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THE WEEK IN TORTS

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

Provided By:

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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
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THE FIFTH DISTRICT HOLDS EN BANC THAT ATTORNEY-CLIENT PRIVILEGE APPLIES TO DISCOVERY SOUGHT BY THE INJURED PARTY IN A THIRD-PARTY BAD FAITH ACTION WHERE THERE HAS BEEN NO ASSIGNMENT FROM THE INSURER TO THE INJURED PARTY--QUESTION CERTIFIED.

Boozer v. Stalley, 39 Fla. Weekly D1907 (Fla. 5th DCA September 5, 2014):

Plaintiff's guardian filed an auto negligence case against the defendant, an Allstate insured, and Allstate retained counsel to defend her. The insured was covered by two policies totalling $1.1 million. The plaintiff recovered a judgment in excess of $11 million which was not appealed. The plaintiff filed a bad faith action.

During the third-party bad faith litigation, the guardian plaintiff sought to depose the insured's attorney, and subpoenaed his original files in the underlying action. The attorney moved for protective order, arguing that the insured's interests were not aligned with the guardian because the insured had no assigned any of her rights to him. However, relying on Dunn Continental Casualty Co. v. Aqua Jet Filter, and Baxley v. Geico, the trial court denied both the attorney's motion, as well as his request to stay the deposition pending appellate review. Read more here.

A TRIAL COURT PROPERLY DENIED DEFENDANT'S MOTION FOR ATTORNEY'S FEES PURSUANT TO A PROPOSAL FOR SETTLEMENT THAT WAS FILED PREMATURELY (LESS THAN 90 DAYS AFTER THE ACTION HAD BEEN COMMENCED AGAINST THE DEFENDANT).

Design Home Remodeling Corp. v. Santana, 39 Fla. Weekly D1862 (Fla. 3rd DCA September 3, 2014):

Read more here.

WITHOUT SUFFICIENT EVIDENCE THAT SUPERVISORS ACT WITH CULPABLE NEGLIGENCE WITHIN THE MEANING OF §440.11(1)(b), THE COURT HELD (PROVIDING NO FACTS) THAT SUMMARY JUDGMENT WAS PROPERLY ENTERED FOR THE DEFENDANT THOUGH CITING A CASE WHERE THE 5TH DISTRICT HELD THE SUPERVISOR'S REMOVAL OF THE SAFETY SWITCH DID NOT AMOUNT TO A CRIME OF CULPABLE NEGLIGENCE.

Arvizu v. Heights Roofing, Inc., et al., 39 Fla. Weekly D1863 (Fla. 3rd DCA September 3, 2014):

Read more here.

BAD FAITH ACTION IS RIPE WHERE INSURER'S LIABILITY FOR COVERAGE AND EXTENT OF THE INSURANCE DAMAGE HAS BEEN DETERMINED BY AN APPRAISAL AWARD, ALTHOUGH THERE HAS BEEN NO DETERMINATION OF WHETHER THE INSURER FOR BREACHED THE INSURANCE CONTRACT.

Cammarata v. State Farm, 39 Fla. Weekly D1880 (Fla. 4th DCA September 3, 2014):

In this en banc opinion, the Fourth District found that only an insurer's liability for coverage and the extent of damages (not necessarily the insurer's liability for breach of contract) must be determined before a bad faith action becomes ripe.

In cases arising out of breach of contract claims arising between State Farm and its insureds over damage in Hurricane Wilma, the court addressed conflicts in its own opinions, and had to recede from a decision where the court had held that an insurer's liability for breach of contract must be determined before a bad faith action becomes ripe, even though the insurer's liability for coverage and the extent of the insured's damages, had been determined by the appraisal award favoring the insured. Read more here.

Best Regards,

Julie H. Littky-Rubin

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