

APPELLATE UPDATE

NOVEMBER 7, 2013

WHERE THE JURY FINDS THAT THE DEFENDANT WAS NOT THE LEGAL CAUSE OF THE PLAINTIFF'S INJURIES, IS THE PLAINTIFF STILL ENTITLED TO THE COST OF DIAGNOSTIC TESTING AND INITIAL MEDICAL EXAMINATIONS?

In Florida, a Plaintiff is generally entitled to the cost of initial medical examinations and diagnostic testing, such as MRIs, even if the jury finds that the Plaintiff was not injured in the accident. However, there are exceptions to this rule. The general rule will not apply if the Defendant presents evidence regarding:

- Pre-existing injuries with extensive treatment;
- Lack of candor with treating physicians;
- Surveillance videos that show actual physical capabilities; and
- Expert medical opinions which conflict as to causation

In Hernandez v. Gonzalez, Case No. 4D12-1810 (4th DCA 2013), the jury awarded zero damages and found that the Defendants were not the legal cause of the injuries. The Fourth District Court of Appeal held that the general rule noted-above did not apply because the Defendants presented evidence of significant pre-existing injuries and medical expert opinions that the accident did not cause the alleged injuries

Additionally, the Court noted that the Plaintiff did not move for directed verdict on the amount of the initial examination and diagnostic testing. As a result, the Plaintiff waived any objection to the fact that the jury did not award these past medical expenses.

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The Boyd & Jenerette Appellate Department can assist you with all phases of state and federal litigation and appellate proceedings. Our attorneys are experienced in identifying legal issues and evaluating the chances of winning an appeal. We will initially consult with the client and provide our recommendations for a cost effective appellate strategy. Our appellate attorneys are skilled in drafting persuasive appellate briefs and are excellent oral advocates. We are also brought in at the trial court level to advise and assist the client with preservation of issues for appeal.

We look forward to assisting you with all of your appellate-related needs. If you have any questions or would like to refer a case, please contact our appellate attorneys.



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