

THE WEEK IN TORTS

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CASES FROM THE WEEK OF JULY 4, 2014

TRIAL COURT SHOULD HAVE DISMISSED DECLARATORY JUDGMENT COUNT AGAINST THE EXCESS INSURER BASED ON A VIOLATION OF THE NON-JOINDER STATUTE

Star Insurance Co. v. Dominguez, 39 Fla. L. Weekly D1337 (Fla. 2nd DCA June 25, 2014):

The plaintiff in this wrongful death case against the county, brought a count for declaratory relief against the insurance company that provided excess liability coverage for an amount above the sovereign immunity limits.

The trial court refused the insurer's request to dismiss the count, deciding to sever it instead.

Simply because the court had severed the count to prevent a jury from learning about the existence of insurance coverage was not enough. Section 627.4136(1) expressly states that a cause of action against an insurance company by a party that is not its insured, does not accrue until a settlement or verdict has been obtained. The court said to allow a party to circumvent the statute by merely instituting a separate action would result in insurers having to litigate claims which have not yet accrued, and for which the insurer might ultimately bear no liability. Such an interpretation would nullify the protection conferred by statute.

The Second District granted certiorari, finding that the trial court had departed from the essential requirements of law, and that the harm could not be remedied on appeal.

MUST OBJECT BEFORE JURY IS SWORN TO PRESERVE AN OBJECTION MADE DURING JURY SELECTION

Johnson v. State, 39 Fla. L. Weekly D1358 (Fla. 1st DCA June 30, 2014)

During voir dire in this criminal case, the prosecutor asked a catch-all question, seeking to learn if there were anything that he had not asked, that the venire members thought they should tell him. A prospective juror said something which suggested that he believed the defendant had a prior criminal record.

Defense counsel approached the bench and requested the trial court to strike the entire panel, arguing that the comment had put the suggestion of the prior criminal record in the panel's mind, and had tainted all of them.

After the jurors were selected, however, defense counsel failed to object again before the jury was sworn. The failure to do so waived the objection, and the court affirmed the conviction based on the lack of preservation.