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A. SIGNIFICANT FLORIDA COURT DECISIONS

1. Supreme Court Decisions

a. Insurance Coverage Decisions

State Farm Mutual Auto Insurance Co. v. Shands Jacksonville Medical Center, Inc., SC-15-1257 (Feb. 26, 2017)
http://www.floridasupremecourt.org/decisions/2017/sc15-1257.pdf

Fla. Stat. 627.736(6) and Scope of Discovery

Hospital provided medical care to insureds who were injured in motor vehicle accidents. After paying the hospital, the insurer asked for documents relating to the "reasonableness of the charges" pursuant to Fla. Stat. 627.736(6), which requires healthcare providers to provide PIP insurance companies documents relating to the treatment of injured persons and the associated costs. Hospital provided the insurer with various documents but refused to supply copies of third-party contracts containing negotiated discount rates between the hospital and other insurers and payers, contending the information was not covered by Fla. Stat. 627.736(6)(b). The insurer filed a petition pursuant to Fla. Stat. 627.736(6)(c) asking the trial court to compel discovery of the withheld information. The trial court ordered the hospital to produce the requested documents but the court of appeals reversed, finding the trial court's order exceeded the scope of discovery allowable under Fla. Stat. 627.736(6)(b) and (c). The Supreme Court of Florida affirmed the decision of the court of appeals, holding that the scope of discovery under Fla. Stat. 627.736(6)(c) is limited to the production of documents contained within Fla. Stat. 627.736(6)(b).

Altman Contrs., Inc. V. Crum & Forster Specialty Ins. Co., No. SC16-1420 2017 Fla. LEXIS 2492 (Dec. 14, 2017)
http://www.floridasupremecourt.org/decisions/2017/sc16-1420.pdf

Florida Supreme Court Holds Pre-Suit Notice of Claim Triggers Insurer's Duty to Defend

Property owner declared bankruptcy during condominium construction project. Property owner subsequently served general contractor with several Chapter 558 Notices of Claims, alleging over 800 unique construction defects. General contractor possessed a CGL policy with insurer. On appeal, the Florida Supreme Court held insurer's duty to defend was triggered when property owner served general contractor with the Chapter 558 Notices of Claims, notwithstanding that no suit had been filed by property owner.

b. Other Significant Decisions

In Re: Amendments to the Florida Evidence Code, SC16-181 (Feb. 16, 2017)
http://www.floridasupremecourt.org/decisions/2017/sc16-181.pdf

Expert Witness Testimony: Daubert versus Frye

In 2013, the Florida Legislature amended sections 90.702 and 90.704 of the Florida Statutes, replacing the Frye standard for the admissibility of expert evidence with the Daubert standard. The Frye standard employs a "general acceptance" standard in which expert testimony, relying on novel scientific processes or techniques, is subject to a standard of review that questions whether the technique is generally accepted in the scientific community. The Daubert standard, which governs all federal courts and has been adopted in whole or in part in 36 states, provides that the court must determine whether the expert testimony is both relevant and reliable. The Florida Supreme Court, however, rejected the rule change to the extent it is procedural, citing "grave constitutional concerns" regarding the right to a jury trial and access to the courts.

Worley v. Young Men's Christian Ass'n, Inc., No. SC150-1086, 2017WL 1366126
(Fla. S. Ct.., April 13, 2017)
http://www.floridasupremecourt.org/decisions/2017/sc15-1086.pdf

Attorney Referrals to Physicians Protected by Attorney-Client Privilege

Pedestrian brought suit against non-profit organization for her trip and fall in organization's parking lot. Pedestrian claimed various injuries, which a referred physician's office documented. In response, the organization alleged that the pedestrian's legal counsel had a "cozy agreement" with the treating physician's office, and sought to compel documents related to the relationship between her law firm and her treating physicians. The trial court ruled that the information was discoverable, as did the district court. Reversing the lower courts, the Florida Supreme Court held the financial relationship between a law firm and a treating physician is not discoverable, and the question of whether an attorney referred a client to a particular physician was protected by the attorney-client privilege.

North Broward Hospital District v. Kalitan, 219 So.3d 49 (Fla. S. Ct., June 8, 2017)
http://www.floridasupremecourt.org/decisions/2017/sc15-1858.pdf

Caps on Non-Economic Damages in Medical Malpractice Cases Ruled Unconstitutional

Patient brought action against hospital for medical malpractice due to complications from carpal tunnel surgery. A jury returned a verdict in favor of patient for over $4.7 million. The appeals court reduced the non-economic damages—including pain and suffering—by $3.3 million. Both parties were unsatisfied with this result, and appealed the matter to the Florida Supreme Court. The Supreme Court held that statutory caps on personal injury non-economic damages in medical malpractice suits violated Florida Constitution's equal protection clause, reinstating the initial award of $4.7 million.

Holmes Regional Medical Center, Inc. v. Allstate Ins. Co., 225 So.3d 780
(Fla. S. Ct., July 13 2017)
http://www.floridasupremecourt.org/decisions/2017/sc15-1555_CORRECTED.pdf

Insurer Barred from Seeking Equitable Subrogation due to Insured's Non-Payment of Judgment

A motor vehicle struck pedestrian while he was riding a scooter. Pedestrian suffered significant injuries, which driver claimed were "exacerbated by medical negligence." The trial court refused to allow driver to present evidence of medical negligence. The jury returned judgment against driver and driver's insurer for over $11 million. Driver's insurer paid out its policy limit of $1.1 million. Driver had yet to pay the remainder of the judgment. Pedestrian subsequently sued his medical providers claiming malpractice, and driver and driver's insurer intervened to file equitable subrogation complaint against medical providers. The trial court dismissed the complaint because the parties had not paid the entirety of the judgment debt. The District Court of Appeals reversed. On appeal, the Florida Supreme Court held that driver and driver's insurer were not entitled to seek equitable subrogation from medical providers until previous judgment debt had been fully satisfied.

2. Appellate Court Decisions

a. Insurance Coverage Decisions

Progressive American Insurance Company v. Eduardo J. Garrido D.C.P.A., etc., 3D15-1067 (Fla. Dist. Ct. App. Feb. 15, 2017)
http://www.3dca.flcourts.org/Opinions/3D15-1067.pdf

Fla. Stat. 627.736(1) and the Meaning of "Authorized Physician"

Insured suffered personal injuries as result of a car accident and sought treatment with a chiropractor. Insured assigned his PIP benefits to chiropractor under insured's insurance policy. Chiropractor submitted invoices totaling $6,075.12 to insurer for treatment of insured. Insurer paid $2,500.00 in PIP benefits. Insurer, however, refused to pay any further PIP benefits because there had not been a determination made by an authorized physician pursuant to Fla. Stat. 627.736(1)(a)3 that insured had suffered an emergency medical condition (EMC). Disputing the fact he was not qualified as an authorized physician, chiropractor filed a declaratory action which sought the full $10,000.00 PIP benefit limit. The trial court ruled the statute unconstitutional as applied to chiropractors on both equal protection and due process grounds. The trial court also determined that, in the absence of an EMC diagnosis, the statute allows an insured to recover up to $10,000.00 in PIP benefits. The court of appeals reversed the decision of the trial court, holding that the statute's requirements as applied to chiropractors was not unconstitutional and that, in the absence of an EMC diagnosis, an insured could only recover up to $2,500.00.

State Farm Florida Insurance Company v. Jose R. Fernandez and Sandra Fernandez, 3D16-1441 (Fla. Dist. Ct. App. Feb. 15, 2017)
http://www.3dca.flcourts.org/Opinions/3D16-1441.pdf

Post-Loss Obligations and Request for Appraisal

Insureds filed a claim with insurer in October 2005 for damage that occurred to insureds' home as a result of Hurricane Wilma. After investigating the claim in November 2005, insurer informed insureds some of the claimed damages were covered under the policy but the damages were less than the insureds' policy deductible. In April 2010, the insureds' public adjuster sent insurer a demand for appraisal, claiming Hurricane Wilma caused $142,733.81 in damages. Insurer sent a letter to insureds requesting "any and all documentation relating to repairs made to your property … which will serve to validate the date of loss, the cause of loss, and the scope of claimed damages." In response, insureds submitted a sworn proof of loss but did not attach any documents to support claim. Insurer denied claim after insureds failed to provide documents upon numerous requests. Insureds filed suit for breach of contract and moved to compel appraisal. The trial court granted insureds' motion. The court of appeals, however, reversed, finding the insureds failed to comply with all post-loss obligations required by insurance policy. The court of appeals pointed out that insureds did not provide notice of additional damage, protect property from further damage, keep an accurate record of expenses, provide requested documents to support claim, and submit a POL within sixty days of loss.

Orlando Noa v. Florida Insurance Guaranty Association, No. 3D16-1367 (Fla. Dist. Ct. App. March 22, 2017)
http://www.3dca.flcourts.org/Opinions/3D16-1367.pdf

Appraisal Determinations for Repairs Must Consider Costs of Legal Compliance

Insured filed a claim with insurer for windstorm damage caused by Hurricane Wilma. In December 2005, insurer assigned an adjuster to evaluate damage to the insured's roof. The adjuster determined damages did not exceed the policy deductible. Over three years later, insured submitted a second, identical claim for $71,687.97. The insurer rejected the second claim and invoked the appraisal clause in the insurance policy. In April 2010, two of the appraisers agreed the claim valued $17,602.10 (replacing only 3% of the tiles on the 3,200 square foot roof) which insurer remunerated to insured, minus the deductible. The appraisal explicitly disclaimed consideration of any effects of "law and ordinances" in computing the total cost of repair. One month later, insured submitted a permit application to have 30% of the roof replaced at a price of $8,700.00. The permit application was rejected by the building and zoning authority, as Miami-Dade County building code required that "not more than 25%" of a roof could be replaced unless the entire roof complies with "current code". The total cost of the proposed repair was now evaluated at $26,000.00, which insured accepted, and then sought further reimbursement from insurer in consideration of the "law and ordinances" effect on value. Third District Court of Appeals held that the appraisers must consider the requirements of building codes when computing cost of repair, and is not an area where courts will "re-appraise" for the parties. Here, two of the appraisers agreed that only 3% of the roof needed to be replaced, and insured and his hired roofers unilaterally determined that 30% of the roof warranted replacement. The court refused to the allow insured to appoint a "super-umpire" who could essentially overrule the

initial appraisal panel and force a re-evaluation of the property due to newly created legal obstacles, and denied insured any additional compensation or reconsideration of the appraisal.

Francis v. Tower Hill Prime Insurance Company, No. 3D16–2114 2017 WL 2960690 (Fla. Dist. Ct. App., July 12, 2017)
http://www.3dca.flcourts.org/Opinions/3D16-2114.pdf

Competing Appraisal Values Creates "Genuine Issue of Material Fact"; A Claim Must be Denied before Breach of Policy Action

Insurer paid out pursuant to policy for home interior repairs caused by roof leaks. This amount reflected actual cash value, less deductible and depreciation. Insured used the funds to repair roof leaks rather than the damaged interior of the home. Unsatisfied with the amount received from insurer, insured sued and claimed the insurer's payments did not reflect "actual cash value" of the interior damage, and furthermore, insured was in breach of contract for not paying for the roof repairs. The trial court granted summary judgement in favor of insurer, holding that the appraisal on the interior repairs was accurate, and any additional claims by insured for damage to the roof itself would be barred by the policy exclusion for "wear and tear". On appeal, the court of appeals held there was an issue of material fact caused by differing appraisal values for the interior damage, and further that the insured had yet to make any actual claim for damage to the roof, and it was premature to assert breach of contract against the insurer.

Castro v. Homeowners Choice Property & Casualty Insurance Company, Case No. 2D15–5456, 2017 WL 3614102 (Fla. Dist. Ct. App., August 23, 2017)
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2017/August/August%2023,%202017/2D15-5456.pdf

Previous Denial of Claim Bars Insurer's Attempt to Assert Breach of Condition

Insureds disputed coverage with insurer regarding policy coverage for alleged sinkhole activity. Insurer hired an expert who determined the insured's home had not been damaged by sinkhole damage, but rather it was caused by "earth movement", which was excluded under the policy. With this information, insurer denied coverage. Some four years later, insureds hired their own expert who determined that the damage to the home was, in fact, related to sinkhole activity. Insureds informed insurer of this information, to which insurer replied by formally requesting Examinations Under Oath (EUO) from all relevant parties. Insureds immediately filed suit. In response, insurer moved to dismiss due to insureds' failure to submit to the requested EUOs - allegedly a material breach of contract. The trial court agreed, granting summary judgement in favor of insurer. On appeal, the court of appeals reversed, holding that insured's previous denial of the claim foreclosed its rights to assert failure of policy conditions.

GEICO General Insurance Company v. Mukamal, No. 3D15–2750 2017 WL 3611593 (Fla. Dist. Ct. App., August 23, 2017)
http://www.3dca.flcourts.org/Opinions/3D15-2750.pdf

Insurer Liable for Verdict for Failing to Deny Coverage Properly

Insurer appealed adverse jury verdict in excess of $15 million. On appeal, the court of appeals affirmed, ruling that insurer failed to comply with Florida's "Claims Administration Statute". The case involved the death of plaintiffs' son in an automobile accident. Insurer asserted its basis of denial was the insured's failing to be a listed driver under its policy. At trial, a jury returned a verdict of $15,350,000.00 in favor of plaintiffs. On appeal, the court of appeals held that insurer had failed to comply with Florida's claims administration statute, and thus its coverage defense was invalid. Specifically, the statute mandates that insurers may only deny coverage in one of three delineated fashions: written notice to the named insured stating a refusal to defend, obtaining a non-waiver agreement from insured, or retaining independent counsel "mutually agreeable" to both parties. Here, insurer defended insured throughout the entirety of the trial, but failed to comply with the statute.

Omega Insurance Company v. Wallace, Case No. 2D16–449 2017 WL 3495211 (Fla. Dist. Ct. App. August 16, 2017)
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2017/August/August%2016,%202017/2D16-449.pdf

Sinkhole coverage

Homeowner sued insurer after dispute regarding proper method of subsurface repair for sinkhole damage under an insurance policy. The parties hired experts who could not agree on whether "underpinning" was necessary, in addition to "compaction grouting". The trial court - without hearing insurer's expert testimony - ruled in favor homeowner, and directed a verdict of over $200,000.00. On appeal, court of appeals reversed, holding the determination of the proper method of subservice repair is a matter for a jury to resolve.

Thornton v. American Family Life Assur., Co. 225 So. 3d 1012 (Fla Dist. App., 2017)
https://edca.1dca.org/DCADocs/2016/1472/161472_DC13_09132017_090511_i.pdf

Appeals Court Clarifies Definition of "Dependent Child" Under Policy

Insured parents brought action against health insurer to compel payment. The insured's 23-year-old daughter sustained significant injuries in a high-speed motorcycle accident. The parties disputed whether the injured daughter was a "dependent child" under the policy. The trial court concluded that the daughter was not covered, and ruled that no benefits were payable by insurer. Parents appealed. Court of Appeals reversed, finding that "dependent child" encompassed the daughter. Appellate court found the insurer's argument that the relevant clause's "under 25" age requirement was limited by a reference to the tax code (under which the daughter would not have qualified) to be against the a "plain reading" of the agreement, and would amount to a "slight-of-hand withdrawal of coverage."

Ifergane v. Citizens Property Ins. Co., 2017 Fla. App. LEXIS 14745 * (Fla. Dist. App., 2017)
http://www.3dca.flcourts.org/Opinions/3D16-1142.pdf

Typo in Insurance Letter Could Waive Contract Defense

Husband and wife had a wind-only dwelling policy with insurer. After Hurricane Wilma damaged the insured's home, insureds made a claim on their policy. While the claim was pending, the insureds divorced, and subsequently entered a settlement agreement where wife assigned her into interest in the home to husband. Insurer and husband could not agree to payment amount, and insurer requested sworn proof of loss and Examinations Under Oath (EUO) from husband and wife (now divorced). Husband complied, while wife did not. A lawsuit commenced where the trial court awarded husband $475,000.00 for damages to his home under policy. Insurer appealed, arguing that wife's refusal to submit to an EUO precluded. However, the appellate court also held that insurer may have waived the EUO requirement in a letter sent to insured that read "by stating the above reason or denial."

b. UM/UIM Decision

Schoeck v. Allstate Ins. Co.,2017 Fla. App. LEXIS 14447, *1 (Fla. Dist. App., 2017)
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2017/October/October%2013,%202017/2D16-3161.pdf

Applying Multiple Uninsured Motorist Policies

Father and daughter were involved in an automobile accident, resulting in injuries to daughter. Daughter alleged that the responsible driver lacked liability coverage sufficient to fully satisfy her damage claims. At the time of the accident, daughter was covered by two separate uninsured motorist provisions in two separate policies. On appeal, the court of appeals held that under the express terms of the first policy, daughter had to exhaust all collectible insurance from the second insurer's policy before any recovery from the first insurer. Nevertheless, the court held that the first insurer had waived this contractual defense. Specifically, the court held that the insurer's affirmative defense was "not plead with sufficient specificity," and the plain reading of the defense only disclaimed insurance coverage from the tortfeasor, not other sources available to the daughter.

c. Other Significant Decisions

Boutin v. St. Augustine Regional Vet. Emerg. Ctr., No. 5D16-1421, (Fla. 5th DCA Oct. 3, 2017)
No weblink available

Veterinary Malpractice – Limitation on Damages

Court of Appeals affirmed the decision of the trial court, which held that non-economic damages are not recoverable in a veterinary malpractice action based solely on negligence. Plaintiff alleged that although her dog had no fair market value, because it was an older, mixed-breed dog, the animal did have great value as a companion to the plaintiff. The trial court ruled the plaintiff could not recover damages based on a subjective, emotional, or "intrinsic" value that

would be based on a non-economic valuation. On appeal, the court rejected plaintiff's argument to extend recoverable damages so as to include such non-economic damages.

Carmen Encarncion v. Lifemark Hospitals of Florida, etc., et al., 3D15-0834
(Fla. Dist. Ct. App. Feb. 1, 2017)
http://www.3dca.flcourts.org/Opinions/3D15-0834.pdf

Fla. Stat. 768.0755 and Premises Liability

Visitor and her mother were waiting in the emergency room for her mother to be admitted to hospital. After waiting five hours, visitor left waiting area to seek out a nurse to determine status of wait. As visitor left waiting area, she noticed a man, who she thought was a paramedic with a spray bottle, cleaning a stretcher in the hallway. In an attempt to walk around the area where the man was cleaning, visitor slipped and fell on what she guessed was the spray liquid on floor. Visitor sued the hospital for her injuries, contending there were no signs indicating the floor was wet. Visitor asserted the substance on the floor was oily, dirty, dark, and smelled like a cleaning product. Trial court granted hospital's motion for summary judgment. On appeal, the court affirmed the decision of the trial court, noting pursuant to Fla. Stat. 768.0755, which concerns premises liability for transitory foreign substances for businesses, an injured person who slips and falls on a transitory foreign substance must show the business knew or should have known of the dangerous condition and should have taken action to remedy the dangerous condition. The court of appeals found nothing to suggest the hospital knew the foreign substance was on the floor, and visitor could not establish how long the substance had been on the floor.

Geico General Insurance Company v. James M. Harvey, 4D15-4724
(Fla. Dist. Ct. App. Jan. 4, 2017)
https://edca.4dca.org/DCADocs/2015/4724/154724_DC13_01042017_083817_i.pdf

Negligence Alone Does not Establish Bad Faith

Insured was involved in car accident which resulted in death of motorcycle rider. The estate of motorcycle rider brought wrongful death lawsuit against the insured. The estate received an $8.47 million judgment against the insured following a jury trial. Thereafter, insured sued insurer to recover for bad faith in handling wrongful death lawsuit that resulted in excess judgment. The trial court denied insurer's motion for a directed verdict and entered judgment on jury verdict for insured. On appeal, the court held the insurer had not engaged in bad faith despite its failure to immediately inform insured of a request by motorcycle rider's estate for a statement regarding insured's assets. The court of appeals found that the insured had fulfilled the seven obligations an insurer owes to an insured, and that insurer's negligence alone is insufficient to sustain a bad faith claim. *Boston Old Colony Insurance Co. v. Gutierrez*, 386 So. 2d 783, 785 (Fla. 1980). The court of appeals further held that any deficiency in handling the claim did not cause the excess judgment.

Bryant v. Mezo, No. 4D16-386 2017 WL 2131495 (Fla. Dist. Ct. App., May 17, 2017)
https://edca.4dca.org/DCADocs/2016/0386/160386_DC05_05172017_090229_i.pdf

Personal Injury Case Dismissed After Injured Motorist Conceals Her Previous Injuries

Injured motorist sued the other driver, alleging the collision caused severe neck and back injuries. Responding to several formal requests for information, the injured motorist claimed she did not recall ever experiencing any injury to her neck or back. Subsequently, it was discovered she had filed two separate worker's compensation claims for a cervical spine injury, and had received treatments for neck and back pain on more than 70 occasions over a fifteen-year period. Upon this information coming to light, the trial court dismissed her suit for perpetuating a "fraud upon the court." The court of appeals affirmed the decision of the lower court, and admonished the injured motorist for "deny[ing] reality even when confronted with the evidence."

Kendall South Medical Center, Inc. v. Consolidated Insurance Nation, Inc., 219 So.3d 185 (Fla. Dist. Ct. App., May 10, 2017)
http://www.3dca.flcourts.org/Opinions/3D16-0926.pdf

Insurance Agent Advice

Medical center brought action for negligent procurement of an insurance policy. The insured alleged that it sought a commercial property insurance policy that would fully cover its leased property. Insured claimed the insurance agent who sold the policy advised the agreement included such coverage, but failed to mention the existence of a 90% coinsurance clause. When the sprinkler system leaked and caused $260,000.00 in damages, insured only received a payout of roughly $16,000.00. The trial court dismissed insured's claim. On appeal, the court of appeals reversed the lower court, finding that the insured had sufficiently pled a cause of action and could proceed with suit. The court held that the agent was required to "exercise due care in correctly advising the insured of the existence and availability of particular insurance", and there was an unresolved question of whether the insurance provider's agent failed to observe this standard.

Duarte v. Snap-On, Inc., 216 So.3d 771 (Fla. Dist. Ct. App., March 15, 2017)
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2017/March/March%2015,%202017/2D15-1952.pdf

Injured Driver Nearly Has Case Dismissed After Telling Inconsistent Stories in Separate Lawsuit

Driver was injured when his idle vehicle was struck from behind by another motorist. Four years later, driver filed suit. The other driver (and his employer) accepted fault, but disputed the extent of driver's claimed injuries to his back and arm. Two months later, driver was involved in another vehicle accident, allegedly exacerbating his arm and back pain. During two separate depositions, driver described the incident as so minor that "[driver] doesn't even know it would be considered an accident." While being deposed about the more recent crash, driver described the event as a "hard impact" and "very fast", and that his injuries were "severely aggravated". Upon learning of this deposition testimony, defendant moved to dismiss plaintiff's claims for perpetuating a "fraud upon the Court". The trial court granted the motion and dismissed driver's case with prejudice. Court of Appeals - with some reluctance - reversed the trial court, finding

dismissal too harsh a remedy. Instead, the court opined that "impeach[ment] at trial or imposing some lesser sanction" was more appropriate.

Deauville Hotel Management, LLC. v. Ward, 219 So.3d 949 (Fla. Dist. Ct. App., May 31, 2017)
http://www.3dca.flcourts.org/Opinions/3D15-2114.pdf

Wedding Ruined by Hotel Not Grounds for Intentional Infliction of Emotional Distress

Couple alleged several claims against a hotel for a scheduling kerfuffle, which resulted in their wedding reception being moved from a private ballroom to the hotel's lobby. The "distressing" events included "bikini-clad" hotel guests walking through the reception area, the hired disc jockey being told repeatedly to turn the music down, and the 190+ wedding guests being crammed into a space that could not comfortably accommodate a group of its size. At trial, the jury awarded the couple $5,000.00 for intentional infliction of emotional distress. On appeal, the court of appeals reversed the damage award, emphasizing that to impose liability for intentional infliction of emotional distress a defendant's behavior must be "truly outrageous". By way of example, the court offered a case where an insurance provider intentionally delayed payments to a terminally-ill insured in an effort to expedite her death. In the court's view, the hotel's behavior here was a far-cry from the extreme behavior necessary to support a similar verdict.

Office of Insurance Regulation v. State Farm Florida Insurance Company, 213 So.3d 1104 (Fla. Dist. Ct. App., March 20, 2017)
https://edca.1dca.org/DCADocs/2016/2301/162301_DC05_03202017_090535_i.pdf

QUASR Data is a Trade Secret Exempt from Florida's Public Records Act

Property insurer brought action against Florida Office of Insurance Regulation to have its "QUASR" data declared a trade secret, and thus exempt from Florida's Public Records Act. QUASR data is information insurers are statutorily obligated to produce quarterly to state government officials, and contains information not available to the general public. The reports contain insurer information regarding the amount of policies in effect, the total dollar value of structure exposure for policies providing wind coverage, and the number of policies canceled due to hurricane risk. Here, the insurer sought an injunction to keep the office from releasing any of its QUASR data to the public. The trial court entered judgment in favor of insurer on both issues. The office appealed. Court of Appeals affirmed, holding that the data was trade secret exempt from disclosure under Public Records Act, and the office was prohibited from releasing it to the public.

Hagertysmith, LLC, v. Timothy Gerlander, et al., 2017 Fla. App. LEXIS 14894 (Fla. Dist. App., 2017)
http://www.5dca.org/Opinions/Opin2017/101617/5D16-3655.op.pdf

Neighbors Can Proceed with Suit Over Ruined Lake View

Purchaser of a lakefront home sued neighbors for diminished home value caused by neighbor's construction of a dock and walkway which obscured view of lake. The trial court held that the purchaser had no cause-of-action, and could not recover any damages because they had no legal right to have an unobstructed view of the lake. On appeal, the court of appeals held that

purchaser did have a cause-of-action for invasion of "littoral rights", and remanded for further proceedings.

B. SIGNIFICANT CASES PENDING BEFORE THE FLORIDA SUPREME COURT

Delisle v. Crane Co., et al., Case No. SC16-2182 (Fla. 2016).
http://jweb.flcourts.org/pls/docket/ds_docket?p_caseyear=2016&p_casenumber=2182

Expert testimony

Doctor was diagnosed with mesothelioma. He sued several parties, including cigarette companies, on a theory that asbestos in the cigarettes he smoked contributed to his illness. Court awarded doctor over $8 million in damages, with a 44 percent liability imposed on the cigarette companies. Cigarette companies appealed, and the court of appeals vacated and remanded, finding doctor's expert to be an unreliable witness. Supreme Court of Florida has agreed to review to the case.

Harvey v. Geico General Ins. Co., Case No. SC17-85 (Fla. 2017).
http://jweb.flcourts.org/pls/docket/ds_docket?p_caseyear=2017&p_casenumber=85

Bad-Faith Insurance Claim

Insured sought to collect under a policy with insurer after automobile accident caused decedent's wrongful death. The trial court returned a verdict for upwards of $8 million against insured. Later, decedent attached insurer as a defendant. Subsequently, insured attempted to file a cross-claim against the insurer for bad-faith coverage denial. Court of Appeals barred the cross-claim, holding that the bad-faith coverage issue arose from a distinct set of factual circumstances. Florida Supreme Court granted review of this issue.

These cases were pending at the time this summary was printed. To confirm whether the Supreme Court has issued a decision in any of these cases, we invite you to visit our website at http://www.smithrolfes.com.