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JUDGE TOSSES JURY VERDICT GIVING BANKATLANTIC A WIN

by Wayne Tompkins, DBR. BankAtlantic Bancorp scored a big court victory Tuesday when a federal judge tossed out a jury verdict that the company intentionally misled investors about problems with loans to commercial developers.

U.S. District Judge Ursula Ungaro said in a 112-page order that the verdict was inconsistent because it found statements made by BankAtlantic Bancorp's chief executive were made in good faith and plaintiffs could not demonstrate the extent to which falling share prices were caused by fraud or a rapidly collapsing economy.

Ungaro said that even if a defrauded plaintiff sells shares at a lower price after fraud is revealed to the market, the loss could be caused by deteriorating economic conditions or other factors as much or more than misrepresentation.

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A.M. HOLT

BankAtlantic attorney Eugene Stearns had predicted the verdict would be set aside either by the court or on appeal: "We won."

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BOARD OF CONTRIBUTORS Changes in law will remove hospital's incentive for assuring patient safety

Eliminating legal rights while taking aim at democracy

Commentary by Stuart N. Ratzan

Catering to the most powerful lobby in the state, the Florida Legislature has decided to create an unequal system of justice for medical malpractice victims, and to eliminate justice for the most disadvantaged among such victims, those receiving Medicaid benefits.


Ratzan

House Bill 479, passed recently out of the House Judiciary Committee, does all of the following: (a) immunizes hospitals from medical malpractice committed by its captive healthcare providers so long as they are "contracted" to work there as opposed to direct employees; (b) creates a higher burden of proof in cases where a healthcare provider fails to order a life-saving diagnostic test; (c) requires out-of-state experts to pay a fee and to sign up to be disciplined by the state government should someone determine to prosecute them for their opinions; and (d) abrogates the physician-patient privilege and allows medical malpractice lawyers for defendant doctors, and defendant doctors themselves, to meet with and speak with a malpractice victim's private physicians without notice or permission of the patient.

These changes in the law will immunize hospitals for a large percentage of the negligence committed on their premises, thereby removing their incentives for assuring patient safety. The changes will make it almost impossible for patients to win cases involving diagnosis errors, and will enable doctors in litigation to invade the privacy rights of their patients without limitation.

Finally, the out-of-state expert licensing requirement is intended to scare out-of-state experts into believing that their testimony about a colleague's negligence will result in discipline. Medical associations have longed for the power to stifle experts who testify on the side of patients. Now, the state government is coming to their side.

The changes, without exception, are anti-patient and anti-consumer. The Legislature relies on all of the familiar canards to justify the Draconian measures: doctors leaving the state, escalating malpractice insurance premiums, runaway juries. The Legislature received no factual data to support any of these allegations. In fact, there are more doctors in Florida than at any time in the last 10 years, malpractice premiums are stable and falling, and jury verdicts and settlements in malpractice cases in Florida are at an all-time low.

This legislature has coddled the medical industry. It has done so not on the basis of any compelling need, nor on the basis of a collection of compelling data, but instead on the basis of a political philosophy currently in vogue: favor the rich and powerful over the common man. Unfortunately, the consequences of this philosophy will be a deterioration in the standard of care delivered to Florida patients, and a creeping degree of unfairness injected into our system of justice.

Meanwhile, the same Legislature is also likely to eliminate the rights of Medicaid patients to seek justice when their healthcare providers carelessly injure them. Senate Bill 1972 will cap all damages at $200,000 whenever malpractice maims or kills a Medicaid patient, even if the healthcare provider is a private business entity, private practitioner, or private hospital. The Legislature is intentionally creating second-class citizens — Medicaid recipients — and intentionally depriving those citizens of the right to access the courts for their negligently inflicted injuries.

Worse, this law impacts the catastrophically injured Medicaid patients the most: those with injuries whose damages exceed $200,000 will never receive full compensation for their loss, while those with minimal injuries remain entitled to full compensation. No matter. It costs more than $200,000 to litigate a medical malpractice case in Florida. With no recovery available for the patient, and no money to pay a contingency fee, Medicaid patients will never again be empowered to stand up for themselves in our system of justice.

Our founding fathers knew that an elected Legislature would tend to legislate contrary to constitutional principles such as equal protection of the laws, right to trial by jury, etc. They understood that the three co-equal branches would provide the checks and balances necessary to protect against tyranny and oppression. As a nation of laws, not of men, we have been blessed with a court system that keeps our governor and our elected politicians in check. The unfair laws delineated above would normally be at risk in a co-equal judicial branch of government.

But that, like patient safety, is on the chopping block. Our speaker of the House, Dean Cannon, is ginning up a law aimed at taking over the court system, exclusively vesting the executive and legislative branches with the power to select judges, with no input from The Florida Bar, and creating a new civil division of the Supreme Court that would allow the governor to immediately appoint a new majority of civil Supreme Court justices.

This amounts to court packing, and would assure the governor and his Legislature that the state Supreme Court, the ultimate arbiter of what is and is not allowed, would be in their back pocket. You can pass whatever unconstitutional law you want if you take complete control of the judicial branch and if you pack the Supreme Court with your hand-picked selections.

The Florida Legislature is taking aim at more than our individual legal rights; it is taking aim at our democracy as we know it.

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