

### **Recently published\* appellate decisions for Mark D. Tinker**

\*Mr. Tinker has been lead counsel in over five hundred appeals, but the vast majority of appellate decisions are not published. The list below represents some of the published decisions.

Packaging Corp. of America v. DeRycke, 49 So.3d 286 (Fla. 2d DCA 2010): Verdict for over \$5.75 million reversed and remanded for a new trial.

Sottilaro v. Figueroa, 86 So. 3d 505 (Fla. 2d DCA 2012): Verdict of \$1.375 million reversed and case remanded for a new trial.

Carvajal v. Penland, 120 So. 3d 6 (Fla. 2d DCA 2013): Verdict of \$1.777 million reversed and case remanded for a new trial.

Markum v. Hayward, 136 So. 3d 695 (Fla. 2d DCA 2014): \$600,000 verdict reversed and remanded with instructions to enter judgment in our client's favor.

State Farm Mut. Auto. Ins. Co. v. Thorne, 110 So. 3d 66 (Fla. 2d DCA 2013): Verdict of \$1.2 million reversed and case remanded for a new trial.

State Farm v. Bailey, 2016 WL 6609623 (Nov. 9, 2016): Reversed a trial court order finding that an insured was entitled to UM benefits despite not being in contact with his insured vehicle.

Smith v. Llamas, 109 So. 3d 1241 (Fla. 2d DCA 2013): Order granting the plaintiff a new trial reversed, and case remanded to enter judgment for the defendant.

State Farm Mut. Auto. Ins. Co. v. Joerg, 188 So. 3d 852 (Fla. 2d DCA 2013): Verdict of \$1.5 million reversed and case remanded for a new trial.

Trek Bicycle Corp. v. Miguez, 159 So. 3d 977 (Fla. 3d DCA 2015): Verdict of \$800,000 reversed and remanded with instructions to enter a defense judgment for Trek.

United States Fid. & Guar. Co. v. Essex Ins. Co., 188 So. 3d 906 (Fla. 1st DCA 2016): reversed an order requiring primary insurer USF&G to reimburse excess insurer Essex for settlement proceeds, and remanded for entry of judgment in USF&G's favor.

Coddington v. Nunez, 151 So. 3d 445 (Fla. 2d DCA 2013): \$600,000 verdict reversed and remanded for a new trial.

State Farm Mut. Auto. Ins. Co. v. Smith, 198 So. 3d 852 (Fla. 2d DCA 2016): affirmed a denial of UM coverage pursuant to a policy provision excluding coverage for individuals insured for liability for their operation of the same vehicle.

Delancey v. Carlton Arms of Magnolia Valley, LLP, 104 So. 3d 1143 (Fla. 2d DCA 2012): Affirmed defense verdict in a wrongful-death case against an attack on the constitutionality of the "intoxicated plaintiff" or "alcohol defense" statute.

Reider v. Dorsey, 98 So. 3d 1223 (Fla. 3d DCA 2012): Verdict of over \$1.5 million reversed and remanded with instructions to enter judgment in the defendant's favor.

Hubner v. Old Republic, 161 So. 3d 438 (Fla. 5th DCA 2014): Declaratory judgment regarding insurance coverage reversed and remanded for judgment in client's favor.

Buitrago v. Feaster, 157 So. 3d 318 (Fla. 2d DCA 2014): Order granting the plaintiff a new trial as to future noneconomic damages reversed.

State Farm Ins. Co. v. Brewer, 191 So.3d 508 (Fla. 2d DCA 2016): Reversed a “net worth” punitive damage award against State Farm’s insured.

Jiminez v. Faccone, 98 So. 3d 621 (Fla. 2d DCA 2012): Plaintiff’s liability verdict reversed for a new trial.

Stollmack v. Stollmack, 32 So. 3d 756 (Fla. 2d DCA 2010): Reversed a plaintiff’s judgment, as well as a sanction order against the defendant, and case remanded with instructions to enter judgment in the defendant’s favor on all issues.

Allstate Ins. Co. v. Adrabi, 78 So. 3d 7 (Fla. 3d DCA 2011): Verdict for the plaintiff reversed and remanded with instructions to enter judgment in Allstate’s favor.

Campbell v. Goldman, 959 So. 2d 223 (Fla. 2007): Quashed a decision from the Fourth District Court of Appeal which allowed the plaintiff to recover attorney’s fees under a defective proposal for settlement.

Wapnick v. State Farm Mut. Ins. Co., 134 So. 3d 968 (Fla. 4th DCA 2014): Affirmed the trial court’s denial of an insured’s claim of attorney’s fees for filing an unnecessary suit.

Creation’s Own Corp. v. Nationwide, 522 Fed. Appx. 589 (11th Cir. 2013): Affirmed a declaratory judgment finding no coverage available under the policy.

Caloosa Property Owners Assoc., Inc. v. Capital Specialty Ins. Co., 522 Fed. Appx. 638 (11th Cir. 2013): Affirmed a declaratory judgment finding no insurance coverage.

Bon Secours Health System v. Bonnano, 109 So. 3d 1241 (Fla. 1st DCA 2013): Worker’s compensation judge’s imposition of late-payment penalties reversed.

SCG Harbourwood, LLC v. Hanyan, 93 So. 3d 1197 (Fla. 2d DCA 2012): Reversed an order denying the defendant’s right to arbitration.

Berman v. Dillard’s, 91 So. 3d 875 (Fla. 1st DCA 2012): Affirmed a defense judgment against a constitutional challenge to the Worker’s Compensation Act.

Southern Owners Ins. Co. v. Mathieu, 67 So. 3d 1156 (Fla. 2d DCA 2011): Petition for Writ of Certiorari granted, and trial court ordered to dismiss Southern Owners from the plaintiff’s lawsuit.

Andrews v. Frey, 66 So. 3d 376 (Fla. 5th DCA 2011): Affirmed a prevailing defendant’s attorney’s fee award against a challenge to the validity of her proposal for settlement.

Boozer v. Stalley, 146 So. 3d 149 (Fla. 5th DCA 2014): Petition for certiorari granted to preclude disclosure of confidential communications between Allstate and its insured.

USAA Cas. Ins. Co. v. Callery, 66 So. 3d 315 (Fla. 2d DCA 2011): Petition for Writ of Certiorari granted, quashing the trial court’s discovery order directed at the defendant’s expert witness.

General Dynamics Corp. v. Brottem, 53 So. 3d 334 (Fla. 5th DCA 2010): Reversed the trial court’s denial of a summary judgment based upon immunity from suit.

Madura v. Lakebridge Condo. Ass’n, Inc., 382 Fed. Appx. 862 (11th Cir. 2010): Affirmed the defendant’s dismissal against a Fair Debt Collection Practices Act claim.

Carpenter v. Chavez, 200 So 3d 212 (Fla 2d DCA 2016): Reversed a trial court's denial of a PIP setoff that was critical to trigger a proposal for settlement.

Metropolitan Cas. Ins. Co. v. Tepper, 2 So. 3d 209 (Fla. 2009): Established that Allstate's insured could not be sued for subrogation by the plaintiff's insurer.

Bonich v. State Farm Mut. Auto. Ins. Co., 996 So. 2d 942 (Fla. 2d DCA 2008): Affirmed a declaratory judgment that State Farm did not owe coverage under its auto policy.

GEICO General Ins. Co. v. Berner, 971 So. 2d 929 (Fla. 3d DCA 2007): Petition for writ of certiorari granted, and order denying the defendant the right to select a different IME doctor quashed.

Crankfield v. Yeldon, 964 So. 2d 277 (Fla. 2d DCA 2007): Order dismissing the defendant affirmed.

Lucas v. Englewood Community Hosp., 963 So. 2d 894 (Fla. 1st DCA 2007): Defense judgment affirmed against a constitutional challenge to the Worker's Compensation Act.

Johnson v. Allstate Ins. Co., 961 So. 2d 1113 (Fla. 2d DCA 2007): Affirmed an order dismissing Allstate under choice of law principles.

St. Paul Fire and Marine Ins. Co. v. Medical Protective Co. of Fort Wayne, Ind., 257 Fed. Appx. 232 (11th Cir. 2007): Affirmed a declaration regarding insurance coverage.

Taylor v. Bateman, 927 So. 2d 1024 (Fla. 4th DCA 2006): Affirmed a judgment entered upon a defense jury verdict.

Martin v. Hacsj, 909 So. 2d 935 (Fla. 5th DCA 2005): Affirmed an order dismissing the plaintiff's case for failure to respond to a suggestion of death.

Lanza v. Lawnwood Medical Center, Inc., 878 So. 2d 491 (Fla. 1st DCA 2004): Affirmed an order approving the Medical Center's choice of venue.

State Farm Mut. Auto. Ins. Co. v. Colon, 880 So. 2d 782 (Fla. 2d DCA 2004): Reversed a declaratory judgment finding the plaintiff entitled to insurance coverage, and case remanded with instructions to enter judgment in State Farm's favor.

Kellner v. David, 140 So. 3d 1042 (Fla. 5th DCA 2014): Reversed unsupportable \$420,000.00 award of loss of future earning capacity.

Al-Hakim v. Big Lots Stores, Inc., 161 So. 3d 568 (Fla. 2d DCA 2014): Order requiring the pro se plaintiff to file all future pleadings through a licensed attorney affirmed.

Overall Mr. Tinker has an excellent success rate as an appellate attorney. While past results should not be interpreted as a prediction or guaranty of success or specific results in any given case, recent studies show that only approximately 15% of appeals result in reversals. Of the cases that Mr. Tinker has served as the appellant's counsel in the past 5 years,<sup>1</sup> over 90% have been successful. The converse is that 85% of "appellee" cases get affirmed. Of the cases that Mr. Tinker has served as counsel for the appellee in that same timeframe, only 3.6% of his cases have resulted in reversals. That equates to a 96.4% success rate.

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<sup>1</sup> Updated as of December, 2016.