2015
CASE LAW SUMMARY

Insurance Coverage

Alcohol Exclusion

American Heritage Life Insurance Company v. Morales, 159 So. 3d 160 (Fla. 3d DCA 2015)

Lopez purchased an accidental death and dismemberment policy from American Heritage. The policy contained an alcohol exclusion provision excluding from coverage "any loss incurred as a result of…any injury sustained while under the influence of alcohol or any narcotic unless administered upon the advice of a physician." While the policy was in affect, Lopez died in a crash while operating a jet ski in Biscayne Bay.

The investigator from the Fish and Wildlife Conservation Commission issued a report which contained various conclusions including that Lopez violated Florida Statutes by operating the jet ski more than one half hour after sunset and more than 30 minutes before sunrise. The report also concluded that Lopez was under the influence of alcohol at the time of the accident.

The trial court found that coverage was applicable and the Third District reversed. The Third District found that in order for the alcohol exclusion to bar recovery under the policy it was only necessary to show that there was some causal relationship between the insured's intoxication and his death and that it was unnecessary to show that the insured's intoxication was the sole cause of the accident.

Attorney's Fees

State Farm Florida Insurance Company v. Alvarez, 175 So. 3d 352 (Fla. 3d DCA 2015)

In 2005, State Farm paid the homeowners $13,700 for damage caused by Hurricane Wilma. In 2009, the insureds retained a public adjuster who prepared a

report reflecting a claim for an additional $80,000. Based upon the public adjuster's report, the insureds requested appraisal pursuant to the insurance policy. This was rejected by State Farm. Suit was then filed. After three years of litigation, the insured claimed $80,000 in damage and State Farm offered $175. At mediation, the case settled for $10,000. Following this, the trial court then awarded attorney's fees. Specifically, they awarded a blended rate of $400 per hour; found that 200 of the 225 hours billed was reasonable; and awarded a 1.5 multiplier because counsel with "specialized knowledge" of first-party property insurance cases would not represent the insureds without the possibility of a multiplier.

On appeal, the Third District found that the trial court did not abuse its discretion in awarding a blended rate of $400 per hour noting that the hourly rate awarded was on the lower end of the hourly rate range suggested by State Farm's own expert witness. The Third District did, however, reverse on the issue of the reasonableness of the hours. They noted that 11 different attorneys billed on the file and that "this alone should have alerted the trial court to a problem" adding that "a court should be extremely wary of paying fees to so many lawyers for such a relatively small case with relatively straightforward legal issues and no precedential value." They also noted that the billing records raised concerns because it included items such as 10 hours of Senior Partner time to draft a 5-page complaint that appeared to be a form; 7 hours spent by a Senior Partner to prepare a 3-page form Motion to Compel Appraisal that was never set for hearing; an additional 11-hours of Senior Partner and Associate time to prepare a Second Motion to Compel Appraisal that was identical to the first one and which was also never set for hearing; and various conferences between many lawyers without any indication of how those conferences advanced the case. Lastly, the Third District reversed the award of the multiplier noting that the application of a multiplier "is the exception, not the rule."

Federated National Insurance Company v. Joyce, 179 So. 3d 492 (Fla. 5th DCA 2015)

Federated appealed an award of attorney's fees in favor of the Joyces following settlement of an insurance dispute. The action arose from a denial of coverage based upon an alleged material misrepresentation in the Joyces' homeowner's insurance application. In denying the claim, Federated argued that the insureds had failed to disclose two prior insurance claims at the time of their

application however, early in discovery it came to light that they had actually disclosed the prior claims.

Federated acknowledged the error and they entered into a Settlement Agreement, exclusive of attorney's fees. The trial court determined a reasonable attorney's fee and then applied a "multiplier" of 2.0. The Fifth District reversed finding that there was no basis for a multiplier because this was not a complicated case noting that the only issue was whether the insureds had falsified their insurance application or whether the insurance company had made an error. There were no esoteric legal issues or complicated factual disputes to resolve and, "as one would anticipate given today's legal market, there was no evidence the Joyces had any difficulty obtaining counsel to handle this matter. Indeed, it took only one phone call for the Joyces to secure counsel."

Attorney's Fees Award Covered Under Policy

GEICO General Insurance Company v. Hollingsworth, 157 So. 3d 365 (Fla. 5th DCA 2015)

GEICO issued a policy of insurance which contained an "additional payments" provision which stated that GEICO would pay "all Court costs charged to an insured in a covered lawsuit." Following a jury verdict against its insured, the Plaintiff moved for attorney's fees pursuant to a Proposal for Settlement. The trial court found that GEICO was liable for the attorney's fees under the additional payments section of the policy and the Fifth District affirmed.

Bad Faith – Citizen's Property Insurance Immune From First Party Bad Faith

Citizens Property Insurance Corp. v,. Perdido Sun Condominium Association, Inc., 164 So. 3d 663 (Fla. 2015)

In interpreting Florida Statute 624.155(1)(b), the Florida Supreme Court held that Citizens Property Insurance Corporation cannot be sued in a statutory first-party bad faith cause of action.

Entitlement To Attorney's Fees Is Not Appealable

Tower Hill Prime Insurance Company v. Torralbas, 176 So. 3d 374 (Fla. 3d DCA 2015)

The insurance company appealed an order determining Torralvis' entitlement to attorney's fees and costs. The Third District dismissed the appeal because an order that merely determines the entitlement to attorney's fees without actually awarding an amount of fees is not final and, therefore, is not appealable.

Insured Entitled To Attorney's Fees

Shirtcliffe v. State Farm Mutual Automobile, 160 So. 3d 555 (Fla. 5th DCA 2015)

State Farm originally disputed Shirtcliffe's entitlement to stacking of uninsured motorist benefits. State Farm later agreed that he was entitled to stacking of UM benefits. The court found that its concession on this issue was tantamount to a confession of judgment and, therefore, the insured was entitled to recover statutory attorney's fees.

Order of Coverage

Allstate Insurance Company v. United Services Automobile Association, 174 So. 3d 622 (Fla. 4th DCA 2015)

The underlying accident occurred in 2007 when a permissive driver of a car owned by another was involved in an accident. The car's owner had a State Farm Insurance policy that provided $100,000 in coverage and an Allstate umbrella policy that provided $1,000,000 in coverage. It also required the owner to maintain underlying limits of $250,000 per person. USAA provided uninsured motorist coverage to the injured party.

State Farm tendered its $100,000 policy limits to the injured party and obtained a partial release in favor of the car owner. The injured party then sought to recover additional monies from the Allstate's umbrella policy, however, Allstate denied coverage. As a result, the Plaintiff filed a Complaint against her UM carrier; USAA. This caused USAA to file a third-party complaint against Allstate, the Plaintiff and the permissive driver. The Complaint sought a declaration that Allstate's umbrella policy applied before USAA's UM policy.

Subsequently, USAA moved for summary judgment against Allstate and argued that the umbrella policy provided coverage before the UM policy. Allstate responded that the car owner's failure to carry the required $250,000 limits and underlying coverage created a $150,000 gap in liability coverage and that the gap was uninsured thereby triggering the uninsured motorist policy. Notwithstanding its position throughout the litigation that Allstate's policy applied before USAA's policy, USAA admitted that at the Summary Judgment hearing that its policy provided coverage for the $150,000 gap before Allstate's umbrella policy kicked in. USAA then argued that the priority dispute arose only after USAA breached the $150,000 gap.

Following the hearing, the trial court entered an order granting USAA's Summary Judgment motion and determined that State Farm provided the first $100,000 of coverage; USAA then provided coverage from $100,000.01 to $249,999.99; Allstate then provided coverage from $250,000 to $1,250,000; and then the remainder of the injuries were covered by the uninsured motorist policy. The Fourth District reversed noting that the judgment entered was adverse to USAA's allegations in its declaratory relief action against Allstate, the Plaintiff and the permissive driver. Because USAA received the exact opposite relief that it originally plead for, it was not the prevailing party herein.

Personal Policy Does Not Cover Driver At Work

Bryant v. Windhaven Insurance Company, 173 So. 3d 1058 (Fla. 3d DCA 2015)

The Plaintiff sued when the driver of a van used to transport children to and from a daycare center left the infant in a car seat in the back of the van for over seven hours and the child died from the affects of the summer heat. Windhaven Insurance Company issued a personal automobile insurance policy covering the operation of a sedan - - not the daycare van involved in the child's death - - owned and operated by Mr. Hernandez who was the van driver for the daycare center.

Hernandez picked up the infant, drove the van to the daycare center and parked it in front of the daycare center where it remained throughout the time until the infant was found dead. The daycare center, its landlord and Mr. Hernandez were sued by the estate for wrongful death and Mr. Hernandez requested a defense and indemnity under his personal automobile policy.

Windhaven provided a defense and filed a declaratory action reserving its rights arguing that the policy provided no coverage based upon an exclusion for any vehicle while it was being used or in the course of the insured's employment or occupation and they also excluded coverage for any vehicle other than the covered automobile which was furnished or available for his regular use.

The trial court granted Windhaven's motion regarding the "regular use" exclusion for any vehicle while it was being used or in the course of the insured's employment or occupation and they also excluded coverage for any vehicle other than the covered automobile which was furnished or available for his regular use.

The trial court granted Windhaven's motion regarding the "regular use" exclusion, but denied the motion regarding the "employment exclusion." The estate and Windhaven both appealed. The Third District affirmed the finding that this was not a covered loss under the "regular use" exclusion, but also concluded that the employment exclusion applied to the use of the van.

The estate argued that the cause of the infant's death was not Hernandez's use of the van because the death occurred while the van was parked at the daycare center. The Third District ruled against this argument finding a direct causal connection between the use of the van and the infant's death.

Policy Did Not Cover Shooting

Miglino v. Universal Property & Casualty Insurance Company, 174 So. 3d 479 (Fla. 4th DCA 2015)

A homeowner's insurance policy contained an exclusion for damages "arising out of sexual molestation, corporal punishment or physical or mental abuse." The policy did not define "physical abuse." In this case, the insured lent his gun to his sister who then used the gun to shoot the Plaintiff, her son in law, outside of her home. Summary Judgment in favor of the Insurance Company was affirmed based upon a determination that the shooting fell within the definition of "physical abuse" when using the plain and ordinary meaning of the phrase. As such, there was no duty to defend or indemnify.

Unclean Hands

Frisbie v. Carolina Casualty Insurance Company, 162 So. 3d 1079 (Fla. 5th DCA 2015)

The trial court entered Summary Judgment in favor of the insurance company in an action to rescind the policy ruling that the doctrine of unclean hands precluded the insureds from asserting the affirmative defenses of waiver and estoppel where the insurance company failed to plead the doctrine of unclean hands prior to filing a Motion for Summary Judgment. The issue of unclean hands, asserted as an avoidance to affirmative defenses, should have been plead in reply to the answer and affirmative defenses and, therefore, the Fifth District reversed.