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Newsletters

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Schools are "Open for Business": Florida Fourth District Classifies Colleges as "Business Establishments"

A Broward College employee slipped and fell on an unknown substance in a Coconut Creek campus elevator. The employee sued under Florida statute §768.0755, which deals with premises liability for transitory foreign substances in a business establishment.The defendant moved for summary judgment, arguing that plaintiff could not establish that the defendant had knowledge (either actual or constructive) of the dangerous condition. Although plaintiff claimed it was wet, the evidence showed the surrounding areas were dry and, that while it had rained four miles away much earlier in the day, there was no evidence it rained at the school. Moreover, the evidence showed that the elevator had been cleaned about 50 minutes prior to the accident. The trial court granted defendant's motion for summary judgment, and plaintiff appealed.

The Fourth District Court of Appeals affirmed. Specifically, the Fourth borrowed the Third District's analysis, when it came to defining a "business establishment. " Looking at the dictionary to find its definition, the Fourth District explained that a "business establishment" is "a location where business is conducted, goods are made or stored or processed or **where services are rendered**" (emphasis added). Analogizing the school to previous governmental institutions that were defined as "business establishments," such as airports and the US Postal Service, the Fourth District determined that the College was an establishment where services were rendered for a fee, therefore making Florida Statute §768.0755 applicable to this case. Moreover, the Court explained that summary judgment is proper in slip and fall negligence cases where there are no genuine issues of material fact. The Court also concluded that in order to believe

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plaintiff's version of events, inferences would have to be stacked, which is impermissible. While there was an inspection 50 minutes prior, certain locations based on utility do not require more frequent inspections to be considered reasonable inspection. In this case, an elevator is not a typical location for fluids or similar hazards, and as such, the time interval was reasonable.

Because the definition of "business establishments" has been repeatedly applied in a broader manner, all higher education organizations must be prepared to comply with statutes related to businesses.

McCarthy v. Broward College and Sunshine Cleaning Systems, Inc., 40 Fla. L. Weekly D1060b (Fla. 4th DCA May 6 2015).

For more information, please contact Paul Gamm.

Proposals for Settlement Against the Dishonest Litigant

In the retail litigation landscape, some cases can seem to be a strong candidate for involuntary dismissal early on in the process. Involuntary dismissal is the termination of a court case, despite the plaintiff's objection. There are several different possible grounds for involuntary dismissal, including the perpetration of fraud upon the court by the plaintiff. Depending on the jurisdiction, early measures can be taken to protect the retailer's interests against the costs of litigation. Certain jurisdictions recognize that an involuntary dismissal can fall under that state's proposal for settlement or offer of judgment statute.

Proposals for settlement, in order to be enforced, must be made in good faith. If reasonable grounds exist to believe that an involuntary dismissal is a possibility in your case, a proposal for settlement can be a deadly weapon in your arsenal. Not only would the case be disposed of, but you would have a claim for your fees and costs in the event of a successful motion for involuntary dismissal.

Are you tired of settling cases that you know are not legitimate? Reach out to your nearest Hinshaw & Culbertson attorney, or contact John K. Weedon in the Jacksonville, Florida office to discuss whether this strategy is a possibility in your case.

Proposal for Settlement Was Patently Ambiguous and Thus Precluded Award of Attorney's Fees

The plaintiff was involved in a car accident and sued GEICO under the uninsured/underinsured motorist portion of her own insurance policy. Later, she filed a proposal for settlement (PFS) to GEICO stating it was “in the total amount of One Hundred Thousand Dollars ($50,000.00) inclusive of all costs and fees.” The case proceeded to trial and the jury awarded Plaintiff $195,739.81. Plaintiff then sought to tax costs and attorney's fees based on the PFS. The trial court found that, despite the conflicting amounts in the PFS, the terms of the PFS were sufficiently clear and not susceptible to more than one reasonable interpretation because the parties knew of GEICO's $50,000 policy limit. On appeal, the Fourth District found this inconsistency to be patent ambiguity and precluded an award of attorney's fees.

The offer of judgment statute and related rule must be strictly construed and virtually any proposal that is ambiguous is not enforceable.

Government Employees Insurance Co. v. Ryan, 40 Fla. Law Weekly D617 (Fla. 4th DCA March 11, 2015)

For more information, contact your regular Hinshaw attorney.

Proposal for Settlement Was Not Ambiguous for Failure to Attach Proposed Release

The defendant served a proposal for settlement. As part of the relevant conditions, the offeror stated that if the proposal were accepted, the plaintiff would dismiss with prejudice any and all claims it had against the bank, and would execute a general release in favor of the bank defendant. The terms and details of the offer would remain strictly confidential, and would not be disclosed to any third-party, except with the express written agreement of all parties.

The Florida Rule of Civil Procedure requires that in cases in which a party offers a settlement, all nonmonetary terms of the settlement should be stated "with particularity." This usually means that the offeree provides the offeror a general release as a condition of settlement. However, the defendant did not attach a copy of its proposed release. Thus, the

plaintiff argued that the defendant did not adequately describe all nonmonetary terms "with particularity."

The court found the offer met all the requirements of Florida's Offer of Judgment rule. Even though there was no release attached, the offer had the names of the parties who would execute the release, and also precisely identified the claims that would be released as those “made” or “could be” made. Thus, the trial court erred in denying the defendant’s motion for fees because there was no release.

Russell Post Properties, Inc. v. Leaders Bank, 40 Fla. Law Weekly D619 (Fla. 3rd DCA March 11, 2015)

For more information, contact your regular Hinshaw attorney.

New Bill Allows Florida Juries to Decide Medical Bills in Personal Injury Actions

The House Civil Justice Subcommittee recently approved a bill which would allow juries instead of judges to determine the amount of medical bills awarded as compensatory damages, including the calculation of "set-offs." The bill would abrogate the common law principle that evidence of collateral sources may not be presented to the jury. Jurors would now be told the actual amount paid in medical bills for an injured plaintiff when they determine compensatory damages. Where medical treatment was provided under letters of protection, jurors would be told what that doctor or facility would be paid for the care under Medicare or if it were paid by a private health insurance company. The jury would also be told the amount a doctor or facility sells the letter of protection to another party. Should the bill become law, it should lead to more accurate compensatory damages awards.

For more information, contact your regular Hinshaw attorney.

I'll Scratch Your Back, If You Scratch Mine: Discovery Rules Concerning the Relationships Between Attorneys and Treating Physicians

In a case that arose from a Slip and Fall at a Young Men's Christian Association, Inc. (YMCA) Defendant's Counsel sought information regarding the existence of an agreement or referral relationship between Plaintiff's Counsel and a group of treating physicians. The Fifth DCA found that in a personal injury action, there is no difference between a retained expert and a hybrid expert when determining the financial relationship between the expert and the attorney and firm. In Florida, it is clear that the financial relationship between the law firm and the treating physicians is not privileged, and discovery of the same is relevant to show a potential bias. However, there must be some evidence of a referral relationship prior to opposing counsel inquiring into the referral relationship. It was also confirmed that the representing law firm may be the primary source of information when the doctor has provided nebulous testimony regarding the existence of a relationship. As a result, Florida after years of permitting such relationships to exist, and artificially inflating damages, has turned sour on the practice and has allowed discovery of bias and impeachment discovery to the defendants.

Worley v. Central Florida Young Men's Christian, Etc. Case No. 5D14-3895 (5th DCA, May 15, 2015).

For more information please contact Paul Gamm.

Past Issues:

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