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LEGAL UPDATE

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SOME TRIAL JUDGES IN FLORIDA ARE RETROACTIVELY APPLYING TORT REFORM TO PENDING CASES — PROPOSED RECOMMENDATIONS AND CONCERNS

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

On March 24, 2023, Governor DeSantis signed into law House Bill 837, which contains broad, sweeping tort reform that was outlined in our Law Alert published on the same date. These changes include, but are not limited to, the adoption of mixed comparative fault under Florida Statute section 768.81(6) and an express definition of the evidence admissible to establish medical damages in personal injury and wrongful death cases under Florida Statute section 768.0427.

Usually, new statutes that affect substantive rights are applied prospectively (after the date of the statute), but changes that involve procedure can be applied instantly, or otherwise retroactively on all pending cases. There has been a battle developing at the trial court level over whether mixed comparative fault (over 50%) and evidence admissible on medical specials are procedural or substantive. The language in House Bill 837 appeared to imply that the tort reform might only apply to cases filed after March 24, 2023. Thus, there was a rush to file thousands of cases to "beat" the statute. This influx has plagued the courts, lawyers and insurers with new suits and it may all have been for nothing. *Read more on page 2 ...*

INSIDE LEGAL UPDATE

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VERDICTS

Sexual Misconduct Liability; Six-day jury trial (St. Lucie County); Plaintiff requested approx. $500,000 in damages — the Jury returned a Defense Verdict

Scott Kirschbaum, Esq.

On May 15, 2023, Partners Scott Kirschbaum, Esq., and Elizabeth Jimenez, Esq., obtained a complete defense verdict after a six-day jury trial in a sexual misconduct matter styled *Plaintiff v. Shawn Hearing d/b/a Therapeutic Touch Healing Center and Shawn Hearing, individually*. The lawsuit arose out of a claim by the Plaintiff, a then 24-year-old woman who was studying to be a massage therapist herself, wherein she claimed that Defendant, a licensed massage therapist in Ft. Pierce, performed a massage on her and injured her neck and shoulder by jamming his knee into her neck and shoulder. The Defendant massage therapist denied having performed a massage on the Plaintiff and insisted that he performed the massage on another willing patient as demonstration for the Plaintiff to learn massage techniques per her request to learn. *Read more on page 3 ...*

Alleged Nursing Home Negligence; Plaintiff's demand at trial was $350,000; Jury returned a Defense Verdict

Michael Schwartz, Esq.

On July 24, 2023, Managing Partner Michael J. Schwartz, Esq., and Senior Associate Frank Lacourt, Esq., obtained a Defense Verdict in a Nursing Home Negligence matter styled *Plaintiff, as Personal Representative of the Estate of Juliana Consuelo Burdie, Deceased v. Jackson Plaza, Inc. d/b/a Jackson Plaza Nursing and Rehabilitation Center*. Plaintiff filed suit against the Defendant alleging nursing home negligence and violation of resident's rights. The Defendant claimed that the Nursing Home staff failed to follow the attending physician's orders to do a chest X-ray STAT, failed to timely report a lab result to the attending physician, and failed to recognize the resident's change in condition, resulting in the resident's death. The resident in question was a 97-year-old admitted at Jackson Plaza from Memorial Hospital West after an 11-day admission for pneumonia and generalized weakness. The resident also had a diagnosis of untreated leukemia. The resident was admitted at Jackson Plaza for less than 24 hours. *Read more on page 3 ...*

SOME TRIAL JUDGES IN FLORIDA ARE RETROACTIVELY APPLYING TORT REFORM TO PENDING CASES – PROPOSED RECOMMENDATIONS AND CONCERNS, *CONT.*

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

Recently, some trial courts have ruled that portions of the reform (mixed comparative and medical specials evidence) are in fact procedural and should therefore be applied on all matters, regardless of filing date or date of loss. These rulings permit defendants to amend their defenses and engage in discovery in conformity with sections 768.81(6) and 768.0427. Some authority for these rulings are set forth below:

Sharon M. Sapp; Stacy M. Chaney, et al., v. James Brooks; J.B. Coachline, Inc. 17-CA-5664 (Hillsborough County; May 19, 2023) (limiting damages to the amounts paid regardless of payor and permitting evidence of health care coverage reimbursement rates, and Medicare/Medicaid if no health insurance, pursuant to section 768.0427(2));

Jacie Hollingsworth v. Debra Muntz, 21-CA-07113 (Hillsborough County, June 14, 2023) (limiting damages to the amounts paid regardless of payor and permitting evidence of health care coverage reimbursement rates, and Medicare/Medicaid if no health insurance, pursuant to section 768.0427(2));

Hunter Goeb v. Johnny Lunford and CDS Manufacturing, Inc., 2020 CA 1616 (Leon County; May 22, 2023) (the court, in reliance on the decision in Sapp, entered an order limiting damages to the amounts paid regardless of payor and permitting evidence of health care coverage reimbursement rates, and Medicare/Medicaid if no health insurance, pursuant to section 768.0427(2));

Lisa Schmitt v. Rosalee M. Anderson, et al.; CACE 21020943 (Broward County; June 9, 2023) (court allowed the defendant to amend her defenses to include mixed comparative fault to comport with section 768.81(6). The order also limits damages to the amounts paid regardless of payor and permits evidence of health care coverage reimbursement rates, and Medicare/Medicaid if no health insurance, pursuant to section 768.0427(2));

Donna McIntosh v. North Broward Hospital District d/b/a Broward Health Medical Center (Broward County; June 12, 2023) (in which the court permitted the defendant leave to amend its affirmative defenses to assert mixed comparative fault under section 768.81(6). The order also limits damages to the amounts paid regardless of payor and permits evidence of health care coverage reimbursement rates, and Medicare/Medicaid if no health insurance, pursuant to section 768.0427(2)).

Where are we now and what are the recommendations going forward? Some courts have ruled the opposite, finding that the new statutes do not apply to cases filed before March 24, 2023. So where does that leave us today? What strategies do we need to employ **now** to protect our clients and preserve our rights under the new laws? This is not an easy question. Trial judges orders will be appealed. An appellate decision will have the most persuasive authority, but it may be years before it works its way through the system. Florida has six district courts of appeal so we could even have disagreement among the appellate courts that would need to be resolved by the Florida Supreme Court. All in all, it will take several years for this to play out on cases that were pending prior to March 24. The appellate ramifications could be significant. Thus, strategies should be carefully analyzed on a case-by-case basis.

After careful review of both sides of the argument, we have decided that as a firm the tort reform benefits our clients. As such, we should pursue amendments of answers on pending cases to raise these defenses when these defenses can help or bolster our defense. We expect this will be met with harsh recourse as plaintiff's lawyers will fight tooth and nail to oppose these amendments. Already we are seeing 57.105 "sanction" threats and motions saying we have no basis to make these arguments, even in the face of several judges and court orders that have agreed with our position. As such, we will continue to monitor this important issue as it makes its way through the courts and raise all affirmative defenses and evidentiary issues that are permitted in cases filed both before and after the effective date of the legislation.

Questions? If you have questions over this strategy or concerns with the appellate issues that could be raised, please feel free to reach out and make this a part of the conversation on your case. Luks and Santaniello, LLC.'s Tort Reform Committee will continue to monitor and provide relevant updates regarding developments in the applications of these new laws.

As a firm, we will zealously defend our clients. For questions or further assistance with your Florida matters, please reach out to Managing Partner Daniel Santaniello and visit our Tort Reform Committee page for more information, resources and pertinent legal updates.

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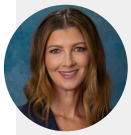

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VERDICTS, *CONT.*

Plaintiff v. Shawn Hearing d/b/a Therapeutic Touch Healing Center and Shawn Hearing, individually
Sexual Misconduct Liability | Defense Verdict
Attorney(s): Scott Kirschbaum, Esq.; Elizabeth Jimenez, Esq.
Plaintiff Counsel: Trelles & Bichler, LLC

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As an aside, the Defendant and the Plaintiff had known each other for years, and in fact, the Plaintiff resided in the Defendant's home with her sister after Plaintiff's mother died. The jury was permitted to know those limited facts about the prior relationship.

The Defendant massage therapist admitted that even if he had performed a massage on the Plaintiff, he would never have used his knee on the patient's body. Massage therapist expert, Nancy Porambo, LMT, also testified that the use of a knee during a massage would be below the standard of care and it did not make sense that the Plaintiff would be so injured during such a massage but not seek immediate medical attention. Notwithstanding, after refusing conservative treatment from one doctor, the Plaintiff then came under the care of orthopedic surgeon, Dr. Thomas Roush. Dr. Roush, after believing the interpretations of an MRI finding disc herniations and bulges at the C3-4, C4-5, C5-6, C6-7, put the Plaintiff through several procedures, most of which had been unsuccessful by his own admission. They included epidural injections, complete disc replacements, and rhizotomy to the tune of nearly $306,000.00 in medical costs. The jury was not pleased with the charges from Dr. Roush, who also had a blended medical bill containing his medical charges for the Plaintiff as well as his "legal" charges as a retained expert in the case. Dr. Roush had also provided a life care plan for the Plaintiff that exceeded $400,000.00 of future care. He ultimately opined that the Plaintiff had recovered completely and had to retreat from many of his opinions about future medical needs and reverse himself in front of the jury.

The defense's medical experts, Dr. Michael Zeide (orthopedic surgery) and Dr. Gordon Sze (diagnostic radiologist), both opined that the imaging showed no evidence of herniation anywhere on the Plaintiff's cervical spine. Dr. Sze said that the imagining showed a minor bulge at the C5-6 level, which was not worthy of surgery. Dr. Zeide also opined that the surgeries and procedures were medically unnecessary, and that the Plaintiff would have benefited from conservative treatment such as physical therapy, which had never been ordered by Dr. Roush. Dr. Zeide also opined that the Plaintiff suffered from a pre-existing and undiagnosed scoliosis. There was no evidence of mediated facet pain syndrome, and this was proven by Dr. Zeide by the medical evidence and the Plaintiff's presentation of symptoms.

Over the course of six days, the jury listened to 12 witnesses, including several before and after witnesses who were mainly family and friends of the Plaintiff, to testify about how she was changed by the alleged incident. This also included the testimony of the four expert witnesses as stated above. The defense imported the theme of "no good deed goes unpunished" in voir dire, opening statement and closing argument.

The Plaintiff asked the jury for an award of damages of approximately $500,000.00 and left the element of future pain and suffering up to the jurors' common sense and own devices. While the case presented a tricky "he said, she said" scenario, after deliberating for about 75 minutes, the jury, believing the testimony of the Defendant massage therapist over that of the Plaintiff, rendered a complete defense verdict in his favor.

Plaintiff, as Personal Representative of the Estate of Juliana Consuelo Burdie, Deceased v. Jackson Plaza, Inc. d/b/a Jackson Plaza Nursing and Rehabilitation Center
Nursing Home Negligence | Defense Verdict
Attorney(s): Michael J. Schwartz, Esq.; Frank Lacourt, Esq.
Plaintiff Counsel: Michael Rotondo – Ford, Dean & Rotondo, PA

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At trial, the Plaintiff presented expert testimony from a Family Medicine Doctor who testified: (1) that the attending physician's orders to do a chest X-ray were ignored by the nursing staff, alleging that the order was entered upon admission to the resident on 4/24/2019 around 3:00PM; (2) that the nursing home staff failed to immediately report the blood labs to the attending physician; and (3) that the nursing staff failed to recognized that the Resident was in respiratory distress. The Defendant presented evidence and expert witness testimony that proved that (1) the chest X-ray order was entered about the time the Resident's condition changed on 4/24/2019, that the order was followed almost immediately by nursing staff, and that the chest X-ray was not done because *Read more on page 4 ...*

the resident was discharged via Fire Rescue before the mobile X-ray company arrived; (2) the blood labs were done as ordered, and the results were received at the Facility's fax machine 30 minutes before the resident's change in condition, and that it was reasonable for the results to take some time to be reported to the attending physician; and (3) the argument that the nurses failed to notice any respiratory distress was purely speculative and not supported by evidence. Finally, the Defendant presented evidence that the resident's pre-existing comorbidities, including the untreated leukocytosis and previous pneumonia diagnoses, accompanied by the resident's advanced age, were the likely causes for the resident's change in condition and ultimate death. The resident's change in condition was unavoidable, and the nursing home was not negligent. The jury agreed with the Defendant and rendered a verdict in two hours. Plaintiff's demand at trial was $350,000.00.

Plaintiffs v. Capp Custom Builders and Juan Luis Raya

Auto Liability | Defense Verdict

Attorney(s): Nora Bailey, Esq.; Benjamin Pahl, Esq.
Plaintiff Counsel: Newlin Law

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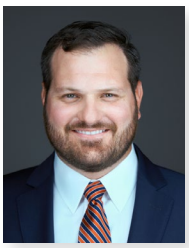

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Four-day jury trial (Brevard County); Plaintiff requested multimillions in damages — the Jury returned a complete Defense Verdict

On June 2, 2023, Partners Benjamin Pahl, Esq., and Nora Bailey, Esq., obtained a complete defense verdict after a four-day jury trial in an auto liability matter styled *Plaintiffs v. Capp Custom Builders and Juan Luis Raya*. The lawsuit arose out of a claim by the Plaintiffs, a motorcyclist and his passenger/girlfriend, wherein it was alleged that Defendant acted negligently in operating a pick-up truck and enclosed trailer, owned by Capp Custom Builders, on US-1 in Brevard County, Florida. Mr. Raya denied liability and asserted that Plaintiff Morgan had acted negligently by failing to observe traffic, causing him to rear-end the back of Defendant's trailer as he slowed to make a legal U-turn.

The Defendant driver testified throughout litigation and at trial that he stopped and looked for at least five seconds before leaving the job site to turn into US-1, and never saw the Plaintiffs' motorcycle. The Plaintiffs, however, changed their story multiple times. Initially, Plaintiffs claimed that Defendant had made a U-turn illegally in front of them, causing the crash. Prior to trial, they testified that Defendant cut into their lane from right to left, or that he swung too wide when making the U-turn and "clipped" the motorcycle. Finally, at trial, Plaintiffs testified to a new theory of liability – namely, that they could not recall what Defendant had done wrong, but that he "appeared" in the roadway like a "flash." Defense counsel, Mr. Pahl, was able to secure testimony from Plaintiff Morgan that he ultimately did not know what the Defendant had done wrong, and that he appeared in the road "like magic." Additionally, the jury heard testimony and saw evidence that Plaintiff Morgan did not have a motorcycle endorsement, despite testifying otherwise, and both Plaintiffs admitted they were not wearing helmets. The defense was also able to elicit testimony and introduce evidence that the Plaintiffs had been to at least three restaurant/bars prior to the accident, where Plaintiff Morgan – the driver – had been drinking. There was no evidence submitted to the jury of Mr. Morgan's impairment. Ms. Bailey elicited testimony from the passenger, Ms. Fuller, that she could not recall how many beers Mr. Morgan had drank, though she admitted it was at least two. Following this testimony, the defense's medical expert, Dr. Ronald Tolchin (pain and rehabilitation specialist), walked the jury through extensive medical records from Mr. Morgan's PCP, which showed that he had reported drinking four beers daily years prior to and after the accident, had chronically elevated liver enzymes, and had been repeatedly told by his doctor to cut back.

Additionally, Defendants' biomechanical engineer, Charles Proctor, Ph.D., testified at trial that the motorcyclist would have had 14.86 seconds with clear view of the trailer and more than adequate time to stop or evade the crash, and rear-ended the Defendant due to a simple lack of inattentiveness, worsened by the fact he had no motorcycle endorsement and therefore lacked the proper training to respond to an impending hazard. Despite extensive argument and objection from Plaintiffs' counsel, Ms. Bailey was successful in securing the accident reconstruction animation, prepared by Dr. Proctor, to be shown as a demonstrative aid during trial.

Despite the clear liability issues, it was undisputed that the two motorcyclists were catastrophically injured, both requiring emergency trauma surgeries and sustaining mild traumatic brain injuries. Both underwent extensive rehabilitation stays and post-operative therapy, and Mr. Morgan required additional, subsequent surgeries to repair damage caused by the accident. Nonetheless, Dr. Tolchin opined that a right hip replacement, done more than threeyears after the accident, was unrelated to the crash given the severe degenerative osteoarthritis present on the day of the incident.

VERDICTS, *CONT.*

Over the course of four days, the jury listened to the Plaintiffs testify about the devastating impact of the incident and the injuries on their lives. In fact, the Plaintiffs called the defense CME physician (Dr. Tolchin) during their case to explain the gruesome nature of the injuries, which included pelvic, rib and sternum fractures, extensive lacerations, and scrotal tears. Plaintiff's testimony that the Defendant driver appeared in the roadway like "magic" became the theme of the defense case, and it was argued by Mr. Pahl in closing that "more than magic" was necessary for Plaintiffs to meet their burden of proof. The jury was instructed on Florida's rear-end presumption at the request of the defense, over objection and after substantial briefing on the issue by Ms. Bailey, that Mr. Morgan rear-ending the Defendant was presumptive evidence of his own negligence.

Plaintiffs' counsel, Lead Trial Counsel for Dan Newlin, asked the jury in closing for an award of $7.4M (approximately $312,000 in total past medical expenses; the rest in pain and suffering). After deliberating for about two hours, the jury rendered a complete defense verdict in favor of Defendants.

Plaintiff v. Michael Hogan and Cynthia Hogan

General Liability | Favorable Verdict

Attorney(s): Juan Ruiz, Esq.; Matthew Funderburk, Esq.

Plaintiff Counsel: Jeffrey M. Byrd, Esquire

Juan Ruiz, Esq.

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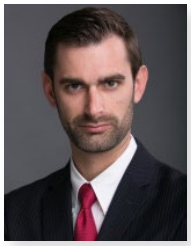

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In closing, Plaintiff counsel demanded $19.5M – $19.9M, Jury returned the verdict of $610,633 and did not find that Plaintiff suffered a permanent injury, and did not award any non-economic damages.

Senior Partner Juan Ruiz, Esq., and Senior Associate Matthew P. Funderburk, Esq., obtained a favorable verdict in a general liability, negligence matter styled *Plaintiff v. Michael Hogan and Cynthia Hogan*. Plaintiff filed suit against Michael Hogan and Cynthia Hogan for personal injury damages arising out of a motor vehicle accident which occurred on February 17, 2016. Plaintiff alleged that because of this, low speed, low impact, rear end collision, she suffered multiple disc herniations in her cervical and lumbar spine. She also alleged she suffered a traumatic brain injury. This matter was tried in the Circuit Court, for the Ninth Judicial Circuit in and for Orange County, Florida. Negligence was admitted on the part of the defense, and the matter proceeded to trial on medical legal causation and damages.

At trial, Plaintiff attempted to advance the traumatic brain injury theory through the testimony of the treating neurologist, Dr. Marc Sharfman. The defense demonstrated through the testimony of the Plaintiff that there were no cognitive deficits, or any indication of a traumatic brain injury present despite allegations to the contrary.

Defense experts, Dr. Kevin Cox, Orthopedic Surgery, and Dr. Paul Koenigsberg, Radiology, Opined that the need for the Plaintiff's surgery was related to chronic and degenerative/pre-existing conditions.

In closing, Plaintiff counsel demanded $19,500,000 – $19,900,000, the defense "anchored" their closing argument with a figure of $17,250 representing the post-accident, conservative care and treatment.

After deliberating for 70 minutes, the jury returned the verdict of $610,633 representing $360,633 in past medical expenses and $250,000 in future medical expenses. The jury did not find the Plaintiff suffered a permanent injury, and therefore did not award any non-economic damages.

Read more Verdicts and Summary Judgments on Page 6 ...

VERDICTS, *CONT.*

Plaintiff v. CWC Transport
Trucking Liability | Favorable Verdict
Attorney(s): Meghan Theodore, Esq.; James Sparkman, Esq.; Matthew Moschell
Plaintiff Counsel: Morgan & Morgan

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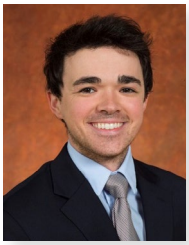

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On October 6, 2023, Partners Jim Sparkman, Esq., Meghan Theodore, Esq., and Matthew Moschell, Esq., obtained a favorable verdict in trucking liability matter styled *Plaintiff v. CWC Transport*. Sparkman (Boca Raton), Theodore and Moschell (Tampa) defended a gasoline tanker company and its driver against a $3 million dollar claim with a cervical disc replacement. The jury found the plaintiff 65% at fault (the defense urged 50%), reduced the medical bills from $125,000 to $95,000, found no permanent injury, and rejected the 57-year-old parks and recreation supervisor's claim for $171,000 in future life care damages. The team defended this low speed, sideswipe impact that occurred by gas pumps with a neurosurgical CME, an interventional radiological expert, and a biomedical engineer. The Plaintiff presented a chiropractor and a medical doctor, an Oxford trained trauma surgeon, and a life care planner.

Jose Martinez v. Defendant Insurance Company
First-Party Property | Defense Verdict
Attorney(s): Otto Espino, Esq.; Cristina Sevilla, Esq.
Plaintiff Counsel: Martin & Randolph PLLC

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Three-day jury trial; alleged water leak to a hallway bathroom and alleged drain line failure — Jury returned Defense Verdict

On August 18, 2023, after a three-day jury trial, Miami Partners Otto Espino, Esq., and Cristina Sevilla, Esq., obtained a full defense verdict in matter styled *Jose Martinez v. Defendant Insurance Company*. The lawsuit was based on a denied claim and arose due to an alleged water leak sustained by the Defendant's Insured (Jose Martinez) to a hallway bathroom where he alleged the drain line had failed. The Insured gutted the bathroom prior to the carrier's field inspection. The Insured also alleged the same drain line failure caused a backup in the adjoining kitchen, damaging his kitchen cabinets.

Defendant contended they were prejudiced by the Insured's failure to provide the property for inspection before gutting the run and trenching the floor to remove the case iron drain lines. Defendant also defended the denial by arguing cause of loss was excluded per the constant and repeated seepage provision in its policy. This exclusion was based on the remaining building materials that were not removed from the hallway bathroom (i.e. wall studs) and based on the condition of the adjoining kitchen.

At trial, Defendant presented the evidence gathered during both its field inspection and engineering inspection. Mr. Espino successfully argued the condition of the bathroom was sufficient to determine the policy's exclusion for constant and repeated was the actual cause of the Insured's claim, and not the alleged failed drain line. The jury's verdict found the exclusion had been properly enforced and there was no breach of contract. The verdict did not reach the question of any post-loss violations, avoiding any appellate issues related to those portions of the trial. After an hour of deliberation, the jury fully agreed and entered a full defense verdict.

SUMMARY JUDGMENTS AND APPELLATE RESULTS

Plaintiffs v. Atlantic Southern Sealcoating and Paving, LLC

Premises, Personal Injury | Motion for Final Summary Judgment granted

Attorney(s): Nora Bailey, Esq.

Plaintiff Counsel: Law Offices of Craig Goldenfarb, Esq. (Paul McBride) / Kelley Kronenberg

Nora Bailey, Esq.
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Stuart Partner Nora Bailey, Esq., prevailed on a Motion for Summary Judgment in a premises liability/personal injury matter styled *Plaintiffs v. Atlantic Southern Sealcoating and Paving, LLC*. Our client, who was contracted to sealcoat and stripe the parking lot at a gas station, was sued for personal injuries after Plaintiff slipped on a painted portion of the lot more than four months after our work was completed. We moved for summary judgment based on the *Slavin* doctrine and argued that Plaintiff was impermissibly stacking inferences to prove her case. The case was made difficult by the fact that it became evident through discovery that our client had inadvertently used the wrong paint as required under the contract with the gas station, who accordingly joined in Plaintiff's opposition to our Motion for Summary Judgment. Nevertheless, the Court found that the Plaintiff had failed to prove that using the right paint would have prevented Plaintiff's fall and granted summary judgment on all counts.

Jessica Andrade v. Gladewind Heights Homeowners Association, Inc.

Premises Liability | Motion for Strike

Attorney(s): Allison Janowitz, Esq.

Plaintiff Counsel: The Right Law Firm

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On July 19, 2023, Senior Partner Allison Janowitz, Esq., prevailed on a Motion to Strike the Plaintiff's Complaint based on Fraud on the Court in a trip and fall matter styled *Jessica Andrade v. Gladewind Heights Homeowners Association, Inc.* Plaintiff filed suit against Gladewind Heights Homeowner's Association for injuries she sustained as a result of a trip and fall. Plaintiff claimed injuries to her right shoulder, right knee and back, in the amount of an estimated $200,000. Plaintiff specifically claimed that she sustained injuries limiting her ability to bend over, carry groceries and other items, and function without a motorized cart at the grocery store. Essentially, Plaintiff testified that if it did not involve her sitting down, she could not do it. Surveillance found the Plaintiff grocery shopping for several days without the use of any assistive devices and bending over on the ground.

The Court found that the Plaintiff's testimony regarding her limitations were contradicted by the surveillance videos, and that with her testimony, the Plaintiff set into motion an unconscionable scheme calculated to interfere with the Judicial System's ability to impartially adjudicate a matter.

You Restoration LLC a/a/o Ali Althis Bastardo v. Defendant Insurance Company

First-Party Property | Dismissal

Attorney(s): Jeremy Fischler, Esq.

Plaintiff Counsel: Florida Insurance Law Group, LLC.

Jeremy Fischler, Esq.
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Fort Lauderdale Junior Partner Jeremy Fischler, Esq., secured a dismissal in the First-Party Property matter styled *You Restoration LLC a/a/o Ali Althis Bastardo v. Defendant Insurance Company*. Defense filed a Motion for Summary Judgment in which it argued that the Defendant made full payment under the Policy's Managed Repair Program. Specifically, the Plaintiff performed water mitigation services on behalf of the Insured, and received a partial payment after carrier review of the estimate. The Insured thereafter rejected the carrier's offer to utilize the Managed Repair Program, thereby limiting the claim under the Policy to $10,000.00. The carrier sent the balance of the Policy limits to the Insured. Plaintiffs argued that this payment, made after the carrier was notified of the water mitigation services, could not have discharged the carrier's obligations to pay the full invoice presented by Plaintiffs. The day before the hearing, Plaintiffs advised that they would abandon the case and submitted a dismissal.

SUMMARY JUDGMENTS AND APPELLATE RESULTS, *CONT.*

Timothy Lillis, as Personal Representative of the Estate of Margaret Solomon, Timothy Lillis, individually and as Next Friend of B.L., a minor v. Alon Blum

Auto & Fleet Liability | Appeal Successful

Attorney(s): Jack Garwood, Esq.; Daniel Weinger, Esq.; Luis Menendez-Aponte, Esq.

Plaintiff Counsel: Leto Law Firm

Jack Garwood, Esq.

Associate (Jacksonville)

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Jacksonville Associate Jack Garwood, Esq., secured an appellate victory after Plaintiff's counsel filed a Notice of Confession of Error on July 31, 2023. At the trial court level, the court had held that service of process had been properly effectuated under Florida's substituted service of process statutes. However, it was clear from the record that Plaintiff had not strictly complied with the substituted service statutes as required. The substituted service of process statutes are to be strictly complied with because of due process concerns. After reviewing the cases cited in the initial Appellate Brief, Plaintiff's counsel stated that he could not say that the statutes had been strictly complied with. Specifically, Plaintiff's counsel referred to one of the cases in Appellant's brief—*Monaco v. Nealon*, 810 So. 2d 1084 (Fla. 4th DCA 2002)—as one he could not get past. Plaintiff's counsel stated that he has never confessed error before, but that due to the cases cited in Appellant's Brief, he had to in this case.

Sage Beach Condominium Association v. PMG Driftwood, LLC, et al

Construction Defect | Summary Judgment

Attorney(s): David Rosinsky, Esq.

Plaintiff Counsel: Ball Janik, LLP (Gabriel Coelho)

Third-Party Plaintiff Counsel: Baumann, Gant & Keeley, P.A.

David Rosinsky, Esq.

Senior Partner (Fort Lauderdale)

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Plaintiff, Sage Beach Condominium Association, brought this action against 27 parties for alleged construction defects relating to the construction of the Association's two condominium buildings. Our client, New Door Installation Co., installed exterior metal doors, frames and hardware. Plaintiff claimed that the materials were defectively installed and in violation of the Florida Building Code due to the existence of corrosion on the door surfaces, frames, and hardware. In addition, the general contractor, Glenewinkel Construction Company, asserted cross claims against New Door for violation of the Florida Building Code, breach of contract, and common law indemnification. Plaintiff's expert, Toby Maxwell, P.E., and Glenewinkel's expert, Donald Rataj, R.A., testified that the doors were properly installed, and that the corrosion was due to the exposure from the harsh coastal environment, as the condominium buildings are located on Hollywood Beach. Plaintiff, in an attempt to defeat summary judgment, provided an affidavit from Mr. Maxwell that contradicted his deposition testimony and claimed that the exterior metal doors were not installed correctly. The Court granted New Door's motion for summary judgment stating, "This kind of change in testimony issue, on the eve of summary judgment motions, is exactly why our Supreme Court changed the Florida rule on summary judgment to align with the Federal rule."

Gladys Torres v. Mazal Investments 21, LLC and Coral Gate West Condominium Association, Inc.

Fair Housing/ADA | Dismissal

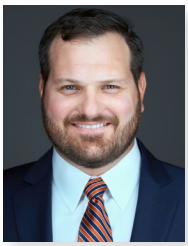
Attorney(s): David Rosinsky, Esq.

Plaintiff Counsel: Law Offices of Lewis & Guerrero, P.A.

This action involved a claim for alleged housing discrimination for refusal to provide a reasonable accommodation to a person with a disability relating to an emotional support animal, in violation of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. Sections 3601-3619 ("Fair Housing Act") and Florida Statutes Section 760.20, *et seq*. ("Florida Fair Housing Act"). Our client, Mazal Investments 21, LLC, leased an apartment to Plaintiff in a condominium building. The co-defendant, Association, has a no-pet rule. Shortly after moving in, the Association discovered Plaintiff had a dog and threatened to bring eviction proceedings against her. Our client had no objection to her emotional support animal as Plaintiff provided documentation for the reasonable accommodation. Our client then forwarded the documentation to the Association for approval. Plaintiff alleged that despite being advised that her dog was an emotional support animal and being provided with supporting documentation, the Association refused to grant the accommodation. In addition, Plaintiff alleged that the Association's staff confronted her several times insisting that the dog be removed from the property or face eviction. After completing the depositions of Association's Board President and management supervisor and establishing that our client did not engage in any housing discrimination practices, Plaintiff voluntarily dismissed the claims against our client.

SUMMARY JUDGMENTS AND APPELLATE RESULTS, *CONT.*

Plaintiff v. Ranger Construction Industries, Inc.
Premises / Personal Injury | Motion for Final Summary Judgment granted
Attorney(s): Benjamin Pahl, Esq.
Plaintiff Counsel: Waggener Law, PLLC



Benjamin Pahl, Esq.
Managing Partner (Stuart)
BPahl@insurancedefense.net

Stuart Managing Partner Benjamin Pahl, Esq., prevailed on a Motion for Summary Judgment in a motor vehicle accident/ roadway construction styled *Plaintiff v. Ranger Construction Industries, Inc.* Our client, who was contracted to do repair work on a local bridge, was sued for personal injuries after the windshield of Plaintiff's vehicle was struck by a traffic delineator that came loose from the bridge deck after being hit by a passing vehicle. We moved for summary judgment based on the Slavin doctrine, as well as on the terms of the contract and applicable subcontracts, and further argued that Plaintiff was impermissibly stacking inferences to prove her case as she could not prove constructive or actual notice as to Ranger.

The Court found that the Plaintiff had failed to provide any evidence by which a jury could conclude that her injuries were proximately caused by Rangers' negligence, and granted final summary judgment in our client's favor.

Karen Soto Vega v. Defendant Insurance Company
First-Party Property | Summary Judgment
Attorney(s): Julian Brathwaite-Pierre, Esq.
Plaintiff Counsel: Cernitz Law

Julian Brathwaite-Pierre, Esq.
Senior Associate (Tampa)
JBraithwaitePierre@insurancedefense.net

Tampa Associate Julian A. Brathwaite-Pierre, Esq. secured summary judgment in the First-Party Property matter styled *Karen Soto Vega v. Defendant Insurance Company* after argument at hearing on April 6, 2023. The Defense filed a Motion for Summary Judgment based on the Plaintiff's admission at her deposition that neither she, nor anyone acting on her behalf, had ever identified the alleged A/C leak that led to microbial mold growth in her home.

Plaintiff's counsel filed a last-minute response to Defendants Motion for Summary Judgment, attempting to create issues of fact using Plaintiff's affidavit, as well as the affidavit of her chosen Public Adjuster. In response, Mr. Brathwaite prepared a Motion to Strike the affidavits, which the Court allowed to be incorporated into the argument made in support of Defense's Motion for Summary Judgment.

After striking the affidavits of Plaintiff and her Public Adjuster, the Court granted the Motion for Summary Judgment.

Moldguard USA Corp. a/a/o Karen Soto Vega v. Defendant Insurance Company
First-Party Property | Voluntary Dismissal
Attorney(s): Julian Brathwaite-Pierre, Esq.
Plaintiff Counsel: Weisser Elazar & Kantor, PLLC

Tampa Associate Julian A. Brathwaite-Pierre, Esq., moved for summary judgment in the First-Party Property matter styled *Moldguard USA Corp. a/a/o Karen Soto Vega v. Defendant Insurance Company*. Defense filed the Motion for Summary Judgment based on the Insured's admission at her deposition that neither she, nor anyone acting on her behalf, had ever identified the alleged A/C leak that led to microbial mold growth in her home. Additionally, at the deposition of the Plaintiff's Corporate Representative, it was also elicited that they did not make any cause and origin determinations, nor could they establish that their services were provided in connection with a covered loss.

Plaintiff was unresponsive in getting the Motion for Summary Judgment set for a hearing. However, after invoking the Court's unilateral hearing setting procedures, Plaintiff finally agreed to a hearing date of August 8, 2023. However, on June 23, 2023, Plaintiff filed a notice of Voluntary Dismissal, rather than attempt to overcome the motion.

Leila Wilson v. Defendant Insurance Company
First-Party Property | Summary Judgment
Attorney(s): Julian Brathwaite-Pierre, Esq.
Plaintiff Counsel: Makris & Mullinax, P.A.

Tampa Associate Julian A. Brathwaite-Pierre, Esq., secured summary judgment in the First-Party Property matter styled *Leila Wilson v. Defendant Insurance Company* after continued argument at hearing on June 12, 2023. *Read more on page 10 ...*

SUMMARY JUDGMENTS AND APPELLATE RESULTS, *CONT.*

The Defense filed a Motion for Summary Judgment based on the Plaintiff's admission at her deposition that neither she, nor anyone acting on her behalf, had ever been on her roof prior to the alleged windstorm that caused damage to her roof. Additionally, the Plaintiff's Daughter, who was also the tenant at the subject property for over a decade, provided deposition testimony that made it clear there was a question as to what the actual date of loss was.

It was also argued that Plaintiff's experts' opinions in opposition to Defendant's Motion for Summary Judgment were not sufficient enough to create any issue of material fact, as the report, and affidavits provided were conclusory in nature and did not articulate in a manner satisfactory to the Court why Defendant's expert's opinion that the damage to the 30-year-old roof was simple wear and tear.

This was a unique situation, as this matter was transferred to Luks & Santaniello from another firm 10 days prior to Non-Binding Arbitration, and with the Summary Judgment Motion hearing being continued from March of 2023, prior to the transfer. Even with short notice, Mr. Brathwaite was able to prepare for and prevail at the continued hearing on the Defense's Motion for Summary Judgment.

Truview Mold, LLC a/a/o Jordan Lloyd v. Defendant Insurance Company

First-Party Property | Dismissal

Attorney(s): Julian Brathwaite-Pierre, Esq.

Plaintiff Counsel: Your Insurance Attorney, PLLC

Julian Brathwaite-Pierre, Esq.
Senior Associate (Tampa)
JBraithwaitePierre@insurancedefense.net

Tampa Associate Julian A. Brathwaite-Pierre, Esq., secured a dismissal on April 10, 2023, in the First-Party Property matter styled *Truview Mold, LLC a/a/o Jordan Lloyd v. Defendant Insurance Company*. Defense filed a Motion to Dismiss with Prejudice based on the Plaintiff's standing as an assignee of benefits. Specifically, the assignment of benefits attached to Plaintiff's Complaint did not contain within it an itemized per-unit estimate of the services that were to be provided within the four corners of the agreement. Instead, the Plaintiff attached an invoice that was prepared after the date the assignment of benefits was executed by the Insured and the work completed, as an additional exhibit to the Complaint.

Plaintiff's counsel filed a written response in opposition to the Defense's Motion to Dismiss, arguing that because Plaintiff's Assignment of Benefits Agreement referenced generally a forthcoming estimate of services, the invoice attached to the Complaint as an exhibit was incorporated by reference, and therefore contained within the Assignment of Benefits Agreement.

The Court was not swayed by the Plaintiff's argument and dismissed the matter with prejudice.

Truview Mold, LLC a/a/o Otoniel Cutino v. Defendant Insurance Company

First-Party Property | Dismissal

Attorney(s): Julian Brathwaite-Pierre, Esq.

Plaintiff Counsel: Your Insurance Attorney, PLLC

Tampa Associate Julian A. Brathwaite-Pierre, Esq., secured a dismissal on April 10, 2023, in the First-Party Property matter styled *Truview Mold, LLC a/a/o Otoniel Cutino v. Defendant Insurance Company*. Defense filed a Motion to Dismiss with Prejudice based on the Plaintiff's standing as an assignee of benefits. Specifically, the assignment of benefits attached to Plaintiff's Complaint did did not contain within it an itemized per-unit estimate of the services that were to be provided within the four corners of the agreement. Instead, the Plaintiff attached an invoice that was prepared after the date the assignment of benefits was executed by the Insured and the work completed, as an additional exhibit to the Complaint.

At the hearing on the Motion to Dismiss, Plaintiff's counsel argued in opposition to the Defense's Motion to Dismiss that because Plaintiff's Assignment of Benefits Agreement referenced generally a forthcoming estimate of services, the invoice attached to the Complaint as an exhibit was incorporated by reference, and therefore contained within the Assignment of Benefits Agreement.

The Court was not swayed by the Plaintiff's argument and dismissed the matter with prejudice. In the Court's Order, it was expressly stated that the Court found that ". . . . paragraph two of the Assignment of Benefits Agreement attached to Plaintiff's Complaint does not satisfy 627.7152(2)(a)(5) Fla. Stat. by referencing, generally, that Plaintiff will provide an invoice for services and Plaintiff attaching an invoice for $1,500.00 dated February 15, 2022 to the Complaint as an exhibit 2."

SUMMARY JUDGMENTS AND APPELLATE RESULTS, *CONT.*

Gail & Andrew Luchey v Defendant Insurance Company

First-Party Property | Dismissal with Prejudice

Attorney(s): Anthony Perez, Esq.

Plaintiff Counsel: The Cardenas Law Group, LLC

Anthony Perez, Esq.
Senior Associate (Tampa)
APerez@insurancedefense.net

Miami Senior Partner Anthony Perez, Esq., secured a dismissal with prejudice in the matter styled *Gail & Andrew Luchey v. Defendant Insurance Company*. Plaintiffs filed suit alleging that Defendant breached the commercial insurance contract by denying coverage for their claim for damage to their quadruplex resulting from Hurricane Irma. Following the depositions of the Plaintiffs and their public adjuster, during which Mr. Perez secured favorable testimony, and in advance of an approaching trial, Plaintiffs dismissed the case with prejudice.

The Kidwell Group, LLC d/b/a Air Quality Assessors of Florida a/a/o Lynda Masters v. Defendant Insurance Company

First-Party Property (Commercial) | Dismissal

Attorney(s): Anthony Perez, Esq.

Plaintiff Counsel: The Florida Insurance Law Group, LLC

Miami Senior Partner Anthony Perez, Esq., secured a dismissal in the matter styled T*he Kidwell Group, LLC d/b/a Air Quality Assessors of Florida a/a/o Lynda Masters v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the commercial insurance contract by denying coverage for its claim for payment relating to services rendered at the insured triplex pursuant to an assignment of benefits. Defendant filed its Motion to Dismiss, and its Motion for Sanctions Pursuant to Florida Statute §57.105, contending that Plaintiff's claim was barred by the statute of limitations, as the assignment was executed more than three years after Hurricane Irma. Defendant relied on Florida Statute §627.70132, which requires notice of a hurricane claim be provided within three years of the date of loss. Just before the hearing on Defendant's motion, Plaintiff dismissed the case.

The Kidwell Group, LLC d/b/a Air Quality Assessors of Florida a/a/o Saksams Investments, Inc. v. Defendant Insurance Company

First-Party Property (Commercial) | Dismissal

Attorney(s): Anthony Perez, Esq.

Plaintiff Counsel: The Florida Insurance Law Group, LLC

Miami Senior Partner Anthony Perez, Esq., secured a dismissal in the matter styled *The Kidwell Group, LLC d/b/a Air Quality Assessors of Florida a/a/o Saksams Investments, Inc. v. Defendant Insurance Company*. Plaintiff filed suit pursuant to an assignment of benefits alleging that Defendant breached the commercial insurance contract by denying coverage for its claim for payment for an engineering report concerning damage to a shopping center from a tornado. Defendant filed its Motion for Final Summary Judgment, and its Motion for Sanctions Pursuant to Florida Statute §57.105, contending that the preparation of an engineering report did not constitute a direct physical loss covered by the commercial wind-only policy, and that Plaintiff's purported assignment agreement failed to comply with Florida Statute §627.7152, and was therefore invalid and unenforceable, rendering Plaintiff without standing to maintain the lawsuit. Minutes before the hearing on Defendant's Motion for Final Summary Judgment, Plaintiff dismissed the case. Plaintiff then reimbursed Defendant for the attorneys' fees and costs incurred defending Plaintiff's frivolous claims, pursuant to Florida Statute §57.105.

Quality Assessments & Logistics, LLC a/a/o Eduardo Vazquez v. Defendant Insurance Company

First-Party Property | Dismissal

Attorney(s): Anthony Perez, Esq.

Plaintiff Counsel: Jimenez & Carrillo, LLC

Miami Senior Partner Anthony Perez, Esq., secured a dismissal in the matter styled *Quality Assessments & Logistics, LLC a/a/o Eduardo Vazquez 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, was therefore invalid and unenforceable, and thus rendered Plaintiff without standing to maintain the lawsuit. Defendant's motion was granted, as the purported assignment agreement did not contain the requisite written, itemized, per-unit cost estimate of the services to be performed by the assignee.

SUMMARY JUDGMENTS AND APPELLATE RESULTS, *CONT.*

Pavel Figueredo v. Defendant Insurance Company
First-Party Property | Dismissal with Prejudice
Attorney(s): Anthony Perez, Esq.; Alec Teijelo, Esq.
Plaintiff Counsel: The Property Advocates, P.A.

Anthony Perez, Esq.
Senior Partner (Miami)
APerez@insurancedefense.net

Alec Teijelo, Esq.
Senior Associate (Miami)
ATeijelo@insurancedefense.net

Miami Senior Partner Anthony Perez, Esq., and Senior Associate Alec Teijelo, Esq., obtained a dismissal with prejudice in the matter styled *Pavel Figueredo 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 a kitchen leak, and then subsequently sold the property. Defendant filed its Motion for Final Summary Judgment, asserting that there was neither any evidence of out of pocket expenses incurred for repairs related to the claimed damage, nor any credits or other impact on the sale of the property related to the claimed damage, thus no evidence of any compensable damages, an essential element of a claim for breach of contract. Following the deposition of the insured, during which Mr. Teijelo secured favorable testimony in support of Defendant's position, and upon receipt of Defendant's motion, Plaintiff dismissed the case with prejudice.

Jose Fabregas & Luz Montenegro v. Defendant Insurance Company
First-Party Property | Dismissal with Prejudice
Attorney(s): Anthony Perez, Esq.; Alec Teijelo, Esq.
Plaintiff Counsel: MSPG Law Group, P.A.

Miami Senior Partner Anthony Perez, Esq., and Senior Associate Alec Teijelo, Esq., obtained a dismissal with prejudice in the matter styled *Jose Fabregas & Luz Montenegro v. Defendant Insurance Company*. Plaintiffs filed suit alleging that Defendant breached the insurance contract by denying coverage for their claim for damage to their property resulting from a kitchen leak. Following the deposition of the insured, during which Mr. Teijelo secured favorable testimony in support of Defendant's position, Defendant filed its Motion for Final Summary Judgment, arguing that the damage was the result of constant or repeated seepage or leakage of water and therefore excluded form coverage under the policy. Just minutes before the hearing on Defendant's motion, Plaintiff dismissed the case with prejudice.

Jacqueline Varela v. Defendant Insurance Company
First-Party Property | Dismissal with Prejudice
Attorney(s): Anthony Perez, Esq.; Alec Teijelo, Esq.
Plaintiff Counsel: Duboff Law Firm

Miami Senior Partner Anthony Perez, Esq., and Senior Associate Alec Teijelo, Esq., obtained a dismissal with prejudice in the matter styled *Jacqueline Varela v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for her claim for damage to her property resulting from a kitchen leak. Following the deposition of the insured, during which Mr. Teijelo secured favorable testimony in support of Defendant's position, Defendant filed its Motion for Summary Judgment, arguing that the damage was the result of constant or repeated seepage or leakage of water and therefore excluded form coverage under the policy. In advance of the hearing on Defendant's motion, Plaintiff dismissed the case with prejudice.

AFCAM Group Corp d/b/a AFCAM Restoration a/a/o Jacqueline Varela v. Defendant Insurance Company
First-Party Property | Dismissal with Prejudice
Attorney(s): Anthony Perez, Esq.; Alec Teijelo, Esq.
Plaintiff Counsel: Law Offices of Marcote & Marcote De Moya, PLLC

Miami Senior Partner Anthony Perez, Esq., and Senior Associate Alec Teijelo, Esq., secured a dismissal with prejudice in the matter styled *AFCAM Group Corp d/b/a AFCAM Restoration a/a/o Jacqueline Varela 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, was therefore invalid and unenforceable, thus rendering Plaintiff without standing to maintain the lawsuit. Defendant's motion was granted, as the purported assignment agreement did not contain the necessary rescission language.

SUMMARY JUDGMENTS AND APPELLATE RESULTS, *CONT.*

JNE Enterprises, Inc. d/b/a Moldone Experts a/a/o Jacqueline Varela v. Defendant Insurance Company
First-Party Property | Dismissal with Prejudice
Attorney(s): Anthony Perez, Esq.; Alec Teijelo, Esq.
Plaintiff Counsel: Peregonza The Attorneys, PLLC

Anthony Perez, Esq.
Senior Partner (Miami)
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Alec Teijelo, Esq.
Senior Associate (Miami)
ATeijelo@insurancedefense.net

Miami Senior Partner Anthony Perez, Esq., and Senior Associate Alec Teijelo, Esq., secured a dismissal with prejudice in the matter styled *JNE Enterprises, Inc. d/b/a Moldone Experts a/a/o Jacqueline Varela v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage of Plaintiff's claim for payment relating to a mold assessment conducted at the insured property pursuant to an assignment of benefits. Defendant filed its Motion for Final Summary Judgment, arguing that the assignee stands in the shoes of the assignor, that the assignor's loss was the result of constant or repeated seepage or leakage of water and therefore excluded form coverage under the policy, and that the mold assessment conducted 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 with prejudice.

Carolina & Abraham Anzardo v. Defendant Insurance Company
First-Party Property | Dismissal with Prejudice
Attorney(s): Anthony Perez, Esq.
Plaintiff Counsel: Grande Law, P.A.

Miami Senior Partner Anthony Perez, Esq., secured a dismissal with prejudice in the matter styled *Carolina & Abraham Anzardo v. Defendant Insurance Company*. Plaintiffs filed suit alleging that Defendant breached the insurance contract by denying coverage for their claim for damage to their property resulting from a roof leak. Defendant filed its Motion for Summary Judgment, maintaining the position that the damage to the roof pre-existed the claimed date of loss, and there was no evidence of a wind created opening in the roof that allowed rainwater to enter the property. Upon receipt of Defendant's motion, Plaintiff dismissed the case with prejudice.

Water Tech Restoration, LLC a/a/o Olga Mederos v. Defendant Insurance Company
First-Party Property | Dismissal with Prejudice
Attorney(s): Anthony Perez, Esq.
Plaintiff Counsel: Levy & Partners, PLLC

Miami Senior Partner Anthony Perez, Esq., secured a dismissal with prejudice in the matter styled *Water Tech Restoration, LLC a/a/o Olga Mederos 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, was therefore invalid and unenforceable, and thus rendered Plaintiff without standing to maintain the lawsuit. Defendant's motion was granted, without prejudice, as the purported assignment agreement did not contain the requisite written, itemized, per-unit cost estimate of the services to be performed by the assignee. Plaintiff then filed an amended complaint, attempting to cure the deficiency. Defendant filed its second motion to dismiss, again challenging the validity of the purported assignment, and Plaintiff's standing to file suit. In advance of the hearing on Defendant's second motion, Plaintiff dismissed the case with prejudice.

South Florida Restoration Service, LLC a/a/o Barbara Cabanas v. Defendant Insurance Company
First-Party Property | Dismissal with Prejudice
Attorney(s): Anthony Perez, Esq.
Plaintiff Counsel: Velasquez & Associates, P.A.

Miami Senior Partner Anthony Perez, Esq., secured a dismissal with prejudice in the matter styled *South Florida Restoration Service, LLC a/a/o Barbara Cabanas 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, was therefore invalid and unenforceable, and thus rendered Plaintiff without standing to maintain the lawsuit. Defendant's motion was granted, without prejudice, as the purported assignment agreement did not contain the necessary language, or the requisite written, itemized, per-unit cost estimate of the services to be performed by the assignee. *Read more on page 14 ...*

SUMMARY JUDGMENTS AND APPELLATE RESULTS, *CONT.*

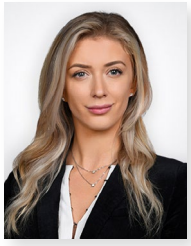
Plaintiff then filed an amended complaint, attempting to cure the deficiencies. Defendant filed its second motion to dismiss, contending that Plaintiff's purported assignment agreement still failed to comply with Florida Statute §627.7152, and was therefore invalid and unenforceable. Just hours before the hearing on Defendant's second motion, Plaintiff dismissed the case with prejudice.

Orlando Water Mitigation, LLC a/a/o Nino Garboza & Annamora Vargas v. Defendant Insurance Company

First-Party Property | Dismissal with Prejudice

Attorney(s): Anthony Perez, Esq.; Taylor Montanari, Esq.
Plaintiff Counsel: Louis Law Group, PLLC

Anthony Perez, Esq.
Senior Partner (Miami)
APerez@insurancedefense.net



Taylor Montanari, Esq.
Associate (Miami)
TMontanari@insurancedefense.net

Miami Senior Partner Anthony Perez, Esq., and Associate Taylor Montanari, Esq., secured a dismissal with prejudice in the matter styled *Orlando Water Mitigation, LLC a/a/o Nino Garboza & Annamora Vargas 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, was therefore invalid and unenforceable, and thus rendered Plaintiff without standing to maintain the lawsuit. In advance of the hearing on Defendant's motion, Plaintiff dismissed the case with prejudice.

The Kidwell Group, LLC d/b/a Air Quality Assessors of Florida a/a/o Chamile Rosa. V. Defendant Insurance Company

First-Party Property | Dismissal

Attorney(s): Anthony Perez, Esq.; Taylor Montanari, Esq.
Plaintiff Counsel: Krapf Legal, P.A.

Miami Senior Partner Anthony Perez, Esq., and Associate Taylor Montanari, Esq., secured a dismissal in the matter styled *The Kidwell Group, LLC d/b/a Air Quality Assessors of Florida a/a/o Chamile Rosa v. Defendant Insurance Company*. Plaintiff filed suit pursuant to an assignment of benefits alleging that Defendant breached the insurance contract by denying coverage for its claim for payment for the preparation of an engineering report. Defendant filed its Motion for Final Summary Judgment, contending that the preparation of an engineering report was not covered by the policy, and that Plaintiff's purported assignment agreement failed to comply with Florida Statute §627.7152, was therefore invalid and unenforceable, and thus rendered Plaintiff without standing to maintain the lawsuit. Plaintiff dismissed the case, and reimbursed Defendant for the costs incurred defending the case.

Plaintiff v. Day Boat Seafood

Personal Injury | Motion to Strike Medical Bills Granted

Attorney(s): Nora Bailey, Esq.
Plaintiff Counsel: Block & Scarpa

Nora Bailey, Esq.
Junior Partner (Stuart)
NBailey@insurancedefense.net

Stuart Partner Nora Bailey, Esq., prevailed on a Motion to Strike the Plaintiff's medical bills in a motor vehicle/personal injury matter styled *Plaintiff v. Day Boat Seafood*. Plaintiff received treatment after a rear-end accident from Dr. Kyle Moyles, who then operated on him at Intracoastal Surgery Center. Dr. Moyles failed to disclose his ownership interest in the surgical center to the Plaintiff, in violation of section 456.052, Fla. Stat. (2023). Accordingly, pursuant to section 456.053, Dr. Moyles' bills were uncollectable due to his failure to comply with the disclosure requirements. Judge Waronicki found that because he failed to provide the required disclosures and his bills were therefore uncollectable, all charges related to Dr. Moyles and his practice, Blackstone Hand Center, were stricken and could not be presented to the jury at trial as it would result in an unfair windfall to the Plaintiff. This reduced boardable bills in the case by almost $60,000.00 and eliminated the ability for the Plaintiff to claim multiple hand/wrist surgeries as damages.

THE GAVEL GRUB CLUB SCHEDULE: UPCOMING WEBINARS

The Gavel Grub Club™ Monthly Webinar Series

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

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19 OCT		**Settlement and Mediation Training** ***(October 19, 2023)*** *Marty Pujolar (WA), Heidi Goebel (UT), Jeff R. Benson (FL), Wade Quinn (TX)*
16 NOV		**Work Comp 101 and Resource Charts** ***(November 16, 2023)*** *Chelsie D. Springstead (WI), Rey Alvarez (FL), Bill Pipkin (AL), Amy Dunn Hotard (LA)*
30 NOV		**Saying "Yes" Can Be Costly – Preparing the Corporate Witness in a Negligent Hiring** ***(November 30, 2023)*** *Joe Catalano (SC), Katherine McKinley (FL), Daniel Deitch (NFI Industries), Barry Montgomery (VA), Eric Rudich (Blueprint Trial), Gene Zipperle (KY)*
14 DEC		**Survey on the Treatment in Various States of the 'YOUR WORK' Exclusions to a GL Policy** ***(December 14, 2023)*** *Ashley Graham (FL), Paul Ricard (OH), Lance Cook (OK), Clark Monroe (MS), Naomi Doraisamy (ID)*

The Gavel Roundtable™

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.

LUKS, SANTANIELLO PETRILLO, COHEN & PETERFRIEND
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