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LEGAL UPDATE

VOLUME 20, ISSUE 1 MAY, 2021



VERDICTS, SUMMARY JUDGMENTS, APPELLATE RESULTS:

Appellate Partner Daniel Weinger, Esq., and Alec Masson, Esq., Prevail in Precedent Setting Decision in the First District Court of Appeal Interpreting the Wrongful Death Act

Appellate Partner Daniel Weinger, Esq., and Senior Associate Alec Masson, Esq., recently prevailed in a precedent setting appeal in the First District Court of Appeal in *Hamblen v. Pilot Travel Centers, LLC*, Case No. 1D19-1613 (Fla. 1st DCA February 26, 2021). The appeal turned on the resolution of an issue of first impression involving an interpretation of section 768.24 of Florida's Wrongful Death Act. That statute provides that "[a] survivor's death before final judgment shall limit the survivor's recovery to lost support and services to the date of his or her death."

The underlying wrongful death case was brought by the father as the sole survivor of his deceased daughter, who died in an automobile accident. At trial he sought recovery for pain and suffering but not for lost support and services. *Read more ..... page 5.*

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FLORIDA'S NEWLY ADOPTED MSJ STANDARD AND ITS ROLE IN REDUCING FLORIDA'S CASE AND JURY TRIAL BACK LOG

by Matthew Fox, Esq., and Senior Partner Dorsey Miller, Esq.



Matthew Fox, Esq.

While the entire state of Florida has been hit hard by COVID-19, the Florida Judiciary has been hit especially hard. The case backlog for the judicial system is estimated to be at 990,074 cases when the new Trial Court Budget Commission fiscal year begins on July 1, 2021.[1] Furthermore, it is estimated that COVID-19 will have delayed nearly 5,000 jury trials by the time the new Trial Court Budget Commission fiscal year begins on July 1, 2021.[2] However, the Florida Supreme Court has taken steps in the right direction to remedy this back log by recently choosing to amend Florida Rule of Civil Procedure 1.510 (Summary Judgment).[3]

With its recent amendment to Florida Rule of Civil Procedure 1.510, the Florida Supreme Court has decided to adopt the federal summary judgment standard.[4] The Florida Supreme Court recognized that both the Florida and Federal Rules of Civil Procedure share the same purpose "to secure the just, speedy, and inexpensive determination of every action."[5] However, the Florida Supreme Court also recognized that despite the consistency of the purpose and text of the two sets of rules, there have been many inconsistencies in the jurisprudence between the two judicial systems, with three areas being particularly consequential.[6]

Read more ..... page 2.

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FLORIDA'S NEWLY ADOPTED MSJ STANDARD AND ITS ROLE IN REDUCING FLORIDA'S CASE AND JURY TRIAL BACK LOG, *CONT.*

by Matthew Fox, Esq., and Senior Partner Dorsey Miller, Esq.



Dorsey Miller, Esq.

The three areas of consequence are: (1) the Florida Courts' refusal to recognize the similarity between a motion for directed verdict and a motion for summary judgment; (2) that the Florida Courts, in contrast to the Federal Courts, require the moving party to conclusively disprove the nonmovant's theory of the case; and (3) the Florida Courts' expansive understanding of what constitutes a genuine issue of material fact.[7]

In regards to the first area of consequence, the newly adopted federal standard recognizes that the inquiry for both a motion for directed verdict and a motion for summary judgment is the same – "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law."[8] This new standard will increase the burden on the nonmoving party as they will now have to provide enough evidence to show a sufficient disagreement that requires submission to a jury.

As to the second area of consequence, the new standard will remove the requirement that the moving party conclusively "disprove the nonmovant's theory of the case in order to eliminate any issue of fact."[9] Consequentially, the moving party's burden may now be discharged by "pointing out to the district court that there is an absence of evidence to support the nonmoving party's case."[10] In other words, the moving party no longer has to conclusively negate an element of the nonmovant's claim. For example, in a negligence case, the moving party no longer has to negate the element of breach by proving lack of notice or an open and obvious condition.

Instead, the moving party can show the district court that the nonmoving party has failed to provide evidence sufficient to establish the element of breach to the extent of the burden that the nonmoving party will carry at trial. This could lead to an increase in the number of motions for summary judgment that are granted because the trial courts will now have a standard that allows them to rule on the sufficiency of the evidence provided by the nonmoving party, and not just the sufficiency of the legal argument put forth by the moving party.

Finally, the new standard will move Florida Courts away from finding a genuine issue of material fact if there is "any competent evidence creating an issue of fact, however credible or incredible, substantial or trivial, … so long as the slightest doubt is raised."[11] Instead, the new standard for determining if there is a genuine issue of material fact will be whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party."[12] Furthermore, "when two opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of facts for purposes of ruling on a motion for summary judgment."[13] On this new standard, both the amount and quality of the evidence put forth by the nonmoving party will be the driving factor in determining whether a genuine issue of material fact exists. As such, the nonmoving party will no longer be able to prove a genuine issue of material fact if the evidence it puts forward in opposition is "merely colorable, or is not significantly probative."[14]

The changes mentioned above decrease the moving party's burden and increase the nonmoving party's burden with regard to motions for summary judgment. As the United States Supreme Court itself pointed out, these changes will paint summary judgment in a new light "not as a disfavored procedural shortcut, but rather as an integral part of [our rules] as a whole."[15] While these changes will not substitute for the trial of disputed fact issues, they will support the Florida Supreme Court's goals of improving the fairness and efficiency of Florida's civil justice system, relieving parties from the expense and burdens of meritless litigation, and "[saving] the work of juries for cases where there are real factual disputes that need resolution."[16] In so doing, the new standard will arm the Florida Judiciary with more power to grant summary judgment and relieve the backlog created by the COVID-19 pandemic.

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1 Jim Ash, *Courts Ask for $16 Million to Clear Pandemic Backlog*, (Oct. 22, 2020) https://www.floridabar.org/the-florida-bar-news/courts-ask-for-16-million-to-clear-pandemic-backlog/

2 *Id.*

3 *See In Re: Amendments to Florida Rule of Civil Procedure 1.510,* No. SC20-1490 (Fla. Dec. 31, 2020) (per curiam).

4 *Id* at 1.

5 *Id* at 2.

6 *Id.*

7 *Id.* at 2-4.

8 *Id.* at 3 (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986)).

9 *Id.* (citing Thomas Logue & Javier Alberto Soto, *Florida Should Adopt the Celotex Standard for Summary Judgment*, 76 FLA. BAR J. Feb. 2002, at 24).

10 *Id.* (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)).

11 *Id.* at 4 (citing BRUCE J. BERMAN & PETER D. WEBSTER, BERMAN'S FLORIDA CIVIL PRO CEDURE § 1.510 5 (2020 ed.)).

12 *Id.* (citing *Anderson*, 477 U.S. at 248).

13 *Id.* at 5 (citing *Scott v. Harris*, 550 U.S. 372, 380 (2007).

14 *Id.* at 4 (citing *Anderson*, 477 U.S. at 249-50).

15 *Id.* at 6 (citing *Celotex*, 477 U.S. at 327).

16 *Id.* at 6-7.

REDUCING EXPOSURE FOR NEGLIGENT SECURITY INCIDENTS

by Ricardo Reyes, Esq., and Managing Partner Daniel Santaniello, Esq.



Ricardo Reyes, Esq.

The number of premises liability actions alleging negligent security against retail establishments has been on the rise for much of the last 30 years.[1] In fact, statistics have shown that retail establishments are the third most common type of defendant in such actions.[2] This, coupled with recent headlines highlighting the increased willingness of jurors to deliver record-setting verdict amounts for actions alleging negligent security, have become a matter of concern for owners of large commercial retail properties. Florida has a real crisis on its hands when it comes to these cases and it doesn't even know it.

Property owners have at their disposal effective means of reducing their exposure to negligent security actions resulting from incidents of third-party criminal conduct on their premises that both have or have not yet occurred. Retail and other property owners are encouraged to take the following preventative measures. First, retail establishment and other property owners and operators should familiarize themselves with the premises liability laws of their state concerning negligent security, as some jurisdictions have passed crucial legislation which may benefit defendants, including Florida's passage of §768.0705, which creates a presumption of non-liability for convenience store owners and operators if specific security and employee training measures are implemented. Next, retail establishments and business owners should implement security policies, procedures, and practices that maximize the detection, deterrence, and prosecution of criminal acts on their premises. These might include utilizing or implementing (1) functioning security cameras, (2) unarmed or armed security personnel, (3) security assessment and plan detailing crime risks on the property, (4) illuminated and patrolled parking facilities, and (5) landscaping designs that prevent hidden areas where criminals may hide or loiter. Finally, retail establishments and business owners should engage in active communication and cooperation with local business owners, competitors, and local law enforcement to further develop and enhance these security policies, practices, and procedures.

While these pre-incident measures are undoubtedly effective in reducing exposure to future risks, it is impossible to eliminate such exposure altogether. Having security measures in place is much better than having none in a state that instructs its juries that the defendant had a duty to provide reasonable security measures to protect against reasonably foreseeable criminal activity. As such, businesses should preemptively develop thorough security assessments and investigatory response plans upon the occurrence of an incident involving the criminal conduct of a third party. At a minimum, a security assessment should include a thorough review of the premises for risks, ways to deter crime and a survey of the past crime on and around the property. A post-incident investigation should include preservation of any and all photographic or video surveillance evidence taken from the scene. Additionally, employees tasked with handling the incident response plan must be required to take statements and witness accounts from all employees and customers who were present at the scene as soon as possible following the incident.

While the occurrence of actions alleging negligent security against businesses continues to increase across Florida, business owners and insurers may consult with us to assess the exposure and consider reasonable measures to reduce crime, and increase your chances of a defense verdict.

[1] Podlucky, Amanda J., Negligent Security Claims Liability Is No Joke, Leisure & Hospitality International, Fall 2014; Corrigan, William M. & Van Ronzelen, Timothy W., *Liability for Criminal Acts of Third Persons*, 52 J. Mo. B. 359 (1996).

[2] §31:1.Tort liability of owner or operator for inadequate security; 4 Pattern Discovery Premises Liability §31:1, August 2020 Update (Westlaw 2021)

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REDUCING EXPOSURE FOR NEGLIGENT SECURITY INCIDENTS, *CONT.*

by Ricardo Reyes, Esq., and Managing Partner Daniel Santaniello, Esq.

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Law, he served as a law clerk for several firms in Connecticut and Florida and gained experience in a variety of practice areas, including insurance defense, commercial litigation, and personal injury. He also completed an externship as a corporate legal extern for the Multinational Law Department of a leading insurance carrier in Hartford, Connecticut.

Ricardo earned his Bachelor of Science degree from Florida State University in 2017. He obtained his Juris Doctor from Quinnipiac University School of Law, graduating *cum laude* in 2020. He received the Quinnipiac Law's Distinguished Scholar Award and its internal award for Outstanding Oral Advocacy. He is admitted to practice law in Florida (2020).

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Dorsey Miller, Esq., is the Fort Lauderdale Co-Managing Partner and has over 17 years of trial litigation experience. Martindale-Hubbell and his peers have rated him AV® Preeminent™. Dorsey concentrates his practice in automobile liability, trucking liability, wrongful death, medical malpractice, premises liability, general liability, negligent security and construction litigation matters. Dorsey also handles commercial litigation and employment claims.

Dorsey is a member of our Surgical SIU team. As a member of our Surgical SIU | LOP team, Dorsey regularly takes 30(b)(6) depositions of medical providers who treated the Plaintiff under an LOP to investigate instances of financial bias, hidden deals and inflated charges from representatives whose testimony binds the corporation as substantive admissible evidence at trial.

In 2010, he was the recipient of the JM Lexus African American Achievers Distinguished Nomination. In 2009, he received the ICABA's Most Accomplished Blacks Nomination. He serves the community as a Board Member for the Boys and Girls Club of America (Nan Knox Unit) and the Florida High School Athletic Association and Section IV Appeals Committee as Chairman. Dorsey is a former member of Florida Bar's Unlicensed Practice of Law Committee for the 17th Judicial Circuit between 2010 and 2015. He is also a member of the Florida Defense Lawyers Association and the Claims & Litigation Management Alliance.

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VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

Prevail in Precedent Setting Decision in the First District Court of Appeal Interpreting the Wrongful Death Act



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The jury returned a net verdict of $1,700,000.00 after assigning the substantial majority of fault on two non-party *Fabre* Defendants. Thereafter, the trial court entered "Final Judgment". A timely motion for new trial was filed and ultimately denied by the trial court. Shortly after Defendant's appeal had commenced, it was discovered that the decedent's father had passed away while Defendant's motion for new trial was still pending.

We filed a motion to set aside the final judgment under Florida Rule of Civil Procedure 1.540(b), arguing that although the trial court originally entered a "Final Judgment", the judgment was not truly "final" until such time as the trial court ruled on the timely filed motion for new trial. Because the decedent's father passed away while the motion for new trial was still pending, his death occurred before "final judgment" and, under section 768.24, his recovery was limited to lost support and services to the date of the decedent's death. In addition to making statutory interpretation arguments, Defendant argued that its position was consistent with the underlying "philosophy of the [Wrongful Death] Act [which] is to afford recovery [of mental pain and suffering damages to] the living rather than the dead." *Fla. Clarklift, Inc. v. Reutimann*, 323 So. 2d 640, 641 (Fla. 2d DCA 1975). The trial court agreed, set aside the final judgment and, because there was no claim for lost support and services, entered a new final judgment in the amount of $0.

In a unanimous decision, the First District Court of Appeal affirmed. In so doing, the district court rejected the Estate's argument that the language in section 768.24 has the same effect as an abatement and, accordingly, abatement law should govern. To that end, the Estate claimed that under abatement law, the right to recovery for those damages beyond lost support and services became final at the latest when the trial court entered the order titled "Final Judgment" and arguably as far back as when the jury first returned the verdict. Unpersuaded, the First District Court of Appeal, while acknowledging that the meaning of "final judgment" in the Wrongful Death Act had never been decided, agreed with Messrs. Paleschic, Weinger, and Masson that the term "abatement" was conspicuously absent from section 768.24 even though it was used in other sections of the Wrongful Death Act. If the legislature intended abatement law to govern section 768.24, it would have said as much.

The First District went on to agree with our arguments that although the phrase "final judgment" is not expressly defined under the Wrongful Death Act, the principle that a judgment is not truly final until at least such time as the trial court rules on timely filed motions for new trial and/or motions for rehearing is so well-settled that to reach any different result under section 768.24 would create an inconsistency in the law that would only lead to confusion. Accordingly, the First District Court of Appeal affirmed the trial court's entry of a new final judgment in the amount of $0.

Read more Verdicts and Summary Judgments ..... page 6.

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

Dismissal for Nominal Damages
First-Party Property



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In matter styled *Jesus Marisol Gamarra v. Citizens Property Insurance Corporation*, Junior Partners Jeremy Fischler, Esq., and Matthew Wendler, Esq., convinced Plaintiff and the Property Law Advocates (formerly The Strems Law Firm), to settle a roof damage claim for $500.00, inclusive of attorney's fees and costs, after nearly four (4) years of litigation. The matter involved an allegation that the Plaintiff suffered wind damage at her Broward County property in February, 2017. After the claim was inspected by a field adjuster, it was determined that there was no wind damage to the property, and the claim was denied. The Strems Law Firm immediately filed suit, and to avoid summary judgment retained an engineer to claim that there was wind damage to the roof. Plaintiff's water mitigation company also retained an expert to assert that there was wind damage to the roof. Plaintiff testified, as most Insureds do, that she noticed damage to her property and contacted the appropriate people to assist her with the claim. However, after diligently uncovering that Plaintiff withheld pertinent information in the policy application and during litigation, we persuaded Plaintiff to dismiss the claim for nominal damages.

Final Summary Judgment
Slip and Fall



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Jacksonville Managing Partner, Todd Springer, Esq., and Appellate Partner Daniel Weinger, Esq., obtained a favorable result when the court granted Defendant, MOR PPM's Motion for Final Summary Judgment on November 24, 2020, in the matter styled *Malcolm Fabre v. MOR PPM, Inc*. in the Circuit Court of Putnam County. Plaintiff filed suit alleging that he slipped and fell on a liquid substance in the administrative building at the Seminole Electric Cooperative power plant. MOR PPM provided many services at the plant including housekeeping services pursuant to a contract. As a result of the accident Plaintiff suffered a C6-C7 fracture requiring surgery, concussion, broken temporal bone, back and neck pain with multiple injections, headaches, and vertigo/ balance issues with multiple ongoing blackouts. Plaintiff's medical expenses and past lost wages totaled approximately $750,000. At the hearing, Mr. Springer persuaded the court that Plaintiff failed to meet his burden of proof that the Defendant had either actual or constructive notice of any hazardous condition in the administration building pursuant to Florida Statute §768.0755. Further, the contract between the Seminole Electric Cooperative and MOR PPM did not create a duty for MOR PPM to continually monitor the floors of the administration building for spills or other foreign substances. Finally, Mr. Springer successfully argued that allegations of negligent maintenance, supervision, inspection and general mode of operation are irrelevant as such claims in transient foreign substance cases have been abolished.

Read more Verdicts and Summary Judgments ..... page 7.

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

Voluntary Dismissal
First-Party Property



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Associate Brittany Ehrenman, Esq., Managing Partner William Peterfriend, Esq., and Senior Partner James Sparkman, Esq., obtained a dismissal in a First-Party Property matter styled *Island Roofing & Restoration, LLC a/a/o Betty Hoffman v. United Property & Casualty Insurance Company*. The matter arose from a homeowner's claim for damage allegedly from Hurricane Irma. Plaintiff, via a purported electronically signed assignment of benefits obtained from the Insured, sought to recover insurance proceeds in excess of $168,000, including the cost for a full roof replacement. The lawsuit was filed by Plaintiff in May 2019, and after several years of litigation, the matter was set to begin trial in March 2021. After taking the Insured's deposition, it became clear that the Insured did not sign the assignment of benefits. Defendant prepared a Motion for Summary Judgment to argue that Plaintiff had no standing to bring the lawsuit. Just three weeks before trial, Plaintiff attempted to correct their standing issue and filed an Emergency Motion to Amend their Complaint. In preparation for trial, Defendant moved to present evidence of Plaintiff and Insured's non-compliance with policy conditions and to exclude hearsay testimony regarding the alleged damages and lay opinion testimony. Following an eleventh hour emergency motion by opposing counsel to withdraw from the case, Plaintiff filed a voluntary dismissal.

Voluntary Dismissal
Firt-Party Property



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Associate Estefania Negrette, Esq., Junior Partner Lisa Taylor, Esq., and Managing Partner William Peterfriend, Esq., obtained a dismissal in a First-Party Property matter styled *Island Roofing & Restoration, LLC a/a/o Timothy and Kathleen Burke v. United Property & Casualty Insurance Company*. The matter arose from a homeowner's claim for damage from Hurricane Irma. Plaintiff, via a purported assignment of benefits obtained from the insureds, sought to recover insurance proceeds in excess of $165,000, including the cost for a full roof replacement. The lawsuit was filed by Plaintiff in May 2019, and after several years of contentious litigation, the matter was set to commence trial in February 2021. Prior to trial, Plaintiffs withdrew their experts. In preparation for trial, Defendant moved to exclude lay opinion testimony, hearsay testimony regarding the alleged damages, and testimony regarding previously unreported damages. In response, Plaintiff filed a voluntary dismissal on the eve of trial.

Read more Verdicts and Summary Judgments ..... page 8.

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

Summary Judgment
Construction Injury



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Junior Partner Matthew Wendler, Esq., obtained summary judgment in matter styled *Acquavella v. Ft. Lauderdale Jet Center, LLC, et al*. Our client was retained to cut out a 529 square-foot excavation into which a flight-simulator plane would be installed. Fifteen days after our client completed its scope of work and left the job site, the plaintiff sustained serious injuries when he fell 30 feet from the aerial lift he was operating near the excavation. Pursuant to *Slavin v. Kay* and its progeny, we argued that our client owed no duty to Plaintiff. Following a March 2, 2021 special-set hearing, the Court entered summary judgment in our client's favor.

Dismissed with Prejudice
First-Party Property



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Senior Associate Lauren Wages, Esq., obtained a Voluntary Dismissal with Prejudice in a matter styled *Xpress Restoration Inc. a/a/o Yleana Ferrera v. Citizens*. We filed a motion for summary judgment based on the pre-suit payment of the $3,000 reasonable emergency measures limit under the policy for accidental discharge or overflow of water from within the plumbing system. Plaintiff dismissed the lawsuit with prejudice on the eve of our hearing on the motion for summary judgment as Plaintiff was unable to provide any summary judgment evidence showing that the limit was inapplicable.

Voluntary Dismissal with Prejudice
False Arrest, False Imprisonment & Malicious Prosecution



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Tallahassee Associate Tabitha Jackson, Esq., recently triumphed in a matter styled *Micah Thompson v. The Board of Trustees for the Florida State University, et al.*, a Leon County suit brought by a former arrestee. Plaintiff brought a three-count suit against the FSU police for an arrest for driving under the influence. Specifically, the Counts included False Arrest, False Imprisonment, and Malicious Prosecution. Plaintiff argued that because the charges ended in a Nolle Prosequi, an entitlement to damages arose. Defendant argued in turn that not only was probable cause present during the arrest, as Plaintiff was speeding, failed the field sobriety test, and had an open bottle of vodka in his car, but also that FSU, as well as all officers involved, were all cloaked with immunity under *Trianon Park Condo. Ass'n, Inc. v. City of Hialeah*, 468 So. 2d 912, 919 (Fla. 1985) and §768.28, Fla. Stat. The day before the hearing on Defendant's Motion to Dismiss, Plaintiff's counsel Voluntarily Dismissed the complaint with prejudice.

Summary Judgment
Federal Practice



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Junior Partner Brad Eubanks, Esq., successfully obtained summary judgment in the federal case styled *Roscoe Bell and Nicol Bell v. Wesley Miedema*, after successfully arguing that applying Florida's choice of law rules, and specifically the significant relationship test, Plaintiffs' claims were barred by the statute of limitations.

Read more Verdicts and Summary Judgments ..... page 9.

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

Dismissed with Prejudice
Construction Defect and Personal Injury



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Senior Associate Dustan Lorimer, Esq., obtained a dismissal in the matter styled *Michael Kirk and Jordana Kirk, Individually and as "next friends" on behalf of Dominic Kirk and Payton Kirk v. Dana construction, Inc., et. al*. The lawsuit was filed on May 5, 2020, with allegations of construction defects that led to water intrusion, consequential mold growth, and ultimately Plaintiffs' resulting personal injury claims arising from mold exposure. In support of the construction defect claims, Plaintiffs attached two expert reports to the Complaint concluding that the alleged water intrusion was primarily caused by excessive cracks in the exterior concrete block walls. However, the Insured's, Dana Construction, Inc., work included certain flatwork on the sidewalk and driveway, as well as final framing punch-out work. Therefore, the causal connection between the Insured's work and claimed damages was questionable, at best.

Despite several requests for dismissal, Plaintiffs' Counsel declined to dismiss any parties because at the time, only limited written discovery was completed and initial documents were exchanged. No depositions were conducted and no expert opinions were finalized. Even so, a Motion for Sanctions coupled with a Motion for Summary Judgment was prepared to extract the Insured. To that end, an affidavit was completed by the Insured attesting to the fact that its work did not result in the damages complained of. Additionally, the Insured prepared and filed an affidavit indicating that the performance of its work did not cause or contribute to Plaintiffs' alleged injuries. Under clearly established precedent, the burden then shifted to Plaintiffs to come forth with counter-evidence sufficient to reveal a genuine issue of material fact. Failing to do this and persuaded by our argument, Plaintiffs' Counsel dismissed the claims against the Insured with prejudice early in this complex construction defect case, with minimal discovery completed.

Dismissal Based on Fraud on the Court
Trip and Fall



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On December 10, 2020, Founding Partner Jack Luks, Esq., and Junior Partner Allison Janowitz, Esq., prevailed on a Motion to Strike Plaintiff's Pleadings based on Fraud on the Court in *Gandy, Anthony v. Florida Mall*. This case arose out of a trip and fall in the parking lot of Florida Mall on December 23, 2017. Plaintiff asserted that Florida Mall failed to maintain the parking lot in a reasonably safe condition, resulting in Plaintiff's injuries to his right shoulder, right knee, and lumbar spine. Plaintiff claimed medical damages of about $100,000 as a result of the fall. Throughout the investigation of the claim, the Defense found multiple surgeries on Plaintiff's right knee that were not disclosed during deposition or discovery. Further, Plaintiff failed to disclose two subsequent incidents where he was admitted to the hospital complaining of pain in his right shoulder. The Court found that the Plaintiff's misrepresentations regarding the extent of his injuries, the limitations that had previously been attributed to other injuries, as well as failing to disclose the surgeries and post-accident falls, were intentional and that the misrepresentations were a scheme to mislead the Court. Accordingly, the Court granted the Motion for Dismissal based upon Fraud on the Court.

Read more Verdicts and Summary Judgments ..... page 10.

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

Successful Risk Transfer
Construction Defect and Personal Injury



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Construction Defect Partner David Rosinsky, Esq., and Junior Partner Raul Flores, Esq., obtained successful risk transfer in a crane accident with serious personal injuries. In the matter styled *Cecchi v. Beyel Brothers Crane and Rigging of South Florida*, Plaintiff fell 20-feet when a suspended 5,680 lb steel eye beam struck the scissor lift he was standing on. He suffered a fracture of his left hip and pelvis, requiring multiple surgeries, and resulting in a significant workers compensation lien. Plaintiff sued our clients, the crane company and crane operator, for gross negligence in the operation of the crane that hoisted the eye beam. Based on an indemnification provision in the crane rental agreement with Plaintiff's employer, which included the rental of the crane and the lending of the crane operator, we served a tender request to Plaintiff's employer for the defense and indemnification of our clients. After the employer failed to serve a response, a third-party complaint was filed against the employer for contractual indemnification and breach of contract on the duty to defend. The employer subsequently accepted our tender request and ultimately settled with Plaintiff with zero contribution from our clients.

Dismissal Within Hours of Filing Motion for Summary Judgment
Auto & Fleet Liability



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Senior Partner John Bringardner, Esq., and Senior Associate Michael Kerwin, Esq., recently filed a motion for summary judgment in the case styled *Jenelle Sprague and Jericho Sprague v. Desoto Automotive Enterprises, Inc. d/b/a Desoto Ford*. In this case, the Defendant car dealership provided a courtesy loaner vehicle to a customer whose vehicle was in service, and that customer was subsequently involved in a motor vehicle collision. Plaintiff contended that the dealership's ownership of the vehicle was sufficient to maintain a claim of vicarious liability through Florida's Dangerous Instrumentality Doctrine.

Our motion for summary judgment, premised on an extension of the Graves Amendment and *Collins v. Auto Partners V, LLC*, 276 So. 3d 817 (Fla. 4th DCA 2019), argued that a car dealership's courtesy loaner does not lead to vicarious liability under Florida's Dangerous Instrumentality Doctrine. Within only hours of filing the motion, Plaintiffs dismissed the claim against Desoto Ford.

Read more Verdicts and Summary Judgments ..... page 11.

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

Appellate
First-Party Property Sinkhole Damage



Lauren Smith, Esq.
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In the matter styled *Baker v. Citizens Property Insurance Corporation*, Lauren Smith, Esq., Managing Partner of our Stuart office, successfully defended the plaintiff-insured's appeal of a summary judgment on a statute of limitations issue involving Citizens' election to repair the insured's sinkhole damage.

Summary Judgment
Construction Injury



Matthew Wendler, Esq.
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Junior Partner Matthew Wendler, Esq., obtained summary judgment in matter styled *McFadden v. Ft. Lauderdale Jet Center, LLC, et al.* Pursuant to *Slavin v. Kay* and its progeny, we demanded counsel to dismiss the matter with prejudice or to agree to the entry of summary judgment, given the proposal for settlement that expired months earlier and the outstanding section 57.105 motion for sanctions. To avoid an adverse ruling relative to attorney fees and costs, plaintiff's counsel agreed to the entry of summary judgment in favor of our client.

Voluntary Dismissal with Prejudice
First-Party Property



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Junior Partner Karma Hall, Esq., and Junior Partner Justin Schwerling, Esq., obtained a Voluntary Dismissal With Prejudice in a First Party Breach of Contract Action brought by an Assignee water restoration company, under an Assignment by the named insured. In the case, styled *Express Damage Restoration, LLC A/A/O Ivan Williams, v. Citizens Property Insurance Corporation*, Plaintiff contended that services provided under the assignment of benefits were covered. Defendant filed a Motion for Final Summary Judgment, arguing that Plaintiff lacked evidence to meet its burden of proof on the Policy's peril created opening provision. Rather than proceed on the merits of the Motion for Final Summary Judgment, Plaintiff voluntarily dismissed with prejudice its claim for breach of contract.

Read more Verdicts and Summary Judgments ..... page 12.

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

Summary Judgment
Slip and Fall



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Key West Managing Partner, Jessalea Shettle, Esq., Senior Partner John Bringardner, and Appellate Partner Daniel Weinger, Esq., obtained Summary Judgment in a slip and fall case, entitled *Cheryl Elmore and James Elmore v. Defendant Store.* just three days before the case was set to go to trial in Gainesville, Florida. Plaintiff filed suit alleging that she slipped and fell on an unknown substance in the café area of the Defendant's Store. As a result of the incident, the Plaintiff required knee surgery and incurred over $100,000.00 in medical bills. At the hearing, Ms. Shettle convinced the Court the Plaintiff had not met her burden of proof that the Defendant had either actual or constructive notice of any hazardous condition on the café floor pursuant to Florida Statute §768.0755. The Court ruled, as a matter of law, that the Defendant was not liable for any injuries suffered by the Plaintiff. A proposal for settlement was filed early on in this case, which has allowed the client the opportunity to recover approximately 70% of the total defense costs for this matter.

This Legal Update is for informational purposes only and does not constitute legal advice. Reviewing this information does not create an attorney-client relationship. Sending an e-mail to Luks, Santaniello et al does not establish an attorney-client relationship unless the firm has in fact acknowledged and agreed to the same.

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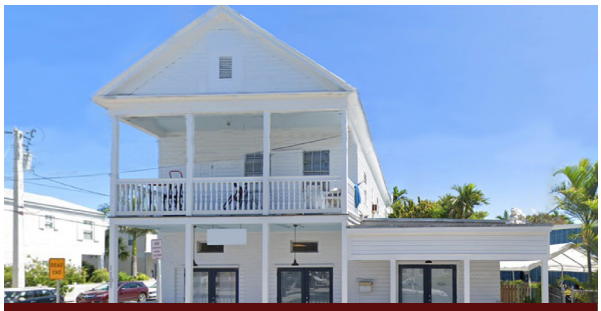
NEWS ABOUT THE FIRM

Announcing the Opening of New Key West Office and New Managing Partners

Luks, Santaniello, Petrillo & Cohen is pleased to announce the opening of its 11th office in Key West led by Managing Partner Jessalea Shettle, Esq. The new office is located in the heart of Old Town on 1101 Simonton Street and a 1/2 mile from the Monroe County Courthouse. The Key West office provides the firm with greater presence across the entire Florida Keys and Monroe County. Accessible street parking is available. The office is just 11 minutes from the Key West International Airport.

Congratulations to our new Managing Partners Audra Bryant in the Tallahassee office, Sean Fisher in Pensacola and Jessalea Shettle in our new Key West office. Our offices are rapidly growing, and for the first time in Luks, Santaniello, four women lead as Managing Partners, Vicki Lambert (Orlando), Lauren Smith (Stuart), Jessalea Shettle (Key West), and Audra Bryant (Tallahassee) in our offices across the state of Florida.

To view their bios, please visit our website at https://www.insurancedefense.net/our-people



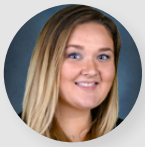
Key West Office



Vicki Lambert
Orlando



Lauren Smith
Stuart



Jessalea Shettle
Key West



Audra Bryant
Tallahassee

Announcing The Grub Club

The Gavel Nationwide Claims Defense Network is rolling out The Grub Club, a series of lunch and learn webinars. The series includes 100+ webinar topics presented by nationwide Gavel law firm members. We can customize any topic to accommodate multi-state law and jurisdictions. The Grub Club provides an opportunity for both CE/CLE or non-accredited sessions. To view The Gavel Course Catalog with course descriptions, visit **The Gavel**, select Education and The Grub Club. To discuss the selected topic and your requirements, please contact one of the following:

Luks Santaniello only or multi-state collaborative presentation:
1-954-847-2936 or
mdonnelly@insurancedefense.net

Non-Florida Presentation:
561-410-7500 or
info@TheGavel.net

Upcoming Webinars

Negligent Security Trends and Exposure Webinar
May 26, 2021 | Live Webcast with Attorney Daniel Santaniello, Esq., of Luks, Santaniello

This one-hour webinar will acquaint the claims representative or attorney with the risks, challenges and trends surrounding negligent security. The course will cover three main objectives: identifying the current problems and trends, ways to minimize your risk and exposure, and ways to mitigate your loss.

Accredited for: TX CE, FL CE, NC CE, NJ CLE, NY CLE, PA CLE, IL CLE, TX CLE

Ding Dong, It's Bacteria: Avoiding Food Safety Litigation During the COVID-19 Pandemic Webinar
June 4, 2021 | Live Webcast with Attorneys Franklin Sato, Esq., and Tabitha Jackson, Esq., of Luks, Santaniello and L. Paige Hall of Engles, Ketcham, Olson and Keith

This webinar will acquaint the claims representative or attorney with the risks, challenges and trends surrounding food safety and avoiding food poisoning litigation during the pandemic.

Accredited for: CA CLE, FL CE, TX CE (*pending DE CE and FL CLE*)

To read more about our upcoming webinars, visit our Current Events page on our website.

Clients interested in attending may email training@insurancedefense.net

For more news about the firm, visit:

InsuranceDefense.net

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