2016
CASE LAW SUMMARY

Automobile Liability

Attorney's Fees

Paton v. GEICO General Insurance Company, 190 So. 3d 1047 (Fla. 3/24/16)

Following a bad faith verdict, Plaintiff moved for attorney's fees and costs. The Plaintiff sought discovery related to the time records of the Defendant's attorneys including: (1) any and all timekeeping slips and records regarding time spent defending GEICO in the bad faith action; (2) any and all bills, invoices, and/or other correspondence for payment of attorney's fees for defending GEICO in the bad faith action; and, (3) any and all retainer agreements. GEICO objected to the request arguing that the information was privileged and irrelevant. The trial court overruled GEICO's objections to this discovery and the Fourth District granted certiorari and quashed the trial court's order. The Supreme Court quashed the Fourth District's decision and held "that the hours expended by counsel for the Defendant insurance company in a contested claim for attorney's fees filed pursuant to §624.155 and §627.428, Florida Statutes, is relevant to the issue of the reasonableness of time expended by counsel for the Plaintiff, and discovery of such information, where disputed, falls within the sound discretion of the trial court."

Attorney's Fees Improperly Granted

State Farm Mutual Automobile Insurance v. Pro Health Pain Relief Center, 185 So. 3d 712 (Fla. 3d DCA 2016)

The Eleventh Judicial Circuit, sitting in its appellate capacity, unconditionally granted Pro Health's Motion for appellate Attorney's fees. The Third District reversed and ruled that the award of appellate attorney's fees pursuant to Florida Statute 627.428(1) should have been condition upon Pro Health ultimately prevailing in the underlying proceeding. The Third District remanded to the appellate division for entry of an order conditionally awarding the appellate attorney's fees to Respondent upon its prevailing in the underlying proceedings.

Dangerous Instrumentality Doctrine

Newton v. Caterpillar Financial Services Corp., 41 FLWD 2755 (Fla. 2d DCA 12/14/16)

Plaintiff was injured as a result of an accident with a front-end loader. The Plaintiff sought recovery based upon the Dangerous Instrumentality Doctrine; however, the trial court entered summary judgment for the owner/lessor of the loader finding that it was not a dangerous instrumentality. The Second District affirmed and held that a front-end loader which: does not transport persons or property on the roads of the state; is not an automobile; is not substantially regulated; does not impose a relatively high danger; and was not being operated in close proximity to the public at the time of the accident does not constitute a dangerous instrumentality.

Error to order production of parts of claim file in non-bad faith cases

State Farm Mutual Automobile Insurance Company v. Premier Diagnostic Centers, LLC, 185 So. 3d 575 (Fla. 3d DCA 2016)

State Farm filed a Petition for Writ of Certiorari in order to quash three trial court orders which required them, in three first-party non-bad-faith cases, to produce portions of its claim files to a medical care provider. The Third District granted certiorari holding than an insurer's claim file is not discoverable in cases such as this and found that the trial court not only applied the wrong law; but also that there would be an irreparable departure from the essential requirements of the law resulting in a manifest injustice to State Farm.

Insured Entitled to Have Damages Assessed Before Bad Faith Claim

Fridman v. Safeco Insurance Company, 185 So. 3d 1214 (Fla. 2016)

Following a motor vehicle accident where the insured suffered several disc herniations, the insurance company failed to tender its $50,000 policy limits until about six months before trial and about three years after the accident. The Plaintiff refused to accept the policy limits. The insurance company then tendered a new check and, without any settlement language, filed a "Confession of Judgment" and a separate "Motion for Entry of Confession of Judgment." The Plaintiff objected and argued that the case should go to trial because the jury's verdict would fix the damages in an ultimate bad faith case.

The trial court denied the Motion to Confess Judgment finding that to do so would ignore the plain legislative intent to Florida Statute 627.727(10) which governs the damages recoverable in a bad faith action. The case then proceeded to trial and the jury awarded damages of $1,000,000. The trial court entered final judgment for $50,000 (the policy limits) and then reserved jurisdiction to determine the Plaintiff's right to amend the Complaint to seek and litigate bad faith damages.

The Fifth District reversed and ruled that when the insurance company confessed judgment in the amount of policy limits, the issues between the parties as framed by the pleadings became moot. The District Court ruled that the trial judge should have entered final judgment and then the Plaintiff would have still had a sufficient basis to pursue a bad faith claim to seek the full amount of damages.

The Supreme Court disagreed with the Fifth District and reinstated the trial court's rulings finding that the issue implicated the heart of UM and first party bad faith litigation. It ruled that an insured is entitled to a determination of liability and a determination to the full extent of his/her damages in the UM case before litigating the first party bad faith claim. It also held that this determination is binding on the subsequent bad faith action provided that the parties have had the opportunity for appellate review of any trial errors that were timely raised. Lastly, they ruled that a final judgment reserving jurisdiction to consider a Motion to Amend to add a bad faith cause of action is a proper approach, as is including the verdict amount in the final judgment.

PIP

Progressive Select Insurance Company v. Florida Emergency Physicians, 183 So. 3d 489 (Fla. 5th DCA 2016)

The Fifth District quashed the decision of the Circuit Court's Appellate Division and ruled that an emergency services provider that submitted its bill within the 30-day window contemplated by the PIP statute was not entitled to have its bill paid due to the existence of a deductible in the insured's insurance contract.

Allstate Indemnity Company v. Markley Chiropractic & Acupuncture, LLC, 201 So. 3d 169 (Fla. 2d DCA 2016)

The policy issued by Allstate stated that the amounts payable "shall be subject to any and all limitations, authorized by §627.736, or any other provisions of the Florida Motor Vehicle No-Fault Law as enacted, amended or otherwise contained in the law, including but not limited to, all fee schedules…" The Second District held that this language gave the insureds and respective medical care providers legally sufficient notice of the insured's election to use Medicare fee schedules.

Florida Wellness and Rehabilitation v. Allstate Fire and Casualty Insurance Company, 201 So. 3d 169 (Fla. 3d DCA 2016)

An insurance policy which contains a limits of liability provision that states "any amounts payable under this coverage shall be subject to any and all limitations, authorized by §627.736, or any other provisions of the Florida Motor Vehicle No-Fault Law, as enacted, amended or otherwise continued in the law, including but not limited to, all fee schedules" clearly and unambiguously elects the §627.736(5)(a)(2) methodology of reimbursement as required by the Florida Supreme Court in *GEICO v. Virtual Imaging Services, Inc.*, 141 So. 3d 147 (Fla. 2013)

PIP Set off

Carpenter v. Chavez, 200 So. 3d 212 (Fla. 2d DCA 2016)

Plaintiff claimed injuries following a motor vehicle accident. At trial, she claimed that she incurred more than $200,000 in past medical expenses as a result of the accident. The jury awarded slightly less than $50,000 for past medical expenses and also found that she had not sustained a permanent injury and therefore awarded no future damages. It was undisputed that the Plaintiff received a full $10,000 in PIP benefits for medical expenses related to the accident. The Plaintiff argued that because the jury did not award the full amount, it could not be determined for which bills the jury made its award and thus the defense could not demonstrate any duplication of benefits. The Defendant argued that a set-off for the full $10,000 paid was appropriate under the "common sense" approach set forth in the Fourth District's decision in *Aetna Casualty v. Langel*, 587 So. 2d 1370, 1373 (Fla. 4th DCA 1991). The trial court entered an order providing for a set-off of only $2,000 finding that the jury award was about 20% of the medical

expenses that were claimed at trial. The Defendant appealed arguing that the Plaintiff received an $8,000 windfall. The Second District agreed with the Defendant and awarded the full $10,000 PIP payment as a set-off.

Rear End Collision

Padilla v. Schwartz, 199 So. 3d 516 (Fla. 4th DCA 2016)

The Fourth District ruled that the trial court improperly granted summary judgment in favor of a driver of a front car in which it found that the rear driver's negligence caused the car accident where the rear driver rebutted the rear-end presumption of negligence by showing through credible evidence that there was a genuine issue of material fact as to whether the front driver contributed to the cause of the accident by suddenly changing lanes. Specifically, the rear driver's deposition testimony that he did not see the front driver's car until she abruptly appeared in front of him, at which point he was unable to avoid the collision, rebutted the rear-end presumption and thus raised factual questions as to whether the front driver suddenly changed lanes and contributed to causing the accident.

Uninsured Motorist Coverage Not Applicable

State Farm Mutual Automobile Insurance Company v. Bailey, 203 So. 3d 995 (Fla. 2d DCA 2016)

The Plaintiff, who was acting within the course and scope of his employment, was struck and injured by an uninsured motorist. Specifically, the Plaintiff had been driving a crane truck on behalf of the named insured. At the time of the accident, the Plaintiff was not operating the truck or the crane, but rather, was standing between 10 and 20 feet from the truck observing the operation of the crane by a co-worker. The truck was running in order for the crane to be operated, however, the crane was not moving. While standing 10-20 feet away from the truck, he was struck by an uninsured motorist. The trial court granted summary judgment finding coverage in favor of the Plaintiff; however, the Second District reversed and found that he was not entitled to uninsured motorist coverage under the business named insured endorsement of the policy because he was not occupying the insured vehicle at the time of the loss.