

The Perils of Pretrial Stipulations

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Those of a certain age will recall “The Perils of Pauline,” but a recent Florida appellate decision demonstrates that the “failure to facilitate a meeting of the minds on a pretrial argument is perilous.” [*Jones v. Blue Ridge Mfg., LLC*, 4D21-1799 \(Fla. 4th DCA Dec. 14, 2022\)](#). The case was a wrongful death suit in which the parties stipulated that the decedent’s death was the result of his head’s “direct or indirect contact” with the flatbed of a stationary truck after losing control of his own vehicle. Shortly before trial, the parties disputed the meaning of “direct or indirect contact” and, in particular, whether the injury would have been a Dale Earnhardt-type of injury without any direct impact. The trial court refused to allow the defendants to withdraw the pretrial stipulation regarding “direct or indirect contact” with the flatbed. The trial court did allow expert testimony describing a Dale Earnhardt-type injury, with the jury ultimately retuning a defense verdict. On appeal, neither party challenged the denial of the request to withdraw from the stipulation, and Florida’s Fourth District Court of Appeal held the trial court did not abuse its discretion in allowing testimony regarding the pretrial stipulation facts. The stipulation was ambiguous and could “fairly be read to mean that the parties intended the ‘direct or indirect’ contact issues to be determined by the jury.” The court further held extrinsic evidence could be submitted to the jury. In closing, the court recognized the value of pretrial stipulations to a “well-run and fair trial,” but cautioned “any such stipulations [must] be clear, positive, definitive, and unambiguous.” Once again, heed the warning: “[T]he failure to facilitate a meeting of the minds on a pretrial agreement is perilous.” **Tips:**

- Treat pretrial stipulations with respect, not as a ministerial act that can be delegated to someone unfamiliar with the nuances of the case.
- Be careful about stipulating to facts if your trial evidence is not settled.

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