



Insurance

Case Law & Insurance Regulation Update

Editors:

Kelly Cruz-Brown

kcruz-brown@carltonfields.com

850.513.3610

Daniel C. Brown

dbrown@carltonfields.com

850.513.3617

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I. STATE APPELLATE DECISIONS

A. FLORIDA

- ***GEICO General Insurance Company v. Harvey (Fla 4th DCA)***. Bad faith/automobile liability insurance. Trial court departed from the essential requirements of law by denying insurer's motion to dismiss. A third party bad faith claim against an insurer for failure to settle may not be brought in the underlying tort action but must be raised in a separate cause of action. Section 627.4136(4), Fla. Stat. (2006)) permitted insurer to be joined as a party solely for the purpose of entering final judgment against it to streamline the injured party's ability to obtain a judgment against the insurer for covered losses without plaintiff having to file a separate cause of action. Subsection (4) of the nonjoinder statute was not intended to allow a party to inject an insurance bad faith claim into the underlying tort action. Furthermore, underlying tort action for wrongful death and defendant's third party bad faith crossclaim against the insurer causes of actions accrued at different times and do not arise out of the same transaction or occurrence for purposes of Rule 1.170(g), Fla. Rules Civ. P. A cause of action for an insurer's bad faith failure to settle a third party claim may not be maintained until a judgment in excess of the policy limits has been entered against the insured. Thus, the bad faith claim could not have been maintained and did not arise out of the accident that is the subject of the tort claim.
- ***Gorham v. Zachry Industrial, Inc. (Fla 4th DCA)***. Workers' compensation/ exclusive remedy. Trial court properly granted summary judgment in favor of employer based on workers' compensation immunity where plaintiff-employee failed to prove that employer engaged in

conduct virtually certain to result in injury or death to employee.

- **List Industries, Inc. v. Dalien (Fla 4th DCA)**. Workers' compensation/exclusive remedy. Trial court erred in failing to direct verdict in favor of employer on ground of workers' compensation immunity where employee failed to prove by clear and convincing evidence that employer was virtually certain that operating the press brake machine would result in injury to employee and failed to prove by clear and convincing evidence that plaintiff was unaware of risk, that danger was not apparent, or that employer concealed or misrepresented danger so as to prevent plaintiff from exercising informed judgment about whether to perform the work. Remanded with instructions to enter directed verdict in favor of employer.
- **Orange County v. Wilder, (Fla 1st DCA)**. Workers' Compensation. Decision of Judge of Compensation Claims ("JCC") that claimant is entitled to benefits upheld. Claimant adduced sufficient proof for application of the presumption that her viral cardiomyopathy constitutes "heart disease" under section 112.18, Fla. Stat. The employer/carrier then bore, but failed to meet, the burden of proving Claimant's employment was not the cause of the viral cardiomyopathy.

B. GEORGIA

- No Georgia state appellate decisions reported.

II. FEDERAL APPELLATE DECISIONS

- **Geovera Specialty Insurance Company v. Hutchins, et al., (11th Cir FL)**. Summary judgment in favor of insurer by district court affirmed. Insurer had no duty to defend wrongful death action. A duty to defend cannot be triggered merely by labeling an intentional act "negligent." Where the facts alleged establish intentional conduct, but the claim asserts negligence, the negligence label should be disregarded.

III. ADMINISTRATIVE LAW/AGENCY DECISIONS

A. FLORIDA – FLORIDA DEPARTMENT OF FINANCIAL SERVICES

Failure to Disclose Prior Administrative Action

- **In the Matter of Allied Specialty Insurance, Inc., Case No. 130426-12-AG**. Consent Order – agency licensure and discipline. Agency fined for failing to disclose prior administrative action by other state insurance departments.
- **In the Matter of Jason Kyle Chepenek, Case No. 130275-12-AG**. Consent Order – agent discipline. Department alleged that agent failed to report to the Department within 30 days final disposition of administrative action taken against his license by another state agency.
- **In the Matter of Afolabi Charles Morakinyo, Case No. 129740-12-AG**. Consent Order - agent licensure. License granted with conditions: fine and 2 year probation. License initially denied based upon applicant's material misstatement on agent licensure application concerning prior administrative action.

Failure to Disclose Prior Criminal History

- **In the Matter of Jason Chandler Edwards, Case No. 130103-12-AG**. Consent Order – agent licensure and discipline. Department alleged that applicant failed to report prior criminal history on insurance agent application. License granted, but fine imposed.
- **In the Matter of Nikii Jelani Rosado, Case No. 124943-12-AG**. Consent Order – agent licensure/disclosure of prior criminal history. Department alleged that applicant failed to report prior criminal history on insurance agent application. Settlement terms: applicant withdrew application and request for formal administrative hearing, Department rescinded its denial of applicant's application. In the event applicant elects to re-apply for licensure, applicant will have either a 1 year waiting period added to his disqualification period or \$1,500 fine.

- ***In the Matter of Anthony Vecchio, Case No. 130295-12-AG.*** Consent Order – agency licensure. Consent Order – agent licensure/disclosure of prior criminal history. Department alleged that applicant failed to report prior criminal history on insurance agent application. License granted, but fine imposed.

Misappropriation

- ***In the Matter of All Florida Insurance Tax Agency, Case No. 121167-11-AG.*** Order of Revocation – insurance agency. Agency failed to respond to administrative complaint alleging: misappropriation of fiduciary funds, failure to forward premiums and documents to insurers, overcharging consumers, failure to refund consumers, engaging in fraudulent and dishonest practices.
- ***In the Matter of Marlene Gail Connelly, Case No. 130263-12-AG.*** Consent Order – agent discipline. Agent license surrendered and permanent bar from seeking an insurance license in Florida or otherwise engaging in the business of insurance in Florida. Department alleged agent diverted fiduciary funds for personal use and failed to timely remit premiums and applications to the insurer.
- ***In the Matter of Red Door Title Insurance Agency, Case No. 126334-12-AG.*** Default Revocation Order. Agency failed to respond to Administrative Complaint alleging misappropriation of escrow funds, failure to maintain surety bond, failure to notify Department of new business location address.

Misrepresentation

- ***In the Matter of Jeff David McCoy, Case No. 13-005014-12-AG.*** Consent Order - agent discipline. Department alleged that life, health, and variable annuity agent knowingly submitted insurance application containing misrepresentations.

Unlicensed Activity/Failure to Timely Renew License

- ***In the Matter of David Kenneth Bozzi, Case No. 125565-12-AG*** and ***In the Matter of Moose Insurance, LLC, Case No. 125332-12-AG.*** Consent Orders – agent and agency discipline. Department alleged that agency permitted unlicensed individuals to transact insurance, impermissibly used an insurance agent license, and impermissibly signed an insurance agent signature. Insurance agency license surrendered. Agent license application withdrawn and applicant barred from seeking licensure for 3 years.
- ***In Matter of Deloise Culberth Durham, Case No. 130281-12-AG.*** Consent Order – customer service representative discipline. Customer service representative acted in the capacity of a bail bonds agent without a proper license or appointment and demonstrated a lack of fitness and trustworthiness to engage in the business of insurance.
- ***In the Matter of J I Cruz Insurance Agency, Case No. 130258-12-AG.*** Consent Order - agency licensure and discipline. Agency fined for untimely submitting insurance agency licensure application.
- ***In the Matter of Kelvin G. Maynard Insurance, Inc., Case No. 130080-12-AG.*** Consent Order - agency licensure and discipline. Agency fined for untimely submitting insurance agency licensure application.
- ***In the Matter of Michael Rose, Inc., Case No. 13-005015.*** Consent Order - agency licensure and discipline. Agency fined for untimely submitting insurance agency licensure application.
- ***In the Matter of Moose Insurance, LLC, Case No. 125332-12-AG.*** ***In the Matter of Petersen Insurance Agency, Inc., Case No. 130093-12-AG.*** Consent Order - Consent Order - agency licensure and discipline. Agency fined for untimely submitting insurance agency licensure application.
- ***In the Matter of Scott Petrucci, Case No. 130253-12-AG.*** Consent Order – agency licensure

and discipline. Agency fined for failing to obtain a license prior to engaging in the business of insurance.

- ***In the Matter of Joel Peter Spencer, Case No. 130264-12-AG.*** Consent Order – agent discipline. Department alleged that life insurance agent submitted an application containing a misrepresentation to a life insurance company. Discipline imposed: 1 year probation and fine.
- ***In the Matter of Riviera Insurance Services, LLC, Case No. 130022-12-AG.*** Consent Order - agency licensure and discipline. Agency fined for untimely submitting insurance agency licensure application.
- ***In the Matter of Jose Javier Santoyo, Case No. Case No 118877-12-AG.*** Final Order to Cease and Desist – customer service representative. Suspended customer service representative continued to engage in homeowners insurance transactions.
- ***In the Matter of Stephens Allstate Agency, Case No. 130067-12-AG.*** Consent Order - agency licensure and discipline. Agency fined for untimely submitting insurance agency licensure application.

Unlawful Fee – Adjusting Services

- ***In the Matter of Antonio Felipe Barredo, Sr., Case No. 130280-12-AG.*** Consent Order – adjuster discipline. Department alleged that adjuster submitted an adjusting contract to Citizens Property Insurance Corp. (“Citizens”) that charged a fee greater than the statutorily required 10% limitation for services rendered to the policyholder, and charged an unlawful fee for adjusting services.
- ***In the Matter of Jay Smilowitz, Case No. 130269-12-AG.*** Consent Order – adjuster discipline. Department alleged that adjuster submitted an adjusting contract to Citizens Property Insurance Corp. (“Citizens”) that charged a fee greater than the statutorily required 10% limitation for services rendered to the policyholder, charged an unlawful fee for adjusting services, failed to include all required conditions for contract cancellation on the adjusting contract submitted, failed to include his name legibly written and his department license number on the adjusting contract.

B. GEORGIA – OFFICE OF THE INSURANCE COMMISSIONER

Failure to Disclose Prior Administrative Action

- ***In the Matter of Robert Byrd, Case No. 1109996.*** Consent Order – agent licensure and discipline. Applicant failed to report his prior voluntary surrender of his Georgia insurance license in 2000. License granted subject to 12 month probation period with conditions: 1) comply with all laws (Georgia and Federal); 2) notify Department in writing within 24 hours of being charged or arrested for any violation of law other than minor traffic offense; 3) notify the Department in writing within 60 days of the date any final disciplinary action entered against applicant by any licensing authority; and, 4) Department may contact applicant’s employer to confirm compliance with the Consent Order; and, 5) immediate revocation of probationary license for cause.

Failure to Disclose Prior Criminal History

- ***In the Matter of Francesco Benvenuto, Case No. 1101519.*** Consent Order – agent licensure and discipline. License granted subject to payment of a fine and 12 month probation period with conditions: 1) comply with all laws (Georgia and Federal); 2) notify Department in writing within 24 hours of being charged or arrested for any violation of law other than minor traffic offense; 3) notify the Department in writing within 60 days of the date any final disciplinary action entered against applicant by any licensing authority; and, 4) Department may contact applicant’s employer to confirm compliance with the Consent Order; and, 5) immediate revocation of probationary license for cause.
- ***In the Matter of Steve Chastain, Case No. 11010390.*** Consent Order – agent licensure and discipline. License granted subject to 12 month probation period with conditions: 1) comply with all laws (Georgia and Federal); 2) notify Department in writing within 24 hours of being charged or

arrested for any violation of law other than minor traffic offense; 3) notify the Department in writing within 60 days of the date any final disciplinary action entered against applicant by any licensing authority; and, 4) Department may contact applicant's employer to confirm compliance with the Consent Order; and, 5) immediate revocation of probationary license for cause.

- ***In the Matter of Brandon Fondren, Case No. 11010177.*** Consent Order – agent licensure and discipline. License granted subject to payment of a fine.
- ***In the Matter of Jeffrey McManus, Case No. 11010216.*** Consent Order – agent licensure and discipline. License granted subject to payment of a fine and 12 month probation period with conditions: 1) comply with all laws (Georgia and Federal); 2) notify Department in writing within 24 hours of being charged or arrested for any violation of law other than minor traffic offense; 3) notify the Department in writing within 60 days of the date any final disciplinary action entered against applicant by any licensing authority; 4) Department may contact applicant's employer to confirm compliance with the Consent Order; and, 5) immediate revocation of probationary license for cause.

License Reinstatement

- ***In the Matter of Norman Aqan, Case No. 11010578.***
- ***In the Matter of Lascelles L. Buchanan, Case No. 11010635.***
- ***In the Matter of Gretchen Desiree Ingram-Giles, Case No. 11010618.***
- ***In the Matter of Joseph James, Case No. 11010646.***
- ***In the Matter of Fay Andrews Massey, Case No. 11010378.***
- ***In the Matter of Wendy Elizabeth Mayes, Case No. 11010620.***
- ***In the Matter of Gary C. Price, Case No. 11010633.***
- ***In the Matter of Conrad Wienges Sanders, III, Case No. 11010571.***
- ***In the Matter of Thomas Shulte, Jr., Case No. 11010573.***

Regulatory Compliance Agreement

- ***In the Matter of Vimo, Inc. d/b/a GetInsured.com, Case No. 11007180.*** Examination of insurance agency call center. Findings included unlicensed insurance agents, lack of registration of affiliated agents, unappointed insurance agent personnel, and unlicensed subagents. Fine imposed (\$40,000) and licensee placed on 12 month supervision period. During the 12 month supervision period, the licensee must employ a compliance officer to ensure compliance of the day-to-day operations of the licensee and form a compliance panel of qualified persons to ensure compliance of the licensee's overall operations of the licensee.

IV. NOTICES OF ADMINISTRATIVE RULEMAKING PROCEEDINGS

A. FLORIDA

- ***Rule 59G-4.190, F.A.C. – Medicaid/Independent Laboratory Services.*** The purpose of the amendment to Rule 59G-4.190 is to incorporate by reference the Florida Medicaid Independent Laboratory Services Coverage and Limitations Handbook, December 2012. The handbook provides coverage for new procedures including Oncotype Dx® and criteria for reimbursement and incorporates a fee schedule. It includes independent laboratory provider qualifications, enrollment requirements, and services coverage and limitations. A rule development workshop will be held on **February 13, 2013**, 1:30 p.m. - 2:30 p.m., Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Conference Room D, Tallahassee, FL.
- ***Rule 61G7-5.005, F.A.C. - Deficiency in Tangible Accounting and Accounting Net Worth; Guaranty Form Acceptable to Board; Sufficient Evidence of Guarantor's Adequate Resources.*** The Board of Employee Leasing Companies proposes to amend the rule to update

incorporated materials in the rule. A copy of the preliminary draft proposed rule, if available may be obtained from Richard Morrison, Executive Director, Board of Employee Leasing Companies, 1940 North Monroe Street, Tallahassee, FL 32399-0767.

- **[Rule 690-176.013, F.A.C. - Notification of Insured's Rights and Standard Disclosure Form; Personal Injury Protection Benefits.](#)** Notice of correction filed regarding the notice of the proposed rule published in [Vol. 38, No. 92, December 17, 2012](#) issue of the Florida Administrative Register. Final adoption of the proposed rule is scheduled for **February 7, 2013** at the Financial Services Commission Meeting.
- **[Rule 690-170.0155, F.A.C. – Forms.](#)** Notice of correction filed regarding the notice of the proposed rule published in [Vol. 38, No. 92, December 17, 2012](#) issue of the Florida Administrative Register. Final adoption of the proposed rule is scheduled for **February 7, 2013** at the Financial Services Commission Meeting.

B. GEORGIA

- No Georgia rulemaking proceedings reported.

V. MEETING NOTICES OF INTEREST/MISCELLANEOUS

- **[Florida Chief Financial Officer Atwater Supports Legislation Requiring Insurers to Cover Orally Administered Cancer Treatment in Same Manner as IV-Administered Cancer Treatment.](#)** The legislation is filed as [Senate Bill 422](#) and [House Bill 301](#).
- **[Florida Division of Workers' Compensation Three-Member Panel Biennial Report to the Speaker of Florida's House of Representatives and the President of the Florida Senate.](#)** The report contains recommendations relating to reimbursement of repackaged prescription medications, hospital inpatient, hospital outpatient, and ambulatory surgical centers. The report also contains recommendations related to health care provider certification and the health care provider reimbursement dispute process.
- **[Florida's Insurance Consumer Advocate Urges Investment in Mitigation as Defense Against Assessment Risk.](#)**
- **[Florida Office of Insurance Regulation Prepares Preliminary Review of the Affordable Care Act and the Florida Insurance Code.](#)** The OIR presentation identifies the conflicts between state and federal regulatory requirements, form and rate review and potential resource issues as major challenges the agency faces in implementing the law. The OIR released the review to the Select Senate Committee on Implementation of PPACA. It may be discussed before the Senate committee on **February 4, 2013**. Click [here](#) for additional material.
- **[Florida Workers Compensation Joint Underwriting Association Teleconference Meeting – Investment Committee.](#)** On **January 29, 2013**, 11:00 a.m.(Eastern Time). To participate in the teleconference meeting, please contact Kathy Coyne at (941) 378-7408.
- **[Medicaid and Public Assistance Fraud Strike Force Study.](#)** The results of a study commissioned by the Strike Force to measure fraud in the Florida's Supplemental Nutrition Assistance Program (SNAP)—a federal program run according to guidelines mandated by the federal government – was discussed at the Strike Force's quarterly meeting held on January 23, 2013.
- **[Receivership of DoctorCare, Inc.](#)** Effective January 31, 2013, the Florida Department of Financial Services is discharged of its duties as Receiver of DoctorCare, Inc.

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