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**Workers' Compensation Immunity**

[Liberty Mutual Insurance v. Steadman](#)

(Released by Fl. Second District Court of Appeal, January 7, 2004),

CLAIMANTS ACTION AGAINST INSURANCE CARRIER FOR DELAY IN PAYING BENEFITS WAS NOT A CLAIM THAT FELL WITHIN ANY EXCEPTION TO STATUTORY IMMUNITY AFFORDED THE CARRIER BY WORKERS COMPENSATION ACT.

Colleen Steadman sought authorization and reimbursement for a bilateral lung transplant through her workers compensation carrier. The insurance company denied this request due to a determination that her condition was pre-existing. Following a merits hearing, the JCC ordered the carrier to authorize and pay for the surgery. The carrier did not comply with the JCC's order and Ms. Steadman did not receive her surgery until nine months later. Shortly after the surgery, Ms. Steadman filed suit against the carrier for intentional infliction of emotional distress. The carrier moved to dismiss the claim citing immunity under the Act. However, the trial court denied the motion and stated that the carrier was not entitled to immunity under the Act. The carrier appealed.

The appellate court began by recognizing that the workers' compensation act recognizes an exception for cases involving intentional torts. Turner v. PCR Inc., 754 So.2d 683 (Fla. 2000). However, the court went on to note that courts, considering whether a carriers action are independent of its claims handling, consistently hold that the exclusive remedy for a claim of intentional infliction of emotional distress arising from a delay in payment is under the Workers Compensation Act. Southeast Adm'rs, Inc. v. Moriarty, 571 So.2d 589 (Fla. 4<sup>th</sup> DCA 1990). Therefore, since Ms. Steadmans claim was based entirely on Liberty Mutual's delay in paying the benefits awarded to her by the JCC, her claim did not fall into any exception to statutory immunity afforded by the Workers Compensation Act.

**Auto Liability**

[Katz v. Allstate Insurance Co.](#)

(Released by the Fourth District Court of Appeal, Jan. 5, 2005)

INJURED PLAINTIFF WAS ENTITLED TO PAST NONECONOMIC DAMAGES AND PIP SETOFF MUST BE SUBMITTED TO THE TRIER OF FACT.

Naomi Katz sued her insurer for injuries and damages as a result of an accident with an uninsured motorist. Katz was seeking payment of PIP benefits and uninsured motorist coverage benefits. Insurer asserted a right of setoff as to the uninsured motorist benefits. Katz settled for \$10,000 with the tortfeasor and received \$3,798.37 in PIP damages. This exceeded

her award \$12, 169.37 the jury awarded on the payment for PIP damages. The jury found there was a permanent injury but awarded nothing for pain and suffering. Katz appealed stating that the court erred in setting off the settlement amount and a verdict which finds permanent injury but awards no damages for pain and suffering is inadequate as a matter of law.

The appellate court held in regards to the past non-economic damages that since the jury did award the plaintiff for past medical costs, the jury's failure to award even nominal past non-economic damages was not supported by the weight of the evidence and must be reversed. See Allstate Insurance v. Campbell, 842 So.2d 1031 (Fla. 2d DCA 2003). Moreover, they held that unless otherwise stipulated the issue of PIP setoff must be submitted to the trier of fact. In this case it was not. See Caruso v. Baumle, 880 So.2d 540 (Fla. 2004).

### Security Firm's Liability

Blier v. Statewide Enterprises  
(Released by Fl. Fourth District Court of Appeal, Jan. 5, 2005).

SECURITY SERVICE NOT HELD LIABLE TO VICTIM WHEN IT WAS ONLY CONTRACTED TO PROVIDE SOME BUT NOT FULL SECURITY SERVICES FOR CONDOMINIUM ASSOCIATION.

Under the terms of the oral agreement with the association, the contractor agreed to provide one unarmed guard to patrol the community of several buildings, to escort residents to their homes upon request, and observe and report serious incidents. No other services were expected or intended by the agreement. Unfortunately, a visitor in the parking lot was forced into a car, driven off the premises and sexually assaulted. Her husband then sued security contractor.

The appellate court stated that it is a question of law whether any duty exists in tort. Mcain v. FPL, 593 So.2d 500 (Fla. 1992). With this in mind, the court went on to state that there was no evidence that the contractor undertook the any affirmative action to assume the associations duty to protect the residents or its guests. In fact, the evidence was unrefuted that the contractor performed only the quite limited duty it agreed to perform. The appellate court held that since there was no evidence the security contractor assumed the associations duty to protect residents and guests, the trial court erred in denying the contractors motion for directed verdict at the close of evidence

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