2008
CASE LAW SUMMARY

Automobile Liability

Graves Amendment

Vargas v. Enterprise Leasing, 993 So.2d 614 (Fla. 4th DCA 2008).

In an *en banc* decision, the Fourth District held that the Graves Amendment preempts Florida Statute 324.021 (9)(b)(2) finding that this statute was neither a financial responsibility Law nor a liability insurance requirement. They certified the following question to the Florida Supreme Court: "does the Graves Amendment preempt section 324.021(b)(2)?"

West v. Enterprise Leasing, 997 So.2d 1196 (Fla. 2d DCA 2008).

The Second District found that the Graves Amendment was a proper exercise of congressional power under the Commerce Clause and held that it preempted Florida law imposing vicarious liability on rental car companies. They certified this issue to the Florida Supreme Court.

Insurance– Leased Vehicles

Edwards v. C.A. Motors, Ltd., 985 So.2d 1147 (Fla. 1st DCA 2008).

The plaintiff's decedent was killed when struck by driver of a leased vehicle. The leased vehicle obligated the driver to procure an auto insurance policy with coverage providing limits of $100,000/300,000/50,000 in accordance with Fla. Stat. §324.0421(9)(b). The agreement also provided "lessor may change the amounts of required insurance." There was no dispute that the driver obtained the required coverage and that her insurance policy was valid and in effect at the time of the accident. The First District found that the lease agreement properly tracked Fla. Stat. §324.0421(9)(b), but then went beyond the terms of the statute by allowing the lessor to change the amount of the required insurance. As such, they reversed the summary judgment granted in favor of the lessor.

Brookins v. Ford Credit Titling Trust, 993 So.2d 178 (Fla. 4th DCA 10/31/08).

The Fourth District held that the trial court properly granted summary judgment in favor of a long term lessor of a motor vehicle whose car was involved in an accident, finding that the lessor maintained a blanket policy of liability insurance covering its fleet of leased automobiles with limits of $1,000,000, thereby satisfying the requirements of Fla. Stat. §324.021(9)(b)(1).

Moreno v. Salem, 993 So.2d 588 (Fla. 4th DCA 2008).

The trial court granted a directed verdict following a motor vehicle accident. Both parties were traveling on the expressway on a rainy and windy afternoon. The plaintiff was traveling at "a normal speed" in their lane when the defendant's car hit the right side of their vehicle. The defendant testified that the weather conditions were terrible and that he was traveling under the speed limit and operating his vehicle at the same speed as the surrounding traffic. Prior to the accident, he tried to move from the left lane to the right lane in order to get away from traffic and, as he did so, his car began to fishtail and slide onto the wet road and into the plaintiff. The trial court granted a directed verdict at the close of all evidence and the Fourth District reversed, finding that this testimony was sufficient to state a *prima facie* case of negligence and the issue of whether the defendant exercised reasonable care was for the jury to decide.

PIP

United Automobile Insurance Co. v. Bermudez, 980 So.2d 1213 (Fla. 3d DCA 2008).

A physician who issues a medical report for the purposes of withdrawal of PIP benefits does not need to examine the person to conduct a physical examination of the insured. The Third DCA also reaffirmed their prior holding that a valid report is required where an insured attempts to reduce, withdraw or deny PIP benefits on grounds of reasonableness, necessity or relationship to the accident. A "valid report" pursuant to Fla.

Stat. §627.736(7)(a) requires reliance on a physical examination of the insured prior to the insurer's withdrawal of payment.

United Automobile Insurance v. Garrido, 990 So.2d 574 (Fla. 3d DCA 2008).

Medical provider forwarded bills beyond the timeframe set forth in F.S. 627.736(5)(c)(1) along with timely filed bills. The Third District held that an insurer has no obligation to pay late filed bills. Further, submitting untimely bills along with timely bills to an independent medical examiner for a determination of medical necessity and failing to check "late billing" as a reason for denying payment of the untimely bills on an explanation of benefits form does not constitute a waiver of this provision.

United Automobile Insurance v. Custer Medical Center, 990 So.2d 633 (Fla. 2d DCA 2008).

United Automobile's insured was scheduled for an IME on two separate occasions. On both occasions the insured failed to appear for the examination. Thereafter, United Automobile Insurance advised the insured that it was denying PIP benefits as of the date of the first IME examination for his failure to appear. They subsequently advised that they were declining him PIP benefits because of his failure to attend the IME "which is a condition precedent to any legal action." Thereafter, the clinic as a Assignee of the insured sued the insurance company for services rendered which were in excess of the deductible. The Third District found that the trial court properly granted a directed verdict in favor of the insurance company finding that Florida Statute 627.736 (7) makes clear that an insured's submission to an IME is a condition precedent to coverage.

Progressive American Insurance v. Rural/Metro Corporation of Florida, 994 So.2d 1202 (Fla. 5th DCA 2008).

Progressive filed a declaratory relief action asking the trial court to find that the ambulance company was not entitled to an insurance disclosure. The ambulance company routinely provided emergency ambulance services to Progressive insureds and would accept assignments from the insured for their PIP benefits. Based upon the assignment, the ambulance company requested payment from Progressive and if the payment was not promptly made, prior to filing suit, they would send demand letters requesting

payment and insurance information including a PIP payout sheet, the name of the insurer, the name of each insured, the limits of liability coverage, a statement of any available policy or coverage defense and a copy of the policy. The Fifth District found that the insurance company had no legal duty to provide the requested documentation to the ambulance company as an assignee medical provider.

Granada Insurance Co. v. Cereceda, 997 So.2d 1243 (Fla. 3d DCA 2008).

Granada's insured was injured in an automobile accident and sought treatment with a chiropractor. Thereafter, an IME was obtained by the insurance company and the IME physician concluded that the patient reached maximum medical improvement. Subsequently, the insurance company received the chiropractor's bills and, then requested a peer review of the bills. The reviewer concluded that many services provided were not reasonable, related or necessary. Before any payment was offered or made to the chiropractor, he sued Granada alleging that the insurance company had unlawfully reduced or denied payment for medical treatment.

After suit was filed, Granada tendered a check to the chiropractor for the services it found were proper, however, the chiropractor refused to accept this payment. The county court granted summary judgment in favor of the chiropractor for the full amount of his bills on the grounds that Granada had not obtained a proper medical report pursuant to Fla. Stat. §627.736(7)(a). Granada argued that the physician report requirement of this statute does not apply where the insurance company never withdrew payment to the provider or contested the authorization to continue treatment.

They argued instead that the applicable statute was Fla. Stat. §627.736(4)(b) which does not require a physical examination where treatment is denied or the charges submitted for payment are reduced. Following the county court's decision, review was obtained from the circuit court and they affirmed the county court's decision. In a 2-1 decision with only a published dissent, the Third District affirmed the lower court's ruling.

Settlement

Peraza v. Robles, 983 So.2d 1189 (Fla. 3d DCA 2008).

Following a motor vehicle accident, Plaintiff's counsel offered to settle for $10,000 policy limits. A $10,000 draft was immediately forwarded to counsel along with a letter requesting that the check be held in escrow by the plaintiff's counsel until the insurer received "an unaltered release executed… along with a copy of the U/M Carrier Authorization of Settlement and Waiver of Subrogation Rights." The plaintiff did not negotiate the draft and filed suit. The trial court then enforced the settlement and dismissed the case.

The Third District reversed holding that the insurer's demand for an unaltered release which included an objectionable hold harmless provision and the UM carrier's subrogation waiver did not demonstrate an effective acceptance of the plaintiff's offer. Because the insurer's documents were not shown to be the "usual settlement documents" implicit in any settlement, the court found that this constituted a counteroffer that served as a rejection of the initial demand.

Uninsured Motorist

Muth v. AIU Insurance, 982 So.2d 749 (Fla. 4th DCA 2008).

The Plaintiff settled her accident case with one of the tortfeasors and released the tortfeasor without first notifying her uninsured motorist carrier and obtaining their consent. The plaintiff's non-compliance with the statutory provision (Fla. Stat. §627.727(6)(a)) created a presumption of prejudice to the insurance company which can be rebutted with competent evidence, however, in this case, the Plaintiff failed to do so and summary judgment was affirmed.

Rundell v. Progressive Express Insurance, 994 So.2d 1227 (Fla. 1st DCA 2008).

The plaintiff and defendant were both insured under the same insurance policy. The plaintiff sued the defendant to recover for injuries he had received while a passenger in the vehicle driven by the defendant. Their insurer then filed a complaint requesting a declaration that the liability portion of the policy afforded the defendant no coverage and did not obligate the insurance company to defend the defendant. The plaintiff then made a claim for uninsured motorist coverage and the insurer moved for summary judgment arguing that the uninsured motorist claim was barred by the statute

of limitations. The First District reversed finding that the claim was a compulsory counterclaim and, therefore, the claim was not barred by the Statute of Limitations.

Uninsured Motorist-Claims File

Illinois National Insurance Co. v. Bolen, 997 So.2d 1194 (Fla. 5th DCA 2008).

The Fifth District granted Certiorari and held that the insurer's claim file constituted work product and was not subject to discovery until it was determined that the insurer had an obligation to provide coverage and benefits. The Plaintiff was allowed to depose the adjuster for the limited purposes of inquiring into the insurer's affirmative defense that the Plaintiff failed to comply with all conditions precedent prior to instituting a claim for uninsured motorist benefits and the insurer's denial that the driver and owner of the motor vehicle that struck the insurer's vehicle were uninsured, thereby triggering entitlement to uninsured motorist benefits.