THE WEEK IN TORTS

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CASES FROM THE WEEK OF MAY 30, 2014

ERROR TO DENY FEES TO DEFENDANT ON GROUND THAT PROPOSALS WERE AMBIGUOUS AND UNENFORCEABLE – PROPOSALS WERE NOT RENDERED AMBIGUOUS BY THE FACT THAT THE BODY OF THE PROPOSAL STATED THAT ONE DEFENDANT WOULD BE RELEASED IF THE RELEASES WERE SIGNED, WHEREAS THE RELEASES ATTACHED STATED THAT ALL THREE DEFENDANTS WOULD BE RELEASED

Mathis v. Cook, 39 Fla. L. Weekly D1075 (Fla. 5th DCA May 23, 2014):

The defendant served separate proposals for settlement on both plaintiffs. Each proposal specifically stated it was being made on behalf of the defendant, and that the only condition associated with accepting the proposal was the execution of the attached release, which released not only the defendant, but also two others.

The defendant argued that the proposals were not ambiguous because they specifically referenced and incorporated attached releases, which required as a condition of the acceptance that the plaintiffs release the two codefendants. The plaintiffs, however, argued the proposals were ambiguous because the language of the body of the proposals stated that the defendant would be released if the releases were signed, whereas the releases themselves released all three defendants.

The court noted that in interpreting Rule 1.442, the Florida Supreme Court has recognized that **it may be impossible to eliminate all ambiguity from proposals**. All that is required is that the settlement proposal be sufficiently clear and definite to allow the offeree to make an informed decision without needing clarification. Only when the ambiguity within the proposal could reasonably affect the offeree's decision, will the proposal not satisfy the particularity requirement.

The court found these proposals were sufficiently clear, and reversed the order denying the defendant's motion for fees.

RULE 9.400(b) DOES NOT APPLY TO ORIGINAL PROCEEDINGS SET FORTH IN RULE 9.100--THE PROCEDURE TO REQUEST ATTORNEY'S FEES FOR SUCH PROCEEDINGS IS GOVERNED BY RULE 9.300 WHICH GOVERNS APPELLATE MOTIONS

Advanced Chiropractic and Rehabilitation v. United Auto., 39 Fla. L. Weekly S360 (Fla. May 29, 2014):

Appellate Rule 9.400(b) which requires that a motion for attorney's fees be served not later than the time for the service of the reply brief, does not by its plain language apply to petitions for writ of certiorari or other original proceedings. On conflict jurisdiction, the supreme court looked at this issue, and determined that Rule 9.300 (the rule governing appellate motions) applies to a motion for attorney's fees under these circumstances. While the rule does not specify any time period in which the motion must be filed, they must be "timely" (with no real guidance on what "timely" means) to provide the relief sought.

CAUSE OF ACTION FOR NEGLIGENT FAILURE TO PROCURE COVERAGE DOES NOT ACCRUE UNTIL THE UNDERLYING CLAIMS ARE SETTLED

Medical Data Systems v. Coastal Insurance Group, 39 Fla. L. Weekly D1038 (Fla. 4th DCA May 21, 2014):

In a case where the plaintiff alleges that an insurance policy does not provide the necessary coverage, the negligent/malpractice cause of action does not accrue until the insured incurs damages at the conclusion of judicial proceedings. If there are no judicial proceedings, then the case accrues when the client's right to sue in the related or underlying proceeding expires.

WHERE EVIDENCE DID NOT SHOW THAT A NATURAL PERSON "LOANED" THE DEFENDANT DRIVER THE VEHICLE, ERROR TO LIMIT DEFENDANT'S LIABILITY FOR NON-ECONOMIC DAMAGES UNDER THE STATUTE--ALSO ERROR TO SET OFF SETTLEMENTS RECEIVED FROM OTHER DEFENDANTS AGAINST AMOUNT AWARDED FOR NON-ECONOMIC DAMAGES

Youngblood v. Villanueva, 39 Fla. L. Weekly D1055 (Fla. 2nd DCA May 21, 2014):

The defendant consigned his uninsured vehicle to a man at an entity called Extreme Auto Sales with instructions to sell it. Defendant testified he never wanted to see the vehicle again after he handed off the keys. He gave no time limit in which to sell the vehicle.

The Extreme Auto Sales rep who took possession of the car was driving it when he struck and killed the decedent. The defendant contended that the employee driving the vehicle constituted a theft or conversion which exempted defendant from liability. The jury specifically rejected that contention (the Second DCA had previously reversed the case on summary judgment).

Pursuant to §324.021(9)(b)(3), an owner who is a "natural person" gets to cap his noneconomic damages when he "**loans** a motor vehicle to any permissive user." There is also language in the statute which allows for a setoff from economic damages in the event of a settlement.

The Second District concluded that the defendant did not intend to "loan" the vehicle. While he did not transfer title and did not intend to retake possession, the scenario did not constitute the type of loan that would activate the provisions of the statute. Additionally, the defendant claimed that at the time of the accident, the driver was not even a permissive user, but rather had stolen or converted the vehicle to his personal use.

Lastly, the trial court erred in setting off settlement amounts, because there is no setoff for noneconomic damages under *Wells*.

COURT DISMISSED DEFENDANT'S PETITION FOR WRIT OF CERTIORARI REQUIRING DEFENDANT TO ANSWER SPECIAL MEDICAL INTERROGATORIES REGARDING DEFENDANT'S OWN INJURIES

Rodriguez v. Smith, 39 Fla. L. Weekly D1069 (Fla. 3rd DCA May 21, 2014):

Plaintiff riding a motorcycle hit defendant's vehicle on the Seven Mile Bridge in the predawn darkness. Plaintiff alleged the hazards were not activated on the defendant's car, and the plaintiff sideswiped defendant's stalled vehicle, which resulted in serious injury to him.

In the course of pretrial discovery, the defendant testified that his leg or ankle had been struck by debris while standing outside his vehicle when the plaintiff and his motorcycle struck it. Plaintiff propounded four medical interrogatories to the defendant, that went far beyond the injuries described by the defendant which the judge ruled to allow.

While compelling discovery of irrelevant, confidential, personal medical records may meet the stringent test for certiorari jurisdiction, and while the interrogatories were facially overbroad, because the plaintiff in response to the petition acknowledged that any responses to the facially overbroad interrogatories would be confined to those "regarding the defendant's medical circumstances and injuries arising from this accident," the court found the petition acceptable. A dissenting judge was unmoved by the plaintiff's concession, and wrote that he would have granted defendant's petition.