

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT IN  
AND FOR HERNANDO COUNTY, FLORIDA

FRED PHILLIPS, and  
CAROL PHILLIPS,

Plaintiffs,

Case No: H-27-CA-2012-1262

vs.

STATE FARM OF FLORIDA  
INSURANCE COMPANY,

Defendant.

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**ORDER GRANTING PLAINTIFFS' MOTION TO CONFIRM APPRAISAL AWARD**

**THIS CAUSE** comes before this Court on Plaintiffs' Motion to Confirm Appraisal Award, and the Court, having reviewed the file, the Motion, the Defendant's Response, and being otherwise fully advised in the premises, hereby finds as follows:

1. Defendant argues that *State Farm Florida Ins. Co. v. Nichols*, 21 So.3d 904 (Fla. 5<sup>th</sup> DCA 2009) is distinguishable from the facts of the instant case because the Defendant's insurance policy in *Nichols* did not contain the Loss Settlement language that Defendant's policy contains within the policy in the case at bar.
2. Defendant's position, however, is a distinction without a difference. The Loss Settlement provision language is language that is verbatim to the very same language contained under Florida Statute §627.707(5)(2007) that the Fifth DCA held was permissive in tone. The fact that the language from the 2007 statute is now contained within the Defendant's Loss Settlement provision within its policy does not make the language any less permissive, as the language is verbatim.



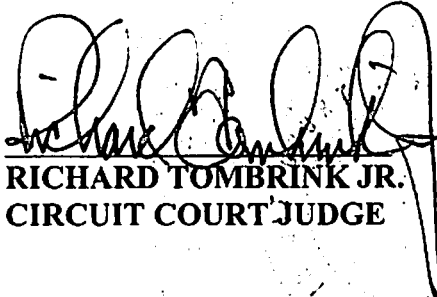
3. Based on the Fifth DCA's opinion in *Nichols*, the Court grants Plaintiffs' Motion to Confirm Appraisal Award.

BASED ON THE FOREGOING, it is

**ORDERED AND ADJUDGED**

1. That Plaintiffs' Motion to Confirm Appraisal Award is hereby **GRANTED**, and Judgment is entered against the Defendant and in favor of the Plaintiffs for the full amount of the Appraisal Award, in compliance with the terms of the policy;
2. Defendant's Motion to Enforce Loss Settlement Provision is hereby **DENIED**.
3. The Court **RESERVES** ruling on the award of attorney's fees and costs until the matter has been briefed with memorandum of law provided.

**DONE AND ORDERED** in chambers, Hernando County, Florida, on this <sup>25<sup>th</sup></sup> day of January, 2013.

  
RICHARD TOMBRINK JR.  
CIRCUIT COURT JUDGE

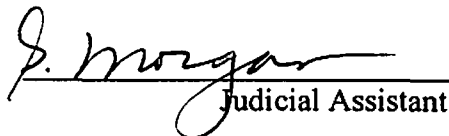
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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true copy of the foregoing has been furnished to the following individuals by hand delivery and/or U.S. Mail/Courthouse box delivery this 25<sup>th</sup> day of January, 2013:

[x] DAVID W. MOLHEM, ESQUIRE  
320 W. Kennedy Boulevard, Suite 330  
Tampa, FL 33606

[x] K.C. WILLIAMS, ESQUIRE  
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Judicial Assistant