THE WEEK IN TORTS

A Weekly Summary Of The Latest Case Decisions Critical To Those Helping Victims of Negligence

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Clark Fountain welcomes referrals of personal injury, products liability, medical malpractice and other cases that require extensive time and resources. We handle cases throughout the state and across the country. Since 1997, Florida Bar Board Certified Appellate Attorney, Julie H. Littky-Rubin has prepared and disseminated The Week In Torts to fellow practitioners. Ms. Littky-Rubin handles trial support and appeals for attorneys throughout the state.

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CASES FROM THE WEEK OF MARCH 20, 2015

TRIAL COURT IMPROPERLY AWARDED ATTORNEY'S FEES PURSUANT TO A REJECTED PROPOSAL FOR SETTLEMENT, WHERE THE PROPOSAL WAS PATENTLY AMBIGUOUS, SPELLING OUT "ONE HUNDRED THOUSAND DOLLARS" IN WORDS, BUT REFERRING TO $50,000 IN NUMERALS.

Government Employees Insurance Co. v. Ryan, 40 Fla. Law Weekly D617 (Fla. 4th DCA March 11, 2015):

The plaintiff made a proposal for settlement against GEICO stating it was "in the total amount of One Hundred Thousand Dollars ($50,000.00) inclusive of all costs and fees."

How the trial court ever found that to be unambiguous is, to be honest, beyond me. The Fourth District agreed and found this patent ambiguity precluded an award of fees.

PROPOSAL FOR SETTLEMENT NOT AMBIGUOUS OR INVALID FOR FAILURE TO ATTACH PROPOSED RELEASE, WHERE THE OFFER NAMED THE PARTIES WHO WOULD EXECUTE THE RELEASE, AND PRECISELY IDENTIFIED THE CLAIMS TO BE RELEASED--TRIAL COURT SHOULD HAVE GRANTED MOTION FOR FEES.

Russell Post Properties, Inc. v. Leaders Bank, 40 Fla. Law Weekly D619 (Fla. 3rd DCA March 11, 2013):

The defendant served a proposal for settlement. As part of the relevant conditions, the offeror stated that if the proposal were accepted, the plaintiff would dismiss with prejudice any and all claims it would have against the bank, and would execute a general release

in favor of the bank defendant. The terms and details of the offer would remain strictly confidential, and would not be disclosed to any third-party, except with the express written agreement of all parties.

The court found the offer met all the requirements of the rule. Even though there was no release attached, the offer both had the names of the parties who would execute the release, and also precisely identified the claims that would be released as those "made" or "could be" made. Thus, the trial court erred in denying the defendant's motion for fees because there was no release.

TRIAL COURT ABUSED DISCRETION BY DENYING MOTION TO DISMISS WITHOUT ENGAGING IN *FORUM NON CONVENIENS* ANALYSIS UNDER *KINNEY SYSTEM, INC.*

Sybac Solar AG Co. v. Falz, 40 Fla. Law Weekly D655 (Fla. 2nd DCA March 13, 2015):

Under *Kinney System*, when reviewing a *forum non conveniens* claim, a court must make findings with respect to the four-part test (whether an adequate alternative forum exists, how the parties' private interests will be affected if the motion is granted or denied, the balance of public conveniences, and whether the suit could be initiated in the alternative forum without undue inconvenience or prejudice).

If the record does not indicate that the *forum non conveniens* factors were considered, the trial court has abused its discretion in denying the motion. Because the trial court here did not engage in its own independent analysis and the argument adopted by the trial court provided an inadequate basis upon which to base its ruling, the court had to reverse and reman d with instructions to consider the findings *vis à vis Kinney*.

Kind Regards

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