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 OCTOBER 3, 2014

TRIAL COURT ERRED IN FINDING CONTRACTOR ESTOPPED FROM ASSERTING WORKERS' COMPENSATION IMMUNITY TO BAR AN ACTION BY THE EMPLOYEE OF A SUB-SUBCONTRACTOR--DEFENDANT CONTRACTOR NOT LIABLE FOR INJURIES SUSTAINED BY THE PLAINTIFF WHERE THE DEFENDANT HAD SECURED WORKERS' COMPENSATION COVERAGE BY VIRTUE OF THE COVERAGE SECURED BY ITS SUBCONTRACTOR.

VMS, INC. v. Alfonso, 39 Fla. Law Weekly D2049 (Fla. 3RD DCA September 24, 2014):

VMS contracted with the F.D.O.T. to maintain portions of specified roadways and bridges in the tri-county area. As part of the contract, VMS was obligated to secure--and did secure--workers' compensation insurance. It subcontracted some of the work to ABC, thereby obligating ABC to also secure workers' compensation insurance.

ABC hired another person to perform some of the work, and that person in turn hired a number of day laborers, including the plaintiff who was injured. The sub-subcontractor ABC hired did not have workers' comp. coverage and neither ABC nor VMS reported the incident to their compensation carriers.

Plaintiff never sought workers' comp. benefits. Instead, it sued ABC and VMS for negligence. Plaintiff moved for the entry of partial summary judgment against VMS, arguing it was estopped from claiming workers' comp. immunity or comparative negligence, because VMS had failed to notify its workers' comp. carrier that the plaintiff had been injured.

§440.10(1)(a) provides that every employer shall be liable for and shall secure the payment to his or her employees the compensation payable under other statutory sections. The liability is "to secure payment" of compensation. It requires only that the employer insure and keep insured the workers--not a duty to actually **pay** benefits.

Here, there was no dispute that VMS had secured coverage for ABC's employees by virtue of the coverage secured by its subcontractor ABC. VMS was not liable for injuries sustained by ABC or any of its subcontractor's employees while at work, once it satisfied that obligation. So long as security for compensation is maintained for all statutory employees, the contractor obligated to secure such compensation is immune from suit.

Where the statutory employer secures coverage, or ensures that the subcontractor does so, the statutory employer is then immune from suit or the employee's personal injury. Because VMS had no obligation to notify its carrier for the plaintiff's injury, and cannot be estopped from asserting the immunity it enjoys by virtue of ABC having secured and having in place workers' compensation coverage, it was still immune from Plaintiff's tort claim.

NO ERROR IN DENYING §57.105 FEES WHEN CLAIM WAS NOT *ENTIRELY* DEVOID OF MERIT.
Frischer v. Quintana, 39 Fla. Law Weekly D2054 (Fla. 3rd DCA September 24, 2014):

The lawsuit in the case was filed almost 15 years after the applicable statute of limitations had run. The argument that the cause of action had not accrued until "recently," although "feeble" according to the court, was not so **entirely devoid of merit** that the trial court's decision to decline to award fees rose to the level of an abuse of discretion.

Importantly, however, the court had no discretion to avoid awarding costs pursuant to §57.041 to the defendant as the prevailing party. Under the statute, every party who recovers a judgment in a legal proceeding is entitled **as a matter of right** to recover unlawful court costs and a trial judge has no discretion to deny costs to the party recovering judgment.

Kind Regards

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