

# Insurer's Voluntary Dismissal of Coverage Action May Entitle Insured to Legal Fees

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A Florida appellate court has reversed a trial court's denial of attorney's fees and costs after an insurer voluntarily dismissed a declaratory judgment action and settled claims against the policyholder. *Unterlack v. Westport Ins. Co.*, 2005 WL 1109604 (Fla. Ct. App. May 11, 2005). An insurer filed suit against its policyholder, seeking a declaration that certain claims were not covered under the terms of its liability insurance policy. Before a ruling on the merits, however, the insurer dismissed the case without prejudice; the dismissal contained no qualifying or limiting language. The insurer then settled the underlying lawsuits against the policyholder.

Based on the insurer's voluntary dismissal and the settlement, the policyholder sought recovery of attorney's fees under a Section 627.428(1), Florida Statutes (2004), which provides for recovery upon "the rendition of a judgment or decree against an insurer" by any court of the state. The trial court denied the policyholder's motion, but the appellate court reversed, explaining that "[a]ctual rendition of an order or decree is not an absolute prerequisite to an insured's entitlement to attorney's fees under the statute." The court rejected the insurer's argument that "at the time of its voluntary dismissal, there had been no actual settlement of the underlying lawsuit." The court explained that "whether a voluntary dismissal is the 'functional equivalent of a confession of judgment or verdict in favor of the insured' does not turn on the order of a voluntary dismissal of a declaratory action against an insured and the settlement of a claim against the insured; that the dismissal and settlement are related to each other is enough to trigger the operation of the statute." Accordingly, the court concluded the plaintiff was entitled to the legal fees incurred in defense of the insurer's dismissed action.

For more information, please contact us at 202.719.7130.