Legal Update

BELL & ROPER, P.A.

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PRE-INJURY RELEASE PRECLUDES CLAIM

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In Sanislo v. Give Kids The World, Inc., 40 F.L.W. S79 (February 12, 2015), the Florida Supreme Court upheld the broad language of a pre-injury release. The Supreme Court's ruling resolved a conflict between the five District Courts of Appeal.

In Sanislo, Stacy and Eric Sanislo brought their seriously ill child to a resort village located in Kissimmee, Florida operated by Give Kids The World, Inc. The "storybook" vacation was provided by Give Kids The World, Inc. in conjunction with the Make-A-Wish Foundation. When the Sanislo…

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EVIDENCE OF MEDICAL BILLS/CONTRACTUAL DEDUCTIONS

The current state of the law permits a plaintiff to introduce into evidence, and/or testify as to the gross amount of his medical expenses. No evidence of reductions for the plaintiff's healthcare insurer's contractual arrangements with healthcare providers is permissible. If the jury awards medical expenses, the trial judge is to reduce the amount of past medical expenses consistent with write-downs or contractual adjustments post-verdict. The only exception to the current procedure concerns Medicare. If Medicare paid any portion of the plaintiff's past medical expenses the plaintiff can only introduce….

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...family stepped on to a pneumatic lift attached to a horse-drawn carriage operated by Heavenly Hoofs, the lift collapsed causing injuries to Ms. Sanislo.

As part of the application process for the "storybook" vacation, the Sanislos completed a wish request form which contained a release in favor of Give Kids The World. The release provided that the Sanislos were releasing Give Kids The World from liability for "any and all claims and causes of action of any kind."

Sanislo and Give Kids The World filed cross-motions for summary judgment as to whether the release was effective before the trial court. The Trial Court ruled in favor of Sanislo, determining that the release did not bar the negligence claim as the release did not contain express language releasing Give Kids The World for its own negligence.

On appeal before the Fifth District Court of Appeal, the Fifth District reversed the Trial Court's ruling. The Fifth District acknowledged that the First, Second, Third and Fourth Districts had previously held exculpatory clauses ineffective unless there was express language referring to the release of a defendant for its own negligence. Despite precedent from the four District Court of Appeal, the Fifth District held that the broad language of the release was effective to bar Sanislo's claim for negligence.

The Florida Supreme Court upheld the Fifth District Court of Appeal's ruling, and rejected precedent from the First, Second, Third and Fourth District Courts of Appeal. The Supreme Court held that the language of the release was not ambiguous. The Supreme Court further held that the basic objective in interpreting a contract is to give effect to the parties' intention. Therefore, the absence of the terms negligence or negligent acts in the exculpatory clause did not render it ineffective.

By: Michael M. Bell, Esquire

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evidence relating to the net expenses approved by Medicare.

At this time there is a bill before the Florida legislature, HB 199, which will require that jurors be provided with evidence as to the actual amount paid for medical expenses by healthcare insurers, i.e., the net amount after write-downs and/or contractual discounts. The bill also requires that if a doctor or health facility sold the receivable for medical care provided to a third-party, the jury be told the amount paid to the doctor or healthcare facility.

At present the bill is opposed by the Florida Medical Association, and the Florida Justice Association. These groups argue that if jurys award a lesser amount for past medical expenses, healthcare providers will be less likely to provide care for uninsured injured parties. In our view, the jury should know the truth, i.e. the exact amount paid by the plaintiff's healthcare insurer. A lower award for past medical expenses will likely translate into a lower award for future medical expenses. In our view it simply makes no sense that past medical expenses are treated differently if they were paid by Medicare as opposed to a healthcare insurer.

By David Blessing, Esquire

Civil Rights- Fourth Amendment- Search & Seizure

Markus v. State, 40 FLW D548b (Fla. 1st DCA, Feb. 27, 2015), addressed the legality of the police entering a suspect's home, in "hot pursuit, in order to make an arrest for the commission of a misdemeanor. The basic facts were that a police officer on foot patrol noticed Markus and others smoking and drinking beer on a public street. As he approached, the officer smelled the odor of burning marijuana, and told Markus to stay where he was. Markus ran into the open garage of his nearby residence. The officer pursued Markus into the garage, where a physical struggle ensued. Markus was arrested, and during a search of his person a firearm was found in his waistband. At trial the defendant moved to suppress the firearm, on grounds that the arrest inside his garage constituted an illegal entry in violation of the 4th Amendment. The trial court denied the motion, holding that the entry into the garage, and the subsequent arrest of the defendant, was allowable under the "hot pursuit" doctrine. Markus was convicted, and an appeal followed. The First District Court of Appeal reversed the trial court, holding that as a general rule, "hot pursuit" is not available as an exception to 4th Amendment protection when the suspect is being pursued into his home in order to make an arrest for a misdemeanor offense.

The appellate court began by noting that the U. S. Supreme Court has identified the "physical entry of a home as the chief evil against which the wording of the Fourth Amendment is directed." *Payton v. New York*, 445 U.S. 573 (1980). Absent exigent circumstances, the threshold of the home (including its curtilage) cannot be crossed without a warrant. *Payton; Lee v. State*, 856 So.2d 1133 (Fla. 1st DCA 2003). While "hot pursuit" is in fact recognized as an exception, its application is ordinarily limited to the pursuit of fleeing felons, because the seriousness of the crime is more likely to support the emergency nature of the entry. When the entry onto the protected area is for a minor offense, however, the courts are much less likely to recognize the exception. "When the government's interest is only to arrest for a minor offense, the presumption of unreasonableness is difficult to rebut, and the government usually should be allowed to make such an arrest only with a warrant issued upon probable cause." *Welsh v. Wisconsin*, 466 U.S. 740 (1984). The 1st DCA in **Markus** held that "to rebut the presumed illegality of warrantless entry by the police into a person's home, the exigent circumstance must involve a threat to the safety of the public, property, or police, which required immediate action by the officers, with no time to obtain a warrant." In this case, the marijuana offense which gave rise to the encounter did not satisfy that threshold. The Court further opined that if the police felt Markus needed to be arrested immediately, they could have secured the premises and sought an arrest warrant before making entry. The motion to suppress was granted, and Markus' conviction was reversed.

It is important to note that this decision does not mean that "hot pursuit" into a constitutionally protected area in order to effect an arrest for commission of a misdemeanor can never be justified. However, in order to justify the entry, the officers must be able to articulate that the underlying crime was of the type that the safety of the public, property, or the police required the intrusion, and that there was insufficient time to obtain a warrant. Similarly, the Court is not saying that the police cannot chase fleeing misdemeanor suspects - only that they cannot be chased into areas protected by the 4th Amendment unless the exception exists.

By: Michael Roper, Esquire

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