

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2002

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Petitioner,

v.

CASE NO. 5D02-766

MOTION X-RAY, INC., ETC.

Respondent.

Opinion filed August 16, 2002

Petition for Certiorari Review of Decision
from the Circuit Court for Orange County
Acting in its Appellate Capacity.

Dorothy C. Venable and Betsy E. Gallagher,
of Gallagher & Howard, P.A., Tampa, and
Donald J. Masten and Rebecca L. Bench of
Rissman, Weisberg, Barrett, Hurt, Donahue &
McLain, P.A., Orlando, for Petitioner.

Peter A. Shapiro of The Law Offices of
Peter A. Shapiro, Orlando, for Respondent.

PLEUS, J.

We dismiss the petition for writ of certiorari because the underlying action has been dismissed by the parties below. However, we remand for the lower court to determine if the petitioner is entitled to appellate attorney's fees under section 768.79, Florida Statutes, and if so, to determine the proper amount. *See Williams v. Brochu*, 578 So. 2d 491 (Fla. 5th DCA 1991), *abrogated on other grounds, White v. Steak and Ale of Florida, Inc.*, 816

So. 2d 54 (Fla. 2002).

PETITION DISMISSED; REMANDED FOR DETERMINATION OF APPELLATE ATTORNEY'S FEES ISSUE.

SAWAYA and ORFINGER, R. B., JJ, concur.