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LEGAL UPDATE

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Liability

3DCA Stresses the Importance of Complying with Notice and Cure Provisions within Construction Contract in Recent Opinion

by Adam Richards, Esq.


Adam Richards, Esq.

One of the most common scenarios giving rise to construction litigation in Florida involves a disagreement between an owner and contractor during a construction project that causes the parties to go their separate ways. One of the most common pitfalls for litigants is that they failed to properly close out the project or at least account for their respective contractual duties and obligations. Such a misstep can, and likely will, preclude recovery. For example, just last month, in Magnum Construction Management Corp. v. The City of Miami Beach, 2016 WL 7232268 (Fla. 3DCA 2016), the Third District Court of Appeals reversed a trial court's entry of final judgment against a contractor because the owner never provided the contractor with an opportunity to cure the defects as required by the contract.

The underlying lawsuit arose out of a construction project intended to redesign and improve South Pointe Park in Miami Beach, Florida. Id. at 1. The City of Miami Beach ("City") hired Hargreaves Associates, Inc. ("Hargreaves) as the design professional, and awarded Magnum Construction Management Corporation ("MCM") the general contract

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Verdicts, Summary Judgments, Appellate Results

Summary Judgment - Wrongful Death

Senior Partner David Lipkin was granted a Summary Judgment in the wrongful death matter styled Zamora v. Riviera Isles Master Association, Inc. and Ardent Ventures d/b/a Exclusive Property Management. The lawsuit involved the death of a 16 year old boy who was killed when the motorcycle he was operating crashed into an extended portion of a canal. The decedent was a resident of Riviera Isles which has a homeowners association that contracts with the codefendant property management company. The community where the teen and his family resided runs parallel to a canal that is owned by the South Florida Water Management District (SFWMD). Parallel to the canal is a gravel path that is also owned by SFWMD. The community is separated from this area by a chain link fence that is owned by the defendant homeowner's association. The fence in question had been the subject of repeated vandalism and it was believed that one of the reasons for that vandalism were the individuals who would cut the fence to ride dirt bikes

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3DCA Stresses the Importance of Complying with Notice and Cure Provisions within Construction Contract in Recent Opinion cont.

for construction of the park. Id. The park was designed to include, in part, a new children's playground and a variety of new grassy turfs and other landscaping features. Id. On March 20, 2009, Hargreaves issued a Certificate of Substantial Completion indicating that conditions and requirements of permits and regulatory agencies have been satisfied and the work was substantially complete in accordance with the contract. Id. Even though Hargreaves stopped work by October 2009 due to a payment dispute with the City, the City did not officially terminate its contract with Hargreaves until 2011 and in the interim, did not hire a replacement for Hargreaves. Id.

After a major flood in 2009, the park's landscaping began to decline, including the deterioration of sod in certain areas of the park. Because the parties were unable to remediate the problems, the City eventually hired another design professional and contractor to create a remediation plan and remediate the park, respectively. The City also learned that certain aspects of the park were not in compliance with contractually required safety standards. Id. However, rather than offering MCM the opportunity to repair or cure any of the defects in the playground, the City removed, redesigned, and replaced the playground in its entirety. Id.

On appeal, MCM argued that the City breached the contract documents by failing to provide it with an opportunity to cure any of the playground defects. Id. The Court agreed, and held that the contract required the City to notify MCM of any defects it found in MCM's work, and the particular contractual provision also specified that MCM "shall" correct the work within the time specified by the City. Id. Even further, the Court determined that had the contract been performed as intended, MCM would also have been given opportunities to cure the defects through either the consultant (Hargreaves) or the dispute resolution provisions, as the consultant had the obligation to make determinations as to MCM's work and to order MCM to correct any defective work pursuant to various provisions within the contract. Id. at 2-3. "Thus, the obligation fell on the City to insure that these contact provisions, which provided MCM with opportunities to cure any defects in its work product, were fully honored, and the City's failure to provide a replacement consultant frustrated these several provisions that were intended to prevent litigation between the parties. " Id. at 3.

In summary, it is critical for parties to a construction contract to act in good faith and pursue completion. If the relationship sours beyond repair, it is equally, if not more important, to review the contract documents and comply with any and all notice, cure, or dispute resolution provisions. If you have any questions, comments or concerns regarding contract provisions, or require assistance with a construction-related dispute, please contact Adam Richards in the Miami office or a member of our CD Team.

About Adam Richards

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Adam Richards is an Associate in the Miami office. He concentrates his practices in construction defect, general liability, products liability, asbestos litigation, real estate, employment law and commercial litigation. Prior to joining the firm, Adam was General Counsel and Vice President of Operations for a leading residential Roofing Systems company where he negotiated construction contracts and spearheaded Federal and State law compliance efforts. He has also worked for various insurance defense practices defending construction industry professionals in construction defect claims, as well as a multitude of national manufacturers and suppliers in asbestos litigation. He has developed transactional proficiency in commercial and residential construction and real estate, mergers and acquisitions, business entity formation, and management and dissolution.

Adam has a Bachelor of Arts degree from SUNY at Binghamton and obtained his Juris Doctor from the University of Miami. He is admitted in Florida (2010) and to the United States District Court, Southern and Middle Districts of Florida.

What's In a Name? Florida Supreme Court Enforces Multiple Proposals for Settlement Against Individual Defendants Referred to Collectively Within Verdict and Judgment

by Christopher Ritchie, Esq.

Chris Ritchie, Esq.

The continually evolving body of law governing proposals for settlement in Florida gained a new Florida Supreme Court decision on November 3, 2016 in Troy Anderson v Hilton Hotels Corporation, etc., et al., 202 So.3d 846 (Fla. 2016). At issue was the enforceability of multiple proposals to individual corporate defendants who were referred to collectively within the jury instructions, verdict form, and judgment.

Troy Anderson was the victim of an armed robbery, carjacking, and shooting in the parking lot of an Embassy Suites hotel in Orlando. He sued four separate entities: (1) Hilton Hotels Corporation ("Hilton"), (2) W2007 Equity Inns Realty, LLC ("W2007"), (3) Interstate Hotels & Resorts, Inc. ("Interstate"), and (4) SecurAmerica, LLC ("SecurAmerica.") Those parties were the (1) franchisor, (2) owner operator/franchisee, (3) property manager, and (4) security company, respectively. The Plaintiff filed 3 separate Proposals for Settlement to Hilton and Interstate in the amount of $650,000 each, and to W2007 in the amount of $100,000. The jury awarded the Plaintiff total damages in excess of $1,700,000.

Lead counsel for Hilton, W2007, and Interstate (represented by the same Firm) specifically requested that the Judge allow him to "simply" talk about his clients as "Embassy Suites" as an appropriate and less cumbersome means of narrowing the issues. The Plaintiff's attorneys and the Judge agreed. This, despite the fact that "Embassy Suites" was never a named party to the lawsuit.

The jury rendered a verdict that found "Embassy Suites" 72% negligent and SecurAmerica 28% negligent. No comparative fault was attributed to the Plaintiff. The precise language of the judgment resultant from that verdict was as follows:

> The Plaintiff, TROY ANDERSON, shall recover from Defendants: HILTON HOTELS CORPORATION, a foreign corporation, doing business as EMBASSY SUITES ORLANDO AT INTERNATIONAL DRIVE AND JAMAICAN COURT and also doing business as HILTON WORLDWIDE; INTERSTATE HOTELS RESORTS, INC., a Florida corporation; and, W2007 EQUITY INNS REALTY, LLC, a foreign corporation, (collectively hereinafter referred to as EMBASSY SUITES pursuant to the Verdict form agreed to by Plaintiff and all Defendants), the sum of $1,142,937.07 (which reflects an agreement between the parties as to the collateral source set-off) plus taxable costs in the amount of $109,251.67 agreed to by the parties, for a partial final judgment total of $1,252,188.74, for which let execution issue at the applicable statutory interest rate.

The Plaintiff sought to enforce his Proposals for Settlement. The 5th DCA agreed with the trial court that Anderson's separate Proposals were unenforceable "because Anderson requested to have these three entities treated as one by the jury, and given that the judgment obtained against the "Embassy Suites" defendants was actually less than the sum of the demand for judgment made against them, the purpose behind the enactment of section 768.79 (i.e., to sanction a party for rejecting a presumptively reasonably proposal for settlement) would be ill-served by assessing attorney's fees against Hilton, W2007, and Interstate." Hilton Hotels Corporation, etc., et al., v Anderson, 153 So.3d 412, 416-17 (Fla. 5th DCA 2014).

On appeal to the Florida Supreme Court, the Plaintiff argued that he was entitled to fees based upon his separate offers to Hilton, W2007, and Interstate, each of which was dwarfed by the total amount of the judgment entered against those Defendants. The Embassy Suites Defendants argued that the $1,400,000 in collective Proposals was not greater than 25% more than the $1,250,000 judgment against those Defendants, therefore the fees provision was not triggered. The Court rejected that argument, noting that neither a Statute nor Rule specifies that a plaintiff must obtain a judgment from a designated party, but rather only upon a sufficient offer and judgment obtained. The Court likewise rejected the Fifth DCA's concern with the Plaintiff's failure to request an assignment of fault among Hilton, W2007, and Interstate as misplaced.

The Court relied in part on the 2nd DCA decision in Hess v. Walton, 898, So.2d 1046, 1047 (Fla. 2d DCA 2005) as a

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What's In a Name? Florida Supreme Court Enforces Multiple Proposals for Settlement Against Individual Defendants Referred to Collectively Within Verdict and Judgment cont.

case in which it was deemed improper to combine separate offers and compare them to the judgment obtained when evaluating a party's entitlement to fees.

Similar decisions likewise note that Rule 1.442 does not discuss the possibility of aggregating offers. See also Thornburg v. Pursell, 476 So. 2d 323, 325 (Fla. 2d DCA 1985).

Ultimately, the Court held that the Plaintiff was entitled to fees based upon his separate offers to Hilton, W2007, and Interstate, against which the trial court entered judgment in the amount of $1,225,487.52 – 189% of the offers that Anderson made to Hilton and Interstate, and 1225% of the offer made to W2007. The only way that these offers could not satisfy the statutory requirement would be if the offers were to be aggregated, which cannot be tolerated. The fact that the judgment entered by the trial court did not specify that Hilton, W2007, and Interstate were jointly and severally liable to Anderson did not destroy his entitlement to fees. Rather, the Plaintiff's entitlement is contingent only upon a satisfactory offer of settlement and judgment that is at least 25% greater than that offer.

The enforceability of Plaintiff's Proposals for Settlement seems to have not been contemplated by any party during the discussion and ultimate agreement to collectively refer to 3 of the Defendants as "Embassy Suites." That, or perhaps all counsel assumed from the onset that their ultimate appellate arguments were the "common sense" approach that would prevail. Hindsight being 20/20, it seems that the enforceability of an individual Proposal for Settlement to a single Defendant would necessarily be undermined by a verdict that does not reference any of those individual Defendants. That verdict was then reduced to an actual judgment against the Defendants, also collectively referred to as "Embassy Suites," without contemplation of the enforceability of the pending Proposals.

Minimizing jury confusion during the trial phase was a laudable consideration, but unfortunately created a separate set of problems that necessitated appellate consideration and attendant attorney's fees and costs. The Court considered the enforceability of the Proposals in Anderson by strictly applying the principle that offers to settle within multiple proposals for settlement cannot be aggregated to determine enforceability. Foresight beyond the trial and into the post-judgment by all counsel would have possibly avoided the confusion that arose in this case. Instead, the body of law in Florida on proposals for settlement continues to expand.

About Christopher Ritchie

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Christopher Ritchie is a Junior Partner in the Jacksonville office. He is AV® Preeminent™ Rated by Martindale-Hubbell and his peers with 18 years of insurance defense experience. Currently, his practice focuses on premises liability, automobile negligence, first and third party insurance claims, and transportation and trucking-related negligence. He also defends cases relating to property damage and homeowner's claims.

Christopher represents clients within the insurance industry, and also within the hospitality, restaurant, retail, manufacturing, and transportation industries. He also assists insurers in assisting and conducting claims investigations, special investigations, and examinations under oath.

Christopher has a Bachelor of Arts degree from the University of North Florida and obtained his Juris Doctor, *cum laude*, from Nova Southeastern University. He is admitted in Florida (1998), and to the U.S. District Court, Northern, Middle, and Southern Districts of Florida, as well as the Eleventh Circuit Court of Appeals.

The High Cost of Attorney-Client Privilege: Will the Florida Supreme Court Allow Attorney-Client Privilege to be Used as a Shield Against Financial Bias Discovery?

by Hayley Newman, Esq.

Hayley Newman, Esq.

The Florida Supreme Court recently heard arguments about whether a plaintiff can refuse to answer inquiries regarding referral relationships under the purported protection of attorney-client privilege. This long-standing issue is no stranger to the Florida courts, and case law on the subject has been evolving during the last few decades. Soon, the Florida Supreme Court will decide whether a plaintiff may use the guise of attorney-client privilege to effectively avoid answering questions about its relationship with experts. Personal Injury Attorneys argue the sanctity of attorney-client privilege is at risk if they are forced to advise their clients to disclose a relationship between plaintiff's counsel and plaintiff's treating physicians; but what about the sanctity of fairness? The inherent bias that stems from attorney-physician referrals is a corroding thread between transparency and justice.

One of the problems with plaintiff's attorney having a referral relationship with treating physicians is there is no incentive to limit the cost of medical treatment. In fact, there's a disincentive to limit the costs. Damages in a lawsuit are, in part, comprised of the cost of medical treatment. Additionally, Personal Injury Attorneys are typically compensated on a contingency basis. Therefore, the higher the medical cost, the greater the amount of damages, and thus, the greater the payout will be for plaintiff's counsel. Plaintiff's treating physicians are not limited in the way physicians dealing with private insurance are limited because they oftentimes provide service under a letter of protection for reimbursement from recovery in the lawsuit. It can be argued that under such an arrangement, treating physicians for plaintiffs may provide unnecessary treatment and charge a higher rate. Even more alarming, these same physicians often end up testifying as expert witnesses, despite their financial ties to the referring attorneys. Gary Blankenship, Court Takes Up Attorney-Client Privilege, 43 Fla. B. News 1, 1 (2016). This article will explore some of the case law that comprises the judicial landscape of the current issue before the Florida Supreme Court, as well as what is at stake with the outcome.

In 1992 there was a personal injury case in Lee County, Burt v. Government Employees Ins. Co., 603 So. 2d 125 (Fla. 2d DCA 1992). At deposition, defense counsel asked Plaintiff 1) when counsel was retained and 2) if counsel referred Plaintiff to a particular doctor. Plaintiff declined to answer, citing attorney-client privilege. The trial Court issued an order to compel Plaintiff to answer defense counsel's questions. Florida's Second District Court of Appeal granted a petition for writ of certiorari to quash the order to compel. The Court ultimately held,

> Although the first question does not violate the attorney-client privilege in this instance, the second question seeks discovery of confidential communications constituting her attorney's advice regarding this lawsuit.

Id. at 125. The Court reasoned that the question elicited advice from counsel, which was not intended to be divulged to third parties. Id. Further, no enumerated exception applied to the attorney-client privilege, the Court quashed the motion to compel as to the question regarding physician referral. Id. at 126.

Seven years later, the Florida Supreme Court addressed the issue of whether a party is prohibited from obtaining discovery about the relationship between experts and opposing parties in the seminal case Allstate Ins. Co. v. Boecher, 733 So. 2d 993, 994 (Fla. 1999). In Boecher, the plaintiff propounded interrogatories asking for cases where the expert had given opinions for defendant in the prior three years, in addition to information about fees. The defense counsel's objection was overruled by the Trial Court. Id. at 994. The decision was affirmed by Florida's Fourth District Court of Appeal, whereupon a conflict was certified to the Florida Supreme Court. The Court concluded that if discovery is focused on a party to uncover information about the party's relationship with an expert then, "the balance of the interests shifts in favor of allowing the pretrial discovery." Id. at 997. In Boecher, the discovery requests were directly related to the party's ability to demonstrate bias. Id. The Court stated, "The more extensive the financial relationship between the party and a witness, the more likely that the witness has a vested interest in that financially beneficial relationship continuing." Id.

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The High Cost of Attorney-Client Privilege cont.

In 2015, Florida's Fifth District Court of Appeal heard Worley v. Central Florida Young Men's Christian Ass'n, Inc., a personal injury case arising in Orange County. Worley v. Cent. Florida Young Men's Christian, 163 So. 3d 1240 (Fla. 5th DCA 2015). Plaintiff alleged she was injured when she suffered a trip-and-fall incident at a Young Men's Christian Association, Inc. ("YMCA"). After retaining counsel, Plaintiff was treated by various physicians and sued for damages which included medical costs. At Plaintiff's deposition, defense inquired whether Plaintiff's counsel referred her to the treating physicians. Plaintiff's attorney objected, citing attorney-client privilege. Defense counsel then made additional discovery inquiries as to the relationship between plaintiff's counsel and the treating physicians. Id. at 1242-43.

The basis for the inquiries was the exceptionally high medical bills included in Worley's claimed damages. Id. at 1243. The trial court sustained Plaintiff's objection to the question regarding attorney referrals to treating physicians. However, after Plaintiff testified in a subsequent deposition that she was not referred by another physician, the trial Court ordered Plaintiff to produce documents regarding agreements between plaintiff's counsel and the treating specialists, in addition to names of all cases where Plaintiff's counsel referred clients to the same doctors. Id. at 1244. Plaintiff petitioned Florida's Fifth District Court of Appeal for a writ of certiorari to quash the trial Court's order. Id. at 1242. Ultimately, the Court denied the petition, and certified a conflict with the ruling in Burt, out of Florida's Second District Court of Appeal. Id. at 1250. The Court reasoned that the case law since Burt, cast doubt on the holding because of the vast amount of developing case law permitting discovery regarding the financial bias in attorney relationships with treating physicians. Id. at 1246. The Court was reluctant to limit the discovery for fear of, 'thwarting the truth-seeking function of the trial process'. Worley, 163 So. 3d at 1247 (quoting Boecher, 733 So. 2d 993 at 998).

In an Amicus Curaie Brief in support of defendant, YMCA's position, the Florida Justice Reform Institute urged the Florida Supreme Court to disapprove the decision in Burt, and to expand Boecher to include permitting discovery of the financial relationship between the party's counsel and the expert witness. The argument is the same: financial bias exists whether the relationship is between the party and the expert, or between the attorney and the expert. As such, the same need for disclosure through discovery is paramount. Brief of *Amici Curiae* Florida Justice Association 18-19, Worley No. SC15-1086.

> All that is sought through the discovery here is the ability to uncover a referral relationship. Hiding behind the cloak of attorney-client privilege to prevent such disclosure is unjustified and improper.

Id. at 19.

Attorney-client privilege should be held sacrosanct in our justice system. But in balancing the interests of the parties to a lawsuit, the Court can both preserve the attorney-client privilege while also preventing a hidden agenda of unjust financial bias. It is clear from Worley that the Florida courts are looking to impose a balance for the scales of justice and allow defense attorneys to expose the attorney-physician referral relationship by means of discovery through plaintiff's themselves. Soon, the Florida Supreme Court will decide if they agree with Florida's Fifth District Court of Appeal in Worley and thus, promote transparency in the administration of justice. The Court needs to preserve fairness in the fact-finding process and ensure justice is made possible through discovery. Defense counsel should be entitled to explore how medical determinations are made because the result of the decisions directly impact the value of damages. If plaintiffs are allowed to use this protection to hide medical care, the Personal Injury process will remain tainted and artificially expensive. Conversely, if Worley is upheld, the disclosure of inherent bias will help to promote the true sanctity of fairness.

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Hayley Newman is an Associate in the Boca Raton office. She obtained her Bachelor of Arts degree from Florida Atlantic University and her Juris Doctor, *cum laude*, from Nova Southeastern University. While in law school, Hayley was a Research Assistant for legal research and writing in the area of professional responsibility and legal education. She also served as a mediator in the Dispute Resolution Clinic mediating diversionary cases for juveniles arrested for misdemeanors and felonies. Hayley was a law clerk for a private practice for commercial litigation matters and was a Judicial Intern with The Honorable Linda Pratt of the 17th Judicial County Court in Fort Lauderdale. She is admitted in Florida (2016).

Verdicts and Summary Judgments cont.

and ATV's in the area owned by the water management district. Due to the repeated vandalism, a decision was made to unlock a gate in the fence so as to make cutting the fence unnecessary. In addition, one of the communities within the master association had requested that a gate be unlocked to permit easier pedestrian access.

On the subject date the decedent and some friends went to the area for a ride. As they traversed the gravel road alongside the canal they came upon an area where the gravel road curved around a swath of a rectangular portion of the canal that extended outward and was approximately 30 feet wide. Rather than follow the curved path the decedent chose to cut straight across towards the canal extension. Plaintiffs postulate the decedent did not know that the canal extended outward and his bike jumped over the canal but landed short causing the decedent to be thrown from his bike and suffering the fatal injuries.

Defendants moved for summary judgment on three grounds: 1. Trespass, 2. No duty to fence the area and 3. Lack of competent evidence of causation, including plaintiffs contention that but for the unlocking of the gate the teen would not have been out there. Defense noted the fence was not installed to keep individuals out of the subject area and that the plaintiffs trespass negated the argument of assumption of duty and that the mere unlocking of the gate was not invitation to trespass. Finally, Defense noted there was no competent way to conclude the unlocking of the gate or failure to maintain the fence differently caused this accident. Defense noted record evidence that the decedent had ridden his motorcycle in that area prior to the unlocking of the gate as evidence that there is no way to know he would not have been out there before. Plaintiff attempted to introduce the opinions of a retained safety expert who opined not only to the standard of care but also as to causation. Defense argued said expert's conclusions were without any *Daubert* required methodology and were merely his own opinions and the court concurred. The case was litigated extensively for over two years with numerous depositions and represented a significant victory in an emotionally charged case.

Summary Final Judgment — Construction Defect

Tampa Jr. Partner, Joseph Kopacz, obtained a partial summary judgment on December 24, 2016 in the matter styled KB Home v. Millard Roofing, as to all roofing claims alleged against Millard Roofing. The suit arises from claims asserted by KB Home against various subcontractors from alleged damages incurred during the construction of the Willowbrook Condominiums Project, which consists of 270 individual units in 51 buildings, located in Manatee County, Florida. The Willowbrook Condominium is governed by Willowbrook Condominium Association, Inc. ("Association"). The Association brought claims against KB Home for a variety of different water intrusion issues in all 51 Buildings which resulted in a 60 million dollar rehabilitation project. The Settlement agreement between the Association and KB Home specifically carved out roofing claims. After settling with Association, KB Home sued Millard Roofing and other subcontractors. Specifically as to Millard Roofing, KB Home alleged roofing and waterproofing of the decks in a majority of the 51 Buildings. On December 24, 2016, Judge Diana Moreland issued her Order after a November 30, 2016 hearing granting Millard Roofing's Motion for Partial Summary Judgment excluding all roof claims.

Summary Final Judgment—Slip and Fall

Fort Myers Senior Partner Howard Holden was granted a Motion for Final Summary Judgment in a slip & fall matter styled Joseph Sendra v. Winn Dixie Stores, Inc., on January 4, 2017 in front of Judge Jay Rosman in Lee County. The case was predicated on the transitory foreign substance statute (§768.0755 Fla. Stat.), which places the burden of proving notice of the alleged dangerous condition on the Plaintiff. In the instant case, the Court found that Plaintiff failed to meet his burden under the statute that required record evidence sufficient to show that Winn Dixie was on either actual or constructive notice of the alleged condition. The Court reserved jurisdiction to consider Winn Dixie's motion for entitlement to fees and costs pursuant to its PFS served in the case.

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Verdicts and Summary Judgments cont.

Summary Judgment Affirmed - Trip and Fall

Miami Associate Edgardo Ferreyra obtained a favorable result on December 21, 2016 when the Third DCA affirmed summary judgment and denial of plaintiff's request to the Florida Supreme Court in the trip and fall matter styled Marilyn Samuels, Appellant, v. Defendant Retail Store, Appellee. The Appellate court granted our motion for Attorneys' Fees and denied Plaintiff's motion for Fees.

Final Judgment Affirmed— Auto Accident

Senior Partner Aaron Wong obtained a favorable result for our client, Clarendon National Insurance Co., when the appellate court affirmed the trial court's Final Judgment in Clarendon's favor on November 18, 2016, denied Appellant's Motion for Rehearing on January 9, 2017, and the Third District Court of Appeals ultimately denied Appellant's Petition for Writ of Certiorari on February 9, 2017 in the auto liability matter styled Mark J. Feldman, P.A., Appellant v. Clarendon Nat'l Ins. Co., Appellee.

Motion for Judgment— Property Damage and Conversion Matter

Boca Raton Senior Partner Marc Greenberg obtained a favorable result when Defendant's Motion for Judgment on the Pleadings was Granted in the property damage and conversion matter styled Holbrook v. Defendant Premises Owner. Plaintiff's last demand was $200,000. Defendant served a Proposal For Settlement and has been granted entitlement to attorney fees and costs. Plaintiff's appeal is pending, which has been denied twice by the United States Supreme Court.

Summary Judgment – Trip and Fall

Fort Lauderdale Senior Partner Zeb Goldstein prevailed on summary judgment in the trip and fall matter styled Maryann Carter v. Coconut Point Town Center LLC. on December 12, 2016 in front of Circuit Judge Elizabeth Krier in Lee County. On the date of loss, Plaintiff was visiting the Target store at Coconut Point Mall when she tripped and fell on a grocery cart corral curb, sustaining injuries to her neck, back and most significantly, her teeth. Plaintiff incurred past medical specials of $12,000. including correction for 2 fractures to her front incisors. Plaintiff retained a dental expert to opine that Plaintiff would require $10,000 - $15,000 in future dental care.

Defense contended that the cart corral, which used concrete curbs instead of more typical metal railings, was not a hazard or dangerous condition, that this incident was not reasonably foreseeable; and more specifically, that the curb and "corral" were reasonably visible to the normal and attentive customer. The defense utilized an engineer to opine that area was constructed in accordance with all local codes and ordinances. The Court was persuaded by the line of cases cited in our motion likening the subject "cart corral" to a common, everyday parking bumper.

Dismissal—Construction Defect

Boca Raton Senior Associate Paul Shalhoub obtained a dismissal with prejudice in the construction defect matter styled Ruth Weinfeld and Robin Frank v. Tropical Roofscapes, Inc., et.al. A co-Defendant sought common law indemnity and equitable subrogation against our client, Tropical Roofscapes, Inc., for alleged construction defects related to the replacement of Plaintiffs' roof. Paul Shalhoub, Esq. was able to have both claims, including common law indemnity, dismissed with prejudice.

LUKS, SANTANIELLO PETRILLO & JONES

OUR VERDICTS TELL THE STORY

Luks, Santaniello Joins The Gavel Network

Luks, Santaniello has become a member of **The Gavel.net, LLC**., a new, nationwide insurance defense network. The Gavel - your claims defense network, brings together vetted attorneys and non-attorney specialists (experts, investigators, field adjusters and mediators) to provide a single point of web-based access to claims partners in each state. The strict vetting process includes 3 tiers with 9 proprietary criteria, starting with a referral from an established Claims Professional. There are no fees or requirements for use of the network by claims professionals. The website, **www.TheGavel.net** is open to all clients and members and can be searched using an interactive map or dedicated search options. Claims Professionals are invited to participate by joining one of the new committees, councils or boards (visit the website and choose the "Claims Professionals" option on the top banner to access the section: "**Get Involved**". By streamlining the claims defense process, **The Gavel.net** is a tool that may make life simpler for claims professionals managing and directing claims.

Pamela Pettus, JD and Chief Executive Officer cofounded the network with the claims professional in mind. Pettus adjusted and handled claims for national insurers and self-insureds, and has liaised claims for all levels of vendors for more than 20 years. Managing Partner **Daniel Santaniello** is a Managing Attorney Member of **The Gavel.net**.

The Gavel.net will have a presence at major leading industry conferences and will offer continuing education courses, trend sharing and forums to all Claims Professionals and its members. Save the date for The Gavel Conference from June 12-14, 2017 in Boca Raton, Florida. Insurance Professionals that would like a complimentary registration may inquire with Luks, Santaniello Client Relations or Pamela Pettus.

The Gavel.net will also exhibit in **Booth 2516** at the RIMS Annual Conference in Philadelphia, PA from April 24—26, 2017. Risk managers and claims professionals may visit **The Gavel.net** and share their specific requirements by submitting a comment (**Contact Us**), emailing **admin@thegavel.net** or calling **844-MY-GAVEL (694-2835).** For further information, please contact Pamela Pettus directly at (561) 226-2520 or email Pamela@thegavel.net.

Trucking Insurance Defense Association (TIDA) Advanced Seminar

Managing Partners Daniel Santaniello and Paul Jones teamed up with Bruce Whitten, Safety Director of Beyel Brothers, Inc., FL. and Rachel York Colangelo, Ph.D., of Magna Legal Services and presented two sessions on "Media Madness" and "The Epilogue" at the TIDA Advanced Seminar on Feb 2-3, 2017. The seminar followed the media madness after a trucking accident and addressed how to formulate a planned company response. It was held at the Renaissance Orlando Hotel.

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