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LEGAL UPDATE

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25TH ANNIVERSARY MILESTONE

Images from the 1st firm brochure

April, 2020 marks the 25th anniversary of Luks, Santaniello, Petrillo & Cohen. We began in 1995 with an eagerness to aggressively defend and try cases. Our goals today remain the same, to decrease litigation costs, lower loss ratios and get the best settlement or result at trial. In our virtual world, we are aligning with technological innovation to manage claims portfolios, and work efficiently and effectively in garnering risk transfer opportunities and mitigating legal spend.

Since inception the firm has grown into a diversified team of over 100 attorneys and more than 200 employees across 11 offices in Miami, Fort Lauderdale, Boca Raton, Stuart, Sunrise, Fort Myers, Orlando, Tampa, Jacksonville, Tallahassee and Pensacola, Florida. Today our firm brings together seasoned litigators with strong core competencies across 30 practice lines. The firm has over 300 results and trial verdicts on our website that may be viewed by practice line, attorney or office.

Along the way, we've added two attorney compliance officers to monitor guideline compliance with case handling and billing. We've made available platforms using artificial intelligence to our attorneys for litigation strategy and invested in a new case management system that allows us to generate claims dashboards for portfolio management. We've shared our remote protocols for settlement conferences, mediations and depositions with our clients and partners.

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.

As we reflect back, we would like to take this opportunity to thank our clients, staff and members of the firm.

Verdicts, Summary Judgments, Appellate Results
Net Verdict of $148,360: Wrongful Death Negligent Security

Managing Partners Daniel Santaniello, Esq., and Todd Springer, Esq., obtained a favorable result in a wrongful death negligent security matter styled *Anabele L. Sitts, individually and as Personal Representative of Nicholas John Lim Sitts v. First Coast Security Services, Inc.* on February 19, 2020. Read More . . . P. 6

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Risen from the Graves: Do Allegations That a Car Rental Company Negligently Investigated a Driver's License, or Failed To Take Certain Actions Regarding a Driver's Insurance Coverage, Overcome Graves Amendment Immunity? by Nicholas J. Christopolis, Esq.

Nicholas Christopolis

A federal law known as the "Graves Amendment" provides car rental companies a shield worthy of Captain America to guard against claims of vicarious liability for the negligent acts of their renters since it was passed as part of a federal highway bill signed into law in 2005. 49 U.S.C. § 30106 (2005). In short, the law preempts state law and forbids states, including Florida, from imposing vicarious liability against car rental companies for the at-fault actions of those who rent their vehicles. *Kumarsingh v. PV Holding Corp.*, 983 So. 2d 599, 600 (Fla. 3d DCA 2008); *Bechina v. Enterprise Leasing Company*, 972 So. 2d 925, 926 (Fla. 3d DCA 2007); *Karling v. Budget Rent A Car Systems, Inc.*, 2 So. 3d 354, 355 (Fla. 5th DCA 2008). In pertinent part, the Graves Amendment states:

> (a) In general. An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if—
>
> (1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and
>
> (2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner).

49 U.S.C. § 30106 (2005).

However, while the first two paragraphs provide strong protection for car rental companies, a key rub is found in paragraph (2) which negates such protections if there is negligence or criminal wrongdoing on the part of the car rental company directly. The question becomes - what if a plaintiff pleads what appears to be independent acts of negligence in the form of an inadequate background check of a driver's license, failing to verify the driver's insurance coverage, or failing to force the driver to purchase insurance coverage? In one such example, a plaintiff alleged, "Defendant owed Plaintiff a duty to rent cars to safe, non-negligent drivers who carried motor vehicle insurance or purchased it from Defendant as part of the rental contract". Does that mere allegation overcome Graves Amendment immunity, or defeat what would ordinarily be grounds for a motion to dismiss, when the remaining allegations simply assert that the car rental company should be vicariously liable for the negligent actions of the driver?

In order to answer this question, it is helpful to address the allegation in two parts. The first part of the allegation focuses on a car rental company's alleged "duty to rent cars to safe non-negligent drivers". It is axiomatic under Florida law, and that of any other state, that a car rental company is simply not a guarantor of safety. *See* 49 U.S.C.A. § 30106 (2005); *Rivers v. Hertz Corporation*, 121 So. 2d 1078 (Fla. 3d DCA 2013). In *Rivers*, the estate of a passenger, who was killed while riding in a rental car being driven by a car renter, brought a negligence action against the car rental company. *Id*. In affirming the trial court's dismissal of the action, the Court pointed out that the actual duty of one who rents vehicles to investigate the driver is limited to the provisions set forth in Florida Statute § 322.38. *Id*. at 1079. While substantially the same language now, the statute in effect at the time of the *Rivers* decisions stated, "No person shall rent a motor vehicle to any other person unless the latter person is then duly licensed…." Fla. Stat. § 322.38 (2009). Importantly, the *Rivers* Court expanded on that language and made it expressly clear that the car rental company did not have a duty to perform any type of further background check or duty to investigate and discover that the driver's license had been suspended after the driver had presented a facially valid driver's license. *Id*. at 1079. In sum, no authority stands for the proposition that rental car companies are legally required to run any type of generalized background check at the time of the rental to somehow determine whom in the future will or will not be a "safe non-negligent driver".

The next part of the allegation states that the rental car company must only rent to drivers who either carry motor vehicle insurance or purchase it as part of the rental contract. However, this allegation misstates a car rental company's financial responsibility as to insurance coverage regarding rented vehicles. Florida Statute § 627.7263 governs priority of insurance coverage for a rented vehicle. Fla. Stat. § 627.7263 (1995). Under that statute,

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Risen from the Graves: Do Allegations That a Car Rental Company Negligently Investigated a Driver's License, or Failed To Take Certain Actions Regarding a Driver's Insurance Coverage, Overcome Graves Amendment Immunity? Cont.

liability coverage for the car rental company is primary unless the following paragraph is stated in at least 10-point type on the face of the rental agreement:

> *"The valid and collectible liability insurance and personal injury protection insurance of any authorized rental or leasing driver is primary for the limits of liability and personal injury protection coverage required by* ss. 324.021(7) and 627.736, Florida *Statutes."*
> Fla. Stat. § 627.7263(2) (1995).

In addition, Florida Statute § 324.171 is also applicable as many car rental companies are self-insured. *See* Fla. Stat. § 324.021 (2013). That statute states in relevant part that a self-insurer shall provide limits of liability insurance to comply with the applicable Florida statutes that mandate such limits. *Id*.

However, nowhere within Florida Statues is a car rental company required to screen and verify that drivers have vehicle insurance before renting to them, or somehow force anyone to purchase automobile insurance. Florida courts have held that the entire point of the financial responsibility laws related to the renting of motor vehicles is to determine priority of coverage, and when primacy of coverage shifts from one party to another. *See McCue v. Diversified Services, Inc.*, 622 So. 2d 1372 (Fla. 4th DCA 1993). In *McCue*, a driver had no personal vehicle liability insurance nor personal injury protection coverage. *Id*. at 1373. The *McCue* court ruled that under Florida law an uninsured driver was not required to purchase automobile insurance coverage when renting a vehicle, but rather the very purpose of the statute is to simply switch coverage obligations back to the vehicle owner in the event the driver is uninsured. *Id*. at 1374.

In conclusion, no duty exists under Florida law to verify a driver's insurance coverage or force a driver to purchase coverage. Likewise, no duty exists regarding verifying a driver's license status beyond the requirements of Florida Statute § 322.38. Therefore, allegations that do not establish that a defendant car rental company violated actual requirements of Florida Statutes or common law cannot serve as a basis for severing its immunity from claims of vicarious liability, nor should they serve as a basis for defeating a properly pled motion to dismiss, thus keeping the protections afforded to car rental companies under the Graves Amendment alive and well.

About Nicholas Christopolis

Nicholas Christopolis is a Junior Partner in the Jacksonville office. He has extensive experience in all phases of general civil litigation in Florida state and federal courts. His practice areas include automobile liability, premises liability, product liability, construction defect, personal injury protection (PIP) claims, and first-party homeowners' insurance claims for property and windstorm damage.

Nicholas was previously a professor of law and served as Director of Florida Coastal School of Law's Trial Advocacy Program. He obtained a Bachelor of Arts from the University of Georgia. Nicholas also obtained an MBA from the University of North Florida. He earned his Juris Doctor from Florida State University College of Law. Nicholas is admitted in Florida (2001). He is also admitted to the United States District Court, Middle District of Florida (2003).

To File or Not to File a Privilege Log by Raul Flores, Esq.

Raul Flores

When defending a breach of insurance contract, the plaintiff may file a request for production demanding that if there is an objection based on privilege, a privilege log be served. This raises the question of whether a log must be filed with the objection, after the objection, or at all.

In the recent decision in *Avatar Property & Casualty Insurance Company v. Lee Jones*, 45 Fla. L. Weekly D588 (Fla 2d DCA 2020), the Second District Court of Appeal quashed the lower court's order holding that before a written objection is ruled upon, the documents are not "otherwise discoverable" and therefore the obligation to file a privilege log does not arise until such time. The party raising the objection should be given enough time to file the privilege log in the event an in camera inspection is required.

Courts appear to be requiring the preparation of a privilege log to preserve claims of privilege or to protect trial preparation materials that may be otherwise discoverable. *See Morton Plant Hospital Ass'n, Inc. v. Shahbas by & through Shahbas*, 960 So.2d 820 (Fla. 2d DCA 2007); *Gosman v. Luzinski*, 937 So.2d 293 (Fla. 4th DCA 2006); *Nationwide Mutual Fire Insurance Co. v. Hess*, 814 So.2d 1240 (Fla. 5th DCA 2002). Florida Rule of Civil Procedure 1.280(b)(6) governs claims of privilege and requires the creation of a log when the materials sought are to be shielded from production. The rule states:

> When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection. *Fla. R. Civ. P.* 1.280 (b)(6).

In *Avatar,* the Plaintiff filed suit for breach of contract under their homeowners' insurance policy. Avatar denied coverage of the plaintiff's hurricane water damage claim. The plaintiffs filed suit for breach of insurance contract and requested the production of "any and all photographs" taken by the insurer's field adjuster during the home inspection of the claimed water damage. Avatar objected to the request on the basis the documents were protected by the work product doctrine. The plaintiff moved to compel the production of the photographs, as well as the imposition of sanctions. At the hearing, the trial court ordered the production of the photographs, reasoning that *Avatar* had failed to file a privilege log.

The trial judge asked *Avatar* whether it planned on using the photographs at trial. A*vatar* replied it was not sure if the photographs would be used at trial but argued they were protected by the work-product privilege. The trial court found that although *Avatar* had objected to their production, because it had not filed a privilege log, it had to produce the photographs.

In quashing the order, the Second District Court of Appeal found the trial court departed from the essential requirements of the law. The appellate court found that *Avatar* had timely responded to the discovery request with an objection despite not filing a privilege log. In so doing, the court reasoned that the obligation to file a privilege log does not arise until the information is determined to be "discoverable," which is after the trial court has ruled on the party's non-privilege discovery objections. *Morton Plant Hosp. Ass'n. v. Shahbas*, 960 So. 2d 820, 826 (Fla. 2d DCA 2007). *Gosman v. Luzinski*, 937 So. 2d 293, 296 (Fla. 4th DCA 2006);

Moreover, the court observed that once the trial court ruled on the non-privilege objections, it should have allowed time for an in camera inspection of the materials that the insurer considered privileged, (noting Florida Rule of Civil Procedure 1.280 "does not provide a time limit for filing the privilege log"). *See Allstate Indem. Co. v. Oser*, 893 So. 2d 675, 677 (Fla. 1st DCA 2005).

Though few courts have found that a privilege may be waived unless timely raised, the failure to file a timely privilege log does not constitute a waiver as a matter of law. The finding of waiver is a matter of discretion for the trial court. *Century Business Credit Corp. v. Fitness Innovations & Technologies, Inc*., 906 So.2d 1156 (Fla. 4th DCA 2005). Failure to submit a privilege log by the due date did not constitute waiver of the right not to disclose work product. *Bankers Security Insurance Co. v. Symons*, 889 So.2d 93, 95 (Fla. 5th DCA 2004).

The privilege log must provide sufficient details to permit a court to assess

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To File or Not to File a Privilege Log , cont.

the applicability of an asserted privilege without disclosing the actual content of the documents. The requirement is intended "to identify materials which might be subject to a privilege or work product protection so that a court can rule on the 'applicability of the privilege or protection' prior to trial." *Kaye Scholer LLP v. Zalis*, 878 So.2d 447, 449 (Fla. 3d DCA 2004) (quoting *General Motors Corp. v. McGee*, 837 So.2d 1010, 1033 (Fla. 4th DCA 2003)).

A defendant insurer cannot refuse to disclose certain documents without more. A legal objection of privilege still must be made. However, under the holding in *Avatar*, after initially making the objection, a privilege log does not have to be filed until the trial court rules on the objection and finds that the materials sought are indeed discoverable. *Se also DLJ Mortgage Capital, Inc. v. Fox,* 112 So.3d 644 (Fla. 4th DCA 2013). After the trial court has ruled and the privilege log filed, the court should allow enough time for an *in camera* inspection of the materials that the insurer feels are privileged. If the trial court orders production of the materials and the insurer still believes the materials are privileged, the insurer should seek a stay pending certiorari review.

About Raul Flores

Raul Flores, Esq. is a Junior Partner with over 20 years of litigation experience. He is a member of the Trucking team. Raul has experience defending trucking, complex civil litigation, automobile accident, products liability and premises liability matters in both state and federal courts. He has also handled real estate and construction defect matters.

Prior to joining the firm, Raul worked representing juveniles as a Special Appointed Public Defender for 10 years. Raul has handled pro-bono legal work for Catholic Legal Services and the Put Something Back Program. He has also chaired projects and events for Habitat for Humanity, Drug Awareness Programs, and Juvenile Delinquency Counseling and Advocacy. He is a former Executive Director of the Cuban American Bar Association Pro Bono Project.

Raul possesses both FAA Airframe & Powerplant licenses giving a solid foundation in understanding mechanical and engineering concepts that enables handling defense claims involving technical and mechanical issues.

Raul has a Bachelor of Science degree from Florida International University. He went on to obtain a Masters degree in Criminal Justice from Florida International University. Raul obtained his Juris Doctor from the University of Miami School of Law. Raul is admitted in Florida (1996). He is also admitted to the United States District Court, Southern District of Florida (1996).

Verdicts and Summary Judgments

Sitts v. First Coast Security Services cont. from P. 1

Plaintiff asked the jury for $50 Million dollars in opening and then ultimately $1,000,000 per year for 29.5 years, which amounted to $29,500,000. The jury returned a verdict for $2,967,200. However, the jury apportioned 70% negligence to Mr. Sitts, the decedent, 25% negligence to Fabre Defendant, Zachary Ames and only 5% negligence to Defendant, First Coast Security Services resulting in a net verdict of $148,360. First Coast was the only defendant remaining at the time of trial as Zachary Ames and the Pablo Creek Home Owner's Association had settled out for a confidential sum pre trial.

Mr. Sitts was a 20-year-old student who had received a Bright Futures scholarship. He was invited to the home of Zachary Ames located in the neighborhood of Pablo Creek Reserve. While at the home, Mr. Ames gave Mr. Sitts marijuana to smoke knowing it was his first time smoking marijuana. Shortly after smoking the marijuana the decedent's demeanor changed. He became violent and paranoid. He left the home and began walking through the neighborhood when he was stopped by a First Coast Security Officer.

Around this time, Mr. Ames and another friend, Alexander McIntyre, arrived on the scene. They attempted to force Mr. Sitts into their vehicle by allegedly placing him in chokehold and tackling him to the ground. The officer denied the extent of the touching but did say they attempted to hold him and force him into the car. Mr. Sitts broke free and ran deeper into the community. The officer called 911 advising that there was a trespasser that refused to leave the property. While on the phone with the 911 dispatcher, the officer was asked a number of questions while he followed Mr. Sitts into a cul-de-sac. Mr. Sitts then went behind a private residence and drowned in a lake.

The Plaintiff alleged that First Coast Security failed to adequately discharge their security duties which was a contributing cause of the death of Mr. Sitts. Specifically, it was alleged that the First Coast Security security officer was negligent in the following:

1. failing to allow Sitts use of his cell phone at the scene to call his parents for help;
2. negligently allowing McIntyre and Ames to physically attempt to force Sitts into their car;
3. abandoning Sitts in the cul-de-sac when the 911 operator said wait for the police
4. abandoning Sitts in the cul-de-sac when his post orders required monitoring the situation
5. failing to attempt to warn Sitts of the lake when he knew the decedent was trying to escape
6. failing to properly report the assault and impairment to the 911 operate which would have allegedly resulted in a faster response time than the one-hour it took for JSO to arrive;
7. failing to notify the resident that Sitts had gone behind the home;
8. failing to allow Sitts into his vehicle when he asked for help
9. allegedly chasing Sitts and causing him to flee behind a house and into the lake
10. failing to properly report Sitts was using drugs or alcohol to the 911 operator when the question was asked

First Coast Security denied it was negligent and that its officer's actions were the legal cause of Mr. Sitts death. Furthermore, First Coast Security alleged that Mr. Sitts was comparatively negligent for his own death as was Fabre Defendant, Mr. Ames, for not advising the police or the officer of Mr. Sitts combatant behavior following the use of marijuana.

Verdicts and Summary Judgments, cont.

Defense Verdict
Franklin Sato, Esq.
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Junior Partner Franklin Sato, Esq., obtained a defense verdict of no liability in a slip and fall matter *styled Hossein Tabarestani v. Defendant Store* on January 16, 2020. The demand at trial was $985,000. This case arises out of an incident occurring on January 7, 2018 at Defendant Wholesale Store located in South Carolina. On that evening, Plaintiff was delivering a load of goods to the store when he slipped and fell on snow and ice in the loading dock. Earlier in the day both at the store and on Plaintiff's route to the same, it had snowed in and around Bluffton, which accumulated on the ground. Immediately prior to his fall, Plaintiff had parked his truck and walked around the snow and ice that had accumulated on the ground for approximately 10 minutes while delivering his load. Plaintiff denies that he walked on the snow and ice prior to the incident. Plaintiff alleged that Defendant failed to remove the snow and ice and otherwise failed to maintain its loading dock in a reasonably safe condition.

Defendant denied Plaintiff's claims made in his lawsuit. Specifically, Defendant asserted that the snow and ice was a natural and open and obvious condition, that Plaintiff voluntarily assumed the risk of walking on the snow and ice despite knowing its risk, and that Plaintiff's comparative negligence was the primary cause of this incident, among other defenses. Plaintiff claimed a double fracture of the lateral malleolus of the right fibula. Plaintiff's orthopedic surgeon confirmed one of the fractures and further diagnosed Plaintiff with a tendonitis in his right ankle.

Dismissal with Prejudice
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Construction Partner David Rosinsky, Esq., obtained a good result in the matter styled *BZB Barn, LLC. vs. Guerrero D. Construction, Inc. Buck Steel, Inc., Hornet Steel Buildings, Inc*. when Plaintiff agreed to drop all claims against our client. Plaintiff is the owner of an equestrian facility in Loxahatchee Grove. It purchased a pre-engineered steel building to cover an equestrian ring on its farm from a local distributor. The distributor purchased the materials and plans for the structure from our client. Due to agricultural exemptions, Plaintiff was not required to obtain a building permit and, as such, was not required to have the erection of the building performed by a licensed general contractor. Plaintiff chose to hire day laborers with no experience in the erection of the steel building. The day laborers did not follow the plans for the erection of the building and did not use the necessary temporary and permanent bracing to support it during the erection. Before the erection was completed, the partially erected building collapsed. Plaintiff sued our client and the distributor for strict liability – manufacturing defect, strict liability – design defect as to the design of the steel building and as to the design of the steel building's foundation, and for negligence. In addition, Plaintiff also sued one of the day laborers and his unrelated paving company. Despite numerous discussions with Plaintiff's counsel concerning the overwhelming evidence that our client was not responsible for the collapse of the steel building and being served with a Proposal for Settlement, Plaintiff refused to dismiss its claims against our client.

Shortly after completing the depositions of Plaintiff's two corporate representatives and establishing that the collapse of the steel building was due to Plaintiff's own failure to hire experienced erectors and the failure of the day laborers to erect the building in compliance with the building's plans and specifications and the Metal Building Systems Manual standards for the erection of a steel building, Plaintiff terminated its relationship with its counsel. Plaintiff subsequently hired new counsel who after review of the case agreed to drop all claims against our client.

Verdicts and Summary Judgments cont.

FPP Plaintiff Voluntary Dismissal with Prejudice

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Partners Jonah Kaplan, Esq., and Jeremy Fischler, Esq., received a good result in a First-Party Property matter when just prior to the hearing on the Motion for Summary Judgment, Plaintiff filed a Voluntary Dismissal with Prejudice. The lawsuit in matter styled *State 2 State Restoration a/a/o Gabriel Rodriguez v. Centauri* stemmed from a homeowner's claim for water damage from a plumbing loss.

The Plaintiff a third party vendor performed water mitigation as a result of a plumbing leak at the insured's Property pursuant to an assignment of benefits. The policy contained a Water Damage Exclusion Endorsement that excluded coverage for damages caused by plumbing leaks. Specifically, the Water Damage Exclusion Endorsement excludes damages as follows:

> **(d)** Accidental or intentional discharge or overflow of water or steam from within a plumbing, heating, air conditions or automatic fire protective sprinkler system or from within a household appliance.

As a result, the insured's claim was denied. Thereafter, the homeowner and Plaintiff filed separate suits. The insured's suit specifically alleged that the damage was caused by a plumbing leak. In order to mitigate the exposure to Plaintiff's attorney's fees and defense, we filed a Motion for Judgment on the Pleadings as opposed to performing any discovery. This strategy was successful as the insured dismissed his claim. However, the Plaintiff (third party vendor) was unwilling to dismiss its lawsuit, as the allegations were vague as to the cause of damage. Therefore, we proceeded with targeted discovery including Request for Admissions in order to force the Plaintiff to confirm the cause of the loss, as being a plumbing leak. Plaintiff was unable to refute the documentary evidence, and the admissions. As a result we filed a Motion for Summary Judgment based on the Water Damage Exclusion Endorsement, and the Plaintiff's discovery responses.

Wrongful Death Favorable Settlement— Palm Beach County

Brett Wishna, Esq.
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Boca Raton Associate Brett Wishna, Esq., obtained a favorable settlement in a wrongful death claim against a liquor store alleged to have sold alcohol to a minor Decedent. The Minor Decedent's Estate claimed that the sale, among other things, was the legal cause of Decedent's ultimate death by way of a shooting at a house party later that day. Following discovery, Mr. Wishna moved for summary judgment on behalf of Defendant, arguing that Plaintiff's evidence was, at best, speculative and circumstantial. While that motion was pending and set for hearing, the parties reached a settlement of $30,000.

Verdicts and Summary Judgments cont.

Dismissal With Prejudice
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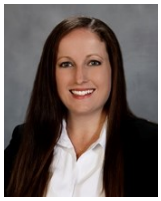
Fort Lauderdale Managing Partner William Peterfriend, Esq., Junior Partner Erin O'Connell, Esq., and Appellate Partner Daniel Weinger, Esq., obtained a Dismissal with Prejudice pending a hearing on motion to strike pleadings for fraud on the court. In the matter styled *Romeo Hebert v. Robert Boutin and Walks and Decks, Inc.,* Plaintiff, Romeo Hebert, claimed damages stemming from an accident in which he flipped over the handlebars of his bicycle in his neighborhood, resulting in injuries to his right hip and right leg. Plaintiff claimed that he was riding his bicycle in his neighborhood and suddenly came upon a forklift owned and operated by Walks and Decks, Inc., causing him to swerve out of the way and crash his bike. Co-Defendant was a neighbor of Plaintiff who was driving around the forklift at the time that Plaintiff crashed his bicycle.

Throughout depositions and discovery, the defense team uncovered information that showed Plaintiff had attempted to conspire with co-Defendant Mr. Boutin to craft his recollection of the incident, placing the blame on Walks and Decks, Inc. Plaintiff offered the co-Defendant a sum of money to advise attorneys that Walks and Decks, Inc. was at fault and the sole cause of Mr. Hebert's accident and subsequent injuries. Co-Defendant testified that, when he refused to do so, Plaintiff included him in the lawsuit as a Defendant. We filed our Motion for Fraud on the Court as to Plaintiff's bribery attempt, and, pending a hearing on same before Judge Nicholas Lopane, Plaintiff filed his Notice of Voluntary Dismissal with Prejudice. Plaintiff's initial demand was for $525,000.



Final Summary Judgment
Lauren Wages, Esq.
Tampa Associate
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Tampa Associate Lauren Wages, Esq., obtained good result when the court granted Defendant Citizens' Motion for Final Summary Judgment on February 6, 2020 in matter styled *Leonor Ferrerio v. Citizens Property Insurance Corporation*. Plaintiff filed suit due to an alleged leak that originated in the garage from a water heater causing water to flow to the interior of Plaintiff's home causing damage. In support of its Motion for Final Summary Judgment, Citizen submitted an affidavit of its expert who concluded that the garage where the water heater was located sat at a lower elevation than the living space slab and that the elevation of the garage sloped away from the living space. The expert further opined that there was no visible evidence of water damage related to a recent water heater leak. Citizens submitted a second affidavit confirming similar findings by its field adjuster at the time of his inspection. Plaintiff submitted an affidavit in opposition executed by the Plaintiff which the court found failed to controvert Defendant's summary judgment evidence. The court specially found that "no cogent explanation has been brought forth by Plaintiff countering Citizens' expert opinions that water flows down hill."

Verdicts and Summary Judgments cont.

Motion to Dismiss for Fraud on the Court

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Laurette Balinsky, Esq., obtained a favorable result when the court granted Defendants' Motion to Dismiss for fraud on the court. In the matter styled *Freeman v. Adkins* and Citrus Auto, Plaintiff was claiming injuries and damages stemming from an automobile accident. Plaintiff alleged severe injuries. Through discovery, the defense was able uncover inconsistencies and false statements made by the Plaintiff under oath. The defense obtained records from Plaintiff's employer which completely contradicted much of Plaintiff's testimony regarding her wage claim and alleged limitations. Defendant filed its Motion to Dismiss based on the clear and unequivocal false statements made under oath.

Voluntary Dismissal

Dale Paleschic, Esq.
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Dale Paleschic, Managing Partner, and Tabitha Jackson, Associate, in our Tallahassee office obtained an Order on the Joint Stipulation for Dismissal in a matter styled *Kennedy v. Florida Department of Corrections, et al*. Plaintiff, former inmate of FDOC, filed suit alleging wrongful and incorrect designation as a sexual predator while incarcerated. Though the alleged scrivener's error was well resolved long prior to the suit and no evidence of harm was shown, Plaintiff brought a myriad of claims and grievances against FDOC, the Clerk of Court, and the State Attorneys' Office. We filed a Motion to Dismiss the matter as well as a § 57.105, Fla. Stat. Motion for Sanctions with the Court. Within three businesses days after the hearing on Defendants' Motions, Plaintiff advised that he was agreeable to dismissal of the suit against all Defendants. The Order Dismissing all Claims with Prejudice was filed by the Court within 10 days of the hearing. Defendants paid nothing to Plaintiff or his attorneys.

Voluntary Dismissal

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Tallahassee Associate Tabitha Jackson, Esq., obtained a Voluntary Dismissal in a matter styled *Smart Storm Solutions, LLC a/a/o Brinkley v. Tower Hill Prime Insurance Company*. Plaintiff, as a purported assignee of the insured, filed a breach of contract suit in June 2019, without any facts, evidence, or information permitting payment of benefits under the insured's homeowners insurance policy. Five months later, an inflated estimate was provided to Tower Hill with a demand for $80,000, inclusive of fees. Discovery was propounded on Smart Storm, though they failed to respond, failed to produce any evidence of work performed (or to be performed), and failed to respond to multiple inquiries for depositions.

In the interim, we obtained a sworn affidavit from the insured himself attesting that no work had been performed by Smart Storm, he did not intend for any work to be performed by Smart Storm, and that he had in fact paid (out of pocket) a local construction company to perform all necessary repairs. We filed this affidavit with our Motion for Summary Judgment. Plaintiff filed its Voluntary Dismissal one business day prior to the hearing on same and Defendant paid nothing to Plaintiff or its attorneys for this frivolous suit.

Verdicts and Summary Judgments cont.

Summary Judgment
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Junior Partner Scott Chapman, Esq., and Senior Associate Hayley Newman, Esq., obtained Summary Judgment on counts for breach of contract and negligence in a case involving water damage to a condominium unit in the matter styled *Rodney and Emily Regan v. Carillon Condominium Association, Inc*. This case arose out of an alleged roof leak in the common area at the Defendant Condominium Association. The Association was previously sued by Plaintiffs in a 2014 lawsuit against the Defendant Condominium Association, resulting in an executed release by the Plaintiffs. Defendant proffered to the Court that the Plaintiffs' renewed Complaint sought double recovery against the Defendant Association in violation of the principles of Res Judicata. The Court agreed that the release executed previously by the Plaintiffs was a bar to monetary damages and granted Summary Judgment as to Counts I and II of Plaintiffs' Complaint.

Reversal of Trial Court's Order
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In *Katz-Luongo v. Amortegui*, 3D19-1852 (Fla. 3d DCA April 8, 2020), Appellate Partner Daniel Weinger successfully obtained a reversal of a trial court's order denying a motion to quash service of process. In the written opinion, the appellate court agreed with Mr. Weinger's argument that the plaintiff failed to meet her burden of establishing substitute service of process through service on the defendants' roommate at an address the defendant maintained but where, according to the roommate, she was not living at the time of service.

Final Summary Judgment
First-Party Property
Jorge Padilla, Esq.
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On November 27, 2019, Miami Senior Partner, Jorge Padilla, secured Final Summary Judgment in a First-Party Property case styled *Raul Ruiz, et al. v. Citizens Property Insurance Corporation*. Plaintiffs made a claim against their homeowner's insurance carrier for a loss that reportedly occurred as a result of a ruptured pipe under the slab of their property. Plaintiffs claimed that the tile flooring within their home became un-bonded as a result of water that penetrated the slab of the home. Seeking substantial damages, including attorney's fees costs, Plaintiffs alleged that the denial of their claim constituted a breach of their homeowner's insurance policy. By employing an aggressive discovery approach, Mr. Padilla was able to get Plaintiffs' expert stricken for repeated violations of discovery orders. After securing that ruling, Mr. Padilla filed a motion for final summary judgment. In response to the motion for summary judgment, Plaintiffs argued that summary judgment was premature for varying reasons ranging from pending discovery that Plaintiffs had hoped to secure to overreaching arguments that genuine issues of material facts existed – issues that were thoroughly briefed by Mr. Padilla and ultimately rejected by the Court. Mr. Padilla is now pursuing a claim for attorney's fees and costs pursuant to a proposal for settlement that he served early in the litigation.

Verdicts and Summary Judgments cont.

Final Summary Judgment
First-Party Property
Jorge Padilla, Esq.
Senior Partner
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On March 20, 2020, Miami Senior Partner, Jorge Padilla, secured Final Summary Judgment in a First-Party Property case styled *Ramon Rodriguez v. Citizens Property Insurance Corporation*. Plaintiff made a claim against his homeowner's insurance carrier for a loss that reportedly occurred as a result of Hurricane Irma. Plaintiff's claim for interior water damage was denied due to the absence of any evidence of wind damage to the home. After engaging in preliminary discovery, Mr. Padilla moved for final summary judgment. In response, Plaintiff's counsel relied on the deposition testimony of his client, who merely testified that his roof was not leaking prior to the hurricane and commenced leaking approximately three days after it made landfall in Miami-Dade County. Relying on well-settled law that causation cannot be established by *post hoc* reasoning, Mr. Padilla prevailed on the motion for final summary judgment and is now pursuing a claim for attorney's fees and costs pursuant to a proposal for settlement.

Claims Against Nursing Home Defeated
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Daniel Weinger, Esq.
Appellate Partner
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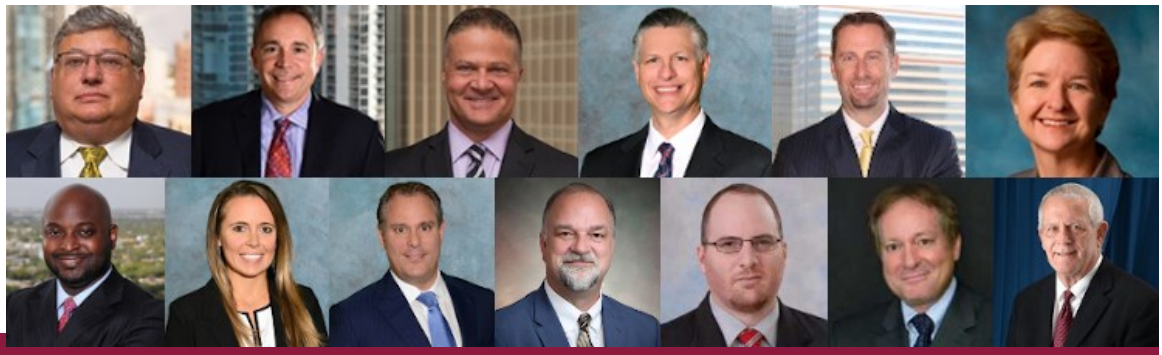
Tallahassee Managing Partner, Dale Paleschic, Esq., and Daniel Weinger, Esq., Appellate Partner recently teamed up for the second time in the same case and again defeated a Plaintiff's claim against an assisted living facility being accused of neglect. Initially, the trial court entered an order dismissing the Plaintiff's Complaint based on the Plaintiff's failure to follow the statutorily mandated presuit notice requirements of Section 429.293, Florida Statutes. This result was per curiam affirmed by the Second District Court of Appeals. Following the District Court's opinion, the Plaintiff tried to file an Amended Complaint after curing the alleged defects in their original notice. Mr. Paleschic and Mr. Weinger formulated an attack on the improper filing by filing a Motion to Dismiss and/or Strike the Amended Complaint. The Plaintiff then filed a response and Motion for Relief from Judgment Pursuant to Florida Rule of Civil Procedure 1.540 (b). Once again, the trial Court sided with the defense's argument that the cure was too late and the Amended Complaint was still defective and struck the Plaintiff's Amended Complaint as a nullity essentially since the case had already been dismissed. Once again, the Second District Court of Appeals upheld the trial court's striking of the Amended Complaint by a per curiam affirmance.



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