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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 SEPTEMBER 19, 2014

IN A CASE WHERE A PERSON ADMITTED TO THE HOSPITAL DUE TO COMPLICATIONS RELATED TO COPD DIED AS A RESULT OF BEING DROPPED ACCIDENTALLY ONTO AN X-RAY TABLE WHILE BEING MOVED FROM THE GURNEY, THE TRIAL COURT PROPERLY DISMISSED THE COMPLAINT FOR FAILURE TO COMPLY WITH MEDICAL MALPRACTICE PRE-SUIT REQUIREMENTS BECAUSE THE CASE WAS FOR MEDICAL NEGLIGENCE AND NOT SIMPLE NEGLIGENCE.

Buck v. Columbia Hospital Corp., 39 Fla. Weekly D1921 (Fla. 4th DCA September 10, 2014):

A woman with COPD was admitted to the hospital. Two days later she was scheduled to have x-rays and was transported from her room to the radiology floor. Prior to the x-rays being taken, the transport techs moved the patient from the transport gurney and lifted her onto the x-ray table. In the course of moving her, they accidentally dropped her onto the hard x-ray table surface causing her to sustain a fracture of her lumbar spine which ultimately resulted in her death.

The plaintiff sued based on simple negligence. The hospital moved to dismiss the complaint alleging that the plaintiff should have pre-suited the case because it arose out of medical negligence. Read more here.

ONCE THE APPELLATE COURT HAS AWARDED ATTORNEYS' FEES, PURSUANT TO A PROPOSAL FOR SETTLEMENT, THE ISSUE OF GOOD FAITH CANNOT BE RAISED FOR THE FIRST TIME AT THE HEARING TO FIX THE AMOUNT OF THOSE FEES.

Arce v. Wackenhut Corp., 39 Fla. Law Weekly D1932 (Fla. 3rd DCA September 10, 2014):

The trial court had awarded defendant an entitlement to attorneys' fees which the appellate court upheld. The appellate court then ordered the trial court to fix the amount of those fees on remand.

On remand, the trial court entertained plaintiff's argument that the proposal for settlement was not made in good faith. It then vacated its earlier order, and refused to award fees.

On the second appeal, the Third District held that once the appellate court affirms the entitlement to fees, it's error for the trial court to consider good faith during the hearing held to fix the amount of those fees. Read more here.

TRIAL COURT PROPERLY FOUND THAT THE INSURER SHOULD BE HELD RESPONSIBLE FOR A SANCTIONS JUDGMENT ENTERED AGAINST THE INSURED FOR MISREPRESENTATIONS MADE DURING DISCOVERY--SANCTIONS JUDGMENT CONSTITUTED A COST CHARGED TO THE INSURED IN A COVERED LAWSUIT

Geico General v. Rodriguez, 39 Fla. Weekly D1937 (Fla. 3rd DCA September 10, 2014):

The defendant insured driver lied about his own physical condition during his deposition, and testified that he had no physical impairments that would prevent him from being a safe driver or would affect his vision. Records later revealed that he was legally blind. The plaintiffs filed a motion for sanctions against the insured (this was after Geico had already tendered the policy limits on the case but refused to pay certain medical liens). Geico still maintained that it was not responsible for the sanctions pursuant to its policy.

The Third District disagreed. It held that the policy issue covered the accident, and while the insured's misrepresentations in his deposition constituted sanctionable conduct, they were not the type of material misrepresentations "relating to insurance" that would implicate the "Fraud and Misrepresentation" provision of the Geico policy. Therefore, Geico could not void the policy based on those misrepresentations. The court affirmed the trial court's decision granting summary judgment determining that Geico was responsible for payment of the sanctions judgment. Read more here.

ERROR TO DISMISS CASE AGAINST INSURER'S AGENT FOR MAKING FALSE STATEMENTS ABOUT THE EXTENT OF THE INSURED'S COVERAGE WITH PREJUDICE.

Gallon v. Geico, 39 Fla. Law Weekly D1965 (Fla. 2nd DCA September 12, 2014):

Plaintiff was the back seat passenger in his mother's car when she was involved in a single car accident. He was ejected and severely injured. The plaintiff's mother carried insurance with Geico, which included UM coverage.

A dispute arose as to the amount of UM benefits available, with the plaintiff asserting the coverage should have been stacked. Plaintiff asserted a claim for negligent misrepresentation against the agent, alleging that after his mother's coverage had lapsed, Geico reissued the policy with a significantly higher premium. Her review of the declarations page showed that Geico had reissued the policy with stacked UM coverage. Read more here.

IT WAS A DEPARTURE FROM THE ESSENTIAL REQUIREMENTS OF LAW TO DISQUALIFY THE PLAINTIFF'S ATTORNEY ON THE GROUND THAT THE ATTORNEY HAD REPRESENTED THE DEFENDANT IN AN EARLIER LAWSUIT IN WHICH BOTH PLAINTIFF AND DEFENDANT HAD BEEN SUED BY A THIRD-PARTY--DEFENDANT FAILED TO DEMONSTRATE THAT THE MATTER IN THE CURRENT SUIT WAS THE "SAME OR SUBSTANTIALLY RELATED" TO THE MATTER IN THE PRIOR SUIT WHERE THE ATTORNEY REPRESENTED THE DEFENDANT.

Galaxy Fireworks v. Kozar, Fla. Law Weekly D1967 (Fla. 2nd DCA September 12, 2014):

To disqualify an opposing attorney, a former client must first demonstrate that he or she had an attorney-client relationship with that lawyer, and if that is established, an irrefutable presumption arises that confidences were disclosed in the relationship. In this case, the circuit court correctly found that the client had shown that he and the attorney did have such a relationship.

However, there is a second burden. The client must demonstrate that the matter in which the attorney is now adverse to him is the "same or substantially related to" the matter in which the attorney previously represented him. Evidence of the relationship between the matters might include pleadings or other documents from an earlier case. Read more here.

Best Regards,

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