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LEGAL UPDATE

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VERDICTS, SUMMARY JUDGMENTS, APPELLATE RESULTS

Negligent Security Shooting Incident — Final Summary Judgment granted to the Defendant on September 27, 2022 — Indian River County Circuit Court, Vero Beach, Florida

Marc Greenberg, Esq.

Senior Partner Marc Greenberg, Esq., and Senior Appellate Partner Daniel Weinger, Esq., prevailed on Final Summary Judgment in a premises liability case based on allegations of negligent security. Relying on the decision in *Stella Mae Brown v. Motel 6 Operating, L.P., LTD*, 989 So.2d 658 (4th DCA 2008), as well as the shift in the burden of production under the newly heightened standard of Florida Rule of Civil Procedure 1.510, we persuaded the trial court that although Defendant sympathized with Plaintiffs for the injuries they suffered, there simply was not any record that Defendant did anything wrong either prior to or following the criminal episode. Additionally, agreeing with one of our alternative arguments, the trial court found that Plaintiffs were unable to establish causation without the impermissible stacking of inferences. For a more detailed account of the case, *read more now*.

INSIDE LEGAL UPDATE

OPPORTUNITIES FOR PURSUING SUMMARY JUDGMENTS IN NEGLIGENT SECURITY CASES WITH FLORIDA'S NEW SUMMARY JUDGMENT STANDARD

by Daniel S. Weinger, Esq., Appellate Senior Partner

Daniel Weinger, Esq.

It is no secret that in Florida, premises liability cases based on allegations of negligent security have traditionally been some of the most difficult to resolve at the summary judgment stage. At first blush, the law in Florida appears favorable to one in possession or control of a premises. As a general rule, a person has no legal duty to control the conduct of a third person to prevent that person from causing harm to another. *Aguila v. Hilton, Inc.*, 878 So.2d 392, 398 (Fla. 1st DCA 2004). Moreover, Florida courts routinely reaffirm the well settled principle that a premises owner is not the insurer of the safety of the persons on their property. See *Wimbush v. Gaddis*, 713 So. 2d 1107, 1107 (Fla. 4th DCA 1998) ("An owner of real property is neither an insurer of the safety of persons on the property nor subject to strict liability for injuries"); *Bovis v. 7-Eleven, Inc.*, 505 So. 2d 661, 662 (Fla. 5th DCA 1987) ("An owner of real property is not an insurer of the safety of persons on such property"). The foregoing suggests that a premises owner would only be held responsible for crimes committed on their property in extreme circumstances. *Read more ... page 2.*

EMERGING TECHNOLOGIES AT PLAY IN PLAINTIFF'S LITIGATION STRATEGY

by Janine Menendez-Aponte, Esq., Strategic Mentoring & Training Partner

Janine Menendez-Aponte, Esq.

The U.S. Open tennis tournament replaced human line judges with optical technology. Major League Baseball is testing automated umpire robots. What do optical technology and robots have to do with litigation? A lot in 2022.

The estimated $12.17 billion worldwide sports tech industry[1] pales in comparison to the $27.6 billion legal tech market.[2] While much of legal tech is nothing new (think, practice management software, legal research, e-discovery, billing and accounting technologies), there are two tools gaining traction in the legal marketplace worth following.

What's a case worth? Settle or go to trial? Will arguments resonate? One company is disrupting the traditional case focus group market by tapping into "emotional analytics" leveraged through smartphone cameras. *Read more ... page 3.*

OPPORTUNITIES FOR PURSUING SUMMARY JUDGMENTS IN NEGLIGENT SECURITY CASES WITH FLORIDA'S NEW SUMMARY JUDGMENT STANDARD, *CONT.*

by Daniel S. Weinger, Esq., Appellate Senior Partner

Unfortunately, the courts have created so many exceptions to these rules that a plaintiff alleging negligent security can easily fashion their claim in such a way that it is sure to at least reach a jury. Simply put, despite the favorable general law, a premises owner could be forgiven for thinking that they are, in fact, the insurer of the safety of the persons on their property.

The relatively recent amendment to Florida Rule of Civil Procedure 1.510, which concerns the procedures and standards for consideration of motions for summary judgment, arguably offers more reason for optimism in the area of negligent security than any other type of claim. By way of brief background, on May 1, 2021, the Florida Supreme Court's amendment went into effect, essentially adopting the federal standard. In so doing, the Court recognized that both the Florida and federal rules of civil procedure share the same purpose of securing "the just, speedy, and inexpensive determination of every action." However, despite the consistent purpose and text of the two sets of rules, in practice there were many inconsistencies in the jurisprudence between the two judicial systems. Most notably, prior to the amendment Florida courts: (1) were reluctant to recognize the similarity between a motion for directed verdict and a motion for summary judgment; (2) required the moving party to conclusively disprove the nonmovant's theory of the case; and (3) adopted an over expansive understanding of what constitutes a genuine issue of material fact sufficient to defeat a motion for summary judgment.

The Court's adoption of the federal standard removed these inconsistencies, resulting in a decrease of the moving party's burden of production and increase in the nonmoving party's burden when ruling on a timely motion for summary judgment. As stated supra, traditionally, claims of negligent security rarely lent themselves to being resolved through motions for summary judgment. However, relying on the changes to the burden of production and the complete removal of any distinction between the summary judgment and directed verdict standards, the Luks & Santaniello Negligent Security Practice Group has developed a more aggressive strategy to pursuing summary judgments in negligent security cases. First, the shift to the burden of production being placed on the non-moving party creates an opportunity for submitting summary judgment motions at a much earlier stage of a proceeding. Even where a plaintiff successfully persuades a court to allow more time for discovery, the earlier filed motion not only promotes settlement, but forces a plaintiff to produce the evidence that will permit defendants to more accurately assess the potential for exposure and the value of the claim.

Additionally, the Court's mandate that the distinction between motions for summary judgment and motions for directed verdict be limited to the timing of the motions rather than the standards themselves opens the door to raise arguments at the summary judgment stage that courts were previously inclined to only consider through directed verdict motions. Recently, we obtained summary judgment in a negligent security case involving a shooting of multiple plaintiffs in the parking lot of a retail establishment. The trial court agreed with several of our arguments, including that the plaintiffs could not establish causation without the impermissible stacking of inferences. Although in theory, the issue of impermissible inference stacking is something a trial court should have been willing to consider at the summary judgment stage even prior to the recent amendment to Rule 1.510, in practice courts were reluctant to dispose of a claim based on an inference stacking argument prior to the trial except in specific types of cases (such as slip and falls on transient foreign substances).

To be sure, which specific arguments are worth raising in a motion for summary judgment in a particular negligent security case is still very fact dependent. Nevertheless, the opportunity presented by the recent amendment to the summary judgment procedure in Florida warrants a thorough analysis in every negligent security case of whether a specific case is a good candidate for a more aggressive approach.

Questions? The Luks & Santaniello, LLC., Negligent Security Practice Group will continue to monitor and provide updates regarding developments in the applications of the new summary judgment standard to negligent security cases. For questions or further assistance with your Florida matters, please reach out to our Negligent Security Practice Chair.

ABOUT THE AUTHOR

Daniel Weinger, Esq., is the Managing Attorney for the firm's Appellate and Trial Support Division. Daniel has handled hundreds of appeals over the past 23 years in his work in the public sector as a career attorney with the Third District Court of Appeal and in the private sector as the lead appellate attorney at various private practices. Daniel is also a Qualified Florida Arbitrator, having successfully completed Florida Supreme Court Mandated Arbitration Training and a Florida Supreme Court Certified Circuit Civil Mediator.

Daniel also provides key trial support in complex and high exposure matters in the areas of products liability, medical products, general negligence, personal injury, automobile liability and premises liability, bad faith, insurance coverage, commercial litigation and employment discrimination. As the Firm's lead appellate attorney, Dan keeps abreast of the latest legal developments impacting all of the Firm's practice areas. Read More.

EMERGING TECHNOLOGIES AT PLAY IN PLAINTIFF'S COUNSELS LITIGATION STRATEGY, *CONT.*

by Janine Menendez-Aponte, Esq., Strategic Mentoring & Training Partner

The technology claims to capture facial "micro-expressions," which famed emotion psychologist Paul Ekman, Ph.D. defined as expressions occurring within a fraction of a second that provides an "emotional leakage," showing a person's real feelings.[3] With "micro-expression" data and traditional survey methods, this company provides demographical reporting of case sentiment and value. Armed with this information, Plaintiff's attorneys are strategically targeting the selection or deselection of jurors and making assumptions on bottom line.

Damaging social media evidence can compromise case value. With this in mind, an automated platform provides Plaintiff's attorneys with real time monitoring across their client's social media accounts so they can proactively conduct damage control. For a flat fee or on a bulk-pricing basis, this tool aims to reduce the exposure risk of harmful evidence to insurance companies so Plaintiffs can increase file value.

Effective October 1, 2022, the Florida Rules of Civil Procedure were amended to keep up with the technological advancements made during COVID-19 through a number of Rule changes that "provide permanent and broader authorization for the remote conduct of certain court proceedings."[4] Going forward, courts will need to continue to adapt our procedural rules to technological changes, but also weigh the permissible bounds in which technology can infiltrate litigation.

To discuss any of these emerging technologies at play in litigation, please contact Janine Menendez-Aponte, Esq., or Managing Partner Daniel Santaniello, Esq.

[1] *Sports Technology Market Size, Share & Trends Analysis Report By Technology (Device (Wearables & Digital Signage), Smart Stadium, Analytics & Statistics, Esports),* By Sports, By Region, And Segment Forecasts, 2022 – 2030, (Sept. 19, 2022) https://www.grandviewresearch.com/industry-analysis/sports-technology-market

[2] Thomas Alsop, *Legal tech market revenue worldwide from 2021 to 2027*, (Sept. 19, 2022) https://www.statista.com/statistics/1155852/legal-tech-market-revenue-worldwide/

[3] Matsumoto, et al., *Microexpressions Differentiate Truths From Lies About Future Malicious Intent*, Front Psychol. 2018; 9: 2545; https://www.frontiersin.org/articles/10.3389/fpsyg.2018.02545/full

[4] In Re: Amendments to Florida Rules of Civil Procedure, et al., No. SC-21-990 (July 14, 2022) https://efactssc-public.flcourts.org/casedocuments/2021/990/2021-990_miscdoc_372979_e05.pdf

ABOUT THE AUTHOR

Janine Menendez-Aponte, Esq., is the firm's Strategic Mentoring and Training Partner. She is also a member of the firm leadership committee focused on developing diversity and inclusion policies and strategies to attract, develop and retain a diverse workforce. Prior to joining the firm, Janine was in-house counsel for a national insurance carrier. In this capacity, she gained invaluable trial experience defending numerous cases to jury verdict.

As Strategic Mentoring and Training Partner, Janine develops and implements innovative programs to train, mentor, develop, and retain the firm's talented and diverse litigators. Janine stays abreast of the tactical shifts used by the Plaintiff's bar and delivers on-time education so our attorneys can be more agile, quickly adapting to the evolving legal environment. She oversees the firm's in-house CLE program, providing training on fundamental principles of practice such as discovery, expert depositions, motion practice, time limit demands, and trial practice and procedure. Janine is also implementing the firm's formal mentoring program, aligning partners with associates to further advance the firm's culture of learning.

Janine is admitted to practice in the State of Florida (2010), including the United States District Court for the Southern (2013) and Northern Districts of Florida.

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VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

Plaintiff v. Tampa Bay Hotels LLC dba Comfort Suites, et al

Federal Sex Trafficking | Motion to Dismiss

Attorney(s): Patrick Boland, Esq.

Plaintiff Counsel: Levin Papantonio Rafferty

Patrick Boland, Esq.

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Fort Myers Senior Partner Patrick Boland, Esq., prevailed on Motion to Dismiss in a Federal Sex Trafficking matter styled *Plaintiff v. Tampa Bay Hotels LLC dba Comfort Suites, et al.* Our client was sued by an alleged victim of sex trafficking under the Trafficking Victims Protections Reauthorization Act ("TVPRA"). Plaintiff alleged that our client, along with several other major hotel brands and franchises, knowingly received financial benefit from a sex trafficking scheme, in violation of the TVPRA. Our client consistently maintained that it was simply in the business of renting hotel rooms to patrons, had no reason to believe that any sex trafficking was occurring and did not knowingly participate in a sex trafficking venture, as those terms are intended in the TVPRA. Prior to reaching a decision on the merits of Plaintiff's claims, we obtained a dismissal of our client from the Federal Court presiding over the action. Our Motion to Dismiss was based upon the fact that Plaintiff's Complaint constituted a shotgun pleading, and improperly joined several Defendants in what appeared to be factually distinct claims. We also argued that Plaintiff's Complaint contained a myriad of impertinent, irrelevant and salacious allegations, which should be stricken. Ultimately, the Federal Court agreed with our arguments and dismissed the Plaintiff's Complaint, without the need for further extensive investigation and litigation.

Jax Dirtworks, Inc. v. McKim & Creed, Inc. and Equix Energy Services, LLC

Contract Liability | Dismissal by Plaintiff after Closing Argument

Attorney(s): G. John Veith, Esq.; C. Eric Bearden, Esq.

Plaintiff Counsel: Orr Cook, PLLC

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Florida DBPR Certified General Contractor
Florida DBPR Certified Roofing Contractor
Florida Bar Board Certified
Construction Law Specialist

Partners G. John Veith, Esq., and C. Eric Bearden, Esq., obtained a favorable result in a contract liability matter styled *Jax Dirtworks, Inc. v. McKim & Creed, Inc. and Equix Energy Services, LLC* in the Circuit Court of St. Johns County, Florida. We represented co-defendant Equix Energy Services, LLC. Plaintiff asked the jury for the full invoiced price—$290,269.82—for its repair of a high-pressure underground water main and surrounding improvements performed during the Christmas and New Year's season of 2020-2021. The jury returned a verdict for all requested damages for the Plaintiff, but only after plaintiff dismissed its claims against Equix—the horizontal directional drilling contractor—at the close of all evidence and after closing arguments.

Plaintiff alleged that it was contacted to repair the underground water main on December 21, 2020, after the main was damaged during directional drilling operations in St. Johns County, Florida. The issue for the Jury's consideration was not fault for the water main strike, but rather which of the co-defendants had entered into contract with Plaintiff for the repairs, and whether either or both defendants were unjustly enriched by Plaintiff's repair of the water main and remediation of damage to the surrounding roadway and curb systems. During closing, Mr. Veith reminded the jury that all of the co-defendant's communications and actions indicated its intent and acquiescence to enter into a contract for emergent repairs with Plaintiff, but that, only after its receipt of Plaintiff's repair invoice, the co-defendant denied its intent to contract with Plaintiff, and argued

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VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

that Equix bore responsibility for payment of the repair costs. After Mr. Veith's closing, Plaintiff's counsel—in open court—dismissed all claims versus Equix, and Equix was therefore removed from the verdict form. Hence, the question of whether Equix was unjustly enriched by Plaintiff's emergent repairs performed during the holiday season was removed from the verdict form prior to jury deliberations.

John Doe v. Retail Store

Slip and Fall | Summary Judgment

Attorney(s): Marc Greenberg, Esq.; Daniel Weinger, Esq.

Plaintiff Counsel: Law Offices of Craig Goldenfarb, P.A.

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Senior Partner Marc Greenberg, Esq., and Senior Appellate Partner Daniel Weinger, Esq., obtained a Final Summary Judgment in Palm Beach County in a premises liability action. Senior Judge Richard Oftendal granted Defendant's Motion for Final Summary Judgment on lack of notice pursuant to Florida Statute 768.0755 (1)(a) and (1)(b). Plaintiff slipped and fell on laundry detergent in the chemical aisle. Plaintiff was transported to the hospital and ultimately underwent two L5-S1 Discectomies as well as C3-C6 cervical epidural injections. Plaintiff's past medical bills were $255,846 as of the date of the hearing. Also, Plaintiff's life care planner MD opined that Plaintiff will likely require $1,098,750 in future medical treatment.

Judge Oftendal held that the preserved store video was dispositive evidence supporting the Defendant's contention that it was not on actual or constructive notice of the liquid on the floor prior to Plaintiff's fall. Using a videography expert, the Defendant was able to prove that the source of the spill came from another customer 1 minute and 10 seconds prior to Plaintiff's fall, thereby negating any constructive notice on Defendant under (1)(a) of the statute. As for (1)(b) of the statute, Plaintiff did not present any genuine issue of material fact showing that spills occurred with regularity, and were therefore foreseeable.

Plaintiff v. DEJ Hotels

Premises Liability | Motion for Summary Judgment

Attorney(s): Franklin Sato, Esq.; Matthew Fox, Esq.

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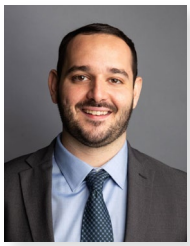

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Senior Partner Franklin Sato, Esq., and Associate Matthew Fox, Esq., got a high-exposure case dismissed with prejudice due to a pending Motion for Summary Judgment on a slip and fall matter styled *Plaintiff v. DEJ Hotels*. The matter arose when the Plaintiff stepped out of an elevator and slipped on a foreign substance. However, the CCTV footage showed only one possible source for the substance – a cooler placed on the floor by another hotel guest approximately 2 minutes prior to the fall. Although Plaintiff's Counsel tried to make an issue of pool goers going to and from the elevators, the discovery and depositions quickly established that was not the case. The Plaintiff had one back surgery and one neck surgery and approximately $370,000.00 in medical bills. The Motion for Summary Judgment covered all the angles, including actual notice, constructive notice, and improper stacking of the inferences. Furthermore, the Defendant filed a nominal PFS early in the case. The Plaintiff reached out the night before the hearing and offered to dismiss the case with prejudice in exchange for the Defendant not proceeding with the Motion for Summary Judgment and not seeking fees and costs pursuant to the prior PFS.

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

Plaintiff v. Community Asphalt Corporation
MVA | Summary Judgment
Attorney(s): James Sparkman, Esq.; Daniel Weinger, Esq.
Plaintiff Counsel: J. Curtis Boyd, P.A.

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Senior Appellate Partner Daniel Weinger, Esq., and Senior Partner James T. Sparkman, Esq., obtained a Final Summary Judgment on September 22, 2022 in St. Lucie County in a personal injury action involving Plaintiff's loss of control of her vehicle in a construction area maintained by the Defendant. Senior Judge Laurie E. Buchanan granted the Defendant's Motion based on Fla Stat. § 337.195 which provides:

(2) A contractor who constructs, maintains, or repairs a highway, road, street, bridge, or other transportation facility for the Department of Transportation is not liable to a claimant for personal injury, property damage, or death arising from the performance of the construction, maintenance, or repair if, at the time of the personal injury, property damage, or death, the contractor was in compliance with contract documents material to the condition that was the proximate cause of the personal injury, property damage, or death.

Plaintiff suffered spinal injuries diagnosed by MRI, and also allegedly suffered PTSD. The Plaintiff's dog was in the car and was also uninjured. Plaintiff is a 52 year old lawyer for Homeland Security.

Defendant has moved for attorney fees and costs based on the Defendant's Proposal for Settlement in the amount of $2,500. Similarly, Defendant has filed a motion for prevailing party costs under Florida Statute 57.041.

Yosvani Gigato v. OHL USA, INC.; Community Asphalt, and Pierre Richard R. Clermont
Construction Law | Motion for Summary Judgment
Attorney(s): Marc Greenberg, Esq.; Lauren Smith, Esq.; Daniel Weinger, Esq.

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In the matter of *Yosvani Gigato v. OHL USA, INC.*; Community Asphalt, and Pierre Richard R. Clermont, Senior Partners Marc Greenberg, Esq., and Lauren Smith, Esq., and Senior Appellate Partner Daniel Weinger, Esq., obtained summary judgment based on workers' compensation immunity in a negligence action brought by the injured employee of a subcontractor on a road construction project. Our team persuaded the trial court to reject Plaintiff's arguments that the defense was barred by the doctrine of equitable estoppel.

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

Plaintiff v. One for the Road Enterprises, Inc and Four Sons Plaza, LLC

Premises Liability | Final Summary Cost Judgment

Attorney(s): James Sparkman, Esq.; Daniel Weinger, Esq.

Plaintiff Counsel: Keller, Keller, Caracuzzo, Cox

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Senior Appellate Partner Daniel Weinger, Esq., and Senior Partner Jim Sparkman, Esq., were successful in obtaining a Final Summary Cost Judgment on October 11, 2022, following the granting of Defendant's Summary Judgment in a Premises Liability case before Judge James Nutt in Palm Beach County. In the matter styled, *Plaintiff v. One for the Road Enterprises, Inc and Four Sons Plaza, LLC*, the Plaintiff, a bar patron, suffered a broken tibia and fibula when other bar patrons attacked him in the bathroom owned by the Co-Defendant. He incurred $180,133.64 in medical expenses. The trial court found that there is no duty under the lease or the common law for the landlord in this case to have provided security or otherwise protect the plaintiff from the alleged battery in the bathroom of its tenant, a co-defendant in the case.

National Retail Chain v. Jane Doe

Appellate | Per Curiam Affirmance

Attorney(s): Daniel Weinger, Esq.

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In the matter of *National Retail Chain v. Jane Doe*, Senior Appellate Partner Daniel Weinger, Esq., obtained a per curiam affirmance of a final summary judgment in favor of a national retail chain in a lawsuit arising from an alleged slip and fall on a transient foreign substance. In affirming the final summary judgment without written opinion, the appellate court approved the trial court's holding that because Plaintiff failed to come forward with evidence from which a jury could find that Defendant was on constructive notice, her claims failed as a matter of law.

Plaintiffs v. Rodal Investment Corp. et. al.

Negligent Security | Motion for Summary Judgment

Attorney(s): Edgardo Ferreyra, Esq.; Elizabeth Jimenez, Esq.

Plaintiff Counsel: Amanda Demanda Law Group

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Appellate Partner Edgardo Ferreyra, Esq., and Junior Partner Elizabeth Jimenez, Esq., prevailed on a Motion for Summary Judgment in the negligent security matter styled *Plaintiffs v. Rodal Investment Corp. et. al.* Plaintiff argued that the commercial landlord had control over the parking lot pursuant to the lease, in which it retained a maintenance responsibility. Defense successfully argued that the provision was not enough to create a duty of care in the negligent security context. Judge Reemberto Diaz agreed and entered final judgment.

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

Dry Guys, Inc. a/a/o Sarah Hartman v. Defendant Insurance Company

First-Party Property | Dismissal

Attorney(s): Julian A. Brathwaite-Pierre, Esq.
Plaintiff Counsel: HL Law Group, P.A.

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Tampa Associate Julian A. Brathwaite-Pierre, Esq., secured a dismissal on August 4, 2022 in the First-Party Property matter styled *Dry Guys, Inc. a/a/o Sarah Hartman v. Defendant Insurance Company*. Defense filed a Motion to Dismiss with Prejudice based on the Plaintiff's standing as an assignee of benefits. Specifically, the assignment of benefits attached to Plaintiff's Complaint did not contain within it an itemized per-unit estimate of the services that were to be provided within the four corners of the agreement. Instead, the Plaintiff attached an estimate that was prepared after the date the assignment of benefits was executed by the Insured, as an additional exhibit to the Complaint.

While the Motion to Dismiss was pending hearing, the Fourth District Court of Appeal issued their opinion in *Kidwell Group, LLC v. United Prop. & Cas. Ins. Co.*, 343 So. 3d 97 (Fla. 4th DCA 2022), which was directly on point. As such, we filed a notice of authority citing the new opinion in support of our Motion to Dismiss.

The client was willing to discuss settlement, but upon receiving a demand from Plaintiff that was far from reasonable given the pending Motion to Dismiss, the client elected to proceed. The morning before the hearing, Plaintiff filed their Notice of Voluntary Dismissal.

Maria Davila, as P.R. of the Estate of Candido Manzanares v. Florida Department of Transportation (FDOT)

Wrongful Death | Dismissal with Prejudice

Attorney(s): Luis Menendez-Aponte, Esq.; Edgardo Ferreyra, Esq.
Plaintiff Counsel: Rubenstein Law, P.A.

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This matter involved a wrongful death cause of action brought by the Estate of the Candido Manzanares stemming from an automobile accident that occurred within the construction zone of FDOT's roadway expansion project along Krome Avenue in Miami-Dade County, FL. On the date of the incident, just prior to the time the workers were to be dismissed for the day, co-Defendants Perez Camejo and Roversys Hernandez entered their personal vehicles and took it upon themselves to engage in a dangerous, high-speed drag race within the construction zone. During the race, both drivers lost control of their vehicles, with Camejo's car striking Mr. Manzanares as he was standing next to his vehicle which was parked within the construction zone.

The Plaintiff's alleged that FDOT had a duty to maintain the roadways in a reasonably safe condition and to learn and discover any dangerous issues on the roadways and to prevent any such dangerous conditions from existing on the roadways. This included having the necessary personnel controlling traffic, training all on-site personnel about how to properly and safely move vehicles, and maintaining appropriate traffic control devices, signals, and signs. FDOT purportedly breached these duties by failing to: (a) ensure that the job site was safe; (b) have appropriate personnel directing, supervising, and/or controlling traffic; (c) comply with all applicable codes, regulations, statutes and any other governing authority regarding roadways and traffic; (d) warn of the hazardous

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VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

conditions of the roadways of the job site; (e) provide proper warnings and signage; (f) train employees and other persons on the job site of the proper way to move and drive vehicles; (g) maintain and enforce safety protocols; (h) make necessary changes to the roadways; and (i) properly create, execute and/or implement relevant designs at and for the job site.

FDOT moved for Summary Judgment on account that: 1) Plaintiff failed to comply with a condition precedent to filing suit; 2) Plaintiff's claim was barred under doctrine of sovereign immunity; 3) FDOT cannot be held liable for the death of an independent contractor b/c FDOT neither directed nor controlled the means or methods of the independent contractor on the construction site; 4) the actions of Camejo and Hernandez were intervening superceding criminal acts breaking the chain of any causation; and 5) the Plaintiff cannot demonstrate a duty or breach of duty.

Notably, FDOT had previously served the Plaintiff with a Proposal for Settlement, which had expired based upon Plaintiff's failure to accept. Accordingly, Plaintiff was facing the fee-shifting exposure if the Court granted FDOT's Motion for Final Summary Judgment. Thirty minutes prior to the special set hearing on the motion for final summary judgment, Plaintiff's counsel contacted defense counsel seeking to dismiss the claims against FDOT with prejudice, so long as FDOT agreed to not pursue recovery of fees and costs in light of Plaintiff's failure to accept the Proposal for Settlement. The Defense agreed and Plaintiff proceeded to dismiss the cause of action against FDOT with prejudice.

Manuel Castillo v. Ulysses Lopez

Auto/Negligence | Motion for Summary Judgment for Defendant

Attorney(s): Luis Menendez-Aponte, Esq.; Edgardo Ferreyra, Esq.
Plaintiff Counsel: Lonnie B. Richardson, P.A.

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Senior Partner Luis Menendez-Aponte, Esq., and Appellate Partner Edgardo Ferreyra, Esq., obtained a summary judgment in an auto negligence matter styled *Manuel Castillo v. Ulysses Lopez*. The primary issue on the case involved whether Plaintiff had presented evidence to establish he was even a passenger in the vehicle crashed by Defendant. Plaintiff was not listed on the traffic crash report. The Defense argued it was entitled to summary judgment as a matter of law because Plaintiff had failed to present evidence or an explanation as to why his name was not included in the traffic crash report, and thus the presumption under Florida Statute section 316.068(2)(g) that he was not involved in the accident was unrebutted. The Defense argued that this omission from the traffic crash report was fatal to Plaintiff's negligence action, because Florida statutory law holds that in "[t]he absence of information in such written crash reports regarding the existence of passengers in the motor vehicles involved in the crash constitutes a rebuttable presumption that no such passengers were involved in the reported crash." Fla. Stat. § 316.068(2)(g). The vehicle Plaintiff claimed he was travelling in had four passengers, all of which had met earlier in the evening at a bar. Plaintiff claimed that immediately after the accident, he walked away from the accident scene and did not wait for police to arrive. Three of the four passengers did not recognize Plaintiff at all, and the officer would not amend his report to include Plaintiff because he did not recognize him as being a part of the accident. Only one of the passengers placed Plaintiff in the vehicle, but she was admittedly drunk, stoned, and her account directly contradicted Plaintiff's version of events in that she testified that Plaintiff actually remained on the scene and spoke with the police. The crux of our argument was that Plaintiff failed to present "credible evidence" to overcome the rebuttable presumption under section 316.068(2)(g). Therefore, Defendant was entitled to summary judgment. The Court agreed.

Argos Properties LLC d/b/a Smuggler Marine v. Defendant Insurance Company

First-Party Property | Dismissal

Attorney(s): Anthony Perez, Esq.
Plaintiff Counsel: Law Office of Howard Levine

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Miami Senior Partner Anthony Perez, Esq., secured a dismissal in the matter styled *Argos Properties LLC d/b/a Smuggler Marine v. Defendant Insurance Company*. *Read more ... page 10.*

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

Plaintiff filed suit alleging that Defendant breached the commercial insurance contract by not paying all amounts due for damage to a marina resulting from Hurricane Irma. Defendant filed its Motion for Summary Judgment, maintaining the position that Plaintiff had failed to provide the requested sworn proof of loss, thus failing to comply with a condition precedent to filing suit, constituting a material breach of the policy. Upon receipt of the motion, Plaintiff dismissed the case.

Florida Restoration Specialist, Inc. a/a/o Gilda Artaza v. Defendant Insurance Company
First-Party Property | Dismissal
Attorney(s): Anthony Perez, Esq.
Plaintiff Counsel: Ligman Martin, P.L.

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Miami Senior Partner Anthony Perez, Esq., secured a dismissal in the matter styled *Florida Restoration Specialist, Inc. a/a/o Gilda Artaza v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for Plaintiff's claim for payment relating to services rendered at the insured property pursuant to an assignment of benefits. Defendant filed its Motion to Dismiss, and served its Motion for Sanctions Pursuant to Florida Statute §57.105, arguing that the insured had no remaining rights to assign to Plaintiff at the time the purported assignment was executed, as an appraisal award had been entered prior to the assignment. Upon receipt of the motions, Plaintiff dismissed the case.

Dolphin Water Restoration Corp. a/a/o Nelson Cabrera v. Defendant Insurance Company
First-Party Property | Dismissal
Attorney(s): Anthony Perez, Esq.
Plaintiff Counsel: Watson et Barnard, PLLC

Miami Senior Partner Anthony Perez, Esq., obtained a dismissal in the matter styled *Dolphin Water Restoration Corp. a/a/o Nelson Cabrera v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for Plaintiff's claim for payment relating to services rendered at the insured property pursuant to an assignment of benefits. Defendant filed its Motion to Dismiss, challenging the validity of the purported assignment, contending that it failed to comply with Florida Statute §627.7152, was therefore invalid and unenforceable, and thus Plaintiff lacked standing to file suit. Upon receipt of the motion, Plaintiff dismissed the case.

Jose Quintanilla v. Defendant Insurance Company
First-Party Property | Dismissal with Prejudice
Attorney(s): Anthony Perez, Esq.
Plaintiff Counsel: Southern Law Group

Miami Senior Partner Anthony Perez, Esq., secured a dismissal with prejudice in the matter styled *Jose Quintanilla v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for his claim for damage to his property resulting from a plumbing leak. After obtaining several Court Orders with which Plaintiff failed to comply, Defendant filed its Motion to Dismiss. On the eve of the hearing on Defendant's Motion, Plaintiff dismissed the case.

Dri-Max Restoration, LLC a/a/o Sue Demmings v. Defendant Insurance Company
First-Party Property | Dismissal with Prejudice
Attorney(s): Anthony Perez, Esq.; Alec Teijelo, Esq.
Plaintiff Counsel: Your Insurance Attorney, PLLC

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

Miami Senior Partner Anthony Perez, Esq., and Associate Alec Teijelo, Esq., secured a dismissal with prejudice in the matter styled *Dri-Max Restoration, LLC a/a/o Sue Demmings v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for Plaintiff's claim for payment relating to services rendered at the insured property pursuant to an assignment of benefits executed more than 3 years after Hurricane Irma. Defendant filed its Motion to Dismiss, and served its Motion for Sanctions Pursuant to Florida Statute §57.105, contending that Plaintiff's claim was barred by the statute of limitations. Defendant relied on Florida Statute §627.70132, which requires notice of a hurricane claim be provided within 3 years of the date of loss. As Plaintiff's purported assignment was executed outside of those 3 years, Plaintiff's claim was barred. Upon receipt of the motions, Plaintiff dismissed the case.

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

Truviewmold, LLC a/a/o Sue Demmings v. Defendant Insurance Company

First-Party Property | Dismissal with Prejudice

Attorney(s): Anthony Perez, Esq.; Alec Teijelo, Esq.
Plaintiff Counsel: Your Insurance Attorney, PLLC

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Miami Senior Partner Anthony Perez Esq., and Associate Alec Teijelo Esq., secured a dismissal with prejudice in the matter styled *Truviewmold, LLC a/a/o Sue Demmings v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for Plaintiff's claim for payment relating to services rendered after Hurricane Irma pursuant to an assignment of benefits. Defendant filed its Motion for Summary Judgment, maintaining the position that the mold testing services provided by Plaintiff would only be covered if the costs were a result of a covered peril, and that the underlying claim was not covered by the policy, as its ability to investigate the loss had been prejudiced by a failure to report the damage until two years after the hurricane. Just before the hearing on Defendant's motion, Plaintiff dismissed the case.

Restoration Cleaning Services, Inc. a/a/o Miriam Muniz v Defendant Insurance Company

First-Party Property | Dismissal with Prejudice

Attorney(s): Anthony Perez, Esq.; Alec Teijelo, Esq.
Plaintiff Counsel: Your Insurance Attorney, PLLC

Miami Senior Partner Anthony Perez Esq., and Associate Alec Teijelo, Esq., obtained a dismissal with prejudice in the matter styled *Restoration Cleaning Services, Inc. a/a/o Miriam Muniz v. Defendant Insurance Company.* Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for Plaintiff's claim for payment relating to services rendered after Tropical Storm Gordon pursuant to an assignment of benefits. Defendant filed its Motion for Summary Judgment, based on the policy's exclusion for damage cause by wear and tear, the lack of any evidence of a peril created opening in the roof that allowed rain water to enter the property, and the position that the tarp services provided by Plaintiff would only be covered if the costs were a result of a covered peril. Before the hearing on Defendant's motion, Plaintiff dismissed the case.

Restoration Doctor, Inc. a/a/o Miriam Muniz v. Defendant Insurance Company

First-Party Property | Dismissal

Attorney(s): Anthony Perez, Esq.; Alec Teijelo, Esq.
Plaintiff Counsel: Your Insurance Attorney, PLLC

Miami Senior Partner Anthony Perez, Esq., and Associate Alec Teijelo Esq., obtained a dismissal in the matter styled *Restoration Doctor, Inc. a/a/o Miriam Muniz v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for Plaintiff's claim for payment relating to services rendered after Tropical Storm Gordon pursuant to an assignment of benefits. Defendant filed its Motion for Summary Judgment, based on the policy's exclusion for damage cause by wear and tear, the lack of any evidence of a peril created opening in the roof that allowed rain water to enter the property, and the position that the shrink-wrap services provided by Plaintiff would only be covered if the costs were a result of a covered peril. Following receipt of the motion, Plaintiff dismissed the case.

Restoration 911 Mitigation LLC a/a/o Ariel Arcia v. Defendant Insurance Company

First-Party Property | Dismissal with Prejudice

Attorney(s): Anthony Perez, Esq.; Alec Teijelo, Esq.
Plaintiff Counsel: Behnejad Law, PLLC

Miami Senior Partner Anthony Perez Esq., and Associate Alec Teijelo Esq., obtained a dismissal with prejudice in the matter styled *Restoration 911 Mitigation LLC a/a/o Ariel Arcia v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for Plaintiff's claim for payment relating to water mitigation services rendered at the insured property pursuant to an assignment of benefits. Plaintiff alleged that it was entitled to proceeds under the reasonable emergency measures provision of the policy, which covers necessary measures taken to protect property from further damage. Defendant filed its Motion for Summary Judgment, maintaining the position that the services rendered by Plaintiff, 19 months after the date of loss, were not reasonable, necessary, or emergency, and therefore not covered by the policy. Following receipt of the motion, Plaintiff dismissed the case.

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

Beacon Management Services LLC a/a/o Ariel Arcia v. Defendant Insurance Company

First-Party Property | Dismissal with Prejudice

Attorney(s): Anthony Perez, Esq.; Alec Teijelo, Esq.
Plaintiff Counsel: Behnejad Law, PLLC

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Miami Senior Partner Anthony Perez Esq., and Associate Alec Teijelo Esq., obtained a dismissal with prejudice in the matter styled *Beacon Management Services LLC a/a/o Ariel Arcia v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for Plaintiff's claim for payment relating to mold remediation services rendered at the insured property pursuant to an assignment of benefits. Plaintiff alleged that it was entitled to proceeds under the policy's additional coverage for fungi, wet or dry rot, yeast, or bacteria. Defendant filed its Motion for Summary Judgment, maintaining the position that the underlying loss was excluded from coverage, and additional coverage that could relate to mold remediation only applies when the costs are the result of a covered peril. Just before the hearing on the motion, Plaintiff dismissed the case.

JD Restoration, Inc. a/a/o Cala Paint Service, Inc. v. Defendant Insurance Company

First-Party Property | Dismissal with Prejudice

Attorney(s): Anthony Perez, Esq.; Alec Teijelo, Esq.
Plaintiff Counsel: Weisser Elazar & Kantor, PLLC

Miami Senior Partner Anthony Perez Esq., and Associate Alec Teijelo Esq., obtained a dismissal with prejudice in the matter styled *JD Restoration, Inc. a/a/o Cala Paint Service, Inc. v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for Plaintiff's claim for payment relating to tarp services rendered at the insured property pursuant to an assignment of benefits. Plaintiff alleged that it was entitled to proceeds under the reasonable emergency measures provision of the policy, which covers necessary measures taken to protect property from further damage. Defendant filed its Motion for Summary Judgment, maintaining the position that the services rendered by Plaintiff, 20 months after the date of loss, were not reasonable, necessary, or emergency, and therefore not covered by the policy. In advance of the hearing the motion, Plaintiff dismissed the case.

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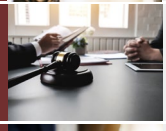
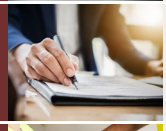
THE GAVEL GRUB CLUB SCHEDULE: UPCOMING WEBINARS

Best Practices for Time Limit Demands! Upcoming monthly webinars in the Grub Club series that you don't want to miss. Co-produced by Luks & Santaniello, the webinars feature five vetted Gavel Law Firm members from various states collectively discussing their jurisdiction and the topic. Please join us for the upcoming webinars. If you would like to be added to the webinar invite distribution list, please email Millie Solis-Loredo of Luks & Santaniello. For more information, please view the entire schedule of webinars.

17 NOV		**Bad Faith – The Ever Expanding World of Bad Faith Claims Handling** ***(November 17, 2022)*** *Grant Lingg (WA), Dan Santaniello (FL), Sharon Hightower (CA), James Maloney (MO), Kris Kamler (NE)*
15 DEC		**Best Practices for Time Limit Demands** ***(December 15, 2022)*** *Dan Santaniello (FL), Wade Quinn (TX), Janet Brooks Holmes (SC), Joseph Stewart (AL)*
16 FEB		**Living Care Facilities – Our New and Growing Ethical Dilemmas** ***(February 16, 2023)*** *Daniel Finerty (WI), Michael Schwartz (FL), Paige Hall (NE), Ted McDonald (KS), Jared Le Fevre (MT), John Ursin (NJ)*
16 MAR		**AMA Guides® – History, Current and Future: A Medical and Legal Analysis** ***(March 16, 2023)*** *Claire Carr (VA), Dr. William Grant, James Sparkman (FL), Justin Burroughs (NE | IA)*
20 APR		**Developing Well – Reasoned Litigation Budgets** ***(April 20, 2023)*** *Janine Menendez-Aponte (FL), Paul Michienzie (MA), Patrick Madden (TX), Jackie Booker (CO), Dan Peabody (AZ)*
18 MAY		**Litigation Funding** ***(May 18, 2023)*** *Dan Cray (IL), Dan Santaniello (FL), Eric Inglis (NJ), Brett Clark (MT), Paige Hall (NE | IA), Chuck Bailey (WV)*
15 JUN		**CD 101 – Advanced Risk Transfer Options** ***(June 15, 2023)*** *Brian Sanders (CA), Hayley Newman (FL), Rod Pettey (NC), Kyle Roehler (MO), James Marshall (WV)*
20 JUL		**Admitting Smartphone Data into Evidence at Trial** ***(July 20, 2023)*** *Joe Aldridge (ID), Meghan L. Theodore (FL), Kate Adams (VA), Clark Monroe (MS), Stacey Sever (MN)*
17 AUG		**Experts: Use or Lose** ***(August 17, 2023)*** *Janet Holmes (SC), Allison Janowitz (FL), Mark Franco (ME | NH), Lily Nierenberg (CO), Richard Underwood (TN), Adam Fitzpatrick (WI)*
21 SEPT		**Preservation and Spoliation** ***(September 21, 2023)*** *Ashley Brown (KY), Dan Santaniello (FL), Todd Goodman (DE), David Dayton (VA), Phil Gulisano (NY), Jennifer Bruder (NY)*
19 OCT		**Settlement and Mediation Training** ***(October 19, 2023)*** *Ashley Brown (KY), Dan Santaniello (FL), Todd Goodman (DE), David Dayton (VA), Phil Gulisano (NY), Jennifer Bruder (NY)*
16 NOV		**Work Comp 101 and Resource Charts** ***(November 16, 2023)*** *Chelsie D. Springstead (WI), Rey Alvarez (FL), Bill Pipkin (AL), Amy Dunn Hotard (LA), Tyler Laflin (NE | IA)*
14 DEC		**Survey on the Treatment in Various States of the 'YOUR WORK' Exclusions to a GL Policy** ***(December 14, 2023)*** *Brian M. Sanders (CA), Ashley Cooper (FL), Paul Ricard (OH), Lance Cook (OK), Clark Monroe (MS), Naomi Doraisamy (ID)*

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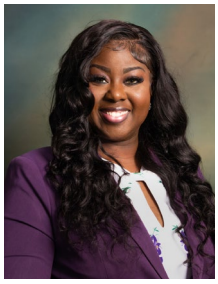

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