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LEGAL UPDATE

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Florida's Vehicular Liability

Vehicular Liability is the most frequently reported liability in Florida according to the 2005 Florida Verdict Survey issued by Jury Verdict Research® (i.e., JVR). It represents 52% of the total number of combined plaintiff and defense verdicts rendered within Florida from 1998 through 2004. Plaintiff verdicts for vehicular liability claims outnumber defense verdicts in Florida with a 72% recovery probability for plaintiff verdicts. This also holds true nationwide where there is a greater proportion of plaintiff verdicts than defense verdicts for vehicular liability claims. The recovery probability is the share of plaintiff verdicts to the total number of verdicts between 1998 through 2004 and excludes cases of admitted or directed liability. The recovery probability (i.e., plaintiff verdicts) for vehicular liability claims in Florida is comparably higher to other liability situations such as Business Negligence (64%), Products Liability (56%), Premises Liability (53%), Government Negligence (53%) and Medical Malpractice (38%), according to JVR.

Luks, Santaniello, Perez, Petrillo & Gold's defense verdict rate, 80%, for vehicular liability claims is almost 3 times higher than the 28% defense verdict rate in Florida reported by JVR. Since inception, from 1995 through 2004, Luks & Santaniello has obtained a defense verdict in every 4 out of 5 cases tried. The defense verdict rate includes cases with a jury finding of "no permanent injury." More than half of the firm's vehicular liability cases have been in challenging venues like Miami-Dade County where we have obtained a 73% defense verdict. The firm has a 75% defense verdict rate for Palm Beach County and 100% defense verdict rate for Broward County. Defense verdict rates are based only on cases published in the Florida Jury Verdict Reporter and exclude cases resulting in mistrial, permanency and settlements.

In a white paper entitled Tort Excess 2004: The Necessity for Reform from a Policy, Legal and Risk Management Perspective developed jointly by the Insurance Information Institute, AIG and the U.S. Chamber of Commerce, the authors report that American legal system remains the most expensive civil justice system in the world and is in need of legislative tort reform, at the state and federal levels in addition to vigorous risk management. *read more . . . page 3*

Recent Verdicts

In this issue of Legal Update, Luks, Santaniello, Perez, Petrillo & Gold reports a Motion to Dismiss for Fraud, a Summary Judgment for Wrongful Death, and a defense verdict for Premises Liability.

Gray v. Sunburst Sanitation Corp., Et. Al. (Palm Beach County): Daniel Santaniello and Bill Peterfriend won a rare Motion to Dismiss for Fraud on the Court in Palm Beach County a week before trial was set to begin on a $ 2 Million dollar claim. Plaintiff filed suit alleging that on February 23, 1998, she was riding in a jog cart behind her horse at Sunshine Meadows Equestrian Village when a Sunburst Sanitation Waste Vehicle came onto the property to pick-up a dumpster, spooked her horse, causing the horse to go out of control. Plaintiff later changed her story to claim that Sunburst's vehicle hit her jog cart, causing it to tip over and causing the Plaintiff's injuries. Plaintiff had several back surgeries and received total Social Security Disability and was demanding $2 million. Based upon the change in story, the Defense argued that the Plaintiff's case should be stricken for fraud on the Court. The court entered an order granting the Motion, holding that Plaintiff lied under oath regarding how the accident occurred, resulting in spoliation of evidence and prejudice to the Defendants.

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In this months issue...

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Workers' Compensation

Divosta v. Building Corp. and Liberty Mutual Insurance Company, 30 FLW D409 (February 18, 2005). The Judge of Compensation Claims in this case held that he lacked jurisdiction to determine whether an enforceable settlement agreement was reached. The 1st DCA reversed, affirming prior decisions holding that it is within the province of the Judge of Compensation Claims to determine whether a settlement agreement was reached. The case was then remanded for the Judge of Compensation Claims to consider the merits of whether a settlement agreement was reached. These recent decisions included Jacobsen v. Ross Stores, 882 So. 2d 431 (Fla 1st DCA 2004) and Gerow v. Yesterday's, 881 So. 2d 94 (Fla. 1st DCA 2004).

The significance of this case, though, is the process the employer/carrier went through in having this matter decided. After the parties entered into and signed a settlement agreement, the claimant withdrew his motion for approval of attorney's fees as well as his agreement to settle. The employer/carrier filed motions to enforce the agreement which were denied by the Judge of Compensation Claims on the grounds that he lacked jurisdiction. The employer/carrier then appealed. The appeal was subsequently dismissed by the appeals court who ruled the order denying the motion to enforce settlement was neither a final or an appealable non-final order.

The employer/carrier then moved to introduce the settlement agreement as evidence during a subsequent merits hearing. The Judge of Compensation Claims sustained claimant's counsel's objection, concluding his prior decision refusing to enforce the agreement was res judicata. The employer/carrier appealed once more. This time around, the 1st DCA overturned the Judge of Compensation Claims' decision, finding that the subsequent order from the merits hearing was a final order and, therefore, appealable. The 1st DCA further found that res judicata was not applicable given that no final order or judgment had previously been entered on the merits of the outstanding claim.

While this case clearly affirms a Judge of Compensation Claims has the authority to determine whether a settlement agreement was reached and to enforce such an agreement, it appears to limit the ability to appeal any subsequent decision. The 1st DCA has indicated with this case that an order on a motion to enforce a settlement agreement is a non-final, non-appealable order. In various jurisdictions where some Judges of Compensation Claims continue to fail to rule on the merits of such motions, then, parties may need to consider other alternatives to resolving cases. Without proceeding to a merits hearing to obtain a final, appealable order, parties will be unable to appeal a judge's refusal to rule on the motion based on jurisdictional grounds or any actual ruling handed down.

by: Brian C. Karsen, Esq.

Recent Verdicts, cont.

Collins v. Wells, Roebuck, Quinn, Et. Al. (Hillsboro County): Daniel Santaniello obtained a Summary Judgment for a national insurance company on a wrongful death case of a mother with multiple survivors. Plaintiff alleged that the insurer provided a safety consultant during the construction of a highway and was negligent in performing its duties, resulting in a dangerous intersection that killed Kathryn Elynor Collins. We filed a motion for summary judgment, alleging that the insurer owed no duty to the public by providing a safety consultant, and further that the non-joinder statute prohibited joining the insurer of the defendants in the case. The Court agreed and dismissed the case.

Lee v. Mall (Clay County): Defense verdict rendered February 2, 2005
Plaintiff, a 54 year old retired secretary, was a business invitee at a local mall when she tripped and fell over a one inch high raised portion of sidewalk. The Plaintiff presented evidence that the maintenance staff and mall management knew of the condition before her fall and that a barricade had been previously placed over the uneven portion of the sidewalk. However, the barricade had been removed at the time of Plaintiff's fall. The Defendant filed a third party claim against the maintenance company for contractual indemnification. Plaintiff had past medical expenses in the amount of $23,138.13. She had undergone epidural and trigger point injections with a pain management specialist who recommended ongoing pain management care. Plaintiff's treating chiropractor diagnosed the Plaintiff with cervical/trapezius myofascial pain syndrome, coccydynia and aggravated pre-existing lumbar degenerative joint disease. Plaintiff's treating neurologist diagnosed the Plaintiff with coccydynia, chronic myofascial injury with chronic cervical, dorsal and lumbosacral strain/sprain. Paul Jones and Todd Springer, on behalf of Defendant Mall, alleged that its client acted reasonably in its efforts to have its maintenance company repair the condition and that the Plaintiff's current complaints were not caused by the fall.

Liability

To Overcome the Work-Product Doctrine, There a Party Must Show the Need for Documents and Inability to Obtain Those Documents Absent without Undue Hardship.

In Honey Transport, Inc. v. Leafar R. Ruiz and Venezia, 30 Fla.L.Weekly D 467 (Fla. 4th DCA 2005), the Fourth Circuit addressed whether photographs of two vehicles involved in an automobile accident were created in anticipation of litigation. Honey Transport, Inc. sought review of a circuit court order, which compelled production of purportedly work-product documents. The documents at issue were:

- Photographs of two vehicles involved in an automobile accident between Leafar Ruiz, Plaintiff, and Honey Transport and;
- Statements made by Michael Venezia to his employer regarding the accident.

Honey objected, maintaining that the items sought were protected by the work-product privilege. The court found this case similar to Waste Management, Inc. of Florida v. Southern Bell Telephone and Telegraph Company, 544 So.2d 1133 (Fla. 4th DCA 1989). In Waste Management, Inc., the court granted certiorari relief after the trial court compelled discovery of photographs without making any findings as to whether the material and statements sought were prepared in anticipation of litigation. In the Honey case, the trial court did not specifically declare that the photographs were created in anticipation of litigation, which is undeniably the first required step in the process. If the photographs *were taken in anticipation of litigation*, the parties seeking discovery would need to make a sufficient showing to the Court that they have a need for the documents and would be unable to obtain same without undue hardship. The court applied this same line of reasoning to witnesses statements, in this case that made by Micahel Venezia to his Employer. In Karch v. MacKay, 453 So.2d 452, 453 (Fla. 4th DCA 1984), the court determined that absent very unusual circumstances, statements obtained by an employer regarding an accident in anticipation of litigation are work product and not subject to adversarial discovery. In the Honey case, the trial court did not specifically declare whether Venezia's statements were work-product, nor whether Ruiz had demonstrated a very unusual circumstance

by: William J. Peterfriend , Esq..

Florida's Vehicular Liability, cont.

Nearly one of every seven jury awards now tallies $1 million or more and nearly one in ten businesses experienced a liability loss of $5 million or more over the past five years, according to the white paper. Furthermore, the authors indicate that the likelihood of plaintiff recoveries has been rising steadily and that the chance of a defendant corporation winning a liability lawsuit has been falling at an alarming rate across liability situations (i.e., premises, business negligence, vehicular liability and products liability). Nationwide the probability of a plaintiff verdict for vehicular liability was 56% in 1996, 59% in 1999 and 63% in 2002, according to the white paper and 61% in 2003 according to Jury Verdict Research. Moreover, the white paper alleges that a defendant's entire future can turn on where its case is heard. The report identifies Miami-Dade as one of several counties (noted in the U.S. Chamber of Commerce States Liability System Ranking Study) that is perceived to be drastically unfair to corporate defendants and insurers, with its history of plaintiff awards.

In 2003, there were 243,294 motor vehicle accidents in Florida with an average of 667 crashes per day according to the 2003 Florida Crash Statistics Report issued by the Florida Department of Highway Safety and Motor Vehicles. As many as 57% of the crashes resulted in injury crashes or crash- related injuries. In 2003, 3,179 people were killed in auto accidents in Florida, up 1% from 3,136 in 2002 according to the National Highway Safety Administration's Fatality Reporting System (i.e., NHTSA). However, in contrast to the number of accidents that occurs annually, far fewer result in lawsuits. According to a recent article in the *Tallahassee Democrat*, in 2003 there were only 19,707 law suits (i.e., Auto Negligence), filed and roughly half of those lawsuits were dismissed either before a hearing was held or after the first hearing (*Tallahassee Democrat*, Scott, Rocky; March, 2005).

Jury Verdict Research® (i.e., JVR) recommends gauging jury award trends by using a combination of the plaintiff recovery probability, compensatory award median and award probability range. The mean may provide a distorted view of awards since it can be skewed by a small number of very high awards. *read more . . . page 4*

Florida's Vehicular Liability, cont.

The award median reported by JVR for vehicular liability cases in Florida between 1998 and 2004 was $53,993. JVR reports an award probability range of $15,650 - $171,218 for this period. The award mean for 1998 through 2004 was $431,979.

Where do most of the accidents occur in Florida? Table 1 illustrates the 2003 Distribution of Motor Vehicle Accidents by Florida region compiled using data from the 2003 Florida Traffic Crash Statistics Report.

Three areas, **South East, Central West and Central Florida** accounted for **71%** of the motor vehicle accidents in 2003. 37% of the motor vehicle accidents in 2003 occurred in counties within South East Florida. Counties that comprise the South East include Miami-Dade, Broward, Palm Beach, Monroe and Martin. Within the South East, Miami-Dade accounted for 19% of the car crashes, followed by Broward (11%) and Palm Beach Counties (6%). Central West Florida is another region with substantial motor vehicle accidents. 20% of the car crashes in 2003 occurred here. Counties that comprise Central West include Citrus, Hernando, Pasco, Pinellas, Hillsboro, Manatee and Sarasota. However, Hillsboro (9%) and Pinellas (6%) counties had the most reported accidents in the Central West. Central Florida accounted for 14% of the accidents in 2003. Counties that make up Central Florida include Orange, Osceola, Polk, Hardee, Highlands, Seminole, Lake, Sumter and Marion. Most of the accidents here occurred in Orange (6%), Polk (3%), Marion (1%), Lake (1%), Seminole (1%) and Osceola (1%) Counties.

Table 1
2003 Florida MV Accidents
By Region

	N	%
South East	90,853	37
Central West	48,526	20
Central	33,704	14
North East	19,110	8
Central East	14,661	6
North Central	13,820	6
North West	11,630	5
South West	10,988	5
Unknown	2	0
Total FL	243,294	100

Source: Compiled using data from the 2003 Florida Traffic Crash Statistics Report issued by the Florida Department of Highway Safety and Motor Vehicles.

If you would like to suggest an article for an upcoming issue of Legal Update, please e-mail your suggestions to Maria Donnelly, Client Relations (i.e., maria@ls-law.com).

by: Maria Donnelly, Client Relations

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