LUKS, SANTANIELLO PETRILLO & JONES

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LEGAL UPDATE

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Liability

Are High Heels A Foreseeable Risk To Your Health? Comparative Negligence In High Heel Slip And Fall Cases by Lisa Clary, Esq.

Lisa Clary

High-heels appear everywhere from fashion magazines, the film industry and the red carpet to the most conservative workplaces, including courtrooms. High heels are a fashion accessory that women continue to wear despite any physical limitations due to age, weight, health issues and pregnancy, and even with the medical community advising against wearing high-heels. Are high heels a foreseeable risk to your health? What are the ill effects of a love affair with stilettos?

The question before the Fifth District Court of Appeals in the recent slip and fall case, Jennifer Bongiorno v. Americorp, Inc., was whether high-heeled shoes create a foreseeable zone of risk implicating comparative negligence in a premises liability case. *See* Bongiorno v. Americorp, Inc., etc., et. al., 2015 WL 1360871 – So.3d – (Fla. 5th DCA 2015); 40 Fla. L. Weekly D760c, March 27, 2015. Jennifer Bongiorno entered a bathroom in the office building where she worked wearing four to five -inch heels and slipped on an unusually slippery floor. Bongiorno filed a negligence claim against the property owner, Americorp, Inc., asserting her injuries were a direct and proximate result of Americorp's negligence. Americorp filed an answer denying liability and asserting affirmative defenses, including comparative negligence.

At the trial, Americorp argued that Bongiorno was negligent in wearing four to five-inch heels to work. Counsel for Americorp argued during the closing argument,

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Verdicts and Summary Judgments
Premises Liability — Defense Verdict

Jack Luks, Founding Partner and Zeb Goldstein, Senior Partner received a defense verdict in a premises liability case styled Cecere-Ferguson vs. The Town Center at Boca Raton Trust in Palm Beach County on March 31, 2015. Plaintiff argued that while walking along the common area sidewalk, she tripped over a handicapped ramp that she was unable to see due to extremely poor lighting. Defendant argued that Plaintiff may have fallen at a different location and that the lighting conditions where Plaintiff claimed she fell were adequate. Plaintiff alleged that as a result of the accident, she suffered multiple disc herniations in her cervical spine at C6-7 and in her lumbar spine at L4-5 and S1. Two experts testified confirming Plaintiff's herniated discs.

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INSIDE LEGAL UPDATE

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Comparative Negligence In High Heel Slip And Fall Cases cont.

in pertinent part that:

> "[T]he reason we had asked for the comparative [negligence] … [is] when you're talking about a … four-to-five-inch heel, there is almost an assumption of the risk in that." [Women] fall wearing those kind of heels. And the way she described her fall is consistent with a woman wearing extremely high heels. We're not trying to say that my client ... [felt] you shouldn't be able to wear heels in our office …. But we're saying sometimes people fall. Sometimes just because somebody falls, there is not necessarily any negligence on somebody else's part …."

Irrespective of the lack of record evidence presented at trial, the court agreed with Americorp that Bongiorno was comparatively negligent for her injuries for wearing four to five-inch high-heels to work. As a result, the trial court found the parties fifty percent negligent for Bongiorno's injuries.

On appeal, Bongiorno argued that it was reversible error for the trial court to find her comparatively negligent for her injuries because there were no facts of record to support the trial court's finding that she was negligent for wearing high-heels to work. In response, Americorp argued that the trial court's finding of comparative negligence was supported by competent substantial evidence which showed that Bongiorno's "choice [to wear] four to five inch high heels contributed to the fall." In support of its position, Americorp cited evidence that Bongiorno "informed her treating physicians that she fell while wearing high heels and that a co-worker was able to avoid falling on the slippery bathroom floor because she was wearing 'safer footwear.'"

The law of Comparative Negligence

Comparative negligence is an affirmative defense that reduces a plaintiff's recovery proportionally to the plaintiff's degree of fault in causing the injuries. Under Florida law, the defendant has the burden of proving the plaintiff's negligence was a cause of the accident. Phillip Morris USA, Inc. v. Arnitz, 933 So.2d 693, 697 (Fla. 2d DCA 2006). Therefore, Americorp had to prove that Bongiorno's wearing high-heels was a cause of her slip and fall injuries. The primary issue in this case was whether Americorp satisfied its burden of proving Bongiorno had a duty not to wear high-heels to work.

To establish a negligence claim, the following elements must be proven: (1) a duty to conform to a certain standard of conduct; (2) a breach of the duty; (3) proximate cause; and (4) damages. Curd v. Mosaic Fertilizer, LLC, 39 So.3d 1216, 1217 (Fla. 2010). To determine whether a duty exists to support a negligence claim, the defendant must first determine whether the plaintiff's conduct created a foreseeable zone of risk. ZP No. 54 Ltd. P'ship v. Fidelity & Deposit Co. of Md., 917 So.2d 368, 374 (Fla. 5th DCA 2005). The 5th DCA examined whether Bongiorno created a foreseeable zone of risk when she wore heels to work to determine whether a sufficient duty existed to establish the plaintiff's negligence. The threshold question in this case was whether a prudent, reasonably careful person would anticipate the plaintiff's injuries were a foreseeable consequence, that is, likely to result, from wearing four to five-inch heels to the office. Land Title of Cent. Fla., LLC v. Jimenez, 946 So.2d 90, 93 (Fla. 5th DCA 2006).

"To impose a duty, it is not enough that a risk merely exists or that a particular risk is foreseeable; rather, the defendant's conduct must *create* or *control* the risk before liability may be imposed." Jackson Hewitt, Inc. v. Kaman, 100 So.3d 19, 28 (Fla. 2d DCA 2011), *citing* Demelus v. King Motor Co. of Ft. Lauderdale, 24 So.3d 759, 761 (Fla. 4th DCA 2009). "As to duty, the proper inquiry for the reviewing appellate court is whether the defendant's conduct created a foreseeable zone of risk, *not* whether the defendant could foresee the specific injury that actually occurred." Id., *citing* McCain v. Fla Power Corp., 593 So.2d 500, 504 (Fla. 1992).

To establish a foreseeable zone of risk, there must be evidence that Bongiorno's injuries were *probable* as a result of wearing high-heels causing her to fall. The *possibility* that a plaintiff may sustain injuries while wearing a particular type of shoes is insufficient evidence to establish a plaintiff created a foreseeable zone of risk. Goode v. Walt Disney World Co., 425 So.2d 1151, 1155 (Fla. 5th DCA 1982); Cona v. Inter County Tel. & Tel. Co., 40 So.2d 148 (Fla. 1949).

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Comparative Negligence In High Heel Slip And Fall Cases cont.

The 5th DCA rejected Americorp's argument that the trial court's holding was based on competent substantial evidence finding to the contrary there were no facts of record to support the court's ruling. The appellate court held that Americorp failed to sustain its burden of proving Bongiorno created a foreseeable zone of risk by wearing high-heel shoes to work and, therefore, the trial court erred in finding her comparatively negligent for her injuries. The trial court's ruling was reversed and remanded for entry of a judgment in Bongiorno's favor without the fifty percent reduction for comparative negligence.

Based on the foregoing, a slip and fall plaintiff will not be found comparatively negligent for injuries in a premises liability case merely because of the type of shoes the plaintiff was wearing at the time of the accident. The defendant has the burden of proving the plaintiff created a foreseeable zone of risk by wearing high-heel shoes before plaintiff liability can be invoked. The correct standard to determine whether the Plaintiff created a "foreseeable zone of risk" is whether the plaintiff's slip and fall injuries were "likely to result" from wearing high-heels or any type of shoes.

The 5th DCA did not speak to the sufficiency of evidence necessary to satisfy a defendant's burden of proof to constitute comparative negligence, but with the right set of facts and a sound presentation of evidence, a defendant may prove that a plaintiff created a foreseeable zone of risk resulting in the plaintiff's injuries. Yet, the court's silence on this issue begs the question, what kind of evidence will satisfy this inexplicable burden of proof? Would expert opinion testimony from a biomechanics expert or biomedical engineering expert suffice? While the 5th DCA did not consider whether high-heels are a foreseeable risk to women's health, a perusal of scientific studies on the dangers of wearing high-heels published by experts in biomechanics and biomedical engineering may lead defense counsel to potential expert witnesses with specialized knowledge in the mechanics of high-heel slips and falls. *See* e.g., Long-term use of high-heeled shoes alters the neuromechanics of human walking, Cronin, Barrett & Carty, J. Appl. Physiol. 112: 1054-1058, 2012.

In light of this 5th DCA opinion and a review of the limited high-heel case law in Florida, there are currently no ill legal effects of a love affair with stilettos, or in that regard, with any other types of shoes. And so the love affair with shoes continues … until the Florida Courts decide or can be persuaded differently.

For further information or assistance with your premises liability matters, please contact Lisa Clary, Esq. in the Orlando office. She can be reached at T: 407.540.9170 Ext. 26 or e-mail LClary@**LS-Law**.com

About Lisa Clary

Lisa Clary, Esq. is an Associate in the Orlando office. She practices in the areas of general liability, personal injury, auto liability, negligence, premises liability, negligent security and defamation claims. Prior to joining the firm, Lisa worked for an Insurance Defense firm in civil litigation, and also as Senior Attorney for the Florida Guardian Ad Litem Program and Department of Children and Families. Prior to attending law school, Lisa was a social worker in the health care industry. White attending law school, she interned with Barry University Children & Families Legal Clinic. Lisa earned both her Bachelor of Science degree in Social Work and Master of Social Work from Florida State University. She obtained her Juris Doctorate from Barry University. She is admitted in Florida (2007).

A Duty of Technological Competence and Cooperation: Legal Ethics in a Digital Era by Deana Dunham, Esq.

Technology is constantly changing legal practice, for better or worse. As communication technology has evolved, so too has the legal profession's standard for competence and cooperation in the practice of law.

Under the Florida Rules of Professional Conduct, Rule 4.1.1, a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. In 2012, the ABA changed the Model Rules of Professional Conduct to clarify that lawyers have a duty to be competent not only in the law, but also in technology. The Comment to Model Rule 1.1 on Competence was revised to provide that "to maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject."

While Florida has not amended its Rules of Professional Conduct to adopt this change, the trend requiring technological competence continues to grow. Thirteen states have formally adopted the revised comment to Rule 1.1 and a handful of others are acknowledging the duty through other means (advisory and formal ethics opinions). The list of states who have formally adopted the Rule change includes Arizona, Arkansas, Connecticut, Delaware, Idaho, Kansas, Minnesota, New Mexico, North Carolina, Ohio, Pennsylvania, West Virginia and Wyoming. California, Massachusetts, Virginia and New Hampshire have also put attorneys on notice that the duty of competence extends to technology. There have been cases in which courts have held Florida attorneys to a higher standard of technological competence.

In Martin v. Northwest Mutual Life Insurance Co., 2006 WL 146991 (M.D. Fla. Jan. 19, 2006), Peter Martin, a lawyer from Sarasota, was seeking benefits from Northwestern Mutual for being "disabled." Despite numerous requests for information about Martin's income while he was disabled, the information was not provided. Northwest Mutual's lawyer suspected that Martin had not produced all of the documents available; he subpoenaed not only Martin's bookkeeper, but also his fiancée. They produced what turned out to be more than three boxes of documents the plaintiff had certified did not exist. When challenged on this, Martin, a former trial lawyer with federal experience, conceded that he had failed to produce the requested documents, but claimed that he is computer illiterate and, therefore, incapable of retrieving any electronically stored documents. The court found such claim was "frankly ludicrous" and imposed sanctions of expenses and attorney's fees.

The ethical challenges of litigation management in today's digital world demand technological competence, especially in managing electronically stored information (ESI) and e-discovery. Client and counsel alike must protect confidential electronic information and work cooperatively to preserve and produce ESI. In an age of electronic discovery, lawyers must be competent in electronically stored information (ESI). An attorney cannot adequately represent a client without some knowledge of how a client is managing its ESI. Thus, lawyers cannot be competent in the digital era if they do not know: how to find it, where it is stored, how it is preserved, and how to make sure it is protected and preserved.

This duty of technological competence is particularly relevant in claims for spoliation of evidence, particularly of electronically stored information. Under Rule 4-3.4 (a) (Fairness to Opposing Party and Counsel) a "lawyer shall not: unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material that the lawyer knows or reasonably should know is relevant to a pending or a reasonably foreseeable proceeding; nor counsel or assist another person to do any such act." The Comment provides additional guidance, "Subdivision (a) applies to evidentiary material generally, including *computerized information*." Furthermore, "a lawyer shall not fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party."

This issue was explored in *In re Seroquel Products Liability Litigation,* 244 F.R.D. 650 (M.D. Fla. 2007), in which the Middle District adopted the Southern District of New York's litigation hold requirement. The court held that the parties had a responsibility at the outset of the litigation to "take affirmative steps to monitor compliance so that all sources of discoverable information

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A Duty of Technological Competence and Cooperation: Legal Ethics in a Digital Era Cont.

are identified and searched." To do this, the court held that counsel must become fully familiar with the client's document retention policies, as well as the client's data retention architecture. "This will invariably involve speaking with information technology personnel, who can explain system-wide backup procedures and the actual (as opposed to theoretical) implementation of the firm's recycling policy. It will also involve communicating with the 'key players' in the litigation, in order to understand how they stored information."

Cooperation

The Comment to Rule 4-1.3 (Diligence) requires a lawyer to "pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer." But it also adds, "A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued."

Rule 4-3.2 (Expediting Litigation) states that a "lawyer shall make reasonable efforts to expedite litigation consistent with the interest of the client," adding in the Comment, "Dilatory practices bring the administration of justice into disrepute."

The courts seem to have gone further in requiring cooperation. In *Seroquel Products*, the court found that "Identifying relevant records and working out technical methods for their production is a *cooperative* undertaking, not part of the adversarial give and take." The court added, "It is not appropriate to seek an advantage in the litigation by failing to *cooperate* in the identification of basic evidence."

As time goes by, the courts will continue to impose a duty of technological competence and cooperation that did not exist even five or ten years ago and which will continue to evolve. It is more important than ever that companies and their attorneys understand how relevant documents are collected, retained and how data is transmitted.

For further information or assistance with your matters please contact Deana Dunham, Esq. in the Jacksonville office. She can be reached at T: 904.791.9191 or e-mail DDunham@**LS-Law**.com

About Deana Dunham

Deana Dunham, Esq. is an Associate in the Jacksonville office and member of the BI team. She practices in the areas of auto, premises and general liability matters. Prior to joining the firm, she worked for several major insurance carriers as a litigation specialist and staff counsel handling first and third party claims for personal injury and property damage. She earned her Bachelor of Science Degree in International Business from Westminster College. Deana obtained her Juris Doctorate from the University of Akron. She is admitted in Florida (2013) and Ohio (2009 - inactive since September, 2013). She is also licensed as an Independent Adjuster, All Lines, Florida Department of Financial Services.

Company's Quarterly Safety Committee Reports Protected by Work Product Privilege and Non-discoverable Unless all the Requirements Are Met Under Fla. R. Civ. P. 1.280(b)(4) by Rachelle Adams, Esq.

Rachelle Adams

On March 26, 2011, Mary Bolda allegedly slipped and fell while shopping at the Sawgrass Mills Mall. She filed a negligence lawsuit against Millard Mall Services, Inc. and Sunrise Mills Limited Partnership. Bolda sent a subpoena duces tecum to Sunrise Mills' corporate representative requesting: all records, incident reports, and written memorandum concerning substantially similar acts and/occurrences on the premises concerning slip and fall accidents within the last three years; all documentation on maintenance or cleaning of the subject premises during March 2011; and all documentation on maintenance or cleaning of the subject premises by any outside person/corporation/entity during 2011. The defendants objected at the hearing and filed supporting affidavits. The defendants objected that the documents were protected by the work product privilege, stating that its Quarterly Safety Committee Reports which included incidents and the incident reports containing photos and discussions on the incidents were mental impressions.

The trial court held an in camera inspection of the requested documents, sustaining/upholding defendant's work product privilege objection as to its incident reports, but ordered the defendant to produce its Quarterly Safety Committee Reports from 2008 to the date of the incident. The defendants petitioned the First District Court of Appeal for a writ of certiorari to quash the order compelling production of the Quarterly Safety Committed Reports.

In granting the defendants' petition, the Court examined Fla. R. Civ. P. 1.280 (b)(4) which permits the invasion of the work product privilege rule upon the meeting of certain conditions and the rationale behind the rule. Fla. R. Civ. P. 1.280(b)(4) permits that a party may obtain work product, or materials "prepared in the anticipation of litigation . . . only upon a showing that the party seeking discovery has need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means."

The Court determined that the work product documents are not discoverable unless the requesting partying can demonstrate both that: (1) a particularized need, which includes the determination of whether the privileged documentation contains relevant information; **and** (2) the inability to obtain the substantial equivalent without undue hardship. "The work product of the litigant, his attorney, or agent cannot be examined, absent rare and exceptional circumstances." Surf Drugs, Inc. v. Vermette, 236 So. 2d 108, 112 (Fla. 1970). "The rationale supporting the work product doctrine is that 'one party is not entitled to prepare his case through the investigative work product of his adversary where the same or similar information is available through ordinary investigative techniques and discovery procedures.'" S. Bell Tel. & Tel. Co. v. Deason, 632 So. 2d 1377, 632 (Fla. 1994).

The Court found that routinely prepared reports, such as the Quarterly Safety Committee Reports, may still qualify as work product. Reports created after slip and fall incidents have demonstrated to companies that people who fall in their stores may seek to be compensated for their injury and that some people bring frivolous, bogus, or exaggerated claims. Publix Super Mkts., Inc. v. Anderson, 92 So. 3d 922, 923 (Fla. 4th DCA 2012). Each side should be able to investigate incidents without the fear of having to disclose everything to its opponents. Id.

The Court determined that the work product protection extends to information gathered in anticipation of litigation by corporate non-attorney employees, such as employees of the corporation's risk management department. Incident reports filed with the corporation's risk management department used to defend against potential litigation are protected by the work product privilege. Snyder v. Value Rent-A-Car, 736 So 2d 780, 781 (Fla. 4th DCA 1999). A company's reports do not lose their work product character when they are routed to departments other than risk management departments in order to take remedial measures, such as the security department and the custodial supervisor. Dist. Bd. of Trs. of Miami-Dade Cmty. Coll. v. Chao, 739, So. 2d 105, 107 (Fla. 3d DCA 1999).

In this case, plaintiff only asserted that prior incidents were within the scope of discovery and she was unable to obtain substantially equivalent material

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Company's Quarterly Safety Committee Reports protected by work product privilege and non-discoverable unless all the requirements are met under Fla. R. Civ. P. 1.280(b)(4) cont.

without undue hardship. The Court found that the plaintiff had the ability to obtain substantially equivalent information though discovery of the defendants even if some of the requested documents pertained to the regular occurrence of incidents similar to the plaintiff's accident.

Plaintiff had at her disposal interrogatories and the use of depositions to obtain the necessary information. In fact, plaintiff had already obtained a list of incidents on defendants' premises for the three years predating plaintiff's incident, which included times, dates, locations, and detailed descriptions.

The Court determined that even if the requested documents might lead to relevant and admissible evidence, that the relevance was only one factor among several to be considered. The mere fact that the requested documents could lead to additional information about the incident was not enough without more to show undue hardship. Mt. Sinai Med. Ctr. v. Schulte, 546 So. 2d 37, 38 (Fla. 3d DCA 1989). The Court found that plaintiff had not demonstrated that she was unable to obtain the substantial equivalent of the material by other means. Plaintiff merely asserted that she needed the materials to prosecute her case, and the Court determined that without more, plaintiff failed to meet her burden.

The Court held that the trial court's order to defendants compelling the disclosure of the Quarterly Safety Committee Reports was a departure from the essential requirements of the law, because the information plaintiff sought was from documents that were created in the course of defendants investigations, in anticipation of litigation. The Court further found that the plaintiff had not made a sufficient showing of need or undue hardship with regard to the information requested.

About Rachelle Adams

Rachelle Adams, Esq. is an Associate in the Fort Lauderdale office. She is a member of the PIP Team. Prior to joining the firm, Rachelle worked as a PIP Attorney in South Florida. While attending law school, she was a Law Clerk for the Honorable David Gersten, Third District Court of Appeal. While completing her Masters of Law (LLM) , she was a Law Clerk for the Honorable Beatrice Butchko, Eleventh Judicial Circuit. She earned her Bachelor of Arts degree from the University of Nebraska-Lincoln. She obtained both her Juris Doctorate and an LL.M. in Intercultural Human Rights from St. Thomas University. Rachelle is admitted in Florida (2011), and to the United States District Court, Southern District of Florida (2011). She is bilingual.

Verdicts and Summary Judgments cont.

Defamation Case—Defense Verdict

Todd Springer and Paul Jones obtained a defense verdict in a defamation case after a three-day Federal Court trial in Jacksonville in the matter styled Berman vs. Kafka. Plaintiff claimed damage to her reputation and punitive damages from the statements in the amount of $4.5 million. However, the jury found that the alleged libel per se statements were in fact substantially true and returned a verdict for the defendant.

Plaintiff alleged one count of libel per se resulting from two statements made by Defendant alleging that she had embezzled money from the Defendant's company. The two statements were based upon two business checks each made payable to Paintiff's husband care of Tri-Fecta Gaming, USA. On the back of each check was the signature of Plaintiff's husband endorsing the check over to Plaintiff. It was the Defendant's position that neither check should have been made payable to Plaintiff's husband nor endorsed over to Plaintiff as Plaintiff's husband was not an owner of Tri-Fecta Gaming USA, Inc., as alleged by Plaintiff, but instead an employee. The funds from the checks were never deposited into the Tri-Fecta Gaming business account. Plaintiff claimed that the signature on the back of each check was not hers. However, the defense offered other samples of her handwriting to be compared by the jury.

Auto Negligence — Defense Verdict

Paul Jones and Joshua Parks obtained a favorable settlement during trial in an Auto Negligence case in Osceola County in the matter styled Motola v. De Laire on April 7, 2015. The Plaintiff was rear ended by the Defendant driver and liability was admitted prior to trial. As a result of the subject accident, the Plaintiff claimed injuries to his shoulder, back and legs. Plaintiff underwent chiropractic treatment and received injections to his back. After the second day of trial, following a blistering cross-exam of the Plaintiff's wife regarding her knowledge of the Plaintiff's preexisting injuries, Plaintiff asked to settle for Defendant's last offer which was substantially less than Plaintiff's last demand before trial.

ADA Putative Class Action — Appellate

Doreen Lasch prevailed on Appeal in an ADA putative class action styled Gomez v. Dade County Federal Credit Union at the United States Court of Appeals for the Eleventh Circuit on May 6, 2015. Gomez was represented by counsel and brought the suit on behalf of himself and a class of visually impaired individuals. The 11th Circuit wrote a 15 page opinion affirming the district court's order dismissing the plaintiff's putative class action ADA case against our client, Dade County Federal Credit Union because Plaintiff could not adequately allege an injury-in-fact under the standing requirements to bring a lawsuit seeking injunctive relief. Plaintiff, who is legally blind, and who was representing himself and a class of visually impaired individuals, alleged that he was unable to use one of the credit union's ATMs because its voice guidance system was not functioning and was therefore in violation of the ADA.

Trip and Fall—Appellate

Doreen Lasch prevailed on Appeal in a trip and fall action styled Romeo v. Sebastian Lakes Master Association at the Fourth District Court of Appeal on April 30, 2015. The Fourth District Court issued its Opinion which affirmed a summary judgment in favor of our client rendered by the trial court in a trip and fall case which occurred in Indian River County.

Verdicts and Summary Judgments cont.

Slip and Fall—Appellate
Doreen Lasch prevailed on Appeal in a slip and fall action styled Tomlinson v. Glendale Properties & Investments, Inc. at the Fourth District Court of Appeal on April 2, 2015. The Fourth District Court issued its Opinion which upheld the jury's defense verdict for our client in a premises liability case arising from a slip and fall in Broward County.

PIP Partial Summary Judgment — Appellate

Doreen Lasch prevailed on Appeal in PIP action styled Neurology Mobile System Associates, Inc. v. Praetorian Insurance Company at the Miami-Dade County Circuit Court on April 20, 2015. The Appellate Division Opinion issued upheld a partial summary judgment entered in favor of our client Praetorian Ins. Co. and also upheld the dismissal of the remainder of Plaintiff's case based on doctrine of *de minimis non curat lex* in a lawsuit by a provider in a PIP case.

PIP Motion to Dismiss Granted — Appellate
Doreen Lasch prevailed on Appeal in a PIP action styled Accident Rehab Associates v. Clarendon National Ins. Co. at the Miami-Dade County Circuit Court on April 30, 2015. Appellate Division granted Motion to Dismiss on behalf of our client, Appellee Claredon National Insurance Co.

Struck from Overhead—Motion for Final Summary Judgment
Anthony Merendino, Senior Partner in the Boca Raton office was granted a Motion for Final Summary Judgment and Judgment in favor of Defendant in a fall from overhead case styled Velez v. Defendant Retail Store in the United States District Court Southern District of Florida on March 11, 2015. Plaintiff, a customer at Defendant Store alleged that he was attempting to retrieve a 4x4 piece of lumber off of a shelf when a metal safety rail fell on his head due to being defective, alleging negligence, including failure to warn, which resulted in serious bodily injury. Plaintiff sustained a scar on his forehead, underwent cervical injections, and ultimately received a 2 level fusion at C3-4 and C4-5. Plaintiff had no prior medical history relating to his cervical spine. Plaintiff's past medical bills totaled approximately $220,000 with all treatment performed under Letters of Protection. Judge Kenneth Marra granted Defendant's Motion for Final Summary Judgment stating that Plaintiff failed to meet his burden of proof.

Negligence—Dismissal with Prejudice

Shana Nogues, Associate in our Miami office obtained a dismissal with prejudice in a negligence matter styled Craig vs. Advantage Rent-A-Car Miami. Plaintiff sued Advantage Rent-A-Car for negligence in failing to discover his suspended license which led to his ultimate incarceration. The dismissal with prejudice was based on 3d DCA case Rivers v. Hertz which holds that rental car companies have no duty to discover a suspended license when a renter presents a facially valid license.

Negligence—Dismissal with Prejudice

Shana Nogues, Associate obtained a dismissal with prejudice in the matter styled Dorsey vs. Hertz Corporation & Rosita N. Simmons. The negligence action arose out of an alleged automobile accident on June 5, 2010, but was filed on January 15, 2015, after the expiration of Florida's four year Statute of Limitations for negligence actions pursuant to Section 95.11, Florida Statutes. Upon hearing Ms. Nogues's Motion to Dismiss arguing that the facts constituting the Statute of Limitations defense affirmatively appeared on the face of the complaint and conclusively established that the defense barred the action, the court dismissed Plaintiff's Complaint with prejudice.

Contract Dispute—Motion for Final Summary Judgment

Jorge Padilla, Senior Associate in the Miami office was granted a Motion for Final Summary Judgment in a contract dispute matter styled Monaco Exchange, Inc. vs. Mt. Vernon Fire Insurance. Co. (MVFIC) The Plaintiff is the named insured under a Business Coverage Form policy issued by Mount Vernon Fire Insurance Company. The Plaintiff claimed that it sustained a covered loss on or about May 17, 2012, when its principal place of business, a jewelry store, was burglarized and its inventory stolen. According to the Plaintiff, approximately $250,000 worth of merchandise was stolen in the burglary. MVFIC denied the claim on the grounds that the policy did not cover theft losses or losses to "stock." Plaintiff filed a breach of contract claim alleging that Monaco breached the policy, which Plaintiff claimed was ambiguous and, thus, covered the alleged loss. Based on the deposition testimony of Plaintiff's corporate representative and analysis of the policy, the Court granted our motion for summary judgment. The case has reserved jurisdiction on the issue of MVFIC's entitlement to legal fees under Florida Statute §57.105.

Firm News

Two Decades of Litigation Excellence 1995 — 2015

2015 marks the 20th anniversary of Luks, Santaniello, Petrillo & Jones. Since inception the firm has grown into a diversified team of 60 attorneys and more than 140 employees across 8 offices in Miami, Fort Lauderdale, Boca Raton, Fort Myers, Orlando, Tampa, Jacksonville and Tallahassee, Florida. Today our firm brings together seasoned litigators with strong core competencies within Insurance Defense. Year in and year out, our members have been recognized by prominent organizations and professional directories. Over the years it has been our pleasure to work with professionals and together bring good results to their claims and lawsuits. Recent office expansions in Miami, Fort Myers and Tallahassee have allowed us to better serve the evolving needs of our existing and new clients. Over the next decade, we will continue to adapt to the changing needs of our clients and further distinguish our firm in the area of client service. As we reflect back, we would like to take this opportunity to thank our clients, staff and members of the firm.

19th Annual Florida Liability Claims Conference (FLCC) June 4 - 5, 2015

The 19th Annual Florida Liability Claims Conference (FLCC) will offer an Adjuster Track consisting of the 5-hour Law and Ethics Update seminar for 5-620 All Lines Adjusters. The Florida Department of Financial Services Bureau of Agent and Agency Licensing has also approved the 19th Annual FLCC for up to 9 hours of Adjuster Law & Policy (CE 3-24A), 2 hours of Ethics (CE 3-24B) and 2 hours of Optional (CE 3-24C), depending on the concurrent elective sessions attended. The Florida Bar has approved the 2015 FLCC for 17.0 CLE credits, including 2.5 Ethics and 17.0 Civil Trial certification credits.

The conference will be held June 4—5, 2015 at Disney's Contemporary Resort in Lake Buena Vista. Luks, Santaniello has a limited number of complimentary registration vouchers available for our insurance clients. A commitment to attend will be required in order to receive the complimentary registration. Please contact Luks, Santaniello Client Relations if you are interested in a complimentary voucher (E: MDonnelly@LS-Law.com).

Subject to availability, Disney will honor the FLCC Conference room rate of $189.00 per night (plus sales & resort tax) for single/double rooms. To register for the conference, please select the link : http://www.fdla.org/pdfs/2015%20FLCC%20%20Brochure.pdf or visit http://www.fdla.org/FDLAHome.asp.

Insurance Claims professionals registering for the 2015 FLCC will receive a complimentary Florida Defense Lawyers Association (FDLA) Corporate Membership for 2015. A corporate membership application must be completed and returned to the FDLA office to activate the free membership. The corporate membership provides access to the benefits of FDLA membership.

The Florida Department of Financial Services Bureau of Agent and Agency Licensing has approved the 19th Annual FLCC Conference for the credits listed below

COURSE AUTHORITY	COURSE NAME	COURSE ID	COURSE OFFERING #	UP TO HOURS
CEO5620	5-Hour Law and Ethics Update 5-620 All Lines Adjusters	89653	1021675	5
CEO324-A	2015 FLCC – Law	92280	1025490	9
CEO324-B	2015 FLCC – Ethics	92570	1025776	2
CEO324-C	2015 FLCC - Optional	92749	1025777	2

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Our verdicts tell the story.

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