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## INSURANCE-RELATED APPELLATE UPDATE June 1, 2004

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### Florida Supreme Court

*Cases in which the Supreme Court of Florida has granted review. Subject matter is taken from Florida Law Weekly headnotes and may not directly reflect issues for review.*

**Oral argument set for October 6, 2004. Insurance — Homeowners — Exclusions — Trial court properly found that coverage for structural damage to home and personal property loss caused by nearby blasting activities was excluded by earth movement exclusion in policy — Under policy language, damage resulting from explosion would be covered only if the explosion followed a specifically listed natural disaster or peril, and the damage in question was caused by man-made explosions.** *Fayad v. Clarendon National Insurance Co.*, 857 So.2d 293 (Fla. 3DCA 2003). Supreme Court Case No. SC03-1808, order dated May 5, 2004.

### Florida District Courts of Appeal

**Insurance — Uninsured motorist — Stacking — In determining whether appellees knowingly selected non-stacking uninsured motorist insurance coverage, and, more specifically, whether State Farm met its burden of proving a non-stacking election, court held that where insured signed an approved UM motorist coverage rejection/selection form and placed check mark in box indicating a rejection of stacking form of coverage and selection of non-stacking form of coverage, trial court erred in finding that stacking was available because of a patent ambiguity created by the manner in which the form had been filled out — Insurer was entitled to rely upon insured's signature on form as a conclusive presumption of the insureds' knowing and voluntary waiver of stacking UM coverage.** *State Farm Mutual Automobile Insurance Co. v. Parrish*, 29 Fla. L. Weekly D1222c (Fla. 5th DCA May 21, 2004.)

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## **INSURANCE-RELATED APPELLATE UPDATE**

**June 1, 2004**

**Continued**

**Workers' compensation — Attendant care — Claimant's son's fiancé would be entitled to compensation for any compensable attendant care she provided during two months prior to marriage to claimant's son — Appellate court unable to determine whether compensation for this period was denied based on finding that fiancé's services consisted only of housekeeping duties or because services provided amounted to "gratuitous family assistance" — Remand for determination of whether services provided by fiancé before marriage were compensable and an appropriate award of compensation, if justified — Denial of attendant care benefits for subsequent periods not supported by competent substantial evidence — Record showed that, in addition to cooking and cleaning services, daughter-in-law provided help with bathing, dressing, taking medication, and promoting personal hygiene, which care is compensable — Finding that there was no medical need for attendant care before certain date not supported by competent substantial evidence — No error in limiting award to compensation for 61 hours per week based on daughter-in-law's testimony that she provided 61 hours of care to claimant each week — No error in limiting compensation to federal minimum wage for period during which daughter-in-law was not otherwise employed — Wage other than federal minimum wage may be appropriate for compensation for certain periods pursuant to statute providing that family member who is employed and chooses to leave that employment to provide attendant care be compensated at per-hour value of former employment — No merit to claim that JCC erred in failing to adjudicate claim for electric cart or wheelchair because parties stipulated that this issue had been resolved. *Socolow v. Flanigans Enterprises and Protegrity Services*, 29 Fla. L. Weekly D1196b (Fla. 1st DCA May 18, 2004.)**