American Constitutional Society
Florida Chapters

"The Florida Supreme Court: A Review of 2023 and a Look Ahead to 2024"

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2023 CIVIL CASES OF NOTE

1. ***Coates v. R.J. Reynolds Tobacco Co.*, No. SC21-175, 2023 WL 106899 (Fla. Jan. 5, 2023) (Polston, J.)**

   - **Facts**: Personal representative of sister's estate filed wrongful death action against tobacco company alleging that defective design of cigarettes caused sister to die from lung cancer. Jury awarded plaintiffs compensatory damages of $300,000, which was reduced by 50% for decedent's comparative fault, and punitive damages of $16 million, and denied company's motion for remittitur of punitive damages award or for new trial. Company appealed.

   - Holding that a trial court in a wrongful death action abuses its discretion by denying remittitur of a punitive damages award that does not bear a reasonable relation to the amount of damages proved and the injury suffered by the statutory beneficiaries.

2. ***Coates v. R.J. Reynolds Tobacco Co.*, 365 So. 3d 353 (Fla. 2023) (Grosshans, J.)**

   - **Facts:** Following *Coates* decision on remittur, plaintiff moved for fees associated with the appeal, notwithstanding that plaintiff lost the appeal; Supreme Court requested briefing on whether the offer-of-judgment statute requires the moving party to prevail in the appellate proceeding.

   - Confirming that offer-of-judgment statute is not a prevailing party law, but rather operates to penalize a party who refuses to accept a good-faith, reasonable proposal for settlement as reflected in the ensuing final judgment

- Fees are therefore recoverable even if the party seeking fees does not prevail at trial or in appellate proceedings, but is otherwise entitled to fees pursuant to the offer-of-judgment statute.

3. ***Parrish v. State Farm Florida Ins. Co.*, 356 So. 3d 771 (Fla. 2023) (Couriel, J.)**

- Court addresses a conflict between Second and Third District Courts of Appeal as to whether the president of a homeowner's public adjusting firm, which is to be compensated on a contingency basis for its adjusting services, can subsequently serve as a "disinterested" appraiser under the language of an insurance policy.

- Courts holds that an appraiser cannot be 'disinterested' if he or she, or a firm in which he or she has an interest, is to be compensated for services as a public adjuster with a contingency fee."

- Because plaintiff's appraiser was to be compensated via contingency fee, he had "a pecuniary interest in the outcome of the claim and cannot qualify as a 'disinterested' appraiser."

4. ***Fried* v. *State*, 355 So. 3d 899 (Fla. 2023) (Polston, J.)**

- Via a declaratory judgment, considering the constitutionality of the penalty provisions included in section 790.33(3)(c)-(d), (f) Fla. Stat., applicable where local officials knowingly and willfully enact laws relating to guns and ammunition. The provision imposes a fine of up to $5,000 against elected or appointed local government officials or administrative agency heads for "knowing and willful" violations of the statute. Further, section 790.33(3)(c) requires the judicial branch to determine whether the violation by the public official was "knowing and willful."

- Agreeing with the State that neither legislative immunity nor governmental function immunity shields local governments and officials from the challenged statutes.

5. ***Ellison v. Willoughby*, 48 Fla. L. Weekly S213 (Fla. Nov. 2, 2023) (Muniz, J.)**

- **Facts**: Where an insured first sued his uninsured motorist insurance carrier both for the $10,000 limit allowed under his policy and for bad faith damages, and his resulting $4 million insurance settlement was undifferentiated (as to

claims and categories of damages), considering whether there is a setoff for UM benefits received prior to an action against the tortfeasor, pursuant to section 768.041(2).

- Holding that a settlement payment made by an uninsured motorist insurer to settle a first-party bad faith claim is not a collateral source under section 768.76(2)(a).

6. ***Univ. of Florida Bd. of Trustees v. Carmody*, 48 Fla. L. Weekly S150 (Fla. July 6, 2023) (Couriel, J.)**
    a. ***In re Amend. To Fla. Rule of App. Proc.*, 2023 WL 4359489 (Fla. July 6, 2023)**

- **Facts:** Patient brought medical-malpractice lawsuit against hospital and state university board of trustees. After an evidentiary hearing, the trial court determined that patient's expert and the corroborating affidavit satisfied Medical Malpractice Act's requirements, and denied defendants' motion to dismiss. Defendants appealed. The First District Court of Appeal certified direct conflict of decisions.

- Holding that district court was precluded from reviewing circuit court's determination that patient's medical doctor expert was unqualified; while there are exceptions to the general rule that certiorari is not available to review the denial of a motion to dismiss, "this is not one of them."

- BUT, concurrently amending, sua sponte, Fla. R. Civ. P. 9.130(a)(3), to provide for interlocutory review of order denying a motion to dismiss on the corroborating expert witness's qualifications.

7. ***Tsuji v. Fleet*, 366 So. 3d 1020 (Fla. 2023) (Couriel, J.)**

- **Facts:** Motorists brought action against personal representative of estate of driver of other vehicle and driver's employer alleging claims of negligence and vicarious liability arising from automobile accident involving employer-owned vehicle. The trial court granted summary judgment for the defendant and his employer. Motorists appealed.

- Court considers what "liable" means in section 733.710 Fla. Stat., which is a statute of repose providing: "Notwithstanding any other provision of the code,

2 years after the death of a person, neither the decedent's estate, the personal representative, if any, nor the beneficiaries shall be liable for any claim or cause of action against the decedent . . ."

- **Holding**, the two-year statute of repose for claims against an estate, section 733.710, bars negligence claims even though motorists sought payment only from casualty insurer;

- Application of statute of repose also barring negligence claims exonerated employer from vicarious liability.

8. ***Emerson v. Lambert*, 48 Fla. L. Weekly S227 (Fla. Nov. 16, 2023) (Couriel, J.)**

- **Facts:** After collision, injured motorcyclist filed suit against vehicle owner, his son, the driver, and his wife, as the bailee of the car. Wife appealed.

- **Holding**: Wife of the vehicle's owner was not subject to vicarious liability for negligence of son to whom she granted permission to use vehicle, under dangerous instrumentality doctrine, even if she was bailee.

- Narrowing dangerous instrumentality doctrine such that one family member who is a bailee of a car cannot be held vicariously liable when the car's acknowledged title owner is another family member who is also vicariously liable under the doctrine.