



## TORT REFORM SUMMARY GUIDE

by Janine Menendez-Aponte, Esq., Angelise Petrillo, Esq., and Daniel Santaniello, Esq.



Janine Menendez-Aponte, Esq.



Angelise Petrillo, Esq.



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Our Summary Guide Quick Facts on Tort Reform is on page 2. The one-page summary is a consolidated cheat sheet with main bullet points for several major changes to Florida law. It should be noted that the Summary Guide does not constitute legal advice. Every claim has its own set of facts, and only formal retention for the claim and formal opinion on the claim can be relied upon as legal advice. The Summary Guide is intended to guide general answers. Sections and portions of the reform will be challenged in the courts. We hope the Summary Guide Quick Facts provides you with some assistance. *Read the summary guide on page 2 ...*

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## VERDICTS, SUMMARY JUDGMENTS, APPELLATE RESULTS

**MVA; Admitted negligence Sumter County; Morgan & Morgan; 48-year old with Cervical fusion; \$2.28M sought; \$26,000 awarded; no permanency, no futures, and no pain and suffering.**



Juan Ruiz, Esq.

On February 17, 2023, Senior Partner Juan A. Ruiz and Junior Partner Christine N. Gargano obtained a defense verdict in Sumter County in a motor vehicle negligence matter styled *Plaintiff v. Timothy Tredwell*. Plaintiff filed suit against Defendant, Timothy Tredwell, as a result of alleged injuries she sustained in a motor vehicle accident on August 16, 2016. Plaintiff specifically claimed that Defendant was negligent by backing into her vehicle, causing injuries to her back, right shoulder, and neck, resulting in a cervical fusion. Plaintiff had a prior accident in 2008, resulting in injuries, but denied any ongoing issue since 2011 and denied any prior right shoulder issues. Plaintiff presented her surgeon, expert life care planner, and expert radiologist at trial. All testified her injuries were permanent; future treatment was necessary, and all treatment and injuries sustained were caused by the 2016 accident. *Read more on page 3 ...*

**Admitted Liability — Four-Day Jury Trial On Causation, Permanency And Damages; Lake County; Morgan & Morgan; \$1.8M Sought; Only \$46K Awarded for Past Medical Bills.**



Benjamin Hamilton, Esq.

On February 2, 2023, Senior Partner Juan Ruiz and Associate Benjamin Hamilton obtained a favorable result in a motor vehicle accident matter styled *Plaintiff v. Defendant Driver* in the Fifth Circuit Court in and for Lake County, Florida. Plaintiff sought damages for past and future pain and suffering, mental anguish, disability, disfigurement, inconvenience, and loss of capacity for the enjoyment of life.

The defense admitted liability and moved forward to a four-day jury trial on causation, permanency and damages. At trial, Plaintiff asked the jury for \$1.8 million. The jury returned a verdict of \$46,000 and specifically found that Plaintiff did not suffer any permanent injury. Plaintiff alleged that while she was parked exiting a shopping center, she was struck on the driver's side of her SUV by Defendant Driver's pickup truck travelling at 35mph. *Read more on page 3 ...*

The Summary Guide does not constitute legal advice. Every claim has its own set of facts, and only formal retention for the claim and formal opinion on the claim can be relied upon as legal advice. The Summary Guide is intended to guide general answers. Sections and portions of the reform will be challenged in the courts.

## Statute Of Limitations – Florida Statute 95.11

- The statute of limitations for general negligence is reduced from four to two years.
- Applies to causes of action accruing after the March 24, 2023 effective date of the new law.

## Negligent Security – Multifamily Residential Property – Florida Statute 768.0706

- Presumption against liability if the property owner follows and completes a checklist of measures, which includes substantially implementing the following:
  - Physical property safety measures to be taken on the property:
    - A security camera system at points of entry and exit that records and maintains video for at least 30 days.
    - A lighted parking lot that provides light from dusk until dawn.
    - Lighting in the walkways, laundry rooms, common areas, and porches from dusk until dawn.
    - A one inch deadbolt in each dwelling unit door.
    - A locking device on each window, each exterior sliding door, and doors not used for community purposes.
    - Locked gates with key or fob access along pool fence areas.
    - A peephole or door viewer on each dwelling unit door that does not include a window or that does not have a window next to the door.
  - A crime prevention analysis
  - Crime prevention training for all employees

## Negligent Security – Jury to Consider Fault of Assailant – Florida Statute 768.0701

- The criminal actor may be included on the verdict form.

## Medical Bills – Florida Statute 768.0427

- Limits admissibility to the amount actually paid
- For unpaid medical bills, allows a jury to consider:
  - What claimant's health insurer would have paid
  - 120% of Medicare
  - 170% of Medicaid if no Medicare rate
  - Evidence of what a third party bought the bill for
  - Similar evidence can be used for future life care plans
- Doctors and surgery centers must use CPT codes and itemize bill
- No attorney client privilege if opposing counsel refers plaintiff to doctor
- Number of referrals from opposing counsel is relevant

## Bad Faith – Florida Statute 624.155

- Arguably applicable to policies renewed or issued on or after March 24, 2023, effective date of statute. Note insurers will argue it applies immediately to all claims but that argument may not prevail
- Avoid third-party bad faith if the insurer tenders within 90 days after receiving actual notice of the claim.
- Failure to tender is inadmissible in a bad faith action.
- Statute of limitations is extended by 90 days.
- Mere negligence is insufficient to support bad faith.
- Require the insured, claimant, and representative to act in good faith concerning furnishing information, making demands, setting deadlines, and attempting to settle the claim.
- Jury may consider whether they did not act in good faith and reasonably reduce the damages awarded against the insurer.
- For multiple third-party claimants with competing claims arising out of a single occurrence, which in total may exceed the policy limits, the insurer does not commit bad faith by failing to pay all or any portion of the available policy limits to one or more of the third party claimants if, within 90 days after receiving notice of the competing claims, the insurer:
  - Files an interpleader action; or
  - Pursuant to binding arbitration agreed to by the insurer and the third-party claimants, makes the entire amount of the policy limits available for payment to the competing third-party claimants before an agreed upon qualified arbitrator at the insurer's expense who will determine apportionment

## Comparative Negligence – Florida Statute 768.81

- Florida's comparative negligence system is changed from pure comparative negligence to modified comparative negligence (except for medical malpractice). A plaintiff who is greater than 50% at fault may not recover damages.
- Arguably applies to cases filed on or after March 24, 2023, effective date of statute. Plaintiff attorneys will argue it applies only to losses occurring on or after the effective date of the statute.

## Attorney's Fees

- One Way Fees Eliminated In
- 627.9373 (suits against surplus line carriers)
- 627.428 (suit to enforce insurance policy)
- 631.70 (life insurance and annuity contracts)
- 631.926 (residential and commercial FPP)
- Auto glass cases eliminated

## PIP Attorney's Fees

- ARE RECOVERABLE in DEC/DJ after complete denial of coverage
- Denial cannot be based on ROR
- ONLY NI, AI or Beneficiary may file a DEC - NO AOB
- ARE RECOVERABLE WITH PFS
- ARE RECOVERABLE against surety bond 627.756
- MULTIPLIERS limited to rare unusual cases 57.104

## DEC Actions

- May proceed summary procedure 51.011
- Only allow attorney's fees for a complete denial 86.121
- RIGHTS MAY NOT BE ASSIGNED
- Only the NI, AI or beneficiary can file a DJ
- ROR alone is not a denial

## Offers Of Judgment / Proposals For Settlement

- Now applies to any civil action involving insurance contract 624.1552

## VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

### **Plaintiff v. Timothy Tredwell**

#### **Auto & Fleet Liability | Defense Verdict**

Attorney(s): Juan Ruiz, Esq.; Christine Gargano, Esq.

Plaintiff Counsel: Morgan & Morgan



**Christine Gargano, Esq.**

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Defendant admitted negligence. The defense argued that the low impact accident did not cause the injuries alleged, but rather the 2008 accident did; and as such, all treatment was unrelated to the 2016 accident. Defense expert radiologist and compulsory medical examination doctor testified that the Plaintiff's pre-existing injuries continued to worsen as result of the 2008 accident and was the cause of her treatment. Defense expert biomechanical expert also testified the impact from the 2016 accident could not have caused Plaintiff's alleged injuries.

Plaintiff asked the Jury to award the Plaintiff \$2.28 million for her past medicals of over \$196,000, future medicals of over \$401,000, and past and future pain and suffering of over \$1.68 million. The defense asked the jury to give the Plaintiff the benefit of the doubt and award her \$26,000 for the costs of her initial emergency room visit to get checked out. The jury agreed with the defense and returned a defense verdict of \$26,000 with no permanency, no futures, and no pain and suffering.

### **Plaintiff v. Defendant Driver**

#### **Auto & Fleet Liability | Favorable Verdict**

Attorney(s): Juan Ruiz, Esq.; Benjamin Hamilton, Esq.

Plaintiff Counsel: Morgan & Morgan



**Benjamin Hamilton, Esq.**

Associate (Orlando)

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She claimed to have sustained three herniated discs in her spine as a result of the incident. Plaintiff asked the jury for \$1.8 million using a per diem argument that Plaintiff should be awarded \$5 per hour for the two years since the accident and \$3.00 per hour for the estimated 45 years she is projected to live under Mortality Table guidelines. The jury awarded Plaintiff only \$46,000 for past medical bills. The jury found no permanent injury and did not award damages for future medical bills or pain and suffering.

[Read more Verdicts and Summary Judgments on Page 4 ...](#)

## VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

### ***Plaintiff v. Defendant Retail Store*** **Negligent Security | Defense Verdict**

**Attorney(s):** Daniel Santaniello, Esq.; Franklin Sato, Esq.;

Angelise Petrillo, Esq.

**Plaintiff Counsel:** Colgan Dominelli Law, David Strong Law



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On December 15 2022, Managing Partner Daniel Santaniello, Senior Partner Franklin Sato and Junior Partner Angelise Petrillo obtained a defense verdict in a negligent security matter styled *Plaintiff v. Defendant Retail Store*. The lawsuit arose out of a criminal assault in the parking lot of Defendant's Retail Store in Palm Beach County. Plaintiff was the victim of an attempted robbery and battery after Plaintiff had asked to be escorted out by a Defendant Retail Store's employee due to her alleged in-store interactions with both assailants. Plaintiff exited the store and was loading her vehicle in the parking lot when the two criminal assailant non-parties attacked her with a tire iron and billie club. Plaintiff was allegedly beaten 50 times while the assailants attempted to separate her from her purse. The entire attack was caught on parking lot surveillance and showed Plaintiff being hit and struck on her head, body, and arms as she was being dragged along the parking lot pavement.

Plaintiff's security expert, Al Ortenzo, attempted to testify that there was at least five prior incidents on the subject property that were substantially similar and sufficient to create both subjective and

objective foreseeability. The defense strategically combed through each of these instances with both the Plaintiff's security expert and the Defense's security expert, W. Kenneth Katsaris, before the jury, and ultimately obtained testimony from each expert that the prior incidents, i.e., shoplifting and cell phone snatching, were not sufficient to establish foreseeability of violent crimes, such as the one at issue. Mr. Ortenzo further testified and supported the defense's position that a security guard wouldn't have necessarily been on notice of the subject incident, nor would the security guard been able to prevent same.

Plaintiff claimed multiple injuries from the attack. She received multiple staples along the backside of her head and testified that she was bleeding so much that it looked like she was wearing a red wig. Plaintiff also alleged the following injuries and underwent corresponding medical treatment: Cervical, Rotator Cuffs (physical therapy), Scarring (21 "dents"/scars all over her head under her hair), Traumatic Brain Injury, Post-Concussion Syndrome, problems with speech (slurring and mispronunciation), vision (black spots left eye), hearing (constant buzzing), short term memory loss (due to early onset dementia), Depression and Post Traumatic Stress Disorder (according to Psychologist, Dr. Iglesias and Neuropsychologist, Dr. Hirsch), PTSD (also per Dr. Iglesias and Dr. Hirsch for which she is attempting to get a German Shepard companion dog trained), nausea, fatigue, and pain and suffering (both past and future). She also underwent an ACDF at C5-7 on March 27, 2014 by letter of protection with Dr. David Campf who also issued Plaintiff a 9% impairment for cervical injuries due to the subject attack. The Defense's experts all refuted Plaintiff's allegations and provided evidence and testimony that same was not as a result of the criminal attack, but due to Plaintiff's pre-existing and ongoing medical issues and conditions.

In terms of special damages, Plaintiff alleged approximately \$223,000.00 in past medical specials, \$470,257.00 in future medical specials, \$500,000.00 for pain and suffering for the incident itself, and \$4,000,000.00 (\$1,000,000.00 per decade) for future pain and suffering. The total damages requested by the Plaintiff were \$5,193,257.20. The Defense suggested approximately \$45,000.00 in special damages to the jury should they find liability.

Over the course of two weeks, more than 20 witnesses were called to this trial, including 11 experts. The defense employed two key strategies to deal with the sympathy/prejudice associated with a plaintiff that was a victim of a crime and a reasonable pain and suffering. These strategies were employed in jury selection and closing arguments, and helped deliver a verdict wherein the jury gave a complete defense verdict.

## VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

### ***Plaintiff v. Jake Piekarski and Kimberly Piekarski*** **Auto & Fleet Liability | Favorable Verdict**

**Attorney(s):** George J. Veith, Esq.; Valerie Edwards, Esq.

**Plaintiff Counsel:** Syfrett, Dykes & Furr and Seymore Justice



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### **MVA-Pedestrian Struck Tried on Damages Only - Bay County; Syfrett, Dykes & Furr and Seymore Justice; 21-year-old Pedestrian Struck; \$9.7M sought, \$1.2M awarded.**

Partners G. John Veith and Valerie Edwards obtained a favorable verdict on January 21, 2023 in a motor vehicle accident in Bay County involving a pedestrian struck on sidewalk in the matter styled *Plaintiff v. Jake Piekarski and Kimberly Piekarski*. The case had been pulled from another well-known national defense firm and reassigned to Luks & Santaniello for trial. By the time of the reassignment, critical deadlines had been missed, including the deadline for disclosure of experts. Despite these setbacks, the defense succeeded in retaining experts for trial, although the experts were not permitted to conduct an in-person physical examination of the Plaintiff. The case was tried on damages only. Plaintiff waived her past medical expense and past and future wage loss claims. Due to a pretrial ruling by the court, the defense was not permitted to offer evidence that Norway, where plaintiff continued to reside, has socialized medicine.

At trial, Plaintiff's counsel asked the jury to award \$9.7 million, including \$3.4 million in future medical care costs, and \$6.3 million in past and future pain, suffering, disability, disfigurement and loss of enjoyment of life. The jury returned a total verdict of \$1.2M.

The Plaintiff was a 21-year-old female exchange student attending the University of Minnesota from Kristiansand, Norway.

Plaintiff, who had come to Panama City for spring break, was walking with two of her friends on the sidewalk at the corner of an intersection in order to cross the street to her hotel when she was struck by a motor vehicle. Surveillance video obtained from a nearby establishment captured the accident and showed the Plaintiff was thrown into the air and landed on the concrete approximately 15 to 20 feet away. The accident was caused by the defendant, Jake Piekarski, who fell asleep at the wheel after having driven all night across the country with some friends for spring break. Alcohol and drugs were not a factor in causing the accident. There was no legitimate basis to argue Plaintiff was comparatively at fault because the evidence showed she was properly on the sidewalk at the time of the accident. Prior to trial, the defendants admitted liability and the case was tried on the damages issues only.

As a result of the impact, Plaintiff claimed she sustained a permanent traumatic brain injury with post-concussive symptoms of impaired memory, attention span and language abilities. Plaintiff sustained a left orbital skull fracture, a full-thickness tear of her left anterior cruciate ligament, soft tissue injuries to her left shoulder and left hip. Plaintiff also claimed anxiety, depression and post-traumatic stress disorder.

Plaintiff's experts testified that, while an initial CT scan failed to show an organic injury to the brain from the impact, a subsequent MRI revealed a lesion on the right frontal lobe. Plaintiff's experts claimed this lesion was a result of the accident, dismissing the radiologist's finding that it could have been evidence of subcortical dysplasia, a congenital condition. Plaintiff's doctors also opined that a DTI (diffuse tensor imaging) scan showed Plaintiff's brain activity at more than two standard deviations downward. Plaintiff's experts opined that their diagnosis of a permanent brain injury was based on the surveillance video of the accident together with the result of the DTI. Neuropsychological testing conducted in Norway, and in Plaintiff's native language, failed to reveal any significant cognitive impairments. However, Plaintiff presented evidence of subsequent neuropsychological testing performed by Kevin Groom, a neuropsychologist hired by plaintiff's counsel, which showed impairment, mostly in categories of testing involving language and speech function. The defense called Dr. Michael Herkov, who testified that the neuropsychological testing performed by Dr. Groom would be expected to include some findings of impairment because the testing was not conducted in Plaintiff's native language.

Plaintiff's left orbital fracture healed with conservative treatment and her left ACL was surgically repaired in Norway. Plaintiff's retained orthopedic surgeon provided opinions that she would likely develop early onset osteoarthritis in her left knee, which would likely require her to need a total knee replacement at a young age, followed by

## VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

a revision surgery. The defense presented testimony of Dr. Troy Lowell, who opined that there was no medical evidence to support this claim. Dr. Lowell testified total knee replacements are typically only needed after ACL reconstructive surgery where there is also evidence of a meniscal injury. Neither the treating radiologist nor the surgeon in Norway had found evidence of any meniscal injury on the MRI scan.

Plaintiff also presented medical testimony from Dr. Deborah Simkin and Dr. Kevin Groom that she continued to suffer from PTSD as a result of the impact. The defense showed that Plaintiff had not been diagnosed with PTSD until 2018, one month after she had been the victim of a violent sexual assault, according to legal records from a Norwegian court, and based on medical records pre- and post-assault.

Plaintiff called Dr. Craig Lichtblau and Dr. Bernard Pettingill, Jr. to testify regarding her future medical care needs and expenses. Dr. Lichtblau opined that Plaintiff would need orthopedic, neurological and pain management care for life, including two surgeries on her left knee, injections and other pain management for her low back due to instability in her left knee, plastic surgery for her scarring, and in-home nursing care due to an anticipated early onset of dementia. Dr. Pettingill testified the present value of her future medical care was \$3.4 million.

### **Plaintiff v. Neil Bailey and Bartels Forest Products** **Auto & Fleet Liability | Favorable Verdict**

Attorney(s): Benjamin Pahl, Esq.; Nora Bailey, Esq.

Plaintiff Counsel: Dan Newlin Injury Attorneys



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**Nora Bailey, Esq.**

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**Admitted Liability Brevard County; Dan Newlin Injury Attorneys; 27-year-old with Lumbar Spine Surgery; \$750,000 sought, only \$48,993 awarded; no future medical treatment or pain & suffering awarded.**

On January 27, 2023, Stuart Managing Partner Benjamin Pahl and Junior Partner Nora Bailey recently received a great verdict in Brevard County. The matter styled *Plaintiff v. Neil Bailey and Bartels Forest Products* involved admitted liability with a dump truck and trailer that had rear-ended Plaintiff's car. Plaintiff was 27 years old, with no prior injuries or treatment. She underwent a lumbar spine surgery with \$118K in medical bills. At trial, her treating neurosurgeon recommended approximately \$750K in future medical treatments, including an ACDF and two-level lumbar fusion. We represented a lumber company and its driver who were in town from Illinois doing clean-up after Hurricane Irma. Our defense focused on undermining the doctor's credibility using the fact that he often accepted far less for patients who were not involved in litigation than the charges he'd billed under a Letter of Protection to the Plaintiff. We also focused on surveillance of the Plaintiff, showing the jury that her claimed damages were inconsistent with her actions.

In closings, Plaintiff's counsel — Lead Trial Counsel for Dan Newlin — asked for \$750K for future meds, \$118K for past meds, and an unlimited number for pain and suffering. After a five-day trial and deliberating for over three hours, the jury came back with an award for past medicals of \$48K — specifically excluding all treatment and surgery from her LOP neurosurgeon. They awarded no futures, no permanency, and no pain and suffering.

Read more Verdicts and Summary Judgments on Page 7 ...

## VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

### **Laura Arroyo v. Universal Property & Casualty Ins. Co.**

#### **First-Party Property | Defense Verdict**

Attorney(s): Otto Espino, Esq.; Jonah Kaplan, Esq.

Plaintiff Counsel: Rosenfeld & Nitch, PA, Pita, Weber, Del Prado, Quintana Law, PA



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#### **Alleged Water Leak — Broward County — Defense Verdict, Rosenfeld & Nitch, PA, Pita, Weber, Del Prado, Quintana Law, PA.**

After a three-day jury trial, on December 15, 2022, Miami Senior Partner **Otto Espino** and Fort Lauderdale Senior Partner **Jonah Kaplan** obtained a full defense verdict on behalf of Universal Property and Casualty for a covered claim in a First-Party Property matter styled *Laura Arroyo v. Universal Property & Casualty Ins. Co.*

The lawsuit arose due to an alleged water leak sustained by Universal's Insured (Laura Arroyo) to a hallway bathroom that allegedly damaged laminate flooring in the bathroom, hallway and the adjoining bedrooms. After receipt of the claim, Universal adjusted the claim and extended coverage. Prior to the lawsuit, Universal paid Plaintiff for Coverage A Dwelling in the gross amount of \$16,168.73. During the pre-suit claim adjustment period, Plaintiff provided a Sworn Proof of Loss ("SPOL") indicating a demand of \$67,665.08. At trial, Plaintiff presented another estimate for a reduced amount. The Plaintiff relied upon this contractor as her damage expert.

The evidence was presented that Universal complied with the Policy payment conditions by issuing payment for the full amount of damages. Mr. Espino successfully argued that the Insured/Plaintiff was not entitled to any further compensation under the Policy. After two hours of deliberations, the jury fully agreed and entered a full defense verdict.

### **Opus Condominium Association v. Islamorada Condominiums, LLC, et al**

#### **Construction Defect | Final Summary Judgment**

Attorney(s): Christopher Burrows, Esq.; Hayley Newman, Esq.; Gavin McLean, Esq.

Plaintiff Counsel: Ball Janik LLP



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Boca Raton Co-Managing Partner **Christopher Burrows** authored Defendant's Motion for Summary Judgment with assistance from Senior Associate **Gavin McLean** in *Opus Condominium Association v. Islamorada Condominiums, LLC, et al.*, a case involving construction and design defects related to the construction of an 11-story, 53 Unit condominium building located in Daytona Beach Shores, Florida (Volusia County). The Plaintiff filed a lawsuit against, amongst others, the original developer, Islamorada Condominiums, more than ten years after the date construction was completed and the certificate of occupancy was issued, which ran afoul of the Statute of Repose contained within Florida Statute section 95.11(3)(c). The major issue in the case was whether Islamorada Condominiums was considered the "owner" for purposes of triggering the statute of repose given that there was no dispositive case law requiring a court to grant Summary Judgment in Favor of Islamorada Condominiums. On May 18, 2022, **Gavin McLean** presented oral argument on Islamorada Condominiums' Motion for Summary Judgment based on the Statute of Repose, wherein the Court reserved ruling. Thereafter, on October 21, 2022, the Court held a second hearing on the Motion for Summary Judgment and Senior Partner **Hayley Newman** continued oral argument on behalf of Islamorada Condominiums, which resulted in the Court ultimately granting Final Summary Judgment in favor of Islamorada Condominiums.

## VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

### **Plaintiff v. Smith Transportation, Inc., et al.** **Trucking / Personal Injury | Motion to Dismiss** **Granted**

Attorney(s): Nora Bailey, Esq.

Plaintiff Counsel: Hoskins Turco Lloyd and Lloyd



**Nora Bailey, Esq.**

Junior Partner (Stuart)

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Stuart Partner **Nora Bailey** prevailed on a Motion to Dismiss in a trucking/personal injury matter styled *Plaintiff v. Smith Transportation, Inc.* Our client, a transportation broker, was sued for personal injuries after the Plaintiff was injured while unloading a truck carrying a load that our client had brokered. We obtained a dismissal of the counts against our client via a Motion to Dismiss. Our Motion was based upon the fact that the tort claims against our client arose from services provided as a transportation broker and were accordingly preempted by the Federal Aviation Administration Authorization Act (FAAAA). The trial court agreed and dismissed the Plaintiff's claims against Smith Transportation in their entirety.

### **Maria Mejia v. Defendant Insurance Company** **First-Party Property | Dismissal/Walk-Away**

Attorney(s): Jeremy Fischler, Esq.

Plaintiff Counsel: Your Insurance Attorney



**Jeremy Fischler, Esq.**

Junior Partner (Fort Lauderdale)

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Partner **Jeremy Fischler** obtained a favorable result in a first-party property matter styled *Maria Mejia v. Defendant Insurance Company* in the Circuit Court of Broward County Florida. Plaintiff reported a Hurricane Irma claim to Defendant in 2019, and Defendant denied the claim when the field adjuster could not identify a storm created opening.

Defendant pursued two primary defenses in the matter — first, that there was no storm created opening, and second, that late reporting

prejudiced the investigation of the claim. In litigation, the Defendant was able to establish that while the loss was not reported until 2019, Plaintiff was aware of the damage in 2017. In that two-year period the Plaintiff made repairs to the Property, including the roof. Therefore, Defendant was able to argue that the investigation was prejudiced. Defendant was also able to document the Plaintiff's continued inability to comply with discovery requirements.

A hearing on the Motion for Summary Judgment was set for February 2023, with trial set for March 2023. Based on the Motion for Summary Judgment, combined with the well-documented inability of Plaintiff to comply with discovery, Plaintiff agreed to dismiss the matter with no money paid by Defendant.

### **Imperial Lakes Group, LLC et al v. Defendant** **Insurance Company**

#### **First-Party Property | Dismissal with Prejudice**

Attorney(s): Anthony Perez, Esq.; Alec Tejjelo, Esq.

Plaintiff Counsel: Tabares Law, P.A.



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**Alec Tejjelo, Esq.**

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Miami Senior Partner **Anthony Perez** and Senior Associate **Alec Tejjelo** secured a dismissal with prejudice in the matter styled *Imperial Lakes Group, et al v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for its claim for damage to its property resulting from Hurricane Irma. Defendant filed its Motion for Summary Judgment, arguing that Plaintiff lacked the requisite insurable interest at the time of loss. In advance of the hearing on Defendant's motion, Plaintiff dismissed the case.

## VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

### **Stephen Woodson v. Defendant Insurance Company**

#### **First-Party Property | Dismissal with Prejudice**

Attorney(s): Anthony Perez, Esq.; Alec Teijelo, Esq.

Plaintiff Counsel: Feldman & Lopez, P.A.



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**Alec Teijelo, Esq.**

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Miami Senior Partner Anthony Perez and Senior Associate Alec Teijelo secured a dismissal with prejudice in the matter styled *Stephen Woodson v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for his claim resulting from a plumbing leak. Following the deposition of the insured, during which Mr. Teijelo secured favorable testimony in support of Defendant's position that the damage at issue was pre-existing, Plaintiff dismissed the case.

### **Jose M. Hernandez, et al v. Defendant Insurance Company**

#### **First-Party Property | Dismissal with Prejudice**

Attorney(s): Anthony Perez, Esq.

Plaintiff Counsel: The Pardo Law Firm, P.A.

Miami Senior Partner Anthony Perez obtained a dismissal with prejudice in the matter styled *Jose M. Hernandez, et al v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for his claim for damage to his property resulting from Tropical Storm Eta. Defendant filed its Motion for Summary Judgment, based on the policy's exclusion for damage caused by wear and tear, and the lack of any evidence of a peril created opening in the roof that allowed rain water to enter the property. On the eve of the hearing on Defendant's motion, Plaintiff dismissed the case.

### **Liberty Extraction & Drying, LLC a/a/o Ana Chavarria v. Defendant Insurance Company**

#### **First-Party Property | Dismissal**

Attorney(s): Anthony Perez, Esq.; Marie Macias, Esq.

Plaintiff Counsel: Property Litigation Group



**Marie Macias, Esq.**

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Miami Senior Partner Anthony Perez and Associate Marie Macias secured a dismissal in the matter styled *Liberty Extraction & Drying, LLC a/a/o Ana Chavarria v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for Plaintiff's claim for payment relating to services rendered at the insured property pursuant to an assignment of benefits. Defendant served Plaintiff with its Motion for Sanctions Pursuant to Florida Statute §57.105, arguing that the loss, an alleged plumbing leak, was not a covered cause of loss specifically enumerated in the named perils insurance policy, and thus, Plaintiff's claim was frivolous in nature. Upon receipt of the motion, Plaintiff dismissed the case.

### **Paramount Property Restoration Corp a/a/o Katuska Hernandez v. Defendant Insurance Company**

#### **First-Party Property | Dismissal with Prejudice**

Attorney(s): Anthony Perez, Esq.; Marie Macias, Esq.

Plaintiff Counsel: The Pardo Law Firm, P.A.

Miami Senior Partner Anthony Perez and Associate Marie Macias obtained a dismissal with prejudice in the matter styled *Paramount Property restoration Corp a/a/o Katuska Hernandez v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by not paying the full amount of Plaintiff's invoice for services rendered at the insured property pursuant to an assignment of benefits. Defendant filed its Motion for Summary Judgment, maintaining the position that it had properly issued payment pursuant to the statutory limit. In advance of the hearing on Defendant's motion, Plaintiff dismissed the case.

## VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

### **AAA Restoration, LLC a/a/o Wilfredo Perez v. Defendant Insurance Company**

#### **First-Party Property | Dismissal with Prejudice**

**Attorney(s):** Anthony Perez, Esq.; Taylor Montanari, Esq.

**Plaintiff Counsel:** Your Insurance Attorney, PLLC



**Anthony Perez, Esq.**

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**Taylor Montanari, Esq.**

Associate (Miami)

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Miami Senior Partner Anthony Perez and Associate Taylor Montanari secured a dismissal with prejudice in the matter styled *AAA Restoration, LLC v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for its claim for payment relating to services rendered at the insured property pursuant to an assignment of benefits executed more than three years after Hurricane Irma. Defendant filed its Motion to Dismiss, and served its Motion for Sanctions Pursuant to Florida Statute §57.105, contending that Plaintiff's claim was barred by the statute of limitations. Defendant relied on Florida Statute §627.70132, which requires notice of a hurricane claim be provided within three years of the date of loss. As Plaintiff's purported assignment was executed outside of those three years, Plaintiff's claim was barred. Upon receipt of the motions, Plaintiff dismissed the case.

### **Quick Mold Lab, Inc. a/a/o Tomasa Raffo v. Defendant Insurance Company**

#### **First-Party Property | Dismissal with Prejudice**

**Attorney(s):** Anthony Perez, Esq.; Alec Teijelo, Esq.

**Plaintiff Counsel:** Your Insurance Attorney, PLLC

Miami Senior Partner Anthony Perez and Senior Associate Alec Teijelo obtained a dismissal in the matter styled *Quick Mold Lab, Inc. a/a/o Tomasa Raffo v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for Plaintiff's claim for payment relating to services rendered at the insured property pursuant to an

assignment of benefits. Defendant filed its Motion for Summary Judgment, making the argument that the assignee stands in the shoes of the assignor, that the insured/assignor had not complied with the post-loss duties imposed by the policy, and that the services provided by Plaintiff would only be covered if the costs were a result of a covered peril. In advance of the hearing on Defendant's motion, Plaintiff dismissed the case.

### **Top Mold Solutions, LLC a/a/o Tomasa Raffo v. Defendant Insurance Company**

#### **First-Party Property | Dismissal**

**Attorney(s):** Anthony Perez, Esq.; Alec Teijelo, Esq.

**Plaintiff Counsel:** Your Insurance Attorney, PLLC



**Alec Teijelo, Esq.**

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Miami Senior Partner Anthony Perez and Senior Associate Alec Teijelo obtained a dismissal in the matter styled *Top Mold Solutions, LLC a/a/o Tomasa Raffo v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for Plaintiff's claim for payment relating to services rendered at the insured property pursuant to an assignment of benefits. Defendant filed its Motion to Dismiss, challenging the validity of the purported assignment, contending that it failed to comply with Florida Statute §627.7152, and was therefore invalid and unenforceable; thus, Plaintiff lacked standing to file suit. On the eve of the hearing on Defendant's motion, Plaintiff dismissed the case.

Read more Verdicts and Summary Judgments on Page 11 ...

## VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

### *Linder, Charles and Paula v. Defendant Insurance Company*

#### First-Party Property | Summary Judgment

Attorney(s): Taylor M. Claudon, Esq.

Plaintiff Counsel: C. Brock Law PLLC



#### **Taylor Claudon, Esq.**

Senior Associate (Fort Lauderdale)

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Senior Associate Taylor Claudon obtained a favorable result in a first-party property matter styled *Linder, Charles and Paula v. Defendant Insurance Company*. Plaintiff filed suit against Defendant Insurance Company alleging Defendant breached the insurance policy by not providing coverage for alleged damages to the Plaintiff's property. The Plaintiff specifically claimed that on July 18, 2021, a windstorm occurred at the Plaintiff's property, causing damage to the roof and subsequent water damages to the interior of the property. However, after Defendant received Plaintiffs' insurance claim, Defendant conducted an inspection of the Plaintiffs' property and concluded that the alleged damages to the property were caused by wear, tear, and age-related deterioration of the roof, which are not covered under the Plaintiffs' homeowners insurance policy.

Defendant filed its Motion for Summary Judgment, arguing that Plaintiff bears the burden to establish that a windstorm first damaged the property, causing an opening, which rain entered, and damaged the interior of the Plaintiffs' property. The Defendant further argued that the Plaintiff cannot establish that the roof was damaged by a covered peril under the homeowners' insurance policy. In addition, the Defendant argued that the only visible damage to the roof was the result of wear, tear, and age-related damage, which is excluded under the Plaintiffs' policy. Therefore, Defendant argued that Plaintiff cannot establish a covered loss under the Policy. The Court agreed with Defendant and entered an Order for Final Summary Judgment in favor of the Defendant. Plaintiff initially demanded **\$85,000**.

### *Jeune, Thalerand v. Defendant Insurance Company*

#### First-Party Property | Dismissal with Prejudice

Attorney(s): Taylor M. Claudon, Esq.

Plaintiff Counsel: Roger A. Alvarez, P.A.

Senior Associate Taylor Claudon obtained a favorable result in a first-party property matter styled *Jeune, Thalerand v. Defendant Insurance Company*. Plaintiff filed suit against Defendant Insurance Company, alleging Defendant breached the insurance policy by not providing coverage for alleged damages to the Plaintiff's property. The Plaintiff specifically claimed that on July 10, 2021, a supply line in the kitchen leaked, causing water damages to numerous areas of Plaintiff's property. However, after Defendant Insurance Company received Plaintiff's insurance claim, Defendant had an engineer conduct an inspection of the Plaintiff's property and concluded that the alleged damages to the property were the result of constant and repeated seepage. In the Plaintiff's deposition, she testified that she had noticed the leak eight to ten months prior to July 10, 2021.

Defendant filed its Motion for Summary Judgment, arguing that the policy of insurance does not provide coverage for damages caused by constant or repeated seepage or leakage of water over a period of weeks, months, or years, unless the seepage or leakage was unknown to all insureds and is hidden within the walls or ceilings of the property. The Defendant further argued that based upon the Plaintiffs' testimony, the kitchen supply line was constantly leaking water over a period of eight to ten months and the leakage was known to her and not hidden. Therefore, the Defendant argued that the reported damage to the Plaintiff's property is not covered under the insurance policy.

On the eve of the hearing to argue Defendant's Motion for Summary Judgment, Plaintiff filed a Notice of Voluntary Dismissal with Prejudice. The Defendant had an expired Proposal for Settlement for \$500 inclusive of attorney's fees and costs. Plaintiff initially demanded **\$25,460**.

## VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

### *Plaintiff v. Imperial Lakes Estates Condominium Association, Inc. et al.*

#### **Premises Liability | MSJ**

Attorney(s): Anthony J. Petrillo, Esq.

Plaintiff Counsel: Morgan & Morgan



**Anthony J. Petrillo, Esq.**  
Managing Partner (Tampa)  
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On March 28, 2023, Tampa Managing Partner Anthony Petrillo obtained a summary judgment in a premises liability matter styled *Plaintiff v. Imperial Lakes Estates Condominium Association, Inc. et al.* Plaintiff, as an employee of a landscaping company hired by our client, an HOA, tripped and fell over cable wire. Plaintiff underwent several surgeries and incurred a lien of nearly \$300,000. Plaintiff's only demand to the insured was for policy limits of \$1 million. In October of 2022, we served a proposal for settlement with our motion for summary judgment. Plaintiff rejected the proposal for settlement. At the summary judgment hearing, we argued that the Condominium Association was immune from tort liability under Florida's worker's compensation law as Plaintiff's statutory employer and was therefore entitled to judgment as a matter of law. Judge Sniffen in Manatee County agreed and dismissed the action with prejudice. Defendant's motion for Attorney's Fees and taxation of costs are pending pursuant to a rejected proposal for settlement.

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## The Gavel Grub Club™ Monthly Webinar Series

Upcoming monthly webinars in the Grub Club series that you don't want to miss.

Co-produced by Luks & Santaniello, the webinars feature vetted Law Firm members of The Gavel from various states collectively discussing their jurisdiction and the topic. Please join us for the upcoming webinars. If you would like to be added to the webinar invite distribution list, please email [Millie Solis-Loredo](mailto:Millie.Solis-Loredo@luks.com) of Luks & Santaniello. View the schedule on our [website](#).

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The Gavel launched **The Gavel Roundtable™** to provide private, panel discussions for the clients of its law firm members. All members of the Roundtable have executed NDAs with commitments to destroy all materials upon conclusion of your confidential virtual session. The panel reviews the information submitted by the industry client and together with the client discusses issues with legal strategy, view of handling exposure, settlement analysis, potential verdict value and any specific questions or challenges the client wants discussed. Sessions convene on Fridays at 11:30 am ET for approximately 90 minutes. Instructions to apply for a confidential session are available through this link on The Gavel website, or you may submit your request to Luks & Santaniello.

18 MAY		<b>Litigation Funding (May 18, 2023)</b> <i>Dan Cray (IL), Dan Santaniello (FL), Eric Inglis (NJ), Brett Clark (MT), Paige Hall (NE / IA), Chuck Bailey (WV)</i>
15 JUN		<b>CD 101 - Advanced Risk Transfer Options (June 15, 2023)</b> <i>Brandon Jones (SC), Sean Patrick (NC), Justin Taylor (WV), Hayley Newman (FL)</i>
20 JUL		<b>Admitting Smartphone Data into Evidence at Trial (July 20, 2023)</b> <i>Joe Aldridge (ID), Meghan L. Theodore (FL), Kate Adams (VA), Clark Monroe (MS)</i>
03 AUG		<b>Defect Claims   Design v. Construction – Who Is Liable And Who Is Covered? (August 3, 2023)</b> <i>Hayley Newman (FL), Janet Brooks Holmes (SC), Mark Franco (ME   NH), Brandon Jones (SC), Clark Monroe (MS)</i>
17 AUG		<b>Experts: Use or Lose (August 17, 2023)</b> <i>Janet Holmes (SC), Allison Janowitz (FL), Mark Franco (ME   NH), Lily Nierenberg (CO), Richard Underwood (TN), Adam Fitzpatrick (WI)</i>
07 SEPT		<b>Dissecting TBI Claims Can Be Traumatic! A Close Look at the Traumatic Brain Injury Claim (September 7, 2023)</b> <i>Ashley Brown (KY), Conley Knott (FL), Bill Austill (AL), Amy Dunn Hotard (LA)</i>
21 SEPT		<b>Preservation and Spoliation (September 21, 2023)</b> <i>Ashley Brown (KY), Dan Santaniello (FL), Todd Goodman (DE), David Dayton (VA), Phil Gulisano (NY), Jennifer Bruder (NY)</i>
05 OCT		<b>Defending Product Liability Claims - A Panel Discussion About Potential Defendants And Obvious Liability Standards (October 5, 2023)</b> <i>Marty Pujolar (WA), Paul Michienzie (MA), Bob Veon (AR), Meghan Theodore (FL)</i>
19 OCT		<b>Settlement and Mediation Training (October 19, 2023)</b> <i>Marty Pujolar (WA), Heidi Goebel (UT), Jeff R. Benson (FL), Wade Quinn (TX)</i>
16 NOV		<b>Work Comp 101 and Resource Charts (November 16, 2023)</b> <i>Chelsie D. Springstead (WI), Rey Alvarez (FL), Bill Pipkin (AL), Amy Dunn Hotard (LA), Tyler Laffin (NE / IA)</i>
30 NOV		<b>Saying “Yes” Can Be Costly – Preparing the Corporate Witness in a Negligent Hiring (November 30, 2023)</b> <i>Joe Catalano (SC), Katherine McKinley (FL), Daniel Deitch (NFI Industries), Barry Montgomery (VA), Eric Rudich (Blueprint Trial), Gene Zipperle (KY)</i>
14 DEC		<b>Survey on the Treatment in Various States of the ‘YOUR WORK’ Exclusions to a GL Policy (December 14, 2023)</b> <i>Daniel Santaniello (FL), Ashley Graham (FL), Paul Ricard (OH), Lance Cook (OK), Clark Monroe (MS), Naomi Doraisamy (ID)</i>

# TORT REFORM COMMITTEE

The Tort Reform Committee and Legislative Action Team stays abreast of legislative reforms of importance to the clients we serve and takes action to support our commitment to fight rampant litigation through legislative efforts.

Our approach is multifaceted. We advocate directly in Tallahassee for reforms by testifying before the legislature on behalf of our firm and on behalf of major associations. We provide regular updates to our clients regarding pending legislative issues and important bill tracking. We also provide balance to the broadcasting campaign of the Plaintiffs' bar by contributing our thoughts on tort reform to the media, appearing in print and film.

The Committee is one component of our comprehensive approach that provides our clients with legal services to help manage risk, reduce exposure and restore fairness lost in the current litigation climate. Visit the [Tort Reform Committee page](#) on our website.



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