

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY FLORIDA

CIVIL APPELLATE DIVISION AY

CASE NO.: 50-2017-AP-000077-CAXX-MB

L.T. NO.: 50-2011-SC-008889-XXXX-MB

ALLSTATE FIRE & CASUALTY
INSURANCE COMPANY,

Appellant,

v.

LOUIS D. KLIONSKY, D.C. P.A.,

A A/A/O Anna Zarankin,

Appellee.

Opinion filed: JUN 05 2018

Appeal from the County Court in and for Palm Beach County,
Judge Nancy Perez

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PER CURIAM.

Allstate Fire & Casualty Insurance Company appeals a final summary judgment that was entered pursuant to the Fourth District Court of Appeal's then-binding decision in *Orthopedic Specialists v. Allstate Insurance Company*, 177 So. 3d 19 (Fla. 4th DCA 2015). The Fourth District's decision was subsequently quashed by the Florida Supreme Court's decision in *Allstate*

Insurance Company v. Orthopedic Specialists, 212 So. 3d 973 (Fla. 2017). We therefore agree that the final judgment must be **REVERSED**, and the matter is **REMANDED** for further proceedings consistent with the Florida Supreme Court's decision.

Allstate has also filed a Motion for Appellate Attorney Fees pursuant to section 768.79, Florida Statutes. We are constrained to find that Allstate is entitled to its reasonable appellate attorney's fees. *See Braxton v. Grabowski*, 125 So. 3d 936 (Fla. 2d DCA 2013). Accordingly, Allstate's Motion for Appellate Attorney Fees is **GRANTED**, conditioned upon the trial court determining that Allstate's offer of judgment otherwise satisfies all legal requirements. However, in determining the reasonable amount of appellate attorney's fees, we encourage the trial court to examine the procedural timeline leading up to the filing of this appeal. The Florida Supreme Court's decision was issued on January 26, 2017, only one day before Allstate filed its motion for rehearing. Although Allstate cannot be faulted for failing to cite to a decision that had not yet been rendered, it does not appear that Allstate ever supplemented or amended its motion for rehearing to bring the Florida Supreme Court's decision to the trial court's attention. The trial court did not deny the motion for rehearing until April 18, 2017, therefore Allstate had nearly three months to alert the trial court to a decision that would have obviated the need for this appeal.

FRENCH, CURLEY, and BLANC, JJ., concur.

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Opinion/Decision filed: JUN 05 2018

Appeal from the County Court in and for
Palm Beach County; Judge Nancy Perez

Date of Appeal: May 16, 2017

DATE OF PANEL: May 14, 2018

PANEL JUDGES: FRENCH, CURLEY, BLANC

AFFIRMED/REVERSED/OTHER: REVERSED AND REMANDED

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:	)	DISSENTING:	)	CONCURRING SPECIALLY:)
	)	With/Without Opinion	)	With/Without Opinion)
<u>6/1/18 DLT</u>)))
DATE: _____ J.	)	_____ J.	)	_____ J.)
<u>6/4/18 [Signature]</u>)))
DATE: _____ J.	)	_____ J.	)	_____ J.)
<u>6/4/18 PNB</u>)))
DATE: _____ J.	)	_____ J.	)	_____ J.)