TERRY'S TAKES

Your Weekly Florida Federal and State Appellate Caselaw Update for Personal Injury Lawyers

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ANTI-LAWYER BILL HB 837

Having passed the Civil Justice Subcommittee with amendments, HB 837 has now moved to the Judiciary Committee. A similar bill in the Florida Senate, SB 236, has been referred to the Banking and Insurance, Judiciary, and Fiscal Policy committees and is on the Banking and Insurance committee's agenda.
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Supreme Court of the United States of America

Justice Katanji Brown Jackson issued her first majority opinion, making history as the first Supreme Court majority opinion written by a black woman. Unfortunately, it's a real snooze, a mostly-unanimous (one subpart was not unanimous, but no concurrence or dissent was written) decision interpreting the Federal Disposition Act on a question of whether Agent Checks and Teller Checks are enough like money orders to fall under the act. Zzzzzzz.
https://www.supremecourt.gov/opinions/22pdf/145orig_kjfl.pdf

Third DCA

Lally v. AIM Recovery Services, Inc.

3d DCA, Per Curiam: Logue, Miller & Bokor
3/1/23
Topics: Summary Judgment Standard

This citation PCA reminds us that in adopting the federal standard for summary judgment, if summary judgment was denied under the old rule, the trial court should give the parties a reasonable opportunity to file a renewed summary judgment motion under the new rule.
https://supremecourt.flcourts.gov/content/download/861233/opinion/220845_DC05_03012023_100434_i.pdf

Mesa v. Citizens Property Insurance Corp.

3d DCA, Judge Scales
3/1/23
Topics: Corporate Representative; Hearsay; Business Records

This is a first-party property insurance case arguing whether roof damage to a home was covered under a homeowner policy. The merits of the case are not summarized. The case is important for any civil practitioner who sues corporate defendants, however, because it held that testimony about the claim offered by the corporate rep was hearsay.

The adjuster did not testify at trial. Instead, the insurance company called Alicia Wright, the corporate representative for Citizens, to testify as the "voice of Citizens" regarding "what happened throughout the claim." The Plaintiff objected that Corporate Rep Wright should be barred from testifying because she had no personal knowledge about the case. The trial court overruled the objection and allowed Corporate Rep Wright to testify about the contents of the field adjuster's report, which included facts about the adjuster's inspection of the property in question and the adjuster's conclusion that the roof was damaged by non-covered wear and tear, not wind damage, which would have been covered. Pictures from the adjuster's inspection were admitted, too.

Citizens prevailed at trial on the issue of coverage, and the Plaintiff appealed.

The DCA agreed with Plaintiff/Appellant that Corporate Rep Wright's testimony was inadmissible hearsay. Rule 1.310(b)(6), Fla. R. Civ. P. (2022), permits a corporate rep to appear at a deposition to testify about matters known or reasonably available to the organization, but this discovery rule is not a trial hearsay exception. Allowing a witness to testify about a business record when the business record itself is not entered into evidence constitutes reversible error, as does allowing a witness to testify without personal knowledge.

Admission of the hearsay testimony was not harmless. The Plaintiff submitted sufficient evidence to demonstrate coverage. Because the adjuster's claims notes and inspection concluded that coverage did not exist, Citizens could not demonstrate that the jury did not accept that evidence over that of Plaintiff's experts and that the evidence did not contribute to the verdict of lack of coverage. Reversed and remanded for new trial.
https://supremecourt.flcourts.gov/content/download/861245/opinion/220398_DC13_03012023_102636_i.pdf

Team Health Holdings, Inc. v. Caceres
3d DCA
3/1/23
Judge Emas
Topics: Personal Jurisdiction

Ms. Caceres sued several physicians and business entities for alleged medical malpractice resulting in permanent injuries during her 2010 hospitalization. Seven years later, she added Team Health as a defendant under a theory of corporate successor liability because Team Health had acquired one of the defendant-companies.

This denial of Team Health's motion to dismiss had gone up on appeal before, and on remand, the trial court again held a hearing on Team Health's motion to dismiss based on lack of personal jurisdiction. Team Health's corporate affidavit essentially alleged that it was a Delaware corporation with no presence in Florida, though it admitted that it has subsidiaries like the acquired defendant-company that do business in Florida. Critically, the affidavit alleged that Team Health's acquisition of the defendant company did not involve assumption of responsibility for the acquired corporation's

operations, claims, obligations, liabilities, debts, or duties. Team Health argued that the brand and logo now used by the acquired company was associated with numerous subsidiaries and affiliates and denoted no control. Health had "acquired" the defendant-company, but Team Health swore that they were separate companies before **and after** the acquisition, and the acquired company retained complete control over its affairs.

The Plaintiffs attempted to counter the affidavits with the contract of aquisition and website information showing that Team Health exercised control over the acquired company. The problem with this is that the acquisition took place seven years **after** the alleged medical malpractice. Even assuming it has control over the acquired company **now**, it did not then. And nothing submitted by Plaintiffs showed that the company assumed liabilities by the acquired company.

The Florida Supreme Court's two-step process for determining whether personal jurisdiction exists over a foreign corporation is to determine whether: (1) there exist sufficient jurisdictional facts to bring the action within the purview of Florida's long-arm statute, section 48.193, Florida Statutes; and (2) whether the foreign corporation possesses sufficient minimum contacts with Florida to satisfy federal constitutional due process requirements.

Prong one is satisfied by showing either general jurisdiction or specific jurisdiction. General jurisdiction is established where the defendant has engaged in **substantial and not isolated activity within the state**. In other words, the defendant's affiliations with the state are so continuous and systemic as to render it essentially at home in the forum state. Specific jurisdiction, on the other hand, is established by pleading specific facts that demonstrate that the defendant's **conduct** fit within one or more subsections of section 48.193.

Plaintiffs' evidence did not establish that Team Health controlled the acquired defendant-company's day-to-day affairs or its overall operations. The order denying the motion to dismiss as to Team Health was reversed and the case was remanded with instructions.
https://supremecourt.flcourts.gov/content/download/861238/opinion/211759_DC13_03012023_101556_i.pdf

Fifth DCA

Peeples v. Carlton Palms Educational Center, Inc.

5th DCA, Judge Jay
3/3/23
Topics: Lack of Prosecution

Rule 1.420(e), Fla. R. Civ. P., (2022), allows courts to dismiss civil actions after providing notice of inactivity if there has been no record activity for the 10 months preceding the notice. In this case, the lower court erred in dismissing the case because nine months and 11 days prior to the notice, the docket showed that there was an order of reassignment of a different judge to the case. The rule states that activity on the face of the record is the filing of any pleading, **order of court**, or otherwise. Well, this was an order of court. Even though the plaintiff had nothing to do with the order and the order had nothing to do with prosecuting the case, it was record activity, and the dismissal was reversed.
https://supremecourt.flcourts.gov/content/download/861451/opinion/220452_DC13_03032023_082022_i.pdf