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**INSURANCE-RELATED APPELLATE UPDATE**  
**August 23, 2004**

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**Florida Supreme Court**

(Nothing of interest reported)

**Florida District Courts of Appeal**

**Civil procedure — Requests for admissions — Insurance — Insolvent self insurers fund — Where Department of Financial Services, as receiver for insolvent self insurers fund, assessed company for a deficiency under section 624.474, and company argued that it was not a member of the self insurers fund and sent to receiver a request for admission that company was not a member of the self insurers fund, receiver's untimely response to the request for admission is deemed an admission which established that company was not a member of the self insurers fund for purposes of assessment under section 624.474. *Florida Department of Financial Services, v. Tampa Service Co., Inc.*, 29 Fla. L. Weekly D1847a (Fla. 1st DCA Aug. 13, 2004.)**

**Contracts — Insurance — Insured alleging that although insurance contract provided insurer with subrogee rights to seek recovery of monies it paid to insured pursuant to the contract, insurer breached duty it owed to insured by failing to notify her of Georgia lawsuit filed against tortfeasor by insurer listing insured as an individual plaintiff and by representing to Georgia court that the amount of UM benefits the insurer had paid to insured was a fair and reasonable amount for damages and injuries insured suffered, when insurer knew or should have known that her damages far exceeded this amount — Error to enter final judgment in favor of insurer on ground that release and trust agreement executed by insured upon her receipt of UM benefits released insurer from all future claims “of whatsoever kind” — Language limited release to claims arising prior to and including the date of the release that grew out of the UM policy issued by insurer to insured and further limited claims to those “resulting or to result from” specific automobile accident — Instant complaint was based on acts taken**

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by insurer after execution of release and was not based on the accident itself, but rather on the filing of the Georgia lawsuit in insured's name personally without notifying her and the reduction of the lawsuit to a judgment in an amount that insurer allegedly knew did not represent insured's total damages — Paragraph of release authorizing insurer to file action against tortfeasor without mentioning notice to insured did not support trial court's finding that insurer had no duty to advise insured of lawsuit or finding that insurer was not required to seek full recovery for insured's injuries instead of limiting recovery to sums insurer had paid to insured as UM benefits — It was clear from release that action insurer was authorized to file was an action for insured's damages, not insurer's — Remand for further proceedings. *Owens v. Nationwide Mutual Insurance Co.*, 29 Fla. L. Weekly D1812a (Fla. 2d DCA Aug. 11, 2004.)

Insurance — Uninsured motorist — Attorney's fees — Proposal for settlement — Error to use multiplier in awarding attorney's fees under offer of judgment statute — Damages — Verdict regarding pain and suffering was not against manifest weight of evidence — Trial court properly limited amount of judgment to policy limits. *Allstate Insurance Co. v. Maytin*, 29 Fla. L. Weekly D1815b (Fla. 3d DCA Aug. 11, 2004.)

Insurance — Personal injury protection — Allowable amount to be paid by PIP insurer to providers of magnetic resonance imaging — Trial court properly found that under statutory scheme, as it existed prior to 2003 amendment, participating physician fee schedule was the proper fee schedule for amounts payable to MRI service providers — Purpose of 2003 amendment was to clarify that the participating fee schedule was the proper fee schedule under the original statute. *Millennium Diagnostic Imaging Center, Inc. v. Security National Insurance Co.*, 29 Fla. L. Weekly D1817b (Fla. 3d DCA Aug. 11, 2004.)

Torts — Insurance — Errors and omissions — Negligent misrepresentation — Action by insured which purchased group health insurance from managing general agent that was not licensed to transact insurance business in state and that subsequently became insolvent, against insurer which provided errors and omissions insurance to the managing general agent, alleging that defendant, by issuing the errors and omissions policy to managing general agent, negligently misrepresented that managing general agent was licensed to transact insurance business in state — Because defendant is in the business of selling insurance, not the business of supplying information to third persons about its insureds' business qualification, defendant had no pecuniary interest in its insured's transactions with plaintiff, and defendant's issuance of errors and omissions policy was not intended to influence plaintiff's decision about whether to begin a business relationship with the defendant's insured, trial court properly entered summary judgment for defendant on negligent misrepresentation claim — Trial court also properly entered summary judgment for defendant on claim that defendant, by issuing errors and omissions policy, aided unauthorized insurer in soliciting, negotiating, effectuating, and procuring insurance policies, in violation of section 626.901, Florida Statutes. *Fla. Orthopedics, Inc. v. The American Insurance Co.*, 29 Fla. L. Weekly D1819a (Fla. 3d DCA Aug. 11, 2004.)