COLE, SCOTT & KISSANE, P.A.

LITIGATION
QUARTERLY
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10th ANNIVERSARY

COLE, SCOTT & KISSANE, P.A

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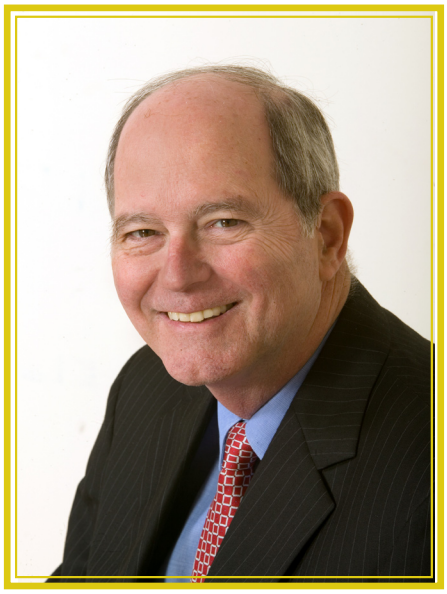
To Our Clients and Friends



Richard P. Cole

Thank you for all of your continual support and friendship. This December marks the 10 year anniversary of the law firm. You, the clients, have made this possible with your encouragement to begin, request that we expand throughout the state and your support of the entire firm which has followed since our December, 1997 founding.

Thanks also to the great staff who started with us with bare concrete floors and temporary $100 used desks and who have continually helped the lawyers provide the quality legal services our clients deserve.

Today, we have 125 lawyers in nine offices throughout the State of Florida. Our ranks include former judges, numerous Best Lawyers in America and Florida Trend's Legal Elite. All offices are headed by AV rated partners and staffed by dedicated bright and ethical attorneys, who place meeting the clients' needs at the top of their agenda each day.

When a few of us started this firm on December 17, 1997, none of us dreamed of what was to follow. We knew we had a common commitment to providing high quality legal work to our clients. We shared a dedication to hard work and ethical values. And, we had a number of clients who were our friends as well as work colleagues, who wanted us to succeed. This remains the same today.

The partners shared a vision that by being responsive to the clients in an efficient manner, we could attract additional clients who were looking for a firm such as ours. Today, we represent most major insurers, many national companies and multiple state agencies and subdivisions in their litigation matters.

On behalf of Cole, Scott & Kissane, P.A, I wanted to tell you about this important firm milestone and again thank you for the initial and ongoing support. We look forward to pridiving you with the high quality counseling and ethical representation you deserve.

COLE, SCOTT &KISSANE, P.A.

CSK'S 5th Annual Claims Management Seminar

We are pleased to announce our
5th Annual Claims Management Seminar
which will be held again in Orlando, Florida,
near the site of our newest office.
We will be celebrating our firm's 10th Anniversary
in conjunction with the Seminar.

March 27-28, 2008

We Look Forward To Seeing You!

Registration forms have been inserted in this special 10th Anniversary Edition of the Quarterly.

First-Party Bad Faith Claims Against Medical Malpractice Liability Insurers

By Brian Rubenstein

Florida courts have long recognized an insurer's obligation to act in good faith when defending claims against the insured. In *Boston Old Colony Ins. Co. v. Gutierrez*, 386 So. 2d 783 (Fla. 1980), the Florida Supreme Court outlined the insurer's duty to act in good faith as follows:

> An insurer, in handling the defense of claims against the insured, has a duty to use the same degree of care and diligence as a person of ordinary care and prudence should exercise in the management of his own business. For when the insured has surrendered to the insurer all control over the handling of the claim, including all decisions with regard to litigation and settlement, then the insurer must assume a duty to exercise such control and make such decisions in good faith and with due regard for the interests of the insured. This good faith duty obligates the insurer to advise the insured of settlement opportunities, to advise as to the probable outcome of the litigation, to warn of the possibility of an excess judgment, and to advise the insured of any steps he might take to avoid same. The insurer must investigate the facts, give fair consideration to a settlement offer that is not unreasonable under the facts, and settle, if possible, where a reasonably prudent person, faced with the prospect of paying the total recovery, would do so … [w]here that duty is breached the insured [first-party] has a cause of action against the insurer.

Id. at 785, 786.

Despite the broad language of *Gutierrez*, some insurers have been able to limit their exposure to insured or "first-party" bad faith claims by adding creative language to their insurance contracts. In *Shuster v. S. Broward Hosp. Dist. Physicians' Prof'l Liab. Ins. Trust*, 591 So. 2d 174 (Fla. 1992), an insurance company settled three medical malpractice claims against the insured within the policy limits, but the settlements resulted in the insured being unable to obtain medical malpractice insurance. The insured brought a first-party bad faith claim against the insurance company, but the trial court dismissed the action. *Id*. The Florida Supreme Court upheld the trial court's decision to dismiss the bad faith claim because the policy at issue contained a "deems expedient" provision, in which both parties agreed in writing that the insurance company could investigate and settle as it "deems expedient." *Id*. As a result, insurance companies put the insured on notice, through a provision in the insurance agreement, that the insurer had exclusive authority to control settlement and to be guided by its own self-interest when settling the claim for amounts within the policy limits, even where the claim was frivolous and without consideration of the insured's interest. *Shuster*, 591 So. 2d at 176-77. Thus, *Shuster* significantly limited the insured's ability to bring a bad faith claim against the insurer.

The above discussion addresses with bad faith causes of action under common law, which is created by the courts. However, insurance companies must also be weary of potential bad faith causes of action created by the legislature through statutes, such as section 627.4147, Fla. Sta. which states:

> (1) In addition to any other requirements imposed by law, each self-insurance policy as authorized under s. 627.357 or s. 624.462 or insurance policy providing coverage for claims arising out of the rendering of, or the failure to render, medical care or services, including those of the Florida Medical Malpractice Joint Underwriting Association, shall include ... a clause authorizing the insurer or self-insurer to determine, to make, and to conclude, without the permission of the insured, any offer of admission of liability and for arbitration pursuant to s. 766.106, settlement offer, or offer of judgment, if the offer is within the policy limits. It is against public policy for any insurance or self-insurance policy to contain a clause giving the insured the exclusive right to veto any offer for admission of liability and for arbitration made pursuant to s. 766.106, settlement offer, or offer of judgment, when such offer is within the policy limits. ***However, any offer of admission of liability, settlement offer, or offer of judgment made by an insurer or self-insurer shall be made in good faith and in the best interests of the insured.***

§ 627.4147, Fla. Stat. (2007).

Although section 627.4147 gives the insurer the sole authority to settle a claim within the policy limits, it also requires the insurer to act in the best interests of the insured. This language is in contrast with *Shuster*, which permitted the insurer to settle a claim within the policy limits in its own self-interest.

On May 16, 2007, the Fourth District Court of Appeal of Florida determined that insured parties could bring a bad faith cause of action under section 627.4147 against insurers who allegedly failed to act in the best interests of the insured. *Rogers v. Chicago Ins. Co.*, 2007 WL 1427041 (Fla. 4th DCA 2007). The Court went on to say that in the context of a claim for medical malpractice, it may not always be in the best interests of the insured to concede liability, where none is present, and settle the claim within the policy limits. *Id*.

Rogers is a major decision in the area of medical malpractice liability insurance because insurers can no longer rely exclusively on the *Shuster* decision, which protected insurers who inserted "deems expedient" or "self-interest" provisions into their insurance agreements. If they are not doing so already, medical malpractice liability insurers should take precautionary steps to protect themselves against potential first-party bad faith claims under section 627.4147. Most importantly, medical malpractice liability insurers may want to consider drafting and implementing policies that require the insurer to keep in close contact with the insured throughout the settlement process and carefully document all correspondence between the insurer and the insured regarding a potential settlement.

Florida's 90-days To Pay Property Claims Law

By Jonathan Buckland

The Florida Legislature recently enacted Florida Statute Section 627.70131 in direct response to damages caused by Florida's 2005 hurricane season and homeowners' desire to receive faster benefits payments on property insurance claims. Section 627.70321 became effective June 11, 2007, and mandates payment or denial of property insurance claims within 90 days after receipt of notice of the claim, unless failure to pay the claim was caused by factors beyond the carrier's control that reasonably prevent such payment. § 627.70131 Fla. Stat. (2007). Failure to pay or deny a claim within 90 days shall result in the insurer's obligation to pay interest at a rate set forth in Section 55.03, Florida Statutes, from the date the insurer received notice of the claim. *Id*. The newly enacted legislation also requires that an insurer review and acknowledge receipt of a claim communication within fourteen calendar days of receipt, and that an insurer initiate within ten working days of receipt of a proof of loss statement such investigation as is reasonably necessary in light of the facts and circumstances surrounding the claim. *Id*.

Florida's 90-day claim payment law applies to both hurricane and non-hurricane losses, and to all four coverages categories typically afforded by property insurance policies – dwelling, appurtenant structures, personal property, and additional living expenses. Because application of the 90-day rule to additional coverages and policy endorsements such as law and ordinance, debris removal, and mold remediation may conflict with current case law and the express terms and conditions of the subject policy, trial courts' attempts to properly apply the new legislation to the facts and circumstances of particular losses may lack consistency until shaped and further defined by appellate opinion.

The insurer's duty to acknowledge communications regarding property insurance claims and timely investigate reported losses shall apply to claims under all policies providing residential coverage as defined in Section 627.4025, including coverage provided by both personal lines residential coverage and commercial lines residential coverage that consist of the type of coverage provided by homeowner's, condominium unit owner's, condominium association, apartment building, and other similar policies. § 627.70131 Fla. Stat. (2007). Section 627.70131 applies also to claims for structural or contents coverage under a commercial property insurance policy if the insured structure is 10,000 square feet or less, and to claims for contents coverage under commercial tenants policies as long as the insured premises is 10,000 square feet or less. *Id.* The new law does not apply to claims under policies covering nonresidential commercial structures or contents in more than one state, and violation of the 90-day rule to pay or deny a claim cannot form the sole basis for a private cause of action. *Id.*

Previously, an award of prejudgment interest from the date of loss following the resolution of a disputed claim was contrary to Florida law. In *Allstate Ins. Co. v. Blanco*, 791 So. 2d 515 (Fla. 3d DCA 2001), the Third District Court of Appeal reversed an award of pre-judgment interest because "prejudgment interest is awarded from the date of the appraisal award... rather than the date of loss." *Id*. at 517. See *Aries Ins. Co. v. Hercas Corp*., 781 So. 2d 429 (Fla. 3d DCA 2001) (plaintiff was entitled to pre-judgment interest from the date of the appraisal award and not from the date of the loss). Under the new framework, insurers are subject to liability for failure to comply with Section 627.70131 unless factors beyond the control of the insurer reasonably prevent the acknowledgement of a communication, commencement of an investigation, or payment or denial of a claim within 90 days of receipt of notice of the loss. § 627.70131 Fla. Stat. (2007). Moreover, subject to the foregoing exception, when a claim is not paid or denied within 90 days after the insurer receives notice of same, pre-judgment interest shall be payable from the date of notice of the claim. *Id*. If factors beyond the control of the insurer reasonably prevent the payment or denial of a claim within 90 days of receipt, the insurer must pay or deny the claim within fifteen days after there are no longer factors beyond the insurer's control which reasonably prevented such payment. *Id*.

While Florida courts' determination of what constitutes a "reasonable delay" in the investigation and payment of claims has yet to be defined in the context of the new 90-day claim payment law, it is likely that some of the factors used to determine whether the right to require appraisal was exercised within a reasonable amount of time may be applied successfully. Courts have considered, in the appraisal context, the factors of impracticality and prejudice when determining if a party to a property claim dispute has waived its right to require appraisal. *See* Policyholder's Response in Opposition to Insurer's Mot. to Invoke/ Compel Appraisal, to Delineate Scope of Appraisal, to Stay Litig. Or, Alternatively, to Dismiss Count II of the Amend. Compl., and Inc. Memo. of Law, *Royal Point I Condo. Assn., Inc. v. QBE Ins. Corp.*, ___ F. Supp. 2d ___, WL 1495786 (M.D. Fla. Apr. 4, 2007). If, for example, an insurer's failure to pay or deny a claim pursuant to the 90-day rule was due to a change in circumstances or the destruction or repair of the damaged property, it may be deemed impractical to apply the 90-day requirement where the property's post-loss condition was altered by factors beyond the insurer's control. Similarly, where a premature coverage decision may prejudice the insurer, such as an exposure to a bad faith action due to an insurer's acknowledgement of coverage when an investigation could not be completed due to factors beyond the insurer's control, courts may find the prejudicial effect of applying the 90-day rule under such circumstances to constitute factors reasonably preventing such coverage denial or benefits payments.

Other factors "beyond the control of the insurer" that would "reasonably prevent" an insurer from payment or denial of a claim within 90 days or commencement of an investigation within ten working days after receipt of a sworn proof of loss may be more easily identified, such as an insured's refusal to cooperate with investigative efforts, including: failing to provide requested documents necessary to adjust the loss alleged; refusing to timely submit to an examination under oath; and refusing to provide the insurer access to the subject property as often as reasonably required under the circumstances of the claim. However, it seems clear that the impact of the new legislation shall be determined largely by the trial courts' application of facts to the 90-day claim payment law, which will, in turn, be influenced greatly by the effectiveness of the particular trial attorneys that litigate these claims.

In light of the foregoing, it is essential that insurers work with legal

counsel to further develop and adapt claim handling practices in order to avoid and mitigate the potential increase in claims. In the environment of law that most adjusters and property insurance defense advocates agree provides undue incentives for claimants to litigate their disputes, this new branch of the bramble bush of Florida's property insurance law will not improve the climate of contention between Florida's property insurance providers and their insureds.

The Medicare Secondary Payer Act and Its Affect on Tort Cases

By Charles J. Zimmerer

This article discusses the potential application of the Medicare Secondary Payer Act (MSPA) in cases where a Medicare beneficiary is injured by a tortfeasor. MSPA is a collection of statutory provisions created in the 1980's to help reduce federal health care costs. *U. S. v. Baxter Int'l*, 345 F.3d 866, 874 (11th Cir. 2003) *cert. denied* 542 U.S. 946 (2004). Since its creation in 1965, Medicare has served to be the primary payer of medical costs for its beneficiaries, with the lone exception that it serves as secondary payer to workers' compensation plans. *Id*. With the advent of MSPA, Congress declared that Medicare would no longer serve as the primary payer under certain circumstances. *Id.* at 875.

The law currently reads: "[Medicare] payment under this subchapter may not be made … [when] payment has been made or can reasonably be expected to be made under a *workers' compensation* law or plan … or under an *automobile* or *liability* insurance policy or plan (including a *self-insured* plan) or under *no fault* insurance." 42 U.S.C. 1395y (b)(2)(A)(ii) (2000 & Supp. 2005). Medicare is authorized to make conditional payments on behalf of its beneficiaries with the right to recoup those payments when the claim has been paid or when the litigation has ended. *Baxter* at 876.

At first glance, the statute seemingly applies to each and every case where an *automobile* or *liability* insurance policy pays the judgment. However, MSPA was intended to allow the federal government (Medicare) to assert a cause of action to recover Medicare payments solely against an insurance company that had a preexisting relationship to the insured/Medicare beneficiary. *Mason v. Amer. Tobacco Co.*, 346 F.3d 36, 39 (2nd Cir. 2003) *cert. denied* 541 U.S. 1057 (2004). An employer who simply contracts with a workers' compensation carrier to provide coverage for its employees, without more, cannot be liable to repay Medicare under MSPA. *Manning v. United Mutual Ins. Co.*, 2004 WL 235256, 6 (S.D.N.Y. 2004).

The federal government has unsuccessfully attempted to assert claims directly against tortfeasors (who were not insurance companies) to recover settlement proceeds in several mass tort litigation cases. *Id. See In re Orthopedic Bone Screw Prods. Liab. Littig.*, 202 F.R.D. 154 (E.D.Pa. 2001); *In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Littig.*, 2001 WL 283163 (E.D.PA. 2001); *U.S. v. Phillip Morris, Inc.*, 156 F.Supp.2d 1 (D.C. 2001). The federal government has even unsuccessfully attempted to use the provisions of MSPA to recover personally against a plaintiff's attorney. *Thompson v. Goetzman*, 337 F. 3d 489, 493-94 (5th Cir. 2003).

Distinguishing itself from the other circuit courts of appeals, the Eleventh Circuit held that a tortfeasor that plans "a combination of deductibles and insurance policies" may be held liable under MSPA because this constitutes self-insurance. *Baxter* at 896. In Baxter, a class action lawsuit was initiated against several manufacturers of alleged silicon breast implants, which resulted in a $4.2 Billion settlement. *Id.* at 872. The federal government filed suit to recover a portion of the proceeds to offset the medical costs that it paid on behalf of claimants (who were Medicare beneficiaries). *Id.* at 874. The United States District Court for the Northern District of Alabama dismissed the federal government's claims, finding that the government could not maintain a cause of action against the silicon manufacturers because the manufacturers were not insurance companies and had no organized, formal written self-insurance plans. *Id*.

The Eleventh Circuit Court of Appeals, whose decisions are binding on federal courts in Florida, Alabama, and Georgia, overturned the district court's ruling finding that a common practice in business was to "self-insure," and a deductible was akin to self-insurance. *Id.* at 894. The court reasoned that self-insurance was simply a label for the absence of insurance. *Id.*

Granting great deference to the regulations promulgated by Medicare, 42 C.F.R. 411.21 and 411.50, the Eleventh Circuit found that Medicare adopted a broad definition of self-insurance. *Id.* Noting that mere payment to a plaintiff by a tortfeasor would not constitute a plan of self-insurance, the court held that "planning such a combination of deductibles and insurance policies…" may constitute a plan of self-insurance on behalf of the insured. *Id.* at 896. Importantly, the court ruled that the plan must exist *ex ante*, or prior to the claim, and it need not be formal, but rather, may be *ad hoc* (informal) and may be unwritten. *Id.* at 897-98.

The Fourth Circuit Court of Appeals, recognizing disagreement among the federal circuit courts of appeals in the U.S., held that, "an entity that engages in a business, trade, or profession shall be deemed to have a self-insured plan if it carries its own risk (whether by a failure to obtain insurance, or otherwise) in whole or in part." *Brown v. Thompson*, 374 F.3d 253, 262 (4th Cir. 2004). This ruling seemingly follows the decision in *Baxter*.

The significance of the *Baxter* holding was that it appeared to be the first instance where MSPA was successfully used to pursue a claim directly against a tortfeasor. The *Baxter* decision seems to bridge a distance by reasoning that self-insurance includes "a combination of deductibles and insurance" while demonstrating a potential trend that favors Medicare recovery against tortfeasors. The *Baxter* Court's statement may implicate a great number of insureds.

Moreover, as healthcare costs increase and the population ages, increasing pressure will be placed on an already stressed Medicare system. Therefore, it is conceivable to foresee MSPA being expanded by Congress. This would most certainly have a profound effect on the many cases handled in our local courts of law as both counsel for the plaintiff and defendant alike would be required to consider the potential Medicare settlement in each and every case.

Defending Economic Damages With Cost of Annuity Evidence

By Daniel J. Kissane

Florida Statute § 768.77 requires verdicts in any personal injury or wrongful death action to be itemized and any amounts awarded for future economic losses to be reduced to present value. In determining present value, a plaintiff's economist will invariably use the "growth factor-discount rate method" for calculating the present value of future economic damages. This method results in a present value amount that is significantly larger than it would cost to secure the same future damage payments through a guaranteed annuity contract. This article addresses techniques for defending future economic damage claims through the use of cost of annuity evidence.

As an example of the above, in utilizing the "growth factor-discount rate" method a plaintiff's economist will determine present value of future economic damages by first determining the historical Consumer Price Index ("CPI") in order to calculate the inflation rate or growth factor. To escape the effect of low inflation during recent history, a plaintiff's economist will generally use the last 30 year (or longer) period of the CPI. Although inflation is presently 2.7%, and core inflation (excluding food and energy) is only 1.9%, using this historical index permits a figure of 5.5% or higher. Growing the future economic damages (either medical expenses or wages) at this rate, a plaintiff's economist will then apply a "discount rate." The discount rate is arrived at by determining what amount must be invested today in order to satisfy this damage cost in the future (what interest rate will be used to grow the funds). In order to maximize the amount of the present value figure, a plaintiff's economist will use the very conservative United States Treasury 30-year bond as the yardstick to measure the interest rate (presently returning 4.4%). However, using the annuity cost method, these same future economic damages could be satisfied for a small fraction of the present value claimed by the plaintiff.

To illustrate the above, we wil use the actual figures from the case of *Gold, Van & White, P.A. v. DeBerry*, 639 So. 2d 47 (Fla. 4th DCA 1994). In this medical malpractice case involving a catastrophically injured child, the plaintiff's economist testified that the plaintiff's future economic damages totaled $173,925,775. Using the growth factor-discount rate method, the plaintiff's economist was opined that the present value of these damages was $7,835,495. The defendant presented evidence through an annuitist that these same damages could be guaranteed through an annuity contract at a cost of $731,385 (less than 10% of plaintiff's damage figure). The trial court excluded this annuity evidence, and the appellate court affirmed. Below are suggestions on how to build a record for a different result.

In determining future economic damages in Florida "the appropriate test is to permit the recovery of future economic damages when such damages are established with reasonable certainty." *Miami-Dade County v. Cardoso*, --- So. 2d ---2007 WL 225 4674 (Fla. 3rd DCA Aug. 4, 2007)(citing *Auto-Owners Insurance Co. v. Tompkins*, 651 So. 2d 89 (Fla. 1995)). Florida Standard Jury Instruction 6.10 provides the following guidance for the jury to calculate the "reduction of damages to present value":

> Any amount of damages which you allow for [future medical expenses], [loss of ability to earn money in the future] ... Should be reduced to its present money value [and only the present money value of these future economic damages should be included in your verdict] [and both the amount of such future economic damages and their present money value should be stated in your verdict].
>
> **The present money value of future economic damages is the sum of money needed now which, together with what that sum will earn in the future, will compensate [claimant] for these losses as they are actually experienced in future years.**

In adopting the model verdict form itemizing personal injury damages, the Florida Supreme Court noted that there are a variety of different methods under Florida law by which a jury can calculate the reduction of future economic damages to present value. Appreciating that the above standard jury instruction did not provide the method for a jury to determine present value, the Florida Supreme Court commented that "the [jury instruction] committee may wish to prepare an additional instruction advising a jury on how to reduce future damages to present value." *In Re: Standard Jury Instructions*, 541 So. 2d 90 (Fla. 1989).

Responding to this directive from the Florida Supreme Court, in 1990, the Committee on Standard Jury Instructions (Civil) drafted the following comment for Standard Jury Instruction 6.10 (Reduction of Damages to Present Value):

> 2. The Supreme Court Opinion approving publication of basic itemized verdict forms for personal injury and wrongful death cases states: "The committee may wish to prepare an additional Instruction advising a Jury on how to reduce future damages to present value" [citations omitted]. **Designing a standard jury instruction is complicated by the fact that there are several different methods used by economists and courts to arrive at a present value determination** . . . *Lumbe Yards v. Levine,* 49 So. 2d 97 (Fla. 1950) (**using approach similar to calculation of costs of annuity**) . . . *Lofton v. Wilson*, 67 So. 2d 185 (Fla. 1953)
>
> (**lost stream of income approach**) ... *Seaboard Coast Line RR v. Garrison*, 336 So. 2d 423 (Fla. 2d DCA 1976) (**discussing interest rate discount method and inflation/ market rate discount method**); and *Bould v. Touchette*, 349 So. 2d 1181 (Fla. 1977) (**even without evidence, juries may consider the effects of inflation**).
>
> Until the Supreme Court or the Legislature adopts one approach to the exclusion of the other methods of calculating present money value, **the Committee assumes that the present value of future economic damages is a finding to be made by the**

> **jury on the evidence; or, if the parties offer no evidence to control that finding, then the jury properly resorts to its own common knowledge as guided by SJI 6.10 and by argument.**
>
> As the Florida Supreme Court and the Florida Legislature have not adopted a specific method of calculating present money value of future economic damages (to the exclusion of another), then the present value of future economic damages is a finding that is to be made by the jury on the evidence at trial (see the Committee Note to SJI 6.10 above).

Guided by the above, defendants should be prepared to present competent, reliable evidence at trial to guide the jury in determining the present value of future economic damages. There is ample support under Florida law that the cost of an annuity is an appropriate means to determine present value of future damages. For example, in *Bould v. Touchette*, 349 So. 2d 1181, 1185 (Fla. 1977). the Florida Supreme Court acknowledged that "courts in this country have generally approved a sum that would purchase an annuity equal to the value of the pecuniary aid which the dependents would have derived from the deceased; in other words, the present worth of such an amount as would accrue to the beneficiary based on his or her life expectancy."

Florida law clearly supports the cost of an annuity approach to determine the present value of economic damages in a wrongful death case. *Bould v. Touchette*, 349 So. 2d 1181, 1185 (Fla. 1977). The same is true in determining the present value of future lost earning capacity. *Cudahy Packing Co. v. Ellis*, 140 So. 918 (Fla. 1930). However, for reasons that defy logic, two Florida courts have refused to reverse a trial court's decision to exclude the same cost of annuity approach in determining future medical expenses. These two cases will be briefly summarized, with guidance on how to try for a different result.

In *North Broward Hospital District v. Bates*, 595 So. 2d 578 (Fla. 4th DCA 1992), the trial court refused the introduction into evidence of the cost of an annuity to fund a plaintiff's future medical expenses. In affirming this ruling, the Fourth District Court of Appeal noted that "evidence of the cost of an annuity to compute present value has been admitted in several Florida cases involving loss of future earning capacity, loss of support which dependents would have derived from the decedent, and in wrongful death actions." *Id.* at 578. The Court then states "however, there is no Florida case which has authorized the jury to utilize an annuity approach in determining future medical damages, though some out-of-state decisions have so held." *Id. citing Ramrattan v. Burger King Co.*, 656 F.Supp. 522 (D.Md. 1987). The Fourth District declined to follow *Ramrattan,* stating that "Ramrattan involved a Maryland statute which specifically directed juries to itemize the monetary award for "future medical expenses"). *Id.* Subsequent to the law that was controlling in *Bates*, Florida passed Florida Statute § 768.77 requiring personal injury and wrongful death verdicts to be itemized and therefore this prior case can be distinguished on this basis.

It is further significant to note that in the *Bates* decision, the Fourth District Court of Appeal specifically acknowledged "we do not address the question of what our decision would have been had the trial judge admitted the annuity evidence." *Id.* at 579.

Judge Farmer's dissent in the *Bates* case is very compelling. The dissent acknowledges that Florida law "supports the admission of evidence of the cost of annuities as one way to compute the present value of future economic damages." The dissent opines that there is "no valid basis for allowing evidence of the cost of annuities for loss of income in the future, but not allowing annuity evidence for covering medical expenses to be incurred in the future." *Id.* at 579. The dissent notes that the jury is faced with the identical task under both elements of future damages (calculating what sum of money awarded today will provide the injured person with the money to either replace the lost income or to pay for medical expenses needed in a distant year). The dissent concludes:

> It may well be that the cost of annuities will not be the fairest or most reasonable way of assuring future compensation. However, that is the stuff that trials are made of. We permit the litigants to present competent and relevant evidence on all sides of the issue, and leave it to them to convince the trier of fact of the best means of assuring that a deserving claimant is fairly compensated. We are faced with precedent that allows annuity evidence on future economic losses, and I believe we are bound by that precedent. *Bates*, dissent at 579.

The issue came before the Fourth District Court of Appeal again two years later in *Gold, Van & White, P.A. v. DeBerry*, 639 So. 2d 47 (Fla. 4th DCA 1994). In *DeBerry,* the plaintiff presented the testimony of an economist who performed the present value calculations using the growth factor-discount rate method as aforementioned. The plaintiff's expert testified that the future value of the medical expenses was $173,925,775, and reduced to present value amounted to $7,835,495. The defendant attempted to call an expert annuitist at trial to prove that a $731,385 annuity would guarantee the payment of the future medical expenses claimed by plaintiff. The trial court made a discretionary ruling and excluded defendant annuity evidence. On appeal the plaintiff argued the annuitist's testimony was speculative; the annuitist's testimony was based on hearsay from underwriters; and the annuitist's testimony was misleading. The defendant countered on appeal that the annuitist's testimony was no more speculative than that of the plaintiff's economist, and argued that the plaintiff's objections concerned the weight of the evidence, rather than its admissibility. Relying upon the previous decision in *Bates*, the court again held that since there is "no Florida case law which authorized the jury to utilize an annuity approach in determining future medical damages;" the trial court's discretionary ruling to exclude such evidence would be affirmed.

The reason an annuity costs less than the present value method utilized by plaintiffs is largely related to the life expectancy of the plaintiff (coupled with the better rate of return on the investment). Underwriters can determine with statistical precision the life expectancy, or rated age, of a particular plaintiff. However, for obvious

strategy reasons, defendants do not want to be placed in the untenable position of arguing to the jury "the plaintiff will never live that long." This should be done through evidence of the cost of an annuity.

As part of Florida's 1999 tort reform effort, the legislature passed Fla. Stat.§ 768.78. This statute provides the trial court discretion to permit a judgment for future economic losses exceeding $250,000 to either be satisfied by lump sum or "to be paid in whole or in part by periodic payments rather than by lump-sum payment." This does not, however, remedy the problem. Ignoring the issue of plaintiff's attorney's fees on the larger figure from trial, this removes the decision from the jury and places the decision within the court's discretion. Moreover, the jury is denied from learning the truth (i.e.: that plaintiff's damages are really only 10% of what they are seeking), and in practice this will generally spill over into the damages beyond future economic damages (i.e.: past and future pain and suffering damages).

As evidence of the cost of an annuity to compute present value is admissible under Florida law in cases involving loss of future earning capacity, loss of support which dependents would have derived from the decedent, and in wrongful death actions, it should also be admissible to determine present value of future medical expenses. There exists no valid basis for permitting evidence of the cost of annuities for loss of income in the future, but not permitting the same evidence with respect to future medical expenses. To accomplish this goal, the defendant should be prepared to call an expert annuitist, as well as an underwriter (to overcome any hearsay objection), at trial in defense of all future economic damage claims in any personal injury or wrongful death claim.

Recent Developments in Bad Faith Discovery

By Joseph T. Kissane and Karin L. Posser

Bad faith litigation presents a unique set of discovery problems. Because bad faith claims only arise when an insured has submitted a prior claim for benefits or is liable to a third party following an action for damages against him, bad faith litigation always involves two distinct sets of claims and defenses – (1) an underlying claim or action for coverage, and (2) an overarching bad faith claim. As a result, the manner in which the insurer handled the underlying claim or action becomes the factual basis of the bad faith claim. These factual records, typically reflected in the insurer's claim file, are therefore the primary evidentiary focus of the subsequent bad faith case.

Until fairly recently, Florida courts had abided by two sets of rules regarding the production of documents from the claim file – one set of rules for third party actions, and another set of rules for first party actions. The justification for this distinction was found in the nature of the duties that the insurer owed its insured. In a third-party action, the insurer was held to be the fiduciary of the insured. In a first party action, it was presumed that the insurer and the insured had an adversarial relationship. Consequently, the plaintiff in a third party action would be allowed wide latitude in obtaining the contents of the claim file on the grounds that the insurer was his fiduciary. In such cases, an insurer would be required to produce the complete, original claim file, including privileged and work-product documents, that were generated through the date of the final judgment in the underlying case. *See Dunn v. Nat'l Sec. and Fire Cas. Co.*, 631 So. 2d 1103, 1109 (Fla. 5th DCA 1993); *Stone v. Travelers Inc. Co.*, 326 So. 2d 241 (Fla. 3d DCA 1976). In contrast, due to the adversarial nature of the relationship in a first party action, an insurer was not required to produce the contents of its claim file. *Kujawa v. Manhattan Nat. Life Ins. Co.*, 541 So. 2d 1168, 1169 (Fla. 1989); *Vesta Fire Ins. Co. v. Figeroa*, 821 So. 2d 1233 (Fla. 5th DCA 2002).

However, in the case of *Allstate v. Ruiz*, 899 So. 2d 1121 (Fla. 2005), the Florida Supreme Court erased the distinction between the scope of an insurer's document production required in first and third party cases. In Ruiz, the court held that:

> [W]e hold that in connection with evaluating the obligation to process claims in good faith under section 624.155, all materials, including documents, memoranda, and letters,contained in the underlying claim and related litigation file material that was created up to and including the date of resolution of the underlying disputed matter and pertain in any way to coverage, benefits, liability, or damages, should also be produced in a first-party bad faith action. Further, all such materials prepared after the resolution of the underlying disputed matter and initiation of the bad faith action may be subject to production upon a showing of good cause or pursuant to an order of the court following an in-camera inspection. *See* Fla. R. Civ. Pro. 1.280(b), 1.350; *Fla. Farm Bureau Gen. Ins. Co. v. Copertino*, 810 So. 2d 1076, 1079 (Fla. 4th DCA 2002). However, we caution that where the coverage and bad faith actions are initiated simultaneously, the courts should employ existing tools, such as the abatement of actions and in-camera inspection, to ensure full and fair discovery in both causes of action . . . However, when the underlying claim for benefits has been resolved, all files pertaining to the underlying dispute which produced the alleged bad faith are discoverable as in traditional common law third-party bad faith cases for failure to settle third-party claims.

In essence, the Florida Supreme Court rejected the formulation outlined in *Kujawa v. Manhattan Nat. Life Ins. Co.* which held that the special relationship in third-party actions did not exist in first-party actions. The *Ruiz* court held that considering the relationship between insurer and insured to be adversarial was "an outdated pre-statutory analysis." The duties outlined in Fla. Stat. § 624.155 confirm that insurers owe insureds the same general duty of good faith and fair dealing when the insured presents his own claim as when he is sued by a third party. In short, the court held that "any distinction between first- and third-party actions with regard to discovery purposes is unjustified." As a result, the entire body of Florida case law restricting the production of an insurer's claims file in first party cases appears to have been swept away.

Although the court in *Ruiz* held that the date of final judgment in the underlying case is the cut-off point for deciding when the work-product privilege is triggered, it is not always a simple matter to identify exactly when the work-product privilege first begins to apply. For example, in

Florida Farm Bureau v. Copertino, 810 So. 2d 1076 (Fla. 4th DCA 2002), the court held that the litigation over the bad faith dispute began before the underlying judgment was entered. The claimants had asserted bad faith affirmative defenses and the civil remedy notices of violation had been served on the insurer. Afterwards, the insurer's employees had prepared memos concerning the likelihood of the impending bad faith litigation. The court held that these memos were protected because they were prepared for the specific purpose of evaluating the bad faith claims, and that litigation had effectively already begun. *Id.*

With respect to attorney-client privileged material, in general, communications between appointed defense counsel and the insurer are not privileged when they concern the underlying litigation. Although disputes are common, it is presumed that, because of the fiduciary duty owed by the insurer, the interests of the insured and the insurer are merged. Because of these common interests, the attorney-client privilege does not attach to communications among the attorney, the insurer, and the insured. *Allstate v. Am. S. Home Ins. Co.*, 680 So. 2d 1114, 1116 (Fla. 1st DCA 1996).

On the other hand, the confidential communications between the insured, the insurer, and any counsel representing them regarding the matter of common interest are protected by the attorney-client privilege from discovery by third parties. *See Progressive Exp. Ins. v. Scoma,* 32 Fla. L. Weekly D1187 (Fla. 2d DCA 2007). The third party will not have had access to such communications during the underlying tort litigation. The third party bringing a bad faith claim, therefore, is in a much different position than the first-party insured bringing such a claim. The first-party insured and the insurer may have no confidential communications with their joint counsel to protect when the first-party insured brings a claim against the insurer for third-party coverage. When a third party brings the claim for such coverage, however, the insured and insurer most certainly will have had such privileged communications and those communications will have been previously protected from disclosure.

Communications between an insurer and its in-house counsel are generally protected as attorney/client communications. *See Progressive Am. Ins. Co. v. Lanier*, 800 So. 2d 689, 691 (Fla. 1st DCA 2001). However, if the insurer asserts the "advice of counsel" defense, it waives the attorney-client privilege with regard to that advice. *Fidelity and Cas. Ins. Co. of New York v. Taylor*, 525 So. 2d 908, 909-10 (Fla. 3d DCA 1987). The court's holding in *Taylor* was considered to be implicitly overruled by the court in *Kujawa*. However, because *Ruiz* has rejected the holding of *Kujawa*, Taylor can once again be considered good law.

Family Educational Rights and Privacy Act (FERPA): Privacy & Access to Student Educational Records

By Laura Alton

The Family Educational Rights and Privacy Act (hereinafter "FERPA") (20 U.S.C. § 1232g (2005); 34 CFR Part 99 (2005)) is a federal law that protects the privacy of student educational records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. 20 U.S.C. § 1232g (a)(3) (2005); 34 C.F.R. § 99.1(a) (2005). FERPA promotes the privacy of educational records and protects the disclosure of student educational records to unauthorized parties without the student's prior consent or the student's parents' consent if the student is a minor. Generally, "the release of education records (or personally identifiable information contained therein other than directory information) of students without the written consent of their parents [if they are a minor or the student if they reached the age of majority] to any individual, agency, or organization" is not permitted. 20 U.S.C. 1232g (b)(1) (2005).

In the context of litigation, FERPA would most likely come into play if the party's educational records were somehow relevant to an issue in the case. For instance, if the plaintiff is a student and claims his or her injuries caused significant damages, the plaintiff's transcripts and/or other educational records may become relevant to the damages element of the claim. FERPA prohibits the disclosure of student educational records to unauthorized entities without the student's prior written consent or the student's parents' written consent, if the student is a minor. 30 C.F.R. § 99.30 (a) (2005). Therefore, it would not be permissible under FERPA for the registrar of an educational institution to release a student's educational records to opposing counsel without that student's or the student's parents', if the student is a minor, prior written consent. 34 C.F.R. § 99.30 (a) (2005). The prior written consent must specify the records that may be disclosed, state the purpose of the disclosure, and identify the party or class of parties to whom the disclosure may be made. 34 C.F.R. § 99.30(b)(1)-(3) (2005).

However, FERPA carves out various exceptions to this prior consent rule to disclose educational records. One of these exceptions to the prior consent rule is the disclosure of student educational records through a subpoena or court order. 34 C.F.R. § 99.31(9)(i) (2005). Through subpoena or court order, the educational agency or institution may disclose information . . . only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action. 34 C.F.R. § 99.31(9)(ii) (2005).

Every educational institution has an internal FERPA policy and typically notifies the student of the subpoena prior to compliance therewith in accordance with the educational institution's policy. Therefore, when a student's educational records are requested pursuant to subpoena, the student's prior written consent is not necessary for the educational institution to disclose the records. The only action a student or student's parent may take with regard to the disclosure of educational records pursuant to a subpoena is to seek protective action in the courts.

What are educational records?

Educational records are defined as "those records, files, documents, and other materials which contain information directly related to a student; and are maintained by an educational agency or institution or by a person acting for such agency or institution." 20 U.S.C. § 1232g (a)(4)(A)(i)-(ii) (2005); 34 C.F.R. § 99.3 (2005). Educational records do not include instructor's records:

- Records of instructional, supervisory, and administrative or educational personnel which are in the sole possession of the maker and which are not accessible or revealed to any other person except a substitute; records maintained by a law enforcement

unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement; student-employment records;

- In the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or
- Records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice."

20 U.S.C. § 1232g(a)(4)(B)(i)-(iv) (2005).

Further, directory information maintained by an educational agency or institution is information that is accessible to the public domain, and does not require a student's prior written consent for disclosure so long as the institution has given public notice to parents of students of the type of information that the institution designates as directory information and provides the student or the student's parent with the right to refuse to have all or part of their information included as directory information.

34 C.F.R. § 99.37 (a) (2005). Directory information relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.
20 U.S.C. § 1232g(a)(5)(A) (2005). Therefore, this type of information may be obtained from an educational agency or institution without requiring the student's prior consent before disclosure.

Other Relevant Exceptions to the Prior Consent Rule

There are other scenarios where a subpoena and/or court order is not necessary to release the educational records of a student, even without the student's prior consent:

> If an educational agency or institution initiates legal action against a parent or student, the educational agency or institution may disclose to the court, without a court order or subpoena, the education records of the student that are relevant for the educational agency or institution to proceed with the legal action as plaintiff; [or], If a parent or eligible student initiates legal action against an educational agency or institution, the educational agency or institution may disclose to the court, without a court order or subpoena, the student's education records that are relevant for the educational agency or institution to defend itself.
> 34 C.F.R. § 99.31 (9)(iii)(A) & (B) (2005).

Florida Statute § 1002.22 – Student Records

Fla. Stat. § 1002.22, [S]tudent records and reports; rights of parents and students, is modeled directly after FERPA and parallels all the requirements imposed by FERPA. Fla. Stat. § 1002.22(d) enforces a student's right to privacy and makes impermissible the release of "personally identifiable records or reports of a student without the written consent of the student's parent, or of the student himself or herself." Fla. Stat. § 1002.22(d) (2007). Fla. Stat. § 1002.22 contains the same exception to the prior consent rule as FERPA with regard to the release of educational records pursuant to a subpoena or judicial order:

> Personally identifiable records or reports of a student may be released to the following persons or organizations without the consent of the student or the student's parent: A court of competent jurisdiction in compliance with an order of that court or the attorney of record in accordance with a lawfully issued subpoena, ***upon the condition that the student and the student's parent are notified of the order or subpoena in advance of compliance therewith by the educational institution or agency.***

Fla. Stat. § 1002.22(d) (11.a) (2007) (emphasis added).
In fact, Fla. Stat. § 1002.22 is broader with regard to the definition of educational records and is broader with respect to the entities educational records may be disclosed to without receiving a student's prior consent. The definition of educational records pursuant to Fla. Stat. § 1002.22 is far more expansive than its federal counterpart and enumerates specific records included in its definition of educational records, such as "scores on standardized intelligence, aptitude, and psychological tests; health data; family background data. . . and any other evidence, knowledge, or information recorded in any medium, including, but not limited to, handwriting, typewriting, print, magnetic tapes, film, microfilm and microfiche, and maintained and used by an educational agency or institution or by a person acting for such agency or institution." Fla. Stat. § 1002.22(2)(c) (2007).

During the course of litigation, FERPA may arise in efforts to obtain educational records of parties to the action, and pose some unexpected, but easily navigated roadblocks. This article should provide you with a mechanism to obtaining educational records in compliance with all federal and state statutes and regulations, in order to better facilitate the discovery process.

It Must Be My Agent's Fault

By Blake Sando

In recent years, premiums for insurance agency Errors and Omissions policies have increased for more than three-quarters of insurance agencies across the United States. See Stephanie Jones, Insurance Journal, What Does the Future Hold for Insurance Agents' E&O? (2006). This trend has been noticeable in South Florida, in which property owners have frequently attempted to hold their insurance brokers responsible for a lapse in coverage in their homeowner's policies, or due to the insurer's denial of coverage. Some of these lawsuits have arisen when coverage has lapsed or been cancelled due to the failure of a property owner to pay the renewal premium for their homeowner's policy in a timely manner before the arrival of one of the many destructive hurricanes that have blown through South Florida in recent years.

As a general rule, Florida law provides that an insurance broker or independent insurance agent acts as the agent of the insured. *See Amstar Ins. Co. v. Cadet*, 862 So. 2d 736, 740 (Fla. 5th DCA 2003). An insurance broker differs from a captive agent because an insurance broker is not bound to work for or solicit insurance for any particular insurance company. *See Amstar*, 862 So. 2d at 739. In Florida, a person's acts, not words, determine whether they are deemed to be an insurance broker or an insurance agent. *See Boulton Agency, Inc. v. Phoenix Worldwide Indus.*, 698 So. 2d 1248, 1250 (Fla. 3d DCA 1997).

The good news for insurance brokers is that Florida law has generally placed the responsibility to timely renew and pay premiums on the insurers and property owner themselves. Specifically, the Florida Supreme Court has held that an insurance broker's employment is at an end when the agent procures insurance for the insured. *See Cat'N Fiddle v. Century Ins. Co.*, 213 So. 2d 701, 704 (Fla. 1968). In Florida, an insurance broker is under a duty to notify the insured of a pending cancellation of a policy unless it is made to appear that the insured knew or reasonably should have known about the cancellation from sources other than the agent. *See Thal v. Shiman*, 524 So. 2d 1156, 1156-7 (Fla. 3d DCA 1988).

Since Florida law requires an insurer to mail the notice of cancellation directly to the insured with an open copy to the broker, an insurance broker is generally under no further duty to inform the insured about the pending cancellation of the policy after receipt of the notice of cancellation. *See Thal*, 524 So. 2d at 1156-7; See also § 627.728(3) (a), *Florida Statutes*. Likewise, an insurance broker also owes no duty to the insurer to forward a defective notice of cancellation to the insured. *See Don Slack Ins. Inc.v. Fidelity Cas. Co. of New York*, 385 So. 2d 1061, 1064 (Fla. 5th DCA 1980).

Although some insurance brokers call their respective insured-clients after receipt of a cancellation notice from the insurance carrier, Florida courts have found that proof of mailing a notice of a cancellation to a named insured at the address stated in the policy constitutes sufficient compliance with policy provisions requiring notice of cancellation to the insured. *Burgos v. Indep. Fire Ins. Co*., 371 So. 2d 539, 541 (Fla. 3d DCA 1979). If a lawsuit does later arise, an insurer's proof of mailing of a notice of cancellation to the insured prevails as a matter of law over the insured's denial as to its receipt. *Ruiz v. Fortune Ins. Co.*, 677 So. 2d 1336, 1338 (Fla. 3d DCA 1996). If cancellation does occur, an insurance broker is generally not under a duty to obtain replacement insurance coverage for the insured unless there is an agreement to do so between the broker and the insured. *See Burgos*, 371 So. 2d at 541.

Despite these apparent protections for insurance brokers, there are still some steps that insurance brokers may wish to take in order to protect themselves against potential lawsuits arising from cancellation and an insurer's denial of coverage, and in order to better serve their insured-clients. First, the broker should meet with and discuss with the insured the coverage requested. In this meeting, the broker should ensure that the insured completes a written insurance application in their own handwriting in order to avoid any transcription errors by the insurance broker. Second, upon obtaining a proposal from prospective insurers, the broker should put forward a detailed insurance proposal for the insured's review and approval, and explain all proposed coverage to the insured. If the insured agrees with the proposed coverage, then the broker should request that the insured sign the proposal so that there will be no confusion regarding the coverage requested by the insured.

With respect to notices of cancellation, it may be advisable for the broker or customer service representative to verify the insured's address on the notice in order to ensure that notice contains the insured's correct mailing address, as stated in the policy. If the insured's address is correct, the insurance broker can reasonably expect that the insured has received notice of the cancellation in accordance with Florida law. As a second step, it may be advisable for the broker to send an email or letter to the insured and attach a copy of the insurer's notice of cancellation, although Florida law requires no such duty. However, this will enable the broker to prove their attempt to notify the insured about the notice of cancellation in the event that litigation later arises. As a final measure, the insurance broker should document all verbal decisions that the insured makes with respect to the continuance or cancellation of insurance coverage in a brief email or letter to the insured so that all parties will be clear with respect to the insured's coverage decisions.

As hurricanes become more frequent in South Florida, insurance brokers can expect that unhappy homeowners may attempt to make them the scapegoat for the insurers' denial of coverage or for the failure of the insured to timely renew their own policies. Although Florida law generally places the responsibility of these matters with the insurers and insureds, insurance brokers would be well advised to take some additional steps in order to protect themselves from E&O liability, litigation costs and increased E&O premiums, as well as to better serve their insured-clients.

Present Status and Florida's Personal Injury Protection (PIP) Statute

By Eric Rieger

Personal Injury Protection (PIP) sunset on October 1, 2007. Prior to this date, PIP was mandatory and governed by statute. After January 1, 2008, the 15 day demand requirement contained in the PIP statute has been extended to 30 days.

Like the "old" PIP statute, under the "new" PIP statute, insureds or assignees are able to recover their attorneys' fees. Section 627.428, Fla. Stat. (2007), still

provides for an award of attorneys' fees on behalf of "any named or omnibus insured or the named beneficiary." Accordingly, we anticipate there will be no change in awards to plaintiff lawyers for successfully litigating these claims.

With these changes, Florida has shifted from a No-Fault system to a fault-based or tort system, whereby the at fault driver is responsible for paying the claimant's medical expenses and compensating for additional damages, such as loss of wages and "pain and suffering." In addition, claimants are no longer required to have suffered a threshold "permanent" injury in order to recover non-economic damages, such as pain and suffering and mental anguish. Again, dependent upon individual contracts of insurance, No-Fault coverage may or may not be a "collateral source" and may be subrogable.

On October 11, 2007, Governor Charlie Crist signed the proposed No-fault bill into law effective January 1, 2008. PIP will continue to pay 80% of medical expenses up to $10,000.00, but the benefits are limited to services and care provided, lawfully supervised, ordered, or prescribed by: medical doctor, osteopath, physician, allopathic, physician, dentist or provided by hospital or ambulatory surgical center; emergency transportation and treatment by an ambulance or emergency medical technician; chiropractic physician; entities wholly owned M.D, osteopathic physician, allopathic physician, chiropractors, dentists, or such practitioners and their spouse, parent, child or sibling; entities wholly owned by a hospital or hospitals; and, licensed health care clinics that are accredited by a specified accrediting organization or the health care clinic has a medical director that is a Florida licensed physician, osteopath or chiropractor, has either been continuously licensed for more than 3 years or is a publicly traded corporation and provides at least four of the following medical specialties: general medicine, radiography, orthopedic medicine, physical medicine, physical therapy, physical rehabilitation, prescribing or dispending medication and laboratory services.

Additionally, the new PIP law has medical fee schedules that allow insurers to limit reimbursement to 80% of the following schedule of maximum charges:

- Emergency transport and treatment (ambulance, emergency medical technicians), 200% of Medicare;
- Emergency services and care provided by a hospital, 75% of the hospital's usual and customary charge;
- Emergency services and care and related hospital inpatient services rendered by a physician, the usual and customary charges in the community;
- Hospital inpatient and outpatient services, 200% of Medicare Part A;
- All other medical services, 200% of Medicare Part B;
- If medical care is not reimbursable under Medicare, the insurer may limit reimbursement to 80% of the workers' compensation fee schedule; and,
- If the medical care is not reimbursable under either Medicare or workers compensation, the insurer is not required to pay.

The following subparagraphs, (b)f.2 through (b)f.5, (commonly referred to as the Consumer Price Index section) has been eliminated from the new PIP statute:

> *2. Charges for medically necessary cephalic thermo_ grams, peripheral thermograms, spinal ultrasounds, extremity ultrasounds, video fluoroscopy, and surface electromyography shall not exceed the maximum reimbursement allowance for such procedures as set forth in the applicable fee schedule or other payment methodology established pursuant to s. 440.13.*
>
> *3. Allowable amounts that may be charged to a personal injury protection insurance insurer and insured for medically necessary nerve conduction testing when done in conjunction with a needle electromyography procedure and both are performed and billed solely by a physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461 who is also certified by the American Board of Electrodiagnostic Medicine or by a board recognized by the American Board of Medical Specialties or the American Osteopathic Association or who holds diplomate status with the American Chiropractic Neurology Board or its predecessors shall not exceed 200 percent of the allowable amount under the participating physician fee schedule of Medicare Part B for year 2001, for the area in which the treatment was rendered, adjusted annually on August 1 to reflect the prior calendar year's changes in the annual Medical Care Item of the Consumer Price Index for All Urban Consumers in the South Region as determined by the Bureau of Labor Statistics of the United States Department of Labor.*
>
> *4. Allowable amounts that may be charged to a personal injury protection insurance insurer and insured for medically necessary nerve conduction testing that does not meet the requirements of subparagraph 3. shall not exceed the applicable fee schedule or other payment methodology established pursuant to s. 440.13.*
>
> *5. Allowable amounts that may be charged to a personal injury protection insurance insurer and insured for magnetic resonance imaging services shall not exceed 175 percent of the allowable amount under the participating physician fee schedule of Medicare Part B for year 2001, for the area in which the treatment was rendered, adjusted annually on August 1 to reflect the prior calendar year's changes in the annual Medical Care Item of the Consumer Price Index for All Urban Consumers in the South Region as determined*

by the Bureau of Labor Statistics of the United States Department of Labor for the 12-month period ending June 30 of that year, except that allowable amounts that may be charged to a personal injury protection insurance insurer and insured for magnetic resonance imaging services provided in facilities accredited by the Accreditation Association for Ambulatory Health Care, the American College of Radiology, or the Joint Commission on Accreditation of Healthcare Organizations shall not exceed 200 percent of the allowable amount under the participating physician fee schedule of Medicare Part B for year 2001, for the area in which the treatment was rendered, adjusted annually on August 1 to reflect the prior calendar year's changes in the annual Medical Care Item of the Consumer Price Index for All Urban Consumers in the South Region as determined by the Bureau of Labor Statistics of the United States Department of Labor for the 12-month period ending June 30 of that year. This paragraph does not apply to charges for magnetic resonance imaging services and nerve conduction testing for inpatients and emergency services and care as defined in chapter 395 rendered by facilities licensed under chapter 395.

The PIP fee schedule referenced above would apply instead.

If the PIP insurer receives notice of an accident, the insurer must reserve $5,000.00 of PIP benefits for payment to physicians or dentists rendering emergency care or inpatient care in the hospital for 30 days. After the 30 day period, the unclaimed amount of the reserve may be used to pay claims from other providers. The required time to pay claims to other providers is tolled for the time period the insurer is required to hold such claims due to this requirement.

The important remaining highlights are:

- All PIP claims against an insurer related to the same health care provider for the same injured person must be brought together in a single lawsuit, unless good cause is shown why such claims should be brought separately;

- Increases 15 day demand requirement to 30 days before a provider can file suit;

- The Death benefit is modified to $5,000 or the remainder of the PIP benefits, whichever is less; and,

- Makes it an unfair trade practice for an insurer to refuse to pay valid claims as a general business practice, and allows the Attorney General to investigate and initiate actions, in addition to the Office of Insurance Regulation.

We will keep you informed of any new developments, legislative or otherwise, on Florida's PIP law.

Success Stories

Richard Cole, Gene Kissane and John Coleman successfully tried a nursing home case in the State of Pennsylvania which resulted in a highly favorable verdict on behalf of our client.

Richard Cole, Thomas Scott, Gene Kissane and Scott Bassman were successful in having a federal court in Florida rule that a 'follow-the-fortunes/follow-the-settlements' provision should not be implied into a reinsurance agreement absent express agreement by the contracting parties. A 'follow-the-fortunes' clause typically describes a reinsurer's obligation to follow a reinsured's underwriting fortunes, whereas 'follow-the-settlements' refers to the duty to follow the actions of the reinsured in adjusting and settling claims. The federal court agreed that there was simply no express provision(s) within the subject reinsurance certificate, and it could not go outside the laws of contract construction to add a clause that was not bargained for by the parties. This is the first published decision in Florida on this issue and one of the few throughout the entire country.

Richard Cole and Blake Sando successfully received a dismissal in a professional negligence claim against their client, who acted as an insurance agent for the procurement of insurance for two of the Plaintiff's commercial businesses. Ultimately, the underlying insurance carrier denied coverage for two separate losses that occurred at the plaintiffs' businesses. Initially, the Plaintiff had sought damages of $15,000.00 from the client for the failure to renew and procure insurance for the Plaintiffs' businesses, which would have provided coverage for the losses. After the defense prevailed on a motion to dismiss the complaint for the failure to state a cause of action, the Plaintiffs ultimately abandoned their claims when the defense pursued a motion for sanctions and fees against the Plaintiffs' attorneys for filing a frivolous lawsuit.

Richard Cole and Blake Sando successfully dismissed a legal malpractice claim against their client, who was a Plaintiff's attorney in the underlying suit. The underlying suit related to a divorce proceeding in New York, in which the Plaintiff alleged that the client-attorney had committed legal malpractice by over-billing the Plaintiff for their legal services. After the defense filed a motion to dismiss due to forum non conveniens, the defense successfully negotiated with the Plaintiff to dismiss the lawsuit with prejudice without any contribution from the client.

Richard Cole and Blake Sando obtained a complete defense verdict in a trip and fall trial in Key West. The Plaintiff claimed injuries including an operated knee, torn rotator cuff in the shoulder and permanent tremors in her neck. The jury was out for one hour, including lunch.

Christopher Hopkins and Allison Bernstein received a defense decision in a wrongful death Assisted Living Facility arbitration. The Resident's Estate sued both the Administrator and the Facility claiming: that the Resident was inappropriate for placement and continued placement, development of tunneling ulcers, dehydration, malnutrition, that the Facility failed to timely transfer the Resident to the hospital, and death. **Christopher and Allison** previously defeated the Plaintiff's Motion for Leave to Assert Punitive Damages.

Christopher Hopkins and Allison Bernstein won an appeal on behalf of a homeowners' association involving the question of whether the homeowners' association could amend their declaration to require future property owners to join a local country club. Additionally, the appellate court granted our Motion To Tax Attorney's Fees And Costs.

The underlying case was tried to a defense verdict by **John Kennedy**.

Christopher Hopkins and Allison Bernstein prevailed in an appeal of a defense verdict involving a dispute between a condominium owner and the association over a board of director's determination that there was a nuisance. Additionally, the appellate court granted our Motion To Tax Attorney's Fees And Costs. **Barry Postman and Lee Cohen** won at the trial level.

Christopher Hopkins, Lisa Szulgit, and Allison Bernstein prevailed on a Motion for Summary Judgment in a trip and fall case that occurred in a nursing home. The Plaintiff, who was not a resident of the nursing home, tripped on an area rug which she claimed should have been secured to the floor. She testified during her deposition that she had been to the nursing home numerous times in the past and that she had seen the area rug, which had been there for a very long time. The Motion for Summary Judgment argued that the area rug was open and obvious and the Court agreed.

Aram Megerian and Scott Shelton obtained a defense verdict in a case where the plaintiff alleged that he fell over a loose plank on our client's dock striking his head on an illegally parked boat. The plaintiff alleged that the boat had been illegally parked over two years and constituted an unreasonably dangerous condition. As a result of the fall, the plaintiff claimed that he sustained a herniated disk and severe post concussion syndrome and requested an award exceeding $750,000.00. The defense argued that the condition, although dangerous, was an open and obvious condition and questioned whether the plaintiff actually fell on the dock. The jury returned a verdict in less than 30 minutes, including lunch.

Aram Megerian and Robert Swift recently obtained a defense verdict in a liability case where the carrier had served a $200,000 Proposal for Settlement on the plaintiff. The issue was whether the client moved a ladder that the plaintiff was standing on, or whether the plaintiff slipped and fell from the roof. Plaintiff's case was based upon our client's numerous versions of the events. Ultimately, our client testified that he and the plaintiff had concocted the story about the ladder since the plaintiff was seriously injured and had no medical or disability coverage. After trial, a juror advised **Aram and Robert** that the case was won upon the convincing testimony of our client, who made excellent eye contact and told a very believable story.

Jonathan Midwall and Lee Cohen received a defense verdict in a case concerning the alleged failure of a day care facility in taking care of a seven year old boy who received personal injuries as the result of an accident at the Facility. The jury was out for 40 minutes, including lunch, and returned a complete defense verdict.

Barry Postman and Sherry Schwartz were successful in compelling the dismissal of two cases involving a title/closing agency's alleged breach of fiduciary duty with regard to the closings of two residential sale contracts. After lengthy negotiations, and pursuing all remedies afforded by Section 57.105, Fla. Stats. Plaintiff's counsel ultimately agreed to voluntarily dismiss one case, with prejudice, and is currently seeking leave of court to amend the second lawsuit, in order avoid being forced to suffer the sanctions associated with the filing of two frivolous lawsuits.

Barry Postman and Michael Shiver succeeded in securing a voluntary dismissal of a breach of fiduciary duty complaint filed against an automobile insurance brokerage. By aggressively taking the position that the Plaintiff had affirmatively and independently sought to reduce and then eliminate her uninsured motorist coverage, and indicating an intent to seek sanctions pursuant to Fla. Stat. ss. 57.105, **Barry and Michael** convinced opposing counsel and the Plaintiff that any cause of action against her insurance broker would be subject to estoppel, due to multiple signed statements by the Plaintiff indicating her intent to limit her automobile insurance policy.

Barry Postman and Jonathan Vine received a directed verdict in a failure to disclose/fraud/nuisance case after a two week trial. Prior to trial, the Defendant offered over $500,000 to settle, which was rejected by the Plaintiff. Additionally, as the Plaintiff was seeking relief pursuant to the Florida Deceptive and Unfair Trade Practices Act, our client is now entitled to its attorney's fees as the prevailing party.

Janet Abel obtained a dismissal with prejudice prior to trial due to the Plaintiff's attorney realizing our investigation was building a strong case of misidentification. The Plaintiff/decedent resided at a nursing home and the Defendants were a healthcare temporary staffing agency and employed nurse. The Plaintiff filed a two-count complaint for negligence and violation of nursing home residents' rights alleging that the Defendant nurse picked up the decedent and threw her on the bed breaking her leg. She required surgery and passed away approximately one month later. The defense of this case revolved around misidentification of the Defendant nurse and the subsequent investigation of the roommate's statements including her ability to identify the Defendant.

Allison Bernstein prevailed in an appeal of an order granting a 2.5 multiplier in a personal injury protection case. On appeal, **Allison** argued that the award of the multiplier by the lower court was an abuse of discretion. The appellate court agreed and threw out the multiplier.

Allison Bernstein successfully negotiated a settlement for $100,000 in a wrongful death case three days before trial where the Defendant was alleged to have choked the Plaintiff/decedent while at work resulting in his suffering a stroke one weak later which caused his death. The Plaintiff proceeded to trial against the Defendant's alleged employer alleging that it was responsible for the actions of its agent/apparent agent. The jury returned a verdict for $4,400,000 for the actions of the Defendant.

Ron Campbell and Justin Sorel obtained a Recommended Order in a discrimination case declaring that the Plaintiff was not discriminated against based on her gender or familial status. The Plaintiff alleged that she was not allowed to serve on the Board of Directors and received notices of violations of the Association's documents due to her gender and her status as a single mother of two minor children. The Florida Commission on Human Relations initially found "no cause" relative to violations of any statutes, which the Plaintiff appealed. At the final hearing, both parties presented witness testimony as well as other forms of evidence. The Administrative Law Judge issued a Recommended Order consistent with all of Defendant's arguments, finding no evidence of discrimination.

Lee Cohen obtained a complete defense verdict in a nursing home negligence trial. The Plaintiff claimed that the nursing home staff failed to respond to complaints of shortness of breath. The Plaintiff alleged that the failure of the staff to timely provide treatment resulted in injuries requiring hospitalization.

Scott A. Cole recently obtained final summary judgment on four cases arising under Florida's Personal Injury Protection statute. Acting

under an assignment of benefits, a chiropractic clinic filed four lawsuits against an insurance company seeking to obtain payment for all medical treatments allegedly rendered. **Scott** was successful in proving that the plaintiff did not possess the required licenses to lawfully render treatments at the facility. **Scott** was also successful in proving that the plaintiff knowingly employed and utilized medical personnel who were not authorized by the Florida Department of Health to work for the plaintiff. As such, the court held in all four cases that no payment was owed by the insurance company on the basis that the treatments were unlawful.

Thomas P. Glenz recently prevailed on a Motion for Summary Judgment on a case of first impression arising out of Florida's No-Fault statute. Acting under an assignment of benefits, a medical clinic filed a lawsuit against an insurer seeking payment of bills for medical treatment to a named insured. However, at the time of the treatment, the provider was not aware of the insurers identity; hence, did not submit any bills that complied with the statute to any entity. The defense argued that: a) the provider could not be dilatory in its efforts to be paid; and b) must strictly follow the billing guidelines outlined in the statute. Since the provider failed to follow the billing guidelines, the Court agreed that it was not entitled to payment. The defense has recently completed its Motion to Tax Fees and Costs to recover approximately $25,000.00.

David Salazar prevailed on a Motion for Final Summary Judgment in a personal injury matter in Monroe County. The Plaintiff claimed that, while riding a bicycle, he slipped and fell on a transient foreign substance suffering serious injuries. The Plaintiff's case was riddled with questions of credibility. Additionally, the Plaintiff failed to respond to Requests for Admission, answer Supplemental Interrogatories, or attend his deposition which was properly noticed. The court found that, together with Plaintiff's failure to respond to Requests for Admissions, Plaintiff's failure to participate in discovery warranted final summary judgment.

David Salazar obtained summary judgment on a defamation matter and prevailed on seeking attorneys' fees and costs based upon a proposal for settlement. After prevailing on the issue of entitlement to attorneys' fees and costs, the Plaintiff contested the reasonableness of the fees and costs. At the evidentiary hearing on the issues of reasonableness, **David** put forth evidence by way of an expert witness and redacted bills. He further argued that the Defendant was entitled to fees and costs for seeking entitlement as well as the costs of the fees and costs expert. The Court granted the Defendant 100% of the fees and costs associated with his defense and the full costs of the expert witness.

David Salazar successfully convinced a Plaintiff to file a Voluntary Dismissal in a serious personal injury matter with medical expenses in excess of $100,000.00. The Plaintiff alleged that the Defendant failed to maintain a safe walkway in his gas station which caused the Plaintiff to fall and suffer a fractured hip. However, **David** argued that, based upon Florida law, if the Plaintiff was not patronizing the Defendant's gas station and if the Plaintiff did not have reason to believe that the area where he fell was a designated walkway, the Plaintiff's case was meritless. Accordingly, upon serving the Plaintiff's attorney with a proper § 57.105 letter, the Plaintiff's counsel voluntarily dismissed the case.

Robert Swift obtained a voluntary dismissal with prejudice due to Plaintiff's realization that they had not complied with pre-suit requirements and that the trial in this matter could take upwards of 3 weeks. The Plaintiff's son/decedent, was a Resident at the Defendant's nursing home. Plaintiff alleged medical malpractice, nursing home residents' rights violations and general negligence. The decedent had an extremely rare and complex medical condition for which the Defendant was rendering care. While at the Defendant's Facility, the decedent suffered numerous seizures and died. The successful defense was predicated on Plaintiff's failure to participate in pre-suit discovery and lack of causation.

Nicole Topper prevailed on a Motion for Summary Judgment in a case alleging that a faulty roof installation led to a leak. The Plaintiff was a visitor in the hospital when the roof caved in and she was severely injured. The co-defendants, which were additional contractors on the roof/drain area, did not succeed on their motions to dismiss/motions for summary judgment.

News & Notes

Awards

Cole, Scott and Kissane, P.A. was listed as one of this years Top Ranked Law Firms within the state by Florida Trend.

Christopher Hopkins received the "Douglas Lawless Alternative Dispute Resolution Award" at the Florida Defense Lawyers' Association Annual Meeting in Ft. Lauderdale in August 2007.

Positions

David Salazar was named co-chair of the Young Lawyers Division of the Florida Defense Lawyers Association

Speaking Engagements

Christopher Hopkins has been invited to speak at the February 2008 Southern Trial Lawyers Association Annual Meeting in a "debate style" session with plaintiff lawyer, Frank Petosa, regarding enforcement and fairness of arbitration.

On October 19, **Christopher Hopkins** sat on the "IME's Across the State" panel at the Florida Defense Lawyers Association & Jacksonville Association of Defense Counsel Regional Seminar "The Independent Medical Exam - Where Do We Stand."

On October 29, **Christopher Hopkins and Allison Bernstein** conducted a presentation titled The Internet Evolution: Savvy Research Strategies for Paralegals in West Palm Beach.

On June 6, 2008, **Christopher Hopkins and Allison Bernstein** will be conducting a CLE titled Legal Ethics in Florida in West Palm Beach.

Publications

Christopher Hopkins and Allison Bernstein are editing the Pro Se Appellate Handbook for the Appellate Section of the Florida Bar.
Christopher Hopkins authored an article for the Trial Advocate Quarterly titled Curiosity Killed The Cat: Top Ten Internet Searches For Florida Lawyers.

Christopher Hopkins authored an article for the Trial Advocate Quarterly titled Computer Tips For Lawyers.

Volunteer Work

Cole, Scott & Kissane, P.A. participates in the Voices for Children's annual toy drive, which obtains and delivers toys to children in the dependency system.

Cole, Scott & Kissane, P.A. sponsors the Jupiter Mustangs pee wee football team, which is coached by **Jeff Alexander**, an associated in the West Palm Beach office.

Gene Kissane regularly serves as a guardian in the Miami-Dade County Guardian at Litem Program. He also volunteers his time as a volunteer coach for Youth Athletics at the Miami YMCA.

Janet Abel volunteers with American Bullmastiff Association Rescue.

Alexis Brown-Gelb volunteers with the Florida Breast Health Initiative which is a program that helps underprivileged people and woman without health insurance obtain free mammograms and other information relating to Breast Cancer. She also ran in the Susan G. Komen Race for the Cure on October 20th raising money for Breast Cancer.

Lara Dabdoub volunteers with the State of Florida Guardian Ad Litem Program in Hillsborough County serving as an Attorney Ad Litem for children in foster care.

Samuel Frankel just got off six months active duty with the United States Marine Corps in a volunteer assignment providing funeral and honor guard detail for the Lake Worth National Cemetery. Between April 23, 2007 and October 1, 2007, Mr. Frankel rendered funeral honors for over 100 veterans and about a dozen color guard and community events.

Jami Gursky serves as an Attorney Ad Litem with Lawyers for Children of America providing a well-needed voice in court for children who are abandoned, abused and neglected.

Christopher Hopkins has volunteered to serve as a juror in the Earl Zehmer annual mock trial competition sponsored by the education foundation of the Florida Justice Association.

Rita Rosato Pitassi is one of the founding members of the COMPASS, INC., Marc B. Tesh Foundation, providing legal consultation and referral information relative to discrimination faced by the diverse members of the Palm Beach County Community. Ms. Rosato Pitassi is also a Host Committee Member of the newly established Palm Beach County Chapter for Equality Florida, holding its first event on November 6, 2007.

Ed Polk volunteers as a coach for girls basketball teams in the Temple Beth Am Basketball League, which he has done for the past twelve years, eight of which he served on the League's management committee as a commissioner of one of the six divisions.

Brian Rubenstein participates in the Big Brothers Big Sisters program of Tampa Bay where he volunteers his time to serve as a mentor for an underprivileged child.

Ashley N. Sybesma and Brandon Waas participated in the Dade County Bar Association Mentoring Program designed for attorneys to serve as mentors to students in the legal magnet programs at Miami high schools.

Daniel J. Kissane

Daniel J. Kissane, is a partner in the Jacksonville office. His areas of expertise include: product liability defense litigation with an emphasis on motor vehicles (including automobiles, motorcycles, forklifts, ATV's, and personal watercraft), cosmetics, and pharmaceuticals; personal injury defense; commercial litigation; and insurance coverage issues.

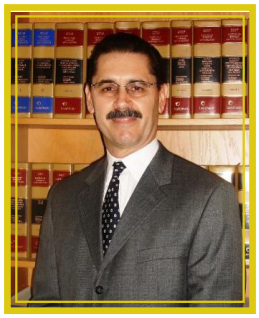
Mr. Kissane is a 1984 graduate of the University of Miami (B.A.) and received his Juris Doctorate degree in 1988 from St. Thomas University (Magna Cum Laude). He is a member of The Florida Bar (1988), the United States District Court for the Southern District of Florida, the United States District Court for the Middle District of Florida and the United States District Court for the Northern District of Florida. Mr. Kissane is also a member of the Bar of the United States Circuit Court of Appeals, Eleventh Circuit. Mr. Kissane interned for the Honorable Thomas Scott, United States District Court for the Southern District of Florida. He is AV rated by Martindale-Hubbell.

Mr. Kissane is a member of the Automobile Products Subcommittee of the Products Liability Committee of the American Bar Association, and a Prime Member of the Association of Defense Trial Attorneys. He is a frequent contributor to the Trends Report and other publications prepared by the Automobile Products Subcommittee of the ABA. University of Miami, Florida Treasurer, Phi Alpha Delta.

In addition, he has recently co-authored the Florida Personal Injury Practice Guide that is published by LexisNexis and Matthew Bender http://bookstore.lexis.com/bookstore/product/63240.html.

Mr. Kissane has represented, among others, Procter & Gamble; Deere & Company ; American Honda Motor Co., Inc.; Yamaha Motor Corporation, U.S.A.; Kawasaki Motors Corp., U.S.A.; Isuzu Motors Ltd., Mitsubishi Motors North America, Toyota Motor Company, Porsche Cars North America, John Deere Insurance Company, Sentry Insurance Co., Sumitomo Marine and Fire Insurance Company, the Underwriters at Lloyd's; and various other insurance companies.

Luis E. Ordonez



Luis E. Ordonez practices in the areas of professional liability, medical malpractice, premises liability, automobile negligence, construction litigation and product liability defense.

He received a B.S. in Business from Eastern Illinois University in 1978 and a law degree from the University of Illinois College of Law in 1981.

Mr. Ordonez is admitted to practice in the Federal District Court for the Northern District of Illinois and all state courts in Illinois. He is also admitted in the Federal District Court for the Southern District of Florida and all state courts in Florida.

He is AV rated by Martindale-Hubbell and is a member of the Florida Defense Lawyers Association.

Save the Date!

MARCH 27-28, 2008

Cole Scott & Kissane is pleased to offer to its valued colleagues, throughout the country, the following seminars which typically afford CEU credits to the claims representatives in attendance. We are happy to provide these seminars in your office. We have provided each of these seminars on multiple occasions to insurance carriers throughout the country and the feedback has been tremendous and we would be delighted to host one or more of these seminars for you and your colleagues:

1. *How To Avoid Bad Faith In Florida – A Must For Every Claims Representative*
2. *How To Effectively Deal With And Understand Liens In The State Of Florida*
3. *Medical Malpractice Seminar With An Emphasis On Florida's Tort Reform*
4. *Products Liability Seminar And How To Defend These Claims In Florida*
5. *Arbitration And How To Effectively Utilize Arbitration In Florida*
6. *Appellate Seminar – Taking Cases To The Next Level*
7. *How To Effectively Use Surveillance – Using The Skeleton In Someone's Closet To Your Advantage*
8. *How To Recognize Fraudulent Claims And How To Effectively Deal With Such Claims*
9. *Current Trends In PIP Litigation*
10. *Frye And Daubert Challenges – What To Do To Exclude The Other Side's Expert Witnesses*
11. *How To Effectively Handle Automobile Claims And The Strategies To Be Utilized*
12. *Handling Property Claims With An Emphasis On Hurricane Claims*
13. *Offers Of Judgment/Proposals Of Settlement – How To Avoid The Mine Fields*
14. *How To Effectively Handle Nursing Home And ALF Claims And Understanding The Plaintiff's Litigation Model*
15. *How To Defend Negligent Security Claims And The Defenses To Be Effectively Asserted*
16. *How To Defend Premises Liability Claims*
17. *How To Defend Trucking Accident Claims*
18. *Litigation 101 An Overview – From the First Notice Of A Claim Through An Opinion By The Florida Supreme Court*
19. *How To Defend Legal Malpractice Claims And Practical Issues In Defending These Claims*
20. *When Is An Insurance Broker Acting As A Statutory, Actual Or Parent Agent Under Florida Law?*
21. *Rights And Duties Of The Insured, The Attorney And The Insurer In The Tripartite Relationship*
22. *How To Defend A Catastrophic Personal Injury Case Which May Include Paralysis, Loss Of Limbs, Burns And Other Catastrophic Injuries*
23. *Do's And Don'ts In The Work Place And How To Avoid Being Sued – An Overview Of Employment Litigation*
24. *Legal Malpractice – The Case Within A Case – What To Do When A Lawyer In On The Wrong Side Of A Lawsuit*
25. *Home Is Not Always Where The Heart Is – How to Handle Condominium Claims*
26. *Fraud And Misrepresentation In Workers' Compensation Claims*
27. *Psychiatric Claims In Workers' Compensation Claims Under The New Law*
28. *Enforcement of Settlements in Workers' Compensation*
29. *Workers' Compensation and Employer Immunity*
30. *Mediations in Workers' Compensation*
31. *Indemnity Benefits in Workers' Compensation/Permanent Total Disability*
32. *Workers' Compensation Adjuster Ethics*
33. *Internet Legal Research … Tricks Of The Trade*

If you have an interest in one or more of these seminars, please contact:

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