2008
CASE LAW SUMMARY

Trial Issues

Evidence-Confrontation of Witnesses

State v. Belvin, 986 So.2d 516 (Fla. 2008).

The defendant was arrested for driving under the influence. During trial, the breath test technician who administered the breath test and prepared the breath test affidavit did not testify. Her affidavit was admitted at trial over the defendant's objection. The Supreme Court reversed the District Court's decision and found that portions of the breath test affidavit which contained the procedures and observations on administering the breath test were testimonial in nature and therefore, its introduction violated the defendant's right of confrontation.

State v. Johnson, 982 So.2d 672 (Fla. 2008).

The defendant was charged with possession of cocaine. During the trial, the State sought to introduce the results of an FDLE lab test performed by another person through her supervisor. The lab test was used to establish the illegal nature of the substances which the defendant possessed. The defendant objected and argued that the lab report was inadmissible hearsay and that its admission without the presence of the person who prepared the report violated his Sixth Amendment right to confront his accuser.

The State argued that the technician who completed the report was now employed by the FBI in Virginia and was unavailable until the following morning of trial and that it would constitute an unreasonable expense and inconvenience to fly her in for trial. The trial court admitted the lab report as a business record and the defendant was found guilty. The Supreme Court found that the lab report was testimonial in nature and, therefore, in order for the report to come in without a witness, the State must make a good faith showing of attempting to secure the witness. Because the State failed to do so, the admission of the report without the live testimony of the technician, was in violation of the confrontation clause.

Evidence-Future Medical Care

Sorrells v. Montesino, 2008 WL 782816 (Fla. 4th DCA 3/26/08), *rev. denied*, 994 So.2d 305 (Fla. 2008).

The trial court erred when it refused to allow Plaintiff's treating physicians to testify as to the cause of future medical care because the opinions were not listed in the physician's report. The Plaintiff had disclosed that the physician was going to testify about the Plaintiff's prognosis and the Fourth District held it was obvious that future medical costs were included within the definition of prognosis.

Evidence-Illegal Immigrant Status

Villasenor v. Martinez, 991 So.2d 433 (Fla. 5th DCA 2008).

The trial court found that the plaintiff's status as an illegal alien was relevant on the limited issue of her future earning potential. The Fifth District affirmed and stated that the trial court did not err in allowing this testimony in light of the plaintiff's claim for damages.

Evidence – Res Ipsa Loquitur

Empire Club, Inc. v. Hernandez, 974 So.2d 447 (Fla. 2d DCA 2007).

Plaintiff was at a night club when a speaker fell and struck her head. Plaintiff's expert opined that the speaker would not have fallen out of the ceiling if it had been properly installed. The defense attempted to introduce testimony that they had more than 30 years of experience in working in nightclubs and they never heard of an accident happening in the fashion as suggested by the plaintiff. The testimony was designed to show that the defendant was not negligent in hanging the speaker over her head or in failing to perform regular safety checks.

The plaintiff opposed the introduction of the testimony on the basis that she was proceeding on the principle of Res Ipsa Loquitur for actual or constructive notice which was irrelevant to the determination of the defendant's negligence. The Second District reversed the trial court and ruled that a new trial was warranted noting that Res Ipsa Loquitur merely assists the plaintiff by permitting the jury to draw an inference of negligence that has not otherwise been proven directly. Res Ipsa Loquitur is not a form of issue preclusion nor does it establish

that the defendant was negligent as a matter of law. It also does not in any way limit the defendant's right to preserve evidence that it did not act negligently.

Evidence -- Stacking of Inferences

Stanley v. Marceaux, 991 So.2d 938 (Fla. 4d DCA 8/20/08).

Tenant sued landlord after a portion of her kitchen ceiling collapsed and fell on her. The sole claim against the defendant was that he negligently repaired the roof above the adjacent apartment and that this repair caused the ceiling to erode and ultimately collapse. On September 5, 2004 Hurricane Frances struck. About three weeks later, Hurricane Jeanne also hit the area. Shortly thereafter a tree fell and struck the edge of the roof of the adjoining duplex causing the interior ceiling of that unit to completely collapse. The defendant removed the tree approximately one week later and repaired damages to the roof and interior ceiling of the adjoining residence.

According to the plaintiff, the ceiling in the adjoining unit collapsed again. In November, 2004 the ceiling in the plaintiff's kitchen fell down on her striking her. She testified that water came into her apartment and that the drywall that fell was wet and there was water on the ceiling beams, the wall and the drywall. The defendant moved for directed verdict which was denied and the jury entered a verdict against the plaintiff. The Fourth District noted that the jury was invited to infer that the attempted repair of the roof was negligently performed and that this defective roof repair caused the ceiling in plaintiff's duplex to collapse weeks later.

They noted that the verdict could stand only if the first inference i.e., that the landlord negligently performed the repair, was established to the exclusion of any other reasonable inference. Although it was possible that the roof repair was negligently undertaken, one could also reasonably infer that any later leak had some other cause such as concealed damage from the two recent hurricanes. Because the first inference was not established to the exclusion of all other reasonable inferences, the Fourth District held that the defendant's motion for directed verdict should have been granted.

Judge/Juror Misconduct

Hood v. Valle, 979 So.2d 961 (Fla. 3d DCA 2008), *rev. denied*, 993 So.2d 512 (Fla. 2008).

In this wrongful death caused by an intoxicated driver, after the jury was discharged, the trial judge authorized the jurors and attorneys to speak with one another if they wished. According to the defendant's counsel, the foreperson then volunteered for the first time that his father had been an alcoholic during his youth and that his perception of the evidence in the case had been influenced by this fact. The defendants maintained that the foreperson should have disclosed his father's alcoholism during voir dire. The Third District noted that the jury panel was not asked as a whole nor individually whether any parent had been an alcoholic, adding that the key to the establishment of a prejudicial concealment of information by a jury member involves a clear direct question requiring a response by the juror.

Juror Interviews

Sterling v. Feldbaum, 980 So.2d 596 (Fla. 2008).

The Fourth District held that the trial court should have granted a Motion to Interview Jurors based upon post-judgment information obtained from Westlaw and the Broward Courthouse docket finding that the information submitted was sufficient to show that the jurors identified concealed material information during voir dire. As such, the trial court should have granted the request to interview the jurors finding that a juror's non-disclosure of prior litigation history during voir dire is relevant and material to jury service.

Egitto v. Wittman, 980 So.2d 1238 (Fla. 4th DCA 2008).

The trial court ordered a post-trial interview of a juror who stated that his company had been involved in litigation which he thought was frivolous and who also volunteered that his brother was a physician. He denied having any close relatives involved in lawsuits. The party requesting the interviews provided documents which showed that he lived at the same address as someone who filed for bankruptcy with the same last name. The moving party also provided an affidavit asserting that the juror failed to disclose that his father was a physician (this was a medical malpractice action).

Noting that a post-trial juror interview is never allowed unless the moving party made sworn factual allegations that, if true, would require a trial court to order a new trial, the Fourth District found that the failure to disclose a relative's possible involvement with a bankruptcy, while relevant, it was not *per se* material. The court noted that the juror had disclosed that he had been involved with several litigation matters and he was questioned in detail about those cases. Further, the parties were aware of the juror's attitudes toward the judicial system. Although the court noted that the failure to disclose that his father was a physician may have constituted concealment of material information, they added that he was never directly asked whether he had any relatives who were doctors, and, as such, the information was not concealed. Further, whether he had one or more doctors in his family was immaterial because the moving party already knew that his brother was a doctor.

Embleton v. Senatus, 993 So.2d 593 (Fla. 4th DCA 2008).

Where a juror expressed a general disenchantment with large jury verdicts in personal injury suits, the statements alone did not indicate that she was unwilling to award Plaintiff's fair compensation if they met their burden of proof. A juror's statement that the Plaintiffs would be starting off behind if they were not in the courtroom during all parts of the trial raised a reasonable doubt as to her ability to be fair and impartial, however, this issue was not raised during Voir Dire and was not preserved for appellate review.

Fine v. Shands Teaching Hospital, 994 So.2d 476 (Fla. 1st DCA 2008).

The trial court granted a juror interview and, following the interview found that a new trial was not required having found that the jurors were not biased when deliberating the case. The First District reversed and reiterated that a juror's non-disclosure of information during voir dire warrants a new trial if:

1. The information is relevant and material to jury service in the case;
2. The juror concealed the information during questioning; and,
3. The failure to disclose the information was not attributable to the complaining party's lack of diligence.

The First District held that the trial court's error was in focusing on whether it believed the jurors were bias when deliberating the case rather than what

Appellant's counsel would have done during voir dire had the litigation history been disclosed.

Jury Selection

Rodriguez v. Lagomasino, 972 So.2d 1050 (Fla. 3d DCA 2008).

The plaintiff was involved in two motor vehicle accidents. During jury selection, one of the jurors advised that his wife had been involved in an accident where "she just touched the other vehicle" and a claim was filed against them. The prospective juror advised that he felt badly because his insurance company advised that they were going to double his premium. The prospective juror advised that he had a problem with the insurance company, but as to this claim he said, "I'm going to be in the middle."

A second juror was asked about caps on damages. The juror advised that there should be caps on damages due to frivolous lawsuits and because he had to pay higher insurance rates for fraud and things such as that. The juror went on to say that he did not have enough information about this case to understand whether his decision would be influenced by his feelings on the caps and damages, but added that it was possible that it would influence his decision. The trial court denied challenges for cause as to both jurors.

The plaintiff used his last peremptory challenge to strike one of the jurors and then requested an additional peremptory challenge which was granted and struck the other juror. The plaintiff's counsel requested yet another challenge to strike another juror but this was denied and that juror ultimately sat on the jury. Prior to the jury being sworn, the plaintiff renewed his objection to the jury. The Third District found that it was not error to strike both of the jurors for cause, adding that "when any reasonable doubt exists as to whether a juror possesses the state of mind necessary to render an impartial verdict based solely on the evidence submitted and the instructions of the law given to her by the court, she should be excused."

Mistrial

Williams v. Lowe's Home Centers, 973 So.2d 1180 (Fla. 5th DCA 2008).

The plaintiff had filed a motion in limine seeking to preclude information regarding a prior automobile accident in the case involving an injury to his finger while using a saw. The motion in limine was denied, but the trial court advised that it would be without prejudice for the Plaintiff to raise again as an objection. During the course of the trial, the issue of the prior automobile accident came up including the amount of damages recovered. Defense counsel also brought out information that the plaintiff had had difficulty with drug addiction at an earlier age and there was no objection to any of the testimony. Further, Plaintiff's attorney did not move for a mistrial at that point in time. He eventually moved for a mistrial after the charge conference based upon testimony that, as juvenile, his client had a crack cocaine addiction.

The Fifth District held that while the earlier injuries suffered by the Plaintiff may have been relevant; the amount recovered was not germane and should not have been elicited. Where the trial court did not issue a definitive ruling on the motion in limine, The Fifth District ruled that it was incumbent upon the plaintiff to object to the testimony or to preserve the issue for appellate review. As for the cross-examination on the issue of crack cocaine addiction, The Fifth District emphasized once again that no objection was made at the time of this attack on the Plaintiff's character. The first time the impropriety regarding this question was raised was after the conclusion of the testimony, after the disposition of motions for directed verdict, after the defense rested and after the charge conference. The trial court did give a curative instructions and the jury was told to disregard any evidence of the plaintiff's addition to crack cocaine. The Fifth District held that unless there is fundamental error, a motion for mistrial must be made at the time the improper comment was made.

Hood v. Valle, 979 So.2d 961 (Fla. 3d DCA 2008), *rev. denied*, 993 So.2d 512 (Fla. 2008).

In a wrongful death action in which the defendant was legally intoxicated, Plaintiff's counsel stated in his opening that the jurors were "the conscious of this community." Defendant moved for mistrial and the trial judge reserved ruling on the motion and invited both side to come up with any cases on the question of whether the use of the phrase in opening statements required a mistrial. Neither

side presented any such cases. The trial court also agreed to give a curative instruction at a point to be selected by defense counsel and defense counsel stated that he would let the court know later, but never did so. After a jury verdict for Plaintiff, the trial judge denied the motion for mistrial. The Third District held that in the context of this case, it cannot be said that the trial court abused its discretion in denying the motion for new trial. The "conscious of the community" comment was promptly interrupted; a curative instruction was offered and a comment was not accompanied by the request for the jury to punish the defendant nor did the outcome indicate that the jury was under the influence of passion, prejudice or gross mistake.

State Farm Mutual Automobile Insurance Co. v Rindner, 996 So.2d 932 (Fla. 4th DCA 2008).

At trial, the Plaintiff's mother who was in her late 80's and deaf testified that, following the accident; she looked over at her daughter and thought she was dead. At that point, the mother let out a wail and the judge ordered the bailiff to take the jury out of the courtroom. The judge then described in great detail what had occurred.

The trial court noted on the record that the jury was "taken aback" by the outburst and that what went on was one of the strangest things that the court had ever been part of. Counsel for the defendant moved for mistrial. The plaintiff objected, but agreed that the jury could disregard any testimony offered by the mother. The court then brought the jury back in and instructed them to disregard the testimony and the outburst. The court then questioned each juror individually to see if they could set aside what transpired and decide the case based on the facts and the law. Each juror assured the court that they could.

New Trial-Closing Argument

Gold v. West Flagler Associates, 997 So.2d 1129 (Fla. 3d DCA 2008).

The plaintiff sued for a fall while walking downstairs on the defendant's property. In closing argument, the defense counsel stated "I have been doing this for almost 30 years now, and invariably it happens that somebody falls down somewhere. They don't know why they fell. They don't know for sure where they fell. An investigator and the photographer go back to the scene of the accident. They go around and take pictures of everything that you can find that looks bad."

The plaintiff objected and the objection was overruled. The defense counsel then continued and stated "As often as not, they don't take the pictures of the spot where they fell because they don't know where they fell. They don't know why they fell. They missed a step. And the reason for that is exactly what you have seen for the last 3 days; so you can parade all these pictures of allegedly dangerous conditions in front of the jury in the hopes that you will find that, well, even though it didn't happen here, it must have been the same thing here. But thank God we have a picture that was taken at the time of the incident. And it's up to you to decide whether there's something in that picture that shows a tripping hazard."

The plaintiff did not move for a mistrial and the jury had an ample opportunity to review the photographs that were admitted into evidence. While finding that defense counsel's statements were clearly improper and that the court erred by not sustaining the objection, the Third District found, after reviewing the entire trial record, that such error was harmless.

New Trial - Damages

Campbell v. Griffith, 971 So.2d 232 (Fla. 2d DCA 2008).

Following a motor vehicle accident, plaintiff developed a subclavian aneurysm. Both the plaintiff's treating physician and the defense medical expert testified that the aneurysm was a permanent injury caused by the automobile accident and there was no other medical explanation for its etiology. Nevertheless, the jury awarded no future medical expenses and no past or future non-economic damages. The Second District held that the failure to award these damages was against the manifest weight of the evidence and, therefore, ordered that a new trial be held. In doing so, they held that while a jury is free to accept or reject an expert's testimony or give it such weight as it deserves, when medical evidence on permanence or causation is undisputed, unimpeached or not otherwise subject to question, the jury is not free to simply ignore or arbitrarily reject that evidence and render a verdict in conflict with it.

New Trial-Improper Comments

Lee v. Oceans Casino Cruises, 983 So.2d 791 (Fla. 3d DCA 2008).

During trial for wrongful death damages suffered from a motor vehicle accident, the Defendant's expert testified and stated that he had retired from the

Broward Sheriff's Office. Plaintiff's counsel asked if he had been filed. Defense counsel did not object during this cross-examination. At a subsequent sidebar, the trial court asked plaintiff's counsel whether he had a basis for this question.

He explained that he had been advised that the expert had not retired but that he was not going to inquire further. Defense counsel did not comment during this discussion nor did he raise any objection. The trial court later stated that the questions about the expert's termination of employment may have antagonized some of the jurors and he wanted to give a neutral instruction on this issue. Plaintiff's counsel advised that did not want any neutral instruction and defense counsel raised no objection.

After a verdict in favor of the plaintiff, defendant moved for new trial arguing that the improper impeachment of their expert prejudiced the case. The trial court granted the new trial and the Third District reversed noting that even if the impeachment was improper, there was no timely objection or motion during trial and, therefore, the error was not preserved.

Aills v. Boemi, 990 So.2d 540 (Fla. 2d DCA 2008).

A new trial was required where the trial court erroneously permitted the plaintiff's counsel to argue to the jury, over the defendant's objection, that the defendant failed to provide appropriate care to the plaintiff during the post-operative period because this was a theory of negligence which was not presented at trial.

Hollenbeck v. Hooks, 993 So.2d 50 (Fla. 2008).

During trial the defense attorney stated to the jury during jury selection "I am a consumer justice attorney and I represent...a merchant marine, not some fancy company, not some conglomerate." The plaintiff moved for mistrial on this basis. In doing so, the plaintiff's counsel noted that defense counsel was retained by an insurance company and therefore did represent "one of those big companies." A verdict was rendered for the defendant and the First District reversed and found that defense counsel's misleading statements implied that an award of damages would be paid solely by the individual and was nothing less than an appeal to the jury to protect that individual from a harmful verdict. They further noted that the statements were impossible to refute and it would have been clear

error for the trial court to inform the jury panel that defense counsel was retained by an insurance company.

New Trial-Jury Instructions

Navarette v. Kern, 975 So.2d 1276 (Fla. 4th DCA 2008).

In a case of admitted liability, the plaintiff alleged that the accident aggravated a pre-existing condition causing her to undergo spinal surgery. By contrast, the defendant argued that the plaintiff suffered only a cervical sprain and that it was due to degenerative changes in the plaintiff's neck that caused her problems and not the accident. The trial court refused the plaintiff's request for a jury instruction on concurring cause. The trial court subsequently granted the motion for new trial finding that it was error not to have given the concurring cause instruction. The Fourth District affirmed, holding that the concurring cause instruction "is required where the defendant's acts in combination with the plaintiff's physical condition to produce the resulting injury." They added that, without the concurring cause instruction, "the jury could have been under the erroneous impression that the required permanent injury had to result solely from the accident."

Olsten Health Services v. Cody, 979 So.2d 1221 (Fla. 3d DCA 2008).

The trial court refused defendant's proposed special jury instruction which stated "the existence of a medical injury shall not create any inference or presumption of negligence against the home health care services provider, and the plaintiff maintains the burden of proving that an injury was legally caused by a breach of the prevailing professional standard of care by the home health care services provider." The trial court denied the requested jury instruction finding that it was redundant. The Third District pointed out that, although the requested jury instruction was patterned after Fla. Stat. §766.102(4) and contained an accurate statement of the law, the trial court was correct that the requested jury instruction was adequately covered by the standard jury instructions regarding negligence and the plaintiff's burden of proof. The defendant also sought a new trial because three 8" x 12" photographs revealing the patient's ulcers were introduced into evidence, and were lost prior to jury deliberations. As such, the trial court allowed the jury to take the blow ups of the 3 photographs into the jury room. Because the photographs were not lost due to any action by any party and because the blow-ups were enlarged copies of the missing photographs that had

been used as demonstrative aids, The Third District found no abuse of discretion in allowing them to be sent back to the jury room.

Rosenfeld v. Seltzer, 993 So.2d 557 (Fla. 4th DCA 2008).

Parents of a deceased child sued the driver of a motor vehicle who killed the 2 year old child. Over objection, the trial court instructed the jury that "no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield." The jury found for the defendant and the plaintiffs moved for new trial arguing that it was error to give this instruction pursuant to the statute because a 2 year old cannot be found to be negligent. While finding that this instruction was erroneous, the Fourth District affirmed the denial of the new trial because the jury found the defendant not negligent and, therefore, never reached the issue of the child's comparative negligence.

New Trial-Miscellaneous

Kalbac v. Waller, 980 So.2d 593 (Fla. 3d DCA 2008).

Even though the Plaintiff erroneously played a portion of a videotaped deposition which suggested that the Defendant was vicariously liable for the negligence of another physician, the trial court properly found that doing so did not warrant a mistrial or a new trial because the Plaintiff's argument to the jury focused on the Defendant's direct negligence and did not suggest that the Defendant should be held vicariously liable for the negligence of others.

State Farm Mutual Automobile Insurance Co. v Rindner, 996 So.2d 932 (Fla. 4th DCA 2008).

At trial, the Plaintiff's mother who was in her late 80's and deaf testified that, following the accident; she looked over at her daughter and thought she was dead. At that point, the mother let out a wail and the judge ordered the bailiff to take the jury out of the courtroom. The judge then described in great detail what had occurred.

The trial court noted on the record that the jury was "taken aback" by the outburst and that what went on was one of the strangest things that the court had ever been part of. Counsel for the defendant moved for mistrial. The plaintiff

objected, but agreed that the jury could disregard any testimony offered by the mother. The court then brought the jury back in and instructed them to disregard the testimony and the outburst. The court then questioned each juror individually to see if they could set aside what transpired and decide the case based on the facts and the law. Each juror assured the court that they could.

The defendant later moved for new trial after a substantial verdict was rendered in favor of the plaintiff. Although the appellate court noted that the emotional outburst of the mother was extreme, they emphasized the trial court's efforts to address the situation. Further, the jury awarded the plaintiff considerably less than her counsel requested. The defendant also complained that the trial court coerced the jury to complete deliberations in a short amount of time.

The jury retired to deliberate at around 3:00 p.m. At around 4:20 p.m., the court had the jury return to the courtroom because it had previously established a schedule ending the trial each day at around 4:00 p.m. based upon the jury and court personnel's concern for childcare responsibilities and other commitments.

When the jury returned to the courtroom, the trial court noted its promise to end the trial by 4:00 p.m. each day and inquired of the jury as to which one of them had travel plans the following day. One juror replied affirmatively and the court then excused the remaining jurors and discussed this issue. The juror responded that she thought they were close to resolving the matter and requested another half an hour.

The trial court then called the remaining jurors back into the courtroom and asked if anyone had any problem working an additional half hour. None of the jurors advised that they had a problem and the trial court responded "we'll see you in a half hour, if not before." Finding that the trial court did not order the jury to conclude their deliberations within 30 minutes, the appellate court affirmed the denial of the motion for new trial.

Plaut v. Norwegian Cruise Lines, Ltd., 34 FLW D10 (Fla. 3d DCA 12/24/08).

Defense counsel used a copy of an out-of-court statement from the plaintiff's neighbor to impeach the plaintiff during cross-examination. The Third District found that the error was harmless where the defense counsel was not permitted to use the statement in any way after objection and defense counsel did not refer to

the statement during closing arguments. As such, they found that the trial court did not abuse its discretion in denying the Plaintiff's Motion for New Trial.

New Trial – Preservation of Error

Williams v. Lowe's Home Centers, 973 So.2d 1180 (Fla. 5th DCA 2008).

The plaintiff had filed a motion in limine seeking to preclude information regarding a prior automobile accident in the case involving an injury to his finger while using a saw. The motion in limine was denied, but the trial court advised that it would be without prejudice for the Plaintiff to raise again as an objection. During the course of the trial, the issue of the prior automobile accident came up including the amount of damages recovered. Defense counsel also brought out information that the plaintiff had had difficulty with drug addiction at an earlier age and there was no objection to any of the testimony. Further, Plaintiff's attorney did not move for a mistrial at that point in time. He eventually moved for a mistrial after the charge conference based upon testimony that, as juvenile, his client had a crack cocaine addiction.

The Fifth District held that while the earlier injuries suffered by the Plaintiff may have been relevant; the amount recovered was not germane and should not have been elicited. Where the trial court did not issue a definitive ruling on the motion in limine, The Fifth District ruled that it was incumbent upon the plaintiff to object to the testimony or to preserve the issue for appellate review. As for the cross-examination on the issue of crack cocaine addiction, The Fifth District emphasized once again that no objection was made at the time of this attack on the Plaintiff's character. The first time the impropriety regarding this question was raised was after the conclusion of the testimony, after the disposition of motions for directed verdict, after the defense rested and after the charge conference. The trial court did give a curative instructions and the jury was told to disregard any evidence of the plaintiff's addition to crack cocaine. The Fifth District held that unless there is fundamental error, a motion for mistrial must be made at the time the improper comment was made.

New Trial - Verdict Form

Plana v. Sainz, 990 So.2d 554 (Fla. 3d DCA 2008).

Plaintiff appealed the trial court's denial of their motion for new trial where the jury failed to award them expenses incurred for diagnostic testing to determine whether the plaintiff's complaint of injuries were as a result of the subject accident. The Third District held that the issue of whether the diagnostic tests performed on the Plaintiff was reasonable and necessary were a disputed issue of fact and it was within the jury's prerogative to weigh the credibility of the witnesses and make a determination that the plaintiff was not entitled to these damages.

The Third District noted that the verdict form used only asked the jury to determine whether there was negligence on the part of the defendant which was a legal cause of injury to the plaintiff as opposed to the standard verdict form which asks whether there was negligence on the part of the defendant which was a legal cause of loss, injury or damage to the plaintiff.

Florida Farm Bureau v. Jordan, 995 So.2d 1135 (Fla. 5th DCA 2008).

In this motor vehicle accident case, the jury was not required to determine future economic damages and future non-economic damages unless they determined that the plaintiff had sustained a permanent impairment. On post-trial motions, the trial court granted the motion for new trial, relying on the Supreme Court's decision in *AutoOwners Insurance v. Tompkins,* 651 So.2d 89 (Fla. 1995), which held that the future award of economic damages is permitted even when the jury does not find any permanent injury.

The court found that the plaintiff presented no evidence of future medical expenses reasonably certain to occur and that the plaintiff only argued that he was permanently injured and would need medical treatment. Further, the jury awarded only for a fraction of the period of identical past damages and therefore, found that the verdict form of the plaintiff could not have been harmful.

Peremptory Challenges and Challenges for Cause

Welch v. State, 992 So.2d 206 (Fla. 2008).

The Supreme Court held that the trial court committed reversible error by refusing to ask for a gender-neutral basis when the State used a peremptory challenge to strike a prospective female juror. In so doing, they stated that it was unimportant if there were other people of the same sex seated on the jury or if the strike was the first such strike of the person of that gender. The court reiterated that when objecting to the other side's use of a peremptory challenge: a timely objection must be made alleging an improper basis (race or gender); the requesting party must show that the prospective juror is a member of a distinct race/gender; and then must request that the court ask the striking party its reason for the strike. Once this occurs, the burden shifts to the proponent of the strike to come forward with a race or gender-neutral explanation and if the court believes that given all of the circumstances surrounding the strike, the explanation is not pre-textual, the strike will be sustained.

Rimes v. State, 993 So.2d 1132(Fla. 5th DCA 2008).

The trial court erred in denying a challenge for cause of a prospective juror who had a close friend who worked as a deputy sheriff. During jury selection, the juror stated that he would tend to believe a law enforcement officer over a lay witness. The juror's statement that he could be impartial made after the trial judge brought him back into the courtroom by himself and through the asking of leading questions, was insufficient to erase reasonable doubt created by his earlier statement.