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APPEALS: APPELLATE COURTS LACK AUTHORITY TO GRANT BELATED APPEALS IN CIVIL CASES: APPELLATE COURT DENIES APPEAL WITHOUT PREJUDICE TO SEEKING RELIEF IN TRIAL COURT

Crystal v. Florida Department of Corrections, ___ So. 3d ___, 40 Fla. L. Weekly D767 (Fla. 1st DCA March 19, 2015)

The appellate court denied the petitioner's request for a belated appeal or belated review by certiorari because the court lacked "authority to grant a belated appeal in a civil proceeding." The court stated that its disposition was without prejudice to seeking relief in the trial court.

TORTS: LEGAL MALPRACTICE: CONFLICT OF INTERESTS: REPRESENTATION OF BOTH DIVORCED PARENTS OF DECEASED CHILD IN WRONGFUL DEATH CASE TO DETRIMENT OF FATHER, WHOSE AWARD WAS ONLY 5% OF MOTHER'S; CIVIL PROCEDURE: SUMMARY JUDGMENT: TRIAL COURT ERRED BY GRANTING SUMMARY JUDGMENT FOR LAW FIRM BASED ON LACK OF CAUSATION: TRIAL COURT ERRED IN SHIFTING BURDEN OF PROVING CAUSATION TO NON-MOVING PARTY OR DETERMINING THAT EVIDENCE OF CAUSATION WAS SPECULATIVE OR INVOLVED PYRAMIDING OF INFERENCES
SE TITLE

Pitcher v. Zappitell, ___ So. 3d ___, 40 Fla. L. Weekly D774 (Fla. 4th DCA April 1, 2015)

The lawyer represented both of the divorced parents of a deceased child in a wrongful death case. When the jury returned a verdict of $4 million for the mother and only $200,000 for the father, the father sued the lawyer for malpractice based on the failure to obtain his informed consent to joint representation. The father alleged that he was ambushed at his deposition because the lawyer failed to inform him that, during her deposition, "the Mother made derogatory statements about the Father and his relationship with [their] daughter." The father also alleged that the lawyer did not properly prepare him for trial and was unwilling to impeach the mother's "negative trial testimony" about the father because the lawyer was representing her. The trial court entered summary judgment for the lawyer based on the absence of a causal relationship between the alleged malpractice and the disparity in the damage awards, but the appellate court reversed. (1) "The trial court based its summary judgment on a finding that the Father did not provide sufficient evidence to establish causation in opposition to [the lawyer's] motion for summary judgment. However, because the non-movant does not have the burden of proof in a summary judgment proceeding, this was error." "When a defendant moves for summary judgment in a negligence case based on causation, summary judgment may not be granted based on a finding that the plaintiff has not come forward with any evidence of causation. This improperly shifts the burden to the non-movant to establish causation." (2) "[T]o the extent that the trial court found the burden had shifted to the Father based on the summary judgment evidence submitted by the movants,

this was error as well. . . . [T]he evidence did not conclusively establish that [the lawyer's] alleged conflict of interest did not in any way contribute to the outcome of the underlying wrongful death case." As a result, "the summary judgment burden of proof never shifted to the Father, and he was not required to produce evidence showing an issue of causation." (3) The trial court erred in concluding that proof of "causation would be based on speculation and inference stacking. . . . Here, the Father's theory of causation [did] not involve numerous steps. He [was] instead making the simple argument that his attorney's conflict of interest compromised his attorney's preparation and presentation of his case, which led to the hugely disparate awards."

TORTS: BATTERY: NEGLIGENCE: FRAUDULENT CONCEALMENT: SEXUALLY TRANSMITTED DISEASES: GENITAL HERPES VIRUS: TRIAL COURT ERRED BY FAILING TO DIRECT A VERDICT FOR THE DEFENDANT ON THE PLAINTIFF'S CLAIM FOR FRAUDULENTLY CONCEALING THAT HE HAD A SEXUALLY TRANSMISSIBLE DISEASE BECAUSE HE OBTAINED A CLEAN BILL OF HEALTH FROM HIS DOCTOR BEFORE THEY HAD UNPROTECTED SEX: VERDICT FOR DEFENDANT ON PLAINTIFF'S CLAIMS FOR BATTERY AND NEGLIGENCE AFFIRMED

Lopez v. Clarke, ___ So. 3d ___, 40 Fla. L. Weekly D779 (Fla. 4th DCA April 1, 2015)

The plaintiff sued her paramour for infecting her with the genital herpes virus. The jury returned a verdict for the defendant on the plaintiff's claims for battery and negligence but returned a verdict for the plaintiff on her claim for fraudulent concealment and awarded her $12,500. The appellate court affirmed on the battery and negligence claims but reversed on the fraudulent concealment claim because the defendant received a "clean bill of health" from his doctor before embarking on a sexual relationship with the plaintiff. As a result, he did not have the intent to deceive her or to commit a battery and could not have been negligent.

COMMERCIAL LITIGATION: TORTS: FRAUD: BREACH OF FIDUCIARY DUTY: BREACH OF CONTRACT; CIVIL PROCEDURE: PROPOSAL FOR SETTLEMENT: ATTORNEY'S FEES: EXCESSIVENESS: AWARD WAS NOT EXCESSIVE BECAUSE DELAY AND COMPLEXITY OF CASE STEMMED FROM DEFENDANT'S FRAUDULENT OR DECEPTIVE DISCOVERY TACTICS: ALTHOUGH PLANTIFF DID REQUEST OR RECEIVE AN ACCOUNTING AT TRIAL, TRIAL COURT DID NOT ABUSE ITS DISCRETION BY FAILING TO DEDUCT TIME SPENT ON ACCOUNTING CLAIM BECAUSE IT WAS INEXTRICABLY INTERTWINED WITH DAMAGE CLAIMS AND WAS AN EQUITABLE TOOL TO DEVELOP THEM: WHEN EXCELLENT RESULTS ARE OBTAINED, THE FEE AWARD SHOULD NOT BE REDUCED SIMPLY BECAUSE THE PLAINTIFF FAILED TO PREVAIL ON EVERY CONTENTION RAISED IN THE LAWSUIT

22nd Century Properties, LLC v. FPH Properties, LLC, ___ So. 3d ___, 40 Fla. L. Weekly D782 (Fla. 4th DCA April 1, 2015)

The plaintiff sued the defendants for fraud, breach of fiduciary duty, breach of contract, and an accounting based upon a failed commercial real estate venture. The plaintiff obtained a judgment on the merits for more than $1.5 million and attorney's fees of $631,969.50 based upon a proposal for settlement. The appellate court held that the trial court did not abuse its discretion in setting the amount of the fee because the "voluminous" and protracted nature of

the case arose from the defendants' "fraudulent or deceptive discovery tactics." In addition, although the plaintiff did not request or receive an accounting at trial, the trial court did not abuse its discretion by failing to deduct the time spent on the accounting claim. When "excellent results' are obtained, "the fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit." The court explained that in this type of commercial litigation, "an accounting can be an equitable tool that allows an aggrieved plaintiff to follow the money and develop other theories of recovery. The accounting claim was an equitable alternative for recovering misappropriated funds had the actions at law failed. At its core, an accounting is '[a]n action for equitable relief against a person in a fiduciary relationship to recover profits taken in a breach of the relationship,' [but] '[e]quity will not act when there is a remedy at law.'" "All the causes of action [in the present case] required that money from the business venture be traced, so that the accounting was inextricably intertwined with the causes of action for which [the plaintiff] recovered damages. [The plaintiff] prevailed upon substantial actions at law – breach of contract and fraud – making recovery under its accounting claim unnecessary. Since [the plaintiff] obtained a most 'excellent' result and the facts underlying the accounting claim entirely overlapped with the claims that prevailed, the trial court did not abuse its discretion by awarding [the plaintiff] for time spent on the accounting cause of action."

INJUNCTIONS: DOMESTIC VIOLENCE: CYBERSTALKING: POSTINGS ON THE HUSBAND'S OWN FACEBOOK PAGE WITH THE LYRICS OF A SONG THE WIFE LISTENED TO OR THE TEXT OF A FACEBOOK MESSAGE THAT THE WIFE SENT TO A THIRD PARTY DID NOT CONSTITUTE CYBERSTALKING BECAUSE THE HUSBAND'S POSTS WERE DIRECTED TO ALL OF HIS FACEBOOK FRIENDS RATHER THAN A SPECIFIC PERSON: HACKING INTO A FACEBOOK ACCOUNT IS NOT CYBERSTALKING BECAUSE IT IS NOT AN ELECTRONIC COMMUNICATION: RESULT NOT ALTERED BY HUSBAND'S STATEMENT THAT HE HAD SOMEONE WATCHING WIFE: WIFE WAS NOT ENTITLED TO INJUNCTION BECAUSE SHE FAILED TO SHOW THAT SHE SUFFERED SUBSTANTIAL EMOTIONAL DISTRESS: THREE INSTANCES OF PHYSICAL ABUSE FIFTEEN YEARS AGO, POSITIONING THE HUSBAND'S FINGERS IN THE FORM OF A GUN AND STATING "TIL DEATH DO US PART," AND BLOCKING DOORWAYS DID NOT SHOW THAT PETITIONER WAS IN IMMINENT DANGER OF BECOMING VICTIM OF DOMESTIC VIOLENCE

Horowitz v. Horowitz, ___ So. 3d ___, 40 Fla. L. Weekly D785 (Fla. 2d DCA April 1, 2015)

The appellate court reversed a final judgment of injunction for protection against domestic violence because the petitioner, the respondent's estranged wife, failed to show that she was the victim of cyberstalking or that she was in imminent danger of becoming the victim of domestic violence. The husband posted on his own Facebook page (1) the lyrics of a song the wife listened to, and (2) the wife's own Facebook message with a third party. (3) In addition, the wife accused the husband of hacking into her Facebook account. The parties were Facebook friends when the husband's actions allegedly occurred. The husband's Facebook postings were not cyberstalking because they were not directed to a specific person but to all of the husband's Facebook friends. Hacking into a Facebook account is not cyberstalking because it is not an electronic communication. The result was not altered by the fact that the husband told the wife that he had someone watching her. In addition, the wife failed to show that she suffered substantial emotional distress as a result of these alleged acts. Physical abuse that occurred fifteen years ago, positioning the husband's fingers in the form a gun and stating "'till death do us part," and blocking doorways were insufficient to show that the wife was in imminent danger of becoming the victim of domestic violence.

CONTEMPT: CIVIL: TRIAL COURT ERRED BY HOLDING DEFENDANT IN CONTEMPT FOR VIOLATING ORDER TO SERVE FACT INFORMATION SHEET AFTER SUMMARY FINAL JUDGMENT WAS ENTERED AGAINST IT BECAUSE OF ABSENCE OF EVIDENCE OF WILLFULNESS

People Tech Group, Inc. v. System Soft Technologies, LLC., ___ So. 3d ___, 40 Fla. L. Weekly D786 (Fla. 2d DCA April 1, 2015)

The trial court held the defendant in contempt and imposed monetary sanctions against it for violating a court order to serve a fact information sheet after a final summary judgment for money damages was entered against it. The appellate court reversed because of the absence of evidence that the defendant willfully violated the trial court's order. "In this case, the trial court's order contained no findings regarding [the defendant's] intent to violate the provision in the final judgment ordering [the defendant] to complete the fact information sheet. No oral findings were made at the hearing as to intent, and no evidence was presented to contradict the facts set forth in [the defendant's] affidavit that it did not receive the pleadings and judgment and had no notice of the order. Further, the trial court heard no testimony from which a credibility determination could have been made." "Because the trial court did not make a finding that [the defendant's] failure to comply with the court order was intentional, and the affidavit presented by [the defendant] present[ed] considerable doubt as to [the defendant's] intent to violate the order, [the appellate court] conclude[d] that the trial court's order depart[ed] from the essential requirements of law." The appellate court reversed and remanded for further proceedings and stated that sanctions could be reimposed if competent, substantial evidence of willful intent was presented.

REAL ESTATE: LEASES; CIVIL PROCEDURE: DEFAULT JUDGMENT: TRIAL COURT ERRED IN ENTERING JUDGMENT FOR DAMAGES BASED UPON ALLEGATIONS OF COMPLAINT BECAUSE DAMAGES WERE UNLIQUIDATED

Robert Maggiano, D.O., P.A. v. Whiskey Creek Professional Center, LLC, ___ So. 3d ___, 40 Fla. L. Weekly D787 (Fla. 2d DCA April 1, 2015)

The trial court entered a default judgment for unpaid rent based on the allegations of the complaint, but the appellate court reversed because the damages were unliquidated. "In this case, the complaint allege[d] a specific amount of unpaid rent. But the complaint admit[ted] that rent payments had been sporadic and it attaché[d] the lease. From the lease, it [was] clear that the accounting to determine the damages in this case [was] somewhat involved. [The appellate court could not] tell whether the amount alleged in the complaint accounted for the deposit, whether the amount stopped [before] or continued to the end of the lease, or how the amount alleged dealt with the sporadic nature of payment. In other words, testimony [was] required to establish facts on which to base the exact amount of damages. Accordingly, [the court] conclude[d] that the conclusory allegation of monetary damages in this case [did] not render the damages liquidated, and [the court] reverse[d] and remand[ed] for a new determination of damages."

CIVIL PROCEDURE: FOREIGN JUDGMENTS: FLORIDA ENFORCEMENT OF FOREIGN JUDGMENTS ACT: STATUTE OF LIMITATIONS: TWENTY YEAR STATUTE OF LIMITATIONS APPLIES TO A FOREIGN JUDGMENT DOMESTICATED IN FLORIDA: TWENTY YEAR PERIOD BEGINS TO RUN FROM THE DATE JUDGMENT WAS ENTERED IN FOREIGN JURISDICTION

Hess v. Patrick, ___ So. 3d ___, 40 Fla. L. Weekly D789 (Fla. 2d DCA April 1, 2015)

A foreign judgment may be enforced in Florida in either of two ways. (1) A common law action may be brought on the judgment within five years after the judgment was entered in the

foreign jurisdiction. The new judgment becomes a Florida judgment, and the statute of limitations on the judgment is twenty years from the date the new judgment was entered in Florida. (2) The judgment may be registered under the Florida Enforcement of Foreign Judgments Act (FEFJA), Sections 55.501-.509, Florida Statutes. The statute of limitations on the registered judgment is twenty years from the date the judgment was entered in the foreign jurisdiction.

REAL ESTATE: MORTGAGE FORECLOSURE: DAMAGES: FINAL JUDGMENT REVERSED BECAUSE OF INADEQUATE EVIDENCE OF DAMAGES OTHER THAN PRINCIPAL BALANCE DUE; APPEALS: DO OVER: REMAND FOR NEW HEARING ON AMOUNT OWED BECAUSE PLAINTIFF PRESENTED AT LEAST SOME COMPETENT EVIDENCE ON DAMAGES

Doyle v. CitiMortgage, Inc., ___ So. 3d ___, 40 Fla. L. Weekly D790 (Fla. 2d DCA April 1, 2015)

The appellate court reversed final judgment of foreclosure because of inadequate evidence of damages. Although the loan payment history, which was received in evidence without objection, established the balance due on the loan, there was no competent evidence to establish the amount of interest, escrow advances, property evaluations, and property inspections. "At the bench trial, the [bank's] representative was presented with a proposed final judgment and asked to recite the current amount due on the loan." Although the witness recited a figure, "[t]he proposed final judgment was not admitted into evidence . . . ." "As such, the testimonial evidence presented to establish the total amount of indebtedness was inadmissible hearsay and the [amount of the indebtedness other than the principal balance due on the note was] not supported by competent substantial evidence." The court reversed and remanded for a new hearing on damages, rather than an order of involuntary dismissal, because at least some competent evidence of damages was presented in the trial court.

INSURANCE: WINDSTORM: APPRAISAL: TRIAL COURT ERRED BY ORDERING APPRAISAL BECAUSE INSUREDS DID NOT COMPLY WITH ALL POST LOSS OBLIGATIONS

State Farm Insurance Company v. Xirinachs, ___ So. 3d ___, 40 Fla. L. Weekly D791 (Fla. 3d DCA April 1, 2015)

The appellate court reversed an order compelling appraisal because the insureds "failed to comply with all post-loss obligations," such as "produc[ing] necessary documentation and protect[ing] the property from further damage . . . ." The court clarified that "sufficient compliance" with post-loss obligations "still requires that all post-loss obligations be satisfied before the trial court can properly exercise its discretion to compel appraisal."

ATTORNEY'S FEES: ALTERNATE FEE RECOVERY CLAUSE: CONTRACT CONTAINED A VALID ALTERNATE FEE RECOVERY CLAUSE EVEN THOUGH IT STIPULATED THE AMOUNT OF A REASONABLE HOURLY FEE: MULTIPLIER: RELEVANT MARKET REQUIRED MULTIPLIER TO OBTAIN COMPETENT COUNSEL TO TAKE CASE TO TRIAL RATHER THAN SETTLE FOR A PITTANCE

TRG Columbus Development Venture, Ltd. v. Sifontes, ___ So. 3d ___, 40 Fla. L. Weekly D796 (Fla. 3d DCA April 1, 2015)

The prevailing party in an action for the return of his deposit on a preconstruction condominium unit entered into a contract to pay his lawyer the higher of a reasonable fee,

stipulated to be $350 per hour, or 40% of any recovery. The trial court awarded $400 per hour, and the appellate court affirmed because the contract contained an alternate fee recovery clause. The reference to $350 per hour established a floor rather than a ceiling. The appellate court also affirmed the award of a multiplier. Although "many South Florida lawyers were taking condominium deposit recovery cases on a contingency fee basis," they were settling the "cases for a tiny percentage of the full deposit without going to trial. The trial court heard direct evidence that competent counsel willing both to take such cases on a contingency fee basis *and* to try such cases to final judgment were few in number. Thus, with particular regard to [*Standard Guaranty Insurance Company v.*] *Quanstrom's* [555 So. 2d 828 (Fla. 1990)] first prong ["whether the relevant market requires a contingency fee multiplier to obtain competent counsel"], the trial court's finding in favor of a contingency fee multiplier [was] supported by competent substantial evidence."

CIVIL PROCEDURE: SANCTIONS: ENTRY OF DEFAULT JUSTIFIED BY DELETION OF RELEVANT EMAILS, CONCEALMENT OF MATERIAL WITNESSES, LYING DURING DEPOSITIONS, PROVIDING FALSE TESTIMONY BEFORE THE TRIAL COURT, AND MUCH MORE: ORDER PRECLUDING DEFENSE ON DAMAGES JUSTIFIED BY STAUNCH REFUSAL TO COMPLY WITH THE TRIAL COURT'S ORDERS AFTER DEFAULTS ON LIABILITY WERE ENTERED

Briarwood Capital, LLC v. Lennar Corporation, ___ So. 3d ___, 40 Fla. L. Weekly D798 (Fla. 3d DCA April 01, 2015)

The appellate court affirmed the entry of default as a sanction for "numerous willful discovery violations, which included the deletion of relevant emails, the concealment of material witnesses, lying during depositions, providing false testimony before the trial court, and much more." The appellate court also affirmed a "subsequent order precluding the [defendants] from presenting evidence or contesting [the plaintiff's] evidence at the damages trial as a sanction for [the defendant's] 'staunch refusal' to follow the trial court's orders after the defaults as to liability were entered against the appellants."

TORTS: NEGLIGENCE: DUTY: SCHOOLS: INTERSCHOLASTIC SPORTS: FIFTEEN YEAR HIGH SCHOOL STUDENT SUFFERED CARDIOPULMONARY ARREST DURING INTERSCHOLASTIC SOCCER GAME AND SUSTAINED PERMANENT BRAIN DAMAGE BECAUSE IT TOOK TWENTY-SIX MINUTES TO RESUSCITATE HIM: ALTHOUGH AED WAS AVAILABLE, IT WAS NOT BROUGHT ON THE FIELD TO ASSIST IN EFFORTS TO RESUSCITATE STUDENT: SCHOOL BOARD OWED DUTY TO STUDENT TO TAKE APPROPRIATE POST-INJURY EFFORTS TO AVOID OR MITIGATE FURTHER AGGRAVATION OF HIS INJURY: CASE HOLDING THAT HEALTH CLUB DOES NOT HAVE DUTY TO PROVIDE AED FOR ADULT MEMBERS IS DISTINGUISHABLE: SCHOOL BOARD WAS NOT IMMUNE UNDER CARDIAC ARREST SURVIVAL ACT BECAUSE IT MADE NO ATTEMPT TO USE AED

Limones v. School District of Lee County, ___ So. 3d ___, 40 Fla. L. Weekly S182 (Fla. April 2, 2015)

A fifteen year old high school student collapsed during an interscholastic soccer game and suffered cardiopulmonary arrest and permanent brain damage because it took twenty-six minutes to resuscitate him. Although an AED was available, it was not brought on the field to assist in the efforts to resuscitate the student. The trial court entered summary judgment for the school board based on lack of duty, and the Second District Court of Appeal affirmed.

The Florida Supreme Court, in the exercise of its discretionary conflict certiorari jurisdiction, quashed the decision of the Second District and remanded for trial. The school board owed a duty to the student "to take appropriate post-injury efforts to avoid or mitigate further aggravation of his injury. *L.A. Fitness International, LLC v. Mayer,* 980 So. 2d 550 (Fla. 4th DCA 2008), which held that "a health club owed no duty to provide or use an AED on a patron in cardiac distress," was distinguishable because "[t]he adult customer and the health club stand in a far different relationship [from] a student involved in school activities with school board officials." "Compulsory schooling creates a unique relationship . . . ." The school board was not immune from liability under the Cardiac Arrest Survival Act, Section 768.1325(3), Florida Statutes, because the Act protects against liability for the use or attempted use of an AED, but there was no attempt to use an AED in the present case. Justices Labarga, Pariente, Quince, and Perry concurred in Justice Lewis's majority opinion, and Justice Polston concurred in Justice Canady's dissenting opinion.

TORTS: PRODUCT LIABILITY: TOBACCO: ENGLE PROGENY CASE: EVIDENCE OF RELIANCE NEED NOT BE ESTABLISHED WITHIN THE FRAUD STATUTE OF REPOSE PERIOD

Philip Morris USA, Inc. v. Russo, ___ So. 3d ___, 40 Fla. L. Weekly S186 (Fla. April 2, 2015)

The Florida Supreme Court, in an *Engle* progeny case that included claims for fraudulent concealment and conspiracy to defraud by concealment, "emphasize[d] that evidence of reliance need not be established within the fraud statute of repose period."

TORTS: PRODUCT LIABILITY: TOBACCO: ENGLE PROGENY CASE: ENGLE DEFENDANTS ARE PRECLUDED AS A MATTER OF LAW FROM ASSERTING THE FRAUD STATUTE OF REPOSE DEFENSE IN ENGLE-PROGENY CASES

Hess v. Philip Morris USA, Inc., ___ So. 3d ___, 40 Fla. L. Weekly S188 (Fla. April 2, 2015)

Although courts "look to reliance in determining when an action accrued for the application of the fraud statute of limitations, the accrual of an action has no bearing on the fraud statute of repose. Because statutes of repose 'run[] from the date of a discrete act on the part of the defendant,' . . . [the Florida Supreme Court held] that the defendant's last act or omission triggers Florida's fraud statute of repose. In other words, [the court found] that 'the date of the commission of the alleged fraud' under section 95.031(2), refers to the defendant's wrongful conduct. Thus, [the court] conclude[d] that for statute of repose purposes it is not necessary that the smoker relied during the twelve-year repose period. Where there is evidence of the defendant's wrongful conduct within the repose period, the statute of repose will not bar a plaintiff's fraudulent concealment claim." "In its Phase I verdict form, the *Engle* jury found that the *Engle* defendants committed fraud by concealment based on conduct that occurred after May 5, 1982, i.e., during the statute of repose period. Because [the court] h[e]ld that the defendants' last act or omission triggers the fraud statute of repose and since the *Engle* jury found that the *Engle* defendants' fraudulent concealment conduct occurred within the repose period, [the court] conclude[d] that the *Engle* defendants [were] precluded as a matter of law from asserting the fraud statute of repose defense in *Engle*-progeny cases."

INSURANCE: UNINSURED MOTORIST COVERAGE: STACKING: ATTORNEY'S FEES: SECTION 627.428, FLORIDA STATUTES: INSURER, WHO CONTESTED INSURED'S RIGHT TO STACKED COVERAGE, CONFESSED JUDGMENT BY PAYING STACKED BENEFITS, ENTITLING INSURED TO ATTORNEY'S FEES

Shirtcliffe v. State Farm Mutual Automobile Insurance Company, ___ So. 3d ___, 40

Fla. L. Weekly D801 (Fla. 5th DCA April 2, 2015)

The insurer initially contested the insured's entitlement to stacked uninsured motorist benefits. After the insured filed an action for declaratory judgment, however, the insurer paid stacked benefits. The court held that the payment was a confession of judgment entitling the insured to attorney's fees under Section 627.428, Florida Statutes.

INSURANCE: AUTO INSURANCE: CANCELLATION: NONPAYMENT OF PREMIUM: WAIVER: ESTOPPEL: EVIDENCE OF LENGTH OF TIME INSURED WAS A CUSTOMER OF THE INSURER WAS IRRELEVANT AND PREJUDICIAL AND DEPRIVED INSURER OF FAIR TRIAL

Government Employees Insurance Company v. Kisha, ___ So. 3d ___, 40 Fla. L. Weekly D802 (Fla. 5th DCA April 2, 2015)

When the insurer cancelled the insurer's auto policy for nonpayment of premium, the insured filed an action for declaratory relief based on the doctrines of waiver and estoppel. The jury found in favor of the insured, but the appellate court reversed because the insurer was prejudiced by irrelevant evidence of the length of time the insured was a customer of the insurer.

APPEALS: ORDER WAS NOT APPEALABLE AS FINAL JUDGMENT BECAUSE IT LEFT UNRESOLVED COMPLAINT AND MOST OF THIRD PARTY CLAIMS: ORDER WAS NOT APPEALABLE AS PARTIAL FINAL JUDGMENT BECAUSE REMAINING CLAIMS WERE RELATED AND ORDER DID NOT DISPOSE OF ENTIRE CASE AS TO ANY PARTY

McMichael v. Zachos, ___ So. 3d ___, 40 Fla. L. Weekly D804 (Fla. 1st DCA April 2, 2015)

The court dismissed an appeal for lack of jurisdiction. The order was not appealable as a final judgment "because it [left] the complaint and most of the claims raised in the third-party complaint unresolved. If an order does not finally end the judicial labor required, 'piecemeal appeals will not be permitted where claims are interrelated and involve the same transaction and the same parties remain in the suit.'" The order was not appealable as "a partial final judgment [under *Fla. R. App.* 9.110(k)] because the remaining claims [were] related and the order [did] not dispose of the entire case as to any party." "[T]he remaining claims [were] related to the claims disposed of in the order on appeal because they rel[ied] on a common set of facts. [I]n this case the third-party complaint allege[d] counts for conspiracy based on the same facts as the individual claims."

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