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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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IN YET ANOTHER CASE WHERE THE APPELLATE COURT FINDS THE INTENTIONAL TORT EXCEPTION TO WORKER'S COMPENSATION IMMUNITY WAS NOT MET, THE COURT REVERSED FOR JUDGMENT FOR THE DEFENDANT.

R.L. Haines Construction v. Santa Maria, 39 Fla. Law Weekly D2017 (Fla. 5th DCA September 19, 2014):

A man died from injuries he received while he was struck by a 2,000 lb. steel column while working on a construction site. His wife sued the contractor/employer based on the intentional tort exception.

The decedent was a foreman on a project to expand an existing warehouse. The scope of their work was to erect steel columns to support the building. Each column stood 33 feet high and weighed over 2,000 lbs. The columns were attached to the bolts anchored to a concrete base by an epoxy adhesive. Before the employees could install the columns, the epoxy adhesive had to cure for a certain amount of time depending on temperature. The epoxy installation in this instance required 72 hours of drying but the employer instructed its employees to begin setting the steel columns after only 44 hours of drying. Ultimately, the decedent was killed by a falling column. Read more here.

WHILE INABILITY TO MOVE TO FEDERAL COURT STILL CONSIDERED "IRREPARABLE HARM" IN THE FOURTH, TRIAL COURT DID NOT DEPART FROM ESSENTIAL REQUIREMENTS OF LAW BY ABATING--RATHER THAN DISMISSING--PLAINTIFF'S CLAIM AGAINST UM INSURER FOR BAD FAITH.

Safeco Ins. Co. v. Beare, 39 Fla. Law Weekly D1987 (Fla. 4th DCA September 17, 2014):

Plaintiff sued third-party tortfeasors as a result of an automobile accident. More than one year later, she amended her complaint to state a claim for bad faith against her UM insurer for failure to settle. The insurer moved to dismiss the bad faith claim as premature, and instead, the trial court abated it.

In a petition for writ of certiorari, the insurer claimed it was irreparably harmed by the denial of its motion to dismiss the bad faith claim, because it had the net effect of preventing removal to Federal Court. Citing to its prior precedent, the Fourth District held that inability to go to Federal Court **was** "irreparable harm," (the 1st DCA has disagreed). Read more here.

CIRCUIT COURT DID NOT ERR BY TREATING EXCESS VERDICT FOR UM TRIAL AS CONCLUSIVE EVIDENCE OF PLAINTIFF'S DAMAGES IN BAD FAITH TRIAL--JURY'S DETERMINATION OF DAMAGES IS BINDING.

Geico v. Paton, 39 Fla. Law Weekly D1988 (Fla. 4th DCA September 17, 2014):

Geico tried to argue that damages had to be established in a separate bad faith trial, and could not be these damages established in the original trial against the tortfeasor. In its opinion, the Fourth District wrote:

Forcing re-trial of a plaintiff's damages at a first-party bad faith trial, as Geico urges, is such bad policy that we do not glean even a hint of its existence in any case the Supreme Court has decided in this area.

While a jury's verdict amount may be vulnerable to a legal error on appeal, once those damages are fixed, it is not necessary for them to be proven in the subsequent bad faith trial. Read more here.

TRIAL COURT IMPROPERLY ALLOWED PLAINTIFFS TO ASSERT CLAIM FOR PUNITIVE DAMAGES AGAINST CORPORATE DEFENDANT, WHERE PLAINTIFFS FAILED TO PROFFER EVIDENCE SATISFYING REQUIREMENTS FOR HOLDING THE EMPLOYER, PRINCIPAL, OR CORPORATION LIABLE FOR PUNITIVE DAMAGES FOR THE CONDUCT OF AN EMPLOYER AND AGENT.

SCI Funeral Services v. Munoz, 39 Fla. Law Weekly D2001 (Fla. 3rd DCA September 17, 2014):

In order to state a claim for punitive damages against a corporate defendant, the plaintiff must proffer evidence that satisfies one of the paragraphs of §768.72(3)(a), (b) or (c). These paragraphs either require the plaintiff to introduce evidence that the employer, principal, corporation or other legal entity "actively and knowingly" participated in the punitive conduct; that the officers, directors or managers knowingly condoned, ratified or consent to such conduct or the employer, principal, etc. or engaged in conduct that constituted gross negligence and contributed to the loss suffered by the plaintiff. Read more here.

UNILATERAL MISTAKES OF LAW AND MISUNDERSTANDINGS OF POSSIBLE RESULTS OF JUDICIAL DECREES AND JUDGMENTS ARE NOT GROUNDS FOR RELIEF UNDER RULE 1.540(b).

Handel v. Nevel, 39 Fla. Law Weekly D2002 (Fla. 3rd DCA September 17, 2014):

In a case stemming from a proposed order that was sent multiple times through email, but where the attorney failed to read one of the last emails, the trial judge refused to vacate a Rule 1.540 motion. The motion asserted that the attorney's failure to closely read the proposed order and take an appeal was due to mistake or excusable neglect or alternatively, that the partial final judgment was procured by fraud or misconduct perpetrated by the other defendant, because the body of the email belied the actual contents of the attached proposed order.

Unfortunately, the court said the only identifiable excusable neglect or mistake was the attorney's failure to review the proposed order on two occasions, and to read the order when it was actually entered by the trial court, and then not appeal because he didn't believe it to be final and appealable. The tactical mistake asking the trial judge for leave to amend the complaint or have a partial final judgment entered rather than filing a motion for rehearing or reconsideration was a tactical one, and not within the purview of Rule 1.540. There was no evidence of fraud or misconduct either. Accordingly, the trial court's decision to deny the plaintiff's Rule 1.540 motion was affirmed. Read more here.

Best Regards,

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