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LEGAL UPDATE

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Liability

Enforcing the Corporate Shield: Protecting Corporate Officers from Individual Liability in Tort Actions by Kelly M. Klein, Esq.



Kelly Klein

It is well-established that the corporate shield doctrine applies in Florida, operating to protect individual agents and employees from exposure to personal liability for acts committed in their employment capacity. The corporate shield doctrine allows a corporate officer (i.e. store manager) to avoid individual liability for an act committed within the scope of his or her employment. In other words, if a customer were to slip and fall in a store, the corporation may be vulnerable to defending against the customer's negligence action, but the customer would not be permitted to maintain an action directly against the store's manager simply based on the manager's employment status with the company.

Florida courts have explained the rationale for this so-called "corporate shield" as applying the "notion that it is unfair to force an individual to defend a suit brought against him personally in a forum with which his only relevant contacts are acts performed not for his own benefit but for the benefit of his employer." *Doe v. Thompson*, 620 So.2d 1004, 1006 (Fla. 1993) (quoting *Estabrook v. Wetmore*, 129 N.H. 520, 529 (N.H. 1987) (quoting *Marine Midland Bank, N.A. v. Miller*, 664 F.2d 899, 902 (2d Cir. 1981)). Thus, the doctrine protects individual employees from liability for decisions made on behalf of their employers. Of course, the corporate shield may be pierced, imposing individual liability, where the agent's alleged act was either criminal in nature, procured some personal benefits to that agent, involved willful misconduct, in conscious disregard of the

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Verdicts and Summary Judgments

Roofing Construction Defect— Defense Verdict

Managing Partner Daniel Santaniello and Boca Raton Junior Partner Christopher Burrows obtained a defense verdict in a roofing case styled *Guy Delmonte v. Whiting Construction, Inc.*, on June 27, 2014. Plaintiff, Guy Delmonte, owner of a townhouse in a quadruplex in Martin County, Florida, sued a local roofing company, Whiting Construction, Inc., alleging that the roofing company had caused interior water damages to Plaintiff's unit when Whiting Construction replaced the roofs of the three neighboring units in the Plaintiff's quadruplex. Plaintiff alleged a single count of negligence and was seeking approximately \$130,000 in direct and consequential damages. After a five day jury trial before Judge McCann, the jury returned a defense verdict after 50 minutes of deliberations.

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Enforcing the Corporate Shield: Protecting Corporate Officers from Individual Liability in Tort Actions cont.



Kelly Klein

corporation, was reckless, or was committed with wanton disregard of human rights. Fla. Stat. s. 607.0831. When attempting to pierce the corporate shield and maintain an action directly against an individual, a plaintiff must plead facts which, if true, rise to the level of the exceptions described above. Otherwise, the plaintiff is limited to an action against the corporation only.

However, despite the corporate shield detailed in Section 607.0831, Florida Courts have recognized several situations where liability may be imposed on an individual beyond those special circumstances set forth in the statute. One of those exceptions involves a tort action against a corporate officer or agent. State and Federal Courts in Florida permit negligence actions to proceed against corporate officers where they were personally involved in committing a tort against the injured party. "Individual officers and agents of a corporation are personally liable where they have committed a tort even if such acts are performed within the scope of their employment or as corporate officers or agents." McElveen v. Peeler and The Tire Shop, Inc., 544 So.2d 270, (Fla. 1st DCA 1989) (citing White-Wilson Medical Center v. Dayta Consultants, 486 So.2d 659, 661 (Fla. 1st DCA 1986) (citing Littman v. Comm. Bank, 425 So.2d 636, 640 (Fla. 3d DCA 1983)).

Predictably, identifying situations where an individual is personally responsible for a tort, as opposed to situations where their responsibility would be purely technical or vicarious, involves some grey area. To clarify the issue, Florida courts apply a test for analyzing the relevant factors for evaluating the potential for individual liability. The test requires an analysis predicated on the following factors:

- (1) The corporation owes a duty of care to the third person, breach of which has caused the damage for which recovery is sought;
- (2) The duty is delegated by the principal or employer to the defendant officer.

- (3) The defendant officer has breached this duty through personal-as opposed to technical or vicarious-fault.
- (4) With regard to the personal fault, personal liability cannot be imposed upon the officer simply because of his general administrative responsibility for performance of some function of his employment. He must have a personal duty towards the injured third person, breach of which specifically has caused the person's damages.

McElveen, 544 So.2d at 272. The McElveen Court applied the principle that individual liability may be imposed upon the owner and president of a tire store for the injuries suffered by a small boy while on store property. In that matter, the young boy was allegedly injured by a rolling tire at The Tire Shop, and his parents brought suit against The Tire Shop, Inc. and against its owner/president, John Peeler, individually. The allegations against Peeler were that for several months prior to the incident, he repeatedly allowed the injured boy access to the entire store premises, never objected to the boy playing in piles of tires, and never warned the boy of the danger of being struck by a rolling tire. Based on these allegations, the First DCA held the plaintiff had sufficiently plead a cause of action against Peeler in his individual capacity because, according to those allegations, Peeler had "personally participated in the tortious conduct that resulted in the child's injuries by acquiescing in the presence of the child on the premises and in failing to warn the child of the dangerous condition." McElveen, 544 So.2d at 272.

The principles espoused in McElveen are routinely adopted and applied by Florida Courts in determining whether the corporate shield may be pierced. In White v. Wal-Mart Stores, Inc., the First DCA considered an injured customer's action for negligence against a Wal-Mart store manager for the customer's injuries from a slip-and-fall on the premises. 918 So.2d 357 (Fla. 1st DCA 2006).

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Enforcing the Corporate Shield cont.

The Court reasoned that while a corporate officer may be individually liable if he or she committed or participated in a tort, even if within the course and scope of his employment, the injured party must allege and prove the officer owed them a duty to and that the duty was breached by a personal (as opposed to technical or vicarious) fault. White, 918 So.2d at 358. In that case, because the complaint alleged that the store manager was personally responsible for carrying out certain responsibilities which he negligently failed to do, the injured customer had sufficiently plead a cause of action against the store manager to survive a motion to dismiss.

Federal courts applying Florida law have also relied on these factors in determining an individual employee's liability. In DeVarona v. Discount Auto Parts, LLC, an injured customer brought an action against a corporation and its store manager, John Grant, for a slip and fall in the store's parking lot. 860 F.Supp.2d 1344 (S.D. Fla. 2012). The plaintiff-injured customer alleged that Grant had a duty to use ordinary care to maintain the parking lot in a reasonably safe condition, which was breached by failing to remove a transitory foreign substance that caused her to fall. To support her claim of negligence, the injured customer produced photographs of the alleged condition to demonstrate the manager knew or should have known of the condition. In response, Defendant Advanced Auto produced an affidavit from Manager Grant attesting he was not in the parking lot when the fall occurred, he could not see the parking lot from his view in the store, and that he did not have any knowledge of a hazardous condition in the lot. Advanced Auto relied on this affidavit to persuade the Court that an action against Grant individually could not be maintained.

After considering the allegations and evidentiary photographs, the Southern District Court ruled the presumption favoring a plaintiff's statement of facts could be successfully rebutted by an *undisputed* affidavit from the defense. Therefore, the courts are not required to resolve all factual issue in a plaintiff's favor simply based on unsupported allegations in the complaint, where those facts had been disputed by

an unopposed affidavit of the defense. In this action, the plaintiff's photographs of the parking lot were ruled insufficient to rebut the defendant's contention that the store manager was not personally liable for the condition. They were ruled insufficient because the photographs were unauthenticated, were undated, did not clearly establish they were taken at the store in question, and showed some kind of apparent spill without showing where the manager's office was in relationship to that spill. In short, they did little to establish Grant's personal involvement in creating a dangerous or negligent condition. Based on the factors set forth in McElveen, the Southern District Court found the unauthenticated photographs did not successfully rebut the store's affidavit denying Grant's personal involvement in the alleged incident. Moreover, the Court explained, it is well-established under Florida law that an individual cannot incur liability for a corporation's torts merely by reason of that corporate officer's official position. Liability may only be imposed on the individual where he personally participated in the alleged tort. DeVarona, 860 F.Supp.2d at 1347. Accordingly, the claim against Grant was dismissed.

Due to the public policy disfavoring individual liability for acts on behalf of an employer, courts are hesitant to allow actions against individuals to proceed so as not to punish employees attempting to fulfill their employment obligations in good faith. When an employee is named as a defendant in a tort action, the defense should consider the factors described above, and where appropriate, craft an affidavit citing relevant corporate policy and denying the officer's personal responsibility. Such contentions are difficult for a third-party (i.e. a customer, invitee) to contradict who is not privy to corporate policy and practice. Limiting individual liability allows employees and officers to perform their job duties without fear of personal repercussions, which ultimately furthers the interests of both the individual and the employer.

For questions regarding the corporate shield doctrine or assistance with your matters, contact Kelly Klein, Esq. at 813.226.0081 or e-mail KKlein@LS-Law.com.

Can an Individual Who Facilitates an Attack on Third-Party Owe Duty of Care to Third-Party?

by Zeb I. Goldstein, Junior Partner



Zeb Goldstein

On March 27, 2014, the Florida Supreme Court reversed the Third District Court of Appeal's decision in *Reider v. Dorsey*, 98 So. 3d 1223 (Fla. 3d DCA 2012), and ruled that a person in an altercation with another person owes that other person a duty of care when he blocks his means of escape, allowing a third party to strike him from behind with a weapon. The Supreme Court's review was premised on conflict with its decision in *McCain v. Florida Power Corp.*, 593 So. 2d 500 (Fla. 1992), the seminal case in Florida on "duty" in negligence cases.

Dorsey was drinking with Reider and Reider's friend, Noordhoek, at a local bar and all were intoxicated over the legal limit. While in the bar, Reider became belligerent, saying that he wanted to fight everyone. Dorsey called Reider a vulgar name and walked out of the bar. Reider and Noordhoek followed him, with Reider demanding to know why Dorsey called him the vulgar name.

Dorsey's path took him between Reider's parked truck and an adjacent car and as Dorsey walked between the vehicles, Reider managed to trap Dorsey between them. Noordhoek followed Dorsey between the vehicles. After several minutes of Reider harassing Dorsey over the epithet he used, Noordhoek reached into Reider's truck and retrieved a tomahawk, a tool which Reider used as part of his work to help him clear land. Dorsey attempted to push Reider aside in order to escape and after the two men grappled for about fifteen seconds, Noordhoek suddenly struck Dorsey in the head with the tomahawk, rendering him temporarily unconscious. Noordhoek and Reider fled the scene. Dorsey regained consciousness and drove himself to the hospital. Dorsey sued Reider for negligence and following a jury trial, Reider filed a motion for a judgment in accordance with a prior motion for directed verdict. The trial court denied the motion and awarded damages to Dorsey. Reider appealed the order.

On appeal, Dorsey argued that Reider created a foreseeable zone of risk because (1) he failed to lock the doors of his truck before he went into the bar or at the time he accosted Dorsey in the parking lot; and (2) he thwarted Dorsey's efforts to escape after Noordhoek retrieved the tomahawk from Reider's vehicle. The Third District Court of Appeal disagreed and held that Reider did not owe a duty of care to Dorsey, as a duty of care could exist only if keeping a tool in a truck "has so frequently previously resulted in the same type of injury or harm that in the field of human experience the same type of result may be expected again." The court further held that while Reider's resistance to Dorsey's effort to escape enabled the strike, there was no record evidence that Reider colluded with Noordhoek to harm Dorsey, or that Reider knew Noordhoek had the tomahawk in his hand before the strike.

The Supreme Court noted that it recognized in *McCain* that a duty of care arises from four potential sources, including the general facts of the case. Whether a common law duty flows from the general facts of the case depends upon an evaluation and application of the concept of foreseeability of harm. When a person's conduct is such that it creates a "foreseeable zone of risk" posing a general threat of harm to others, a legal duty will ordinarily be recognized to ensure the conduct is carried out reasonably.

The Supreme Court stated that it cautioned in *McCain* that it is important to note the difference between the type of foreseeability required to establish duty as opposed to that which is required to establish proximate causation. Establishing the existence of duty is primarily a legal question and requires demonstrating that the activity at issue created a general zone of foreseeable danger of harm to others. Establishing proximate cause requires a factual showing that the dangerous activity foreseeably caused the specific harm suffered.

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Can an Individual Who Facilitates an Attack on Third Party Owe Duty of Care to Third-Party?

The Supreme Court found that Reider's conduct in blocking Dorsey's escape from the situation created a foreseeable zone of risk posing a general threat of harm to others, thus establishing a legal duty on the part of Reider. The Supreme Court then analyzed whether this duty of care extended to the misconduct of Noordhoek, a third party, and held that it did, as the facts of this case met the exception to the general rule that a party has no legal duty to prevent the misconduct of third persons.

In particular, Reider was present and had the ability to control access to his truck where the tomahawk was located. Furthermore, Reider not only provided access to the tomahawk, but he blocked Dorsey's escape and was present when the tomahawk was used to injure Dorsey. Finally, and significantly, Reider was in a position to retake control of the tomahawk and prevent an injury, as Dorsey testified that when Noordhoek took the tomahawk out of Reider's truck, Dorsey asked Reider, "Bobby, what is this?" Ten or fifteen seconds passed before Dorsey was then struck. In this amount of time, Reider had the opportunity to prevent the injury.

The district court thus misapplied the Supreme Court's precedent in McCain when it concluded that the evidence failed to demonstrate that Reider owed a legal duty of care to Dorsey under the facts of the case. The McCain decision does not require that there be evidence that the defendant colluded with the third party to cause harm or knew exactly what form the harm might take, only that his conduct created a general zone of foreseeable danger of harm. The Supreme Court quashed the district court's decision and remanded the case for reinstatement of the trial court's judgments.

For questions about duty of care or assistance with your matters, contact Zeb Goldstein, Junior Partner at 954.761.9900 or e-mail ZGoldstein@LS-Law.com.

About Zeb Goldstein



Zeb Goldstein

Zeb I. Goldstein is a Junior Partner in the Fort Lauderdale office and was admitted in 2002. Zeb has substantial trial experience in litigating general liability, premises liability and negligent security matters for shopping malls and centers, retail stores, restaurants, night clubs and hotels in South Florida venues. He also handles catastrophic injury and wrongful death matters. Zeb has a Bachelor of Arts degree from Canisius College and earned his Juris Doctorate from Nova Southeastern University.

About Kelly Klein



Kelly Klein

Kelly M. Klein is an Associate in the Tampa office and was admitted in 2004. She is a member of the PIP Team and also dedicates her practice to handling complex and catastrophic personal injury matters involving aircraft and auto collisions, product liability and premises liability. Kelly is also a member of the Employment Practices Liability team and handles EEOC claims and suits for public and private entities. She has provided counsel to management on a broad spectrum of employment matters, including litigating discrimination claims, as well as crafting personnel policies in compliance with current state and federal laws. Kelly earned both her Juris Doctorate and Bachelor of Science degree from Florida State University. She is admitted to practice in all State courts and the Southern, Middle and Northern District Courts of Florida.

Endorsement CG 22 94 10 01 and the Penny Wise GC by Christopher H. Burrows, Junior Partner



Chris Burrows

In J.B.D. Construction, Inc. v. Mid-Continent Casualty Company, the Eleventh U.S. Circuit Court of Appeals considered an action by an insured against its insurer for defense and indemnity of a construction defect claim and the applicability of the “your work” policy exclusion to coverage where the J.S.U.B. exception for work performed by subcontractors was eliminated by standard endorsement. J.B.D. Construction, Inc. v. Mid-Continent Casualty Company, 2014 WL 3377690 (No. 13-10138, Eleventh Circuit Court of Appeals, July 11, 2014).

In 2004 J.B.D. Construction, Inc. (“JBD”) contracted with Sun City for the construction of a fitness center as an addition to an existing building. Sun City purchased pre-fabricated components of the fitness center and JBD assembled them and installed everything needed to make it a complete and functioning building. JBD acted as a general contractor for the construction and engaged a number of subcontractors to perform the work, which was completed in 2007. JBD had also obtained two identical standard form Insurance Services Office Commercial General Liability (“CGL”) policies from Mid-Continent Casualty Company (“MCC”) covering the timeframe of the Sun City work.

Shortly after completion of the project, Sun City noticed damage caused by water leaks in the fitness center’s roof, windows, and doors, including rust, peeling paint, and blistering and discolored stucco. Despite attempts to repair the leaks, Sun City withheld final payment to JBD eventually resulting in JBD initiating a lawsuit against Sun City for non-payment. Sun City counterclaimed in the lawsuit alleging that JBD breached the contract, violated building codes, and performed the work negligently causing “damages to the interior of the property, other building components and materials, and other, consequential and resulting damages” and “damages to other property”.

In May 2009, JBD tendered the Sun City Counter-

claim to MCC for defense and indemnification. MCC shortly thereafter issued a Reservation of Rights letter indicating that it was investigating coverage and identifying various coverage exclusions in the policies MCC believed may be applicable. In July 2009, JBD settled Sun City’s claims for \$181,750.94, an amount less than the Sun City’s pre-mediation demand, and paid with JBD’s own funds. JBD then sought reimbursement for the payment and its defense costs from MCC, which it ultimately brought suit in state court, and was removed to federal court by MCC.

The issue on appeal was whether MCC had a duty to defend JBD based on the allegations in the Sun City Counterclaim and whether MCC had a duty to indemnify Contractor for the settlement payment it made.

As indicated by the Eleventh Circuit, the relevant policy language was: “[MCC] will pay those sums that the insured becomes legally obligated to pay as damages because of ... ‘property damage’ to which this insurance applies...” Including the following exclusion: “‘Property damage’ to: ... [t]hat particular part of any property that must be restored or replaced because ‘your work’ was incorrectly performed on it.” “Your work” was defined in the policies as “work or operations performed by you or on your behalf”.

The MCC policies originally contained a “subcontractor exception”, stating that “[t]his exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor”, however, this exception was eliminated by Endorsement CG 22 94 10 01.

Since JBD undertook the construction of the entire fitness center, the Eleventh Circuit found that JBD’s “work”, for purposes of applying the “your work” exclusion, included “construction of the health center building with related and appurtenant improvements to an existing structure”.

[Read More . . . P. 7](#)

Endorsement CG 22 94 10 01 and the Penny Wise GC cont.

Therefore, the “your work” exclusion, absent the subcontractor’s exception, barred coverage for damages to the completed fitness center or its components arising from JBD or its subcontractors’ defective construction.

In determining MCC’s duty to defend JBD, the Eleventh Circuit cited governing case law to the effect that the duty to defend is greater than the duty to indemnify, that the determination depends solely on the allegations of the policy, that the insurer must defend “even if the allegations in the complaint are factually incorrect or meritless,” and that doubts are resolved in favor of the insured. It also held that the allegation that there was “damage to other property” in Sun City’s Counterclaim was sufficient to trigger MCC’s duty to defend JBD.

In determining MCC’s duty to indemnify JBD, the Eleventh Circuit cited governing case law to the effect that the duty to indemnify is narrower than the duty to defend, that it is dependent on the final judgment or final resolution of the claim, and that it requires the insured to “demonstrate that it suffered a loss under the policy.”

The Court reiterated that the MCC policies only covered claims for damage to property other than the completed fitness center caused by the defective installation of the doors, windows, and roof. The Court could not find evidence in the record of “damage to other property” and therefore, upheld the district court’s determination that MCC did not have a duty to indemnify JBD as a matter of law, illustrating how an insurer may have a duty to defend, but no duty to indemnify for a claim.

For questions about construction defect claims or assistance with your matters, contact Chris Burrows, Junior Partner at 561.893.9088 or e-mail CBurrows@LS-Law.com.

About Chris Burrows



Chris Burrows Christopher Burrows is Junior Partner in the Boca Raton office practicing in construction defect and real property law. He is an expert in Construction Law and is Board Certified in Construction Law by the Florida Bar. His practice also includes commercial civil litigation, general liability and premises liability matters. He obtained his Bachelor of Arts degree from the University of Florida and earned his Juris Doctorate from Stetson University. Christopher is admitted in Florida (2002) and to the Southern, Middle and Northern Districts of Florida, including the United States District Court of Appeals, Eleventh Circuit.

It's Midnight . . . Do You Know Where the Cars Titled in Your Name Are? by Zeb I.

Goldstein, Junior Partner



Zeb Goldstein

On April 10, 2014, the Florida Supreme Court issued an opinion addressing the beneficial ownership exception to the dangerous instrumentality doctrine, which provides an exception to the doctrine that a vehicle owner who permits another to use the vehicle may be liable for any harm caused by the negligent use of the vehicle.

The opinion was issued in Christensen v. Bowen, (SC12-2078).

Robert Christensen purchased a vehicle for his wife while the two were involved in divorce proceedings, and was listed on the title as a co-owner of the vehicle. In the opinion, the Court unanimously held that Robert Christensen could be held vicariously liable in a wrongful death action stemming from a fatal accident in which his ex-wife negligently struck and killed another while driving the vehicle. The Court held that vicarious liability under the dangerous instrumentality doctrine could apply even though the car was intended by Christensen to be used by his ex-wife, and even though Christensen had neither keys to the car nor access to the garage where the car was kept.

The Court began its analysis by noting that “the underlying rationale of the dangerous instrumentality doctrine is that if a vehicle owner, who has control over the use of the vehicle, exercises his or her control by granting custody of the vehicle to another, the owner commits himself or herself to the judgment of that driver and accepts the potential liability for his or her torts.”

The Court recognized that there is a beneficial ownership exception to the dangerous instrumentality doctrine. The exception precludes vicarious liability when the titleholder lacks beneficial ownership of the vehicle. However, the Court held that the exception only applies in cases where equitable and legal rights of control have passed to another and the titleholder retains bare legal paper title. Such a situation might arise when a car is sold but title retained as security for the full payment of the purchase price, or where a

common law purchase of a vehicle is effected but the title has not been updated to reflect the transfer.

In other words, “beneficial ownership is unrelated to physical access to a vehicle, past use of a vehicle, or intent to use or not use a vehicle. Rather, beneficial ownership arises from legal rights that allow an individual to exert some dominion and control over the use of the vehicle.” The Court added that for purposes of motor vehicle litigation, title determines ownership, and ownership reflected in a title can only be disproven by objective evidence of a “conditional sale or incomplete faulty transfer.”

Because Christensen did not present any evidence that he transferred his co-ownership interest in the vehicle, he retained the legal right (if not practical ability) to exert control over the vehicle. He therefore could not avail himself of the beneficial ownership exception to the dangerous instrumentality doctrine.

For questions about the dangerous instrumentality doctrine or assistance with your matters, contact Zeb Goldstein, Junior Partner at 954.761.9900 or e-mail ZGoldstein@LS-Law.com.

Verdicts and Summary Judgments cont.

Dog Attack – Premises Liability/Negligence – Dismissal with Prejudice

Tampa Associate Joseph Kopacz and Partner Anthony Petrillo obtained a Motion to Dismiss Plaintiff's Complaint with prejudice and entry of judgment against Plaintiff in a dog attack case styled Ralph Hayes v. Oldsmar Flea Market, on July 25, 2014. Defendant operated a flea market in Oldsmar, Florida. Plaintiff, Ralph Hayes, while walking through the parking lot of the flea market alleged to have been attacked by a large pit-bull. Plaintiff alleged this attack caused severe head trauma requiring multiple brain surgeries directly related to the dog attack at Oldsmar Flea Market. Plaintiff's medical bills were well in excess of **\$200,000**. Plaintiff alleged both a negligence cause of action and premises liability cause of action against Defendant. Plaintiff's general allegation was Defendant allowed dogs onto the premises and also allowed vendors to sell dogs at the flea market creating a "foreseeable zone of risk." The problem Plaintiff faced was the fact this particular dog never previously attacked anyone on Defendant's premises giving Defendant's notice of this particular dog's dangerous propensities. After multiple Motion to Dismiss hearings, Judge Jack Day (Pinellas County) dismissed the complaint with prejudice.

Slip and Fall Death – Summary Judgment

Fort Lauderdale Junior Partner David Lipkin and Managing Partner Daniel Santaniello obtained a Summary Judgment on a Slip and Fall Death matter styled Tom Osland, as Per. Rep. of the Est. of Alice Francis, v. El Ad Camino Real, LLC; and L-Ad-V Management, LLC, d/b/a Element National Management. Plaintiff alleged the decedent, Alice Francis died after striking her head in a trip and fall on a defective portion of public sidewalk that abutted the defendants' property. Plaintiff relied on a Boca Raton City Ordinance that requires private property owners to maintain and repair public sidewalk which abuts their premises. We acknowledged the ordinance but argued there was no intent that the ordinance would create a private right of action. The plaintiff disputed this and also argued that as she was an invitee on defendant's premises the private landowner should still be responsible for the sidewalk even if the ordinance is construed as creating no private right of action. The

court agreed with our contention that the ordinance did not create a private right of action against the property owner and further agreed that the decedent's invitee status did not alter the analysis. Following entry of final judgment in favor of the defendant we filed a Motion to Tax costs and the plaintiff agreed to waive appeal rights in exchange for our agreement to not pursue taxable costs.

Automobile Accident Letter of Protection— Supreme Court Denied Plaintiff's Petition for Review of Appeal Opinion

On July 7, 2014, the Florida Supreme Court denied plaintiff's petition for review of the Fourth District Court of Appeal's opinion rendered on November 27, 2013 in favor of our client (Blanco) in Mayruis Disla v. Joseph Blanco, found at 129 So. 3d 398 (Fla. 4th DCA 2013). The plaintiff has therefore exhausted all of her appeals.

Appellate Junior Partner Doreen Lasch handled the appeals and Dan Santaniello represented the defendant in the trial court proceedings. Plaintiff Disla was a passenger in Defendant Blanco's vehicle when Blanco suffered a seizure while driving his vehicle. Defendant lost control of his vehicle, striking multiple objects, including a curb, tree and a house. Plaintiff Disla suffered a broken neck in the accident and had emergency anterior cervical fusion with bone graft and plating at C3-4.

Following her release from the hospital, Plaintiff continued to have neck pain and related neurological symptomatology. Disla's attorney referred her to a physiatrist/pain management specialist, Stuart Krost, who then referred her to a neurosurgeon, Heldo Gomez, who performed two surgeries under a Letter of Protection. Gomez performed a spinal fusion surgery for which he charged an exorbitant amount and proposed an expensive large life care plan.

Given the exorbitant medical bills and life care plan, the Defendant was looking at specials that exceeded **\$1,000,000**. Policy limits had been tendered and rejected so the case went to trial. Based on the jury's verdict, the resulting judgment for the plaintiff was \$10,532.50. This is the judgment that was upheld on appeal.

Verdicts and Summary Judgments cont.

Property Management – Breach of Contract/ Negligence – Dismissal with Prejudice

Boca Raton Junior Partner Christopher Burrows and Daniel Santaniello, Managing Partner obtained a Final Order Dismissing Plaintiff's Third Amended Complaint with prejudice against Plaintiffs in the case styled Maria Del Carmen Roberto, et al. v. Four Points Property Management, Inc., et al., in Miami-Dade County Circuit Court, on April 22, 2014. Defendant, Four Points Property Management contracted to provide property management services for West Point Condominium where the Plaintiffs owned a unit. Plaintiffs alleged Defendant breached its contract and/or committed negligence in its physical maintenance obligations to the Condominium and its unit owners, causing water intrusion and mold to occur in Plaintiffs' unit and thereby rendering it uninhabitable. After Plaintiffs' repeated attempts to plead a cause of action against the Defendant, Four Points Property Management, Plaintiffs' complaint was dismissed with prejudice for failure to state a cause of action.

Fort Myers Office

In July we announced the opening of our new Fort Myers office located downtown in the River District at 1412 Jackson Street. The new office provides the firm with greater presence in southwest Florida and will cover matters in Charlotte, Lee, Collier, Desoto, Hendry and Glades counties. Howard Holden, Esq. is the Managing Partner of the Fort Myers office and has been practicing law for 25 years. He is joined by John Meade, Esq. and Deborah Goodaker, Paralegal. The office is within walking distance to the Lee County Courthouse and is on the corner of First Street and Jackson. Free parking is available on Jackson Street along with municipal parking nearby at the Main Street Garage.

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Firm News

Florida Defense Lawyers Association (FDLA) Annual Meeting

The FDLA held its annual meeting August 7—10, 2014 at the Breakers Palm Beach. Attorneys from our offices in Orlando, Tampa, Jacksonville and Fort Lauderdale attended the CLE sessions and conference events. The Defense Research Institute (DRI) presented Dan Santaniello, FDLA President with the Exceptional Performance Citation (2013/2014) for supporting and improving the standards and education of the defense bar, and contributing to the improvement of the administration of justice in the public interest. The event marked the end of Dan's term as President of the FDLA.



Exceptional Performance Citation presented to Dan Santaniello.

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