



# Insurance

## Case Law & Insurance Regulation Update

Editors:

**Kelly Cruz-Brown**

[kcruz-brown@carltonfields.com](mailto:kcruz-brown@carltonfields.com)  
850.513.3610

**Daniel C. Brown**

[dbrown@carltonfields.com](mailto:dbrown@carltonfields.com)  
850.513.3617

For more information about Carlton Fields' Insurance and Insurance Regulation Practices, please visit us at: [Insurance](#) and [Insurance Regulation](#)

**Week Ending April 5, 2013**

### CONTENTS

- State Appellate Decisions
- Florida
- Georgia
- Federal Appellate Decisions
- Administrative Law/Agency Decisions
  - A. Florida
  - B. Georgia
- Notices of Administrative Rulemaking Proceedings
  - A. Florida
  - B. Georgia
- Meeting Notices of Interest/Miscellaneous

### I. STATE APPELLATE DECISIONS

#### A. FLORIDA

- ***1500 Coral Towers Condominium Association, Inc. v. Citizens Property Insurance Corporation (Fla. 3d DCA)***. Property insurance; late notice of loss. Summary judgment for insurer in insured's breach of contract action based on hurricane property damage affirmed. Insured's property sustained damage in Hurricane Wilma in 2005. Five years later, the insured notified the insurer notified Citizens for the first time that the property had sustained damages as a result of Hurricane Wilma. The insurer requested a proof of loss within 60 days. The insured did not provide it. The policy required prompt notice of a loss and timely submission of a proof of loss on request. The court held that the undisputed facts showed non-compliance by the insured and raised a presumption of prejudice to the insurer, which the insured did not overcome by a conclusory statement by one of its engineers that, in his opinion, the late notice did not prejudice the insurer.
- ***Church's Chicken v. Anderson (Fla. 1<sup>st</sup> DCA)***. Workers' compensation; emergency medical services; temporary partial disability. Judge of Compensation Claims (JCC) erred in awarding compensation for emergency medical services. Although the JCC found that the services were provided on an emergency basis, there is no medical evidence that the services were causally related or medically necessary for claimant's compensable injury. JCC erred in denying claimant partial disability benefits for three days. Once a claimant satisfies the initial burden of proving a causal connection for the wage loss, that cause remained the established cause unless and until an intervening or superseding cause for the wage loss is demonstrated by the employer/carrier,

who was not done in this case.

- **Escambia County School Board v. Vickery-Orso (Fla. 1<sup>st</sup> DCA)**. Workers' compensation; compensation rate. Reversal of order of the Judge of Compensation Claims (JCC) Claimant an upward adjustment in compensation rate, and penalties, interest, costs, and attorney's fees associated with that adjustment. Though technically incorrect, the Employer's calculated rate did not pay less than the compensation rate required by statute. The JCC erred in ordering the Employer to pay more. The JCC consequently erred in awarding associated penalties, interest, costs, and fees.
- **Exotic Motorcars and Jewelry, Inc. v. Essex Insurance Company (Fla. 4<sup>th</sup> DCA)**. Property insurance; final judgment. Trial court's entry of final judgment for insurer reversed and remanded where final judgment contained no findings. Appellate review hampered by lack of findings where multiple reasons for judgment in insurer's favor might exist, but one such ground, if relied on by the trial court, would be legally invalid. Remanded for further proceedings.
- **Fidelity National Title Insurance Company v. Grosso (Fla. 4<sup>th</sup> DCA)**. Title insurance; class action. Trial court order certifying class action against insurer reversed and remanded because the trial court certified a class without making findings of fact and conclusions of law as required by Florida Rule of Civil Procedure 1.220(d)(1).
- **Hunt v. State Farm Florida Insurance Co. (Fla. 2d DCA)**. Homeowner's insurance; bad faith claim. Trial court's summary judgment for insurer in insured's bad faith action under section 624.155, Fla. Stat., reversed. The insured's home sustained sinkhole damage. He sued the insurer and filed a civil remedy notice of insurer violation (CRN) pursuant to section 624.155, Fla. Stat. The insurer moved to dismiss the suit and to require an appraisal. The trial court abated the lawsuit and granted the motion for appraisal. Appraisal award was entered in the insured's favor and was paid by the insurer. The insured voluntarily dismissed his lawsuit but subsequently filed the bad-faith action seeking delay damages for the period between when the claim was paid and when he maintains it should have been paid. The appeals court held that the an appraisal award satisfies the requirement in a first party bad faith suit that the insured's right to benefits be established before the cause of action for bad faith can accrue. The court held that the insured's CRN under section 624.155, Fla. Stat., was not invalid because it failed to state a no definite "cure" amount, finding that the statute does not impose such a requirement.
- **Lopez v. Duda & Sons (Fla. 1<sup>st</sup> DCA)**. Workers' compensation; permanent disability. Order of Judge of Compensation Claims (JCC) denying permanent total disability benefits to claimant reversed. The evidence showed that claimant could not return to the work he had done for twenty-seven years with the employer, the only suitable job consistent with his limitations was a security guard job with the same employer, and claimant was never offered an open position in that category by the employer. Evidence that the employer could have additional security guard jobs positions in the future did not support a finding that the claimant was not entitled to permanent disability benefits.
- **Russ v. BHCC (Fla. 1<sup>st</sup> DCA)**. Workers' compensation; certiorari. On certiorari review of an order of the Judge of Compensation Claims (JCC) which denied Claimant's motion seeking approval of an hourly attorney's fee retainer agreement and an evidentiary hearing to build a record to support a constitutional challenge to the attorney's fee statutes, the appeals court quashed the order denying Claimant an evidentiary hearing to build a record supporting Claimant's constitutional challenge. JCC's inability to rule on constitutional issues does not preclude a claimant's right to build an evidentiary record in preparation for a constitutional challenge. To assist appellate courts in determining the constitutionality of statutes it oftentimes is preferable to have a record developed in the lower tribunal.

## B. GEORGIA

- No Georgia state appellate cases reported.

## II. FEDERAL APPELLATE DECISIONS

- No Federal appellate cases reported.

### III. ADMINISTRATIVE LAW/AGENCY DECISIONS

#### A. FLORIDA

- **Final Order In the Matter of Hamid Goozardi, Case No. 109601-10-AG - Final Order.** Florida Department of Financial Services (FDFS) issues Final Order adopting Administrative Law Judge's Recommended Order finding insurance agent guilty of violating section 626.611(7), Fla. Stat. (demonstrated lack of fitness or trustworthiness to engage in the business of insurance) and suspending his license for six months.

#### B. GEORGIA

- No Georgia agency decisions reported.

### IV. NOTICES OF ADMINISTRATIVE RULEMAKING PROCEEDINGS

#### A. FLORIDA

- No Florida rulemaking proceedings reported.

#### B. GEORGIA

- **Regulation Chapter 120-2-3 - Retail Vendors of Portable Electronics Limited License.** The Office of the Commissioner of Insurance (OCI) entered an Order adopting amendments to Regulation Chapter 120-2-3 effective **April 21, 2013.**

### V. MEETING NOTICES OF INTEREST/MISCELLANEOUS

- **Florida Medical Malpractice Joint Underwriting Association Compensation Committee Meeting.** **April 23, 2013,** 3:00 p.m., Hotel Duval, Tallahassee, FL. A copy of the agenda may be obtained by contacting: FMMJUA, 1836 Hermitage Blvd., Suite 201, Tallahassee, FL 32308.
- **Florida Medical Malpractice Joint Underwriting Association Audit Committee.** **April 23, 2013,** 3:30 p.m., Hotel Duval, Tallahassee, FL. A copy of the agenda may be obtained by contacting: FMMJUA, 1836 Hermitage Blvd., Suite 201, Tallahassee, FL 32308.
- **Florida Medical Malpractice Joint Underwriting Association Claims & Underwriting Committee.** **April 23, 2013,** 4:00 p.m., Hotel Duval, Tallahassee, FL. The Claims & Underwriting Committee will receive and consider reports from the Association's General Counsel, General Manager, Servicing Carrier, and such other business properly brought before the Committee. A copy of the agenda may be obtained by contacting: FMMJUA, 1836 Hermitage Blvd., Suite 201, Tallahassee, FL 32308.
- **Florida Medical Malpractice Joint Underwriting Association Board of Governors.** **April 24, 2013,** 9:00 a.m., Hotel Duval, Tallahassee, FL. The Board of Governors will receive and consider quarterly reports from the Association's Investment Counsel, General Counsel, Servicing Carrier, Claims Committee, Audit Committee, Compensation Committee, General Manager, and such other business properly brought before the Board. A copy of the agenda may be obtained by contacting: FMMJUA, 1836 Hermitage Blvd., Suite 201, Tallahassee, FL 32308.



reprint permission for any of our publications, please use our "Contact Us" form, which can be found on our website at [www.carltonfields.com](http://www.carltonfields.com). The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. If you do not wish to receive such communications from Carlton Fields in the future, either reply to the e-mail address from which you received it, or e-mail [marketing@carltonfields.com](mailto:marketing@carltonfields.com), and we will not send them to you.

[www.carltonfields.com](http://www.carltonfields.com)

Atlanta • Miami • New York • Orlando • St. Petersburg • Tallahassee • Tampa • West Palm Beach