

# PUBLICATION PROVIDED BY:

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### CASE INFORMATION SHEET

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*Florida Jury Verdict Reporter* Reference Number:

(A) JENNIFER LEGRIS vs. GREGORY SCOTT, SHIRLEY SCOTT and JOSEPH SCOTT, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

COUNTY AND COURT: Orange/07-CA-8008/Maura T. Smith

PLAINTIFF'S ATTORNEY: Adam L. Saxe, Esquire of Jeffrey M. Byrd, P.A., Orlando

DEFENDANTS' ATTORNEY: F. Dean Hewitt and F. Paul Tipton of Rissman, Barrett, et al, Orlando

AGE/SEX/OCCUPATION OF PLAINTIFF: 27/F/Receptionist

**CAUSE OF INJURY: Automobile Negligence/Declaratory Action against auto insurer:**

This case arose out of a personal injury claim brought by Plaintiff, Jennifer Legris, against State Farm's insured, Joseph Scott, when Mr. Scott's 1996 Nissan collided with a 2001 Saturn driven by Jessica Harris on February 2, 2005. Ms. Legris was a passenger in Ms. Harris' vehicle at the time of the accident.

On October 27, 2005, Jennifer Legris accepted a draft from State Farm for \$477.50 and executed a Release thereby discharging "Gregory Scott, Shirley Scott, Joseph Scott" from "... any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever ... .. which have resulted or may in the future develop from an accident which occurred on or about the 2nd day of February, 2005 at or near Ocoee, Florida."

On July 9, 2007, Plaintiff filed a two-count Complaint against Joseph, Gregory and Shirley Scott and State Farm Mutual Automobile Insurance Company in Orange County Circuit Court. Count I of the Complaint alleged that Ms. Legris had suffered a permanent injury as a result of the accident caused by Mr. Scott's negligence. Count I further alleged that the automobile driven by Joseph Scott was owned by Gregory and Shirley Scott.

Plaintiff's second Count included a claim for declaratory relief against State Farm Mutual Automobile Insurance Company. In that count Plaintiff requested the Court to rescind the October 27, 2005 release executed by Jennifer Legris based on the contention that State Farm had fraudulently and/or erroneously obtained the Release from Plaintiff by coercion and/or that the Release was entered into under a mutual mistake relative to the injuries sustained by Ms. Legris in the automobile accident.

In Plaintiff's complaint she alleged that she incurred \$2,337.50 as the result of medical treatment for the injuries she sustained in the accident. After Ms. Legris' No-Fault carrier, Nationwide paid 80% of these bills, Ms. Legris was allegedly left with a balance of \$467.50.

On August 8, 2007, Defendant, State Farm, filed a Motion to Dismiss on the basis that Plaintiff could not maintain a lawsuit against both the Scotts and State Farm until an underlying Judgment had been entered against the Scotts. In that motion, State Farm requested that Count II of Plaintiff's Complaint be dismissed for both a failure to state a cause of action as well as based on the fact that Plaintiff had sued both the Scotts and State Farm in violation of Florida Statute § 627.4136.

On October 26, 2007 the court granted State Farm's Motion to Dismiss. The Court agreed with State Farm that Plaintiff was required to first obtain a Judgment against the Scotts before suing their insurer.

On July 16, 2008, Defendants, Gregory, Shirley and Joseph Scott, filed a Motion for Summary Judgment. In Defendants' Motion they contended that no genuine issue of material fact existed as Ms. Legris had executed a full and final release on October 27, 2005 thereby releasing any and all claims against Defendants as a result of injuries from the February 2, 2005 automobile accident.

In Defendants' Motion for Summary Judgment, Defendants cited deposition testimony from Ms. Legris indicating that at the time she executed the Release she possessed more education than the average lay person as she was enrolled in a nursing program at a local college. Defendants also included deposition testimony from Ms. Legris reflecting that she had already purchased a house and a car without the assistance of counsel.

Defendants also cited deposition testimony reflecting that despite Ms. Legris' level of sophistication, she conceded that at the time she executed the Release she had not read the document. Ms. Legris conceded in her deposition that the State Farm representative who had provided her the Release was pleasant to her and did not rush her or prevent her from reading it before she signed it.

Defendants also presented deposition testimony that when Ms. Legris got home later that day she read the Release and found it a "little confusing". Despite this, Ms. Legris testified that although she did not entirely understand the Release at the time she simply "put it away." Ms. Legris conceded that she should have read the Release before signing it.

Ms. Legris also conceded in deposition that she had thought about calling the State Farm representative, Phyllis Blacke, who had negotiated the settlement with her after she read it but decided not to. Ms. Legris ultimately conceded that her motivation for accepting the settlement agreement was to get creditors off her back.

At the time of the August 27, 2008 hearing on the Motion for Summary Judgment, Plaintiff contended that the Release should be set aside as a result of a mutual mistake. Plaintiff contended that because neither Ms. Legris nor State Farm were aware of Ms. Legris' significant neck injury (herniated disc in the cervical spine) there was a mutual mistake as to the extent of her injuries.

On September 3, 2008 Judge Maura Smith issued an Order requesting the parties to reset the Motion for Summary Judgment and more specifically address those facts on the record that might establish a "genuine mistake of fact rendering the Release voidable." The Order noted that the Court specifically needed to know what the understanding of both Plaintiff and Defendants were relative to the injuries of Plaintiff at the time she signed the Release.

On November 3, 2008 Plaintiff filed a Response in Opposition to Defendants' Motion for Summary Judgment. In that response Plaintiff contended that a material fact existed relative to the parties' understanding of Plaintiff's injuries at the time she signed the Release because both Plaintiff and Defendants were apparently unaware of the extent of Ms. Legris' neck injuries.

On December 2, 2008 Defendants filed a reply to Plaintiff's response in opposition to Defendants' Motion for Summary Judgment. In that reply Defendants specifically cited to deposition testimony given by Plaintiff that she had first experienced neck pain by March/April of 2005 - within two or three months following the February 2, 2005 motor vehicle accident.

The parties reargued Defendants' Motion for Summary Judgment on December 2, 2008. At that hearing Plaintiff argued that although Ms. Legris had had complaints of neck pain prior to executing the Release, the fact that she had not sought any type of medical treatment regarding her neck problems was indicative of the fact that both she and State Farm were not aware of the severity of this injury.

Defendants pointed out to the Court that in deposition Plaintiff had testified that within two or three months following the accident she had felt neck pain. Defendants further brought to the court's attention that Ms. Legris testified that she had ultimately quit her job at the veterinary clinic because of the severity of her complaints of neck and headache pain.

Plaintiff's counsel argued that **Boole v. Florida Power & Light Company**, 3 So. 2d 335 (Fla. 1941) was applicable to the facts in the case at bar. Defendants pointed out to the Court that the Plaintiff in *Boole* had been aware of only orthopedic injuries and not aware of internal injuries that had ultimately caused his death when he entered into the settlement agreement with the Defendant.

Defendant contended that the Supreme Court's later decision in **DeWitt v. Miami Transit Company**, 95 So. 2d 898 (Fla. 1957) was more applicable in that in *DeWitt* the Supreme Court decided that the Release should not be set aside

despite the fact that Plaintiff had not learned of a herniated disc in her back until after the settlement because Plaintiff was well aware of her back injury before the settlement.

Judge Smith announced at that hearing that she would take the Motion under advisement but ruled later that same day.

**NATURE OF INJURY** [please be specific concerning injuries, treatment and medical testimony]:

Plaintiff claimed that as a result of the injury she injured her neck, shoulders and experienced headaches.

**EXPERT WITNESSES** [include full name, degree, specialty and city]:

**PLAINTIFF'S**: N/A

**DEFENDANTS'**: N/A

**SUMMARY JUDGMENT:**

On the same day but following the December 2, 2008 hearing, Judge Smith entered an Order granting Defendants' Motion for Summary Judgment. A Final Summary Judgment in favor of Defendants was entered on December 22, 2008. In the Final Summary Judgment the Court found that Plaintiff had knowingly and willingly executed a full and final Release thereby releasing any and all claims against Defendants as a result of the February 2, 2005 automobile accident.

The Court specifically found that the facts of the case at bar were distinguishable from those found in ***Boole v. Florida Power & Light Company***, 3 So. 2d 335 (Fla. 1941) in that all parties to the Release were aware of those injuries sustained by Ms. Legris prior to the October 27, 2005 execution of the Release. The Court further found that the Supreme Court's holding in ***DeWitt v. Miami Transit Company***, 95 So. 2d 898 (Fla. 1957) was controlling and that any "unknown and unexpected consequences" of any injuries already known to the parties would not operate to invalidate the Release.

On December 22, 2008 Defendants moved for its costs and attorney's fees pursuant to a Proposal for Settlement served on behalf of Defendants to Plaintiff in the amount of \$477.50 on July 17, 2008. The parties stipulated to the amount of Defendants' attorney's fees and an Agreed Final Judgment Awarding Attorney's Fees in the amount of \$3,000 was signed by Judge Maura T. Smith on June 19, 2009. Plaintiff has not made any payment to satisfy the judgment.

**PLAINTIFF'S ATTORNEY'S COMMENTS:**

**DEFENDANTS' ATTORNEY'S COMMENTS:**

On July 17, 2008, Defendants filed a Proposal for Settlement in the total amount of \$477.50 "which has already been paid to Plaintiff..." Defendants specifically noted that "no new money shall be paid to Plaintiff but she shall be allowed to retain the \$477.50 already paid to her."

Defendants prorated the total \$477.50 by one-third among all the Defendants. Defendants did not offer more than what the case had originally settled for in order to avoid any later argument that State Farm had not appropriately evaluated Plaintiff's claim.

**Submitted By: F. Paul Tipton**

**Date: August 31, 2009**

**Firm: Rissman, Barrett, Hurt, Donahue  
& McLain, P.A.**

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