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BIFURCATION

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Bifurcation of the issues of liability and damages is permitted under Fla. R. Civ. P. 1.270(b) "in furtherance of convenience or to avoid prejudice."

Defendants are fond of asking for bifurcation, not for any of the reasons stated in the Rule, but rather for the perceived prejudice that may accompany damage testimony. Ordinarily, the decision whether or not to bifurcate a trial rests in the sound judicial discretion of the trial judge but when the issues of liability and damages are inextricably interwoven, ordering bifurcation may constitute error. Such was the case in Rooss v Mayberry, 866 So. 2d 174 (Fla. 5th DCA 2004).

Rooss was a medical malpractice case involving a German citizen who, while in Orlando, suffered appendicitis which was apparently misdiagnosed. Ms. Rooss was sent home with medicine, which masked her medical condition and, after arriving in Germany, suffered the consequences of a ruptured appendix. The reason advanced to and accepted by the trial court for bifurcation was the cost of extensive discovery in Germany where Rooss' treatment had taken place. The Court apparently reasoned that the portion of the above-cited rule relating to "convenience" permitted the bifurcation. The appellate court disagreed. In its opinion reversing the trial court's order of bifurcation, the District Court discussed the intertwined scenario of liability and damages that accompanies virtually every malpractice case. At Page 176 the Court holds:

Rather than saving time and money as urged by respondents in this case, it appears the effect of the bifurcation order would

be to convert what should have been one trial into two, with much duplicative testimony from the same medical witnesses. See *Microclimate Sales Co., Inc. v. Doherty*, 731 So. 2d 856, 858 (Fla. 5th DCA 1999). In this case, as in most medical malpractice cases, there is an intertwining of evidence relating to both the damage and causation issues. Bifurcation is not likely to promote convenience or judicial efficiency and because the issues of damages and causation in this case are related and necessarily have an 'important bearing' on one another, a unified trial is required to affect substantial justice. See *Dobress v. North Shore University Hospital*, 178 Misc.2d 205, 678 N.Y.S.2d 870, 871 (1998)

The Court's holding recognizes the reality of most malpractice cases. In virtually every one of those cases, causation issues require the testimony of treating physicians and their testimony is also almost always necessary to discuss pre-existing conditions. In such circumstances, there is no basis for assuming that bifurcation will save anyone either time or money. To the contrary, when liability and damage issues are intertwined, granting bifurcation only increases both the time and expense of concluding an action.

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