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# LEGAL UPDATE

VOLUME 23, ISSUE 1 MAY 2024

## THIRD-PARTY LITIGATION FUNDING

**by Jack Garwood, Esq., Associate**

Jack Garwood, Esq.

This legislative session in Florida saw attempts to regulate "Third-Party Litigation Funding" (hereinafter "TPLF") stall. House Bill 1179 and companion Senate Bill 1276 sought to require courts to consider "specified conflicts of interest; prohibit specified acts by litigation financiers; require disclosures & discovery relating to litigation financing agreements; require[] indemnification of specified fees, costs, & sanctions; void[] certain litigation financing agreements; [and] provide[] for enforcement of specified violations under the Florida Deceptive & Unfair Trade Practices Act."[1] While the legislation appears to have stalled in the House this year, Rep. Toby Overdorf, who wrote the bill along with Rep. Tommy Gregory, "intends to introduce [the bill] again next year," and the Senate author, Sen. Jay Collins, has similar plans.[2] *Read more on page 2 ...*

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## VERDICTS, SUMMARY JUDGMENTS, APPELLATE RESULTS

### Defense Verdict | Decedent 62-Year-Old | Wrongful Death Defendant Mall Parking Lot

Jack D. Luks, Esq.

Founding Partner Jack D. Luks, Esq., and Senior Partner Allison I. Janowitz, Esq., obtained a full defense verdict on February 2, 2024 in a wrongful death action styled *Plaintiff, as Personal Representative of the Estate of Plaintiff Decedent v. Defendant Retail Mall and Co-Defendant Driver*. The lawsuit arose out of an accident that occurred on December 24, 2020 in the Defendant Retail Mall's parking lot. The decedent was severely injured when a vehicle made a left turn from the inner perimeter road into a parking aisle striking the decedent while he was walking across the parking aisle. Due to the injuries he sustained, the decedent did not regain consciousness and passed away several days later. Plaintiff asserted that the Defendant – our client – Mall negligently maintained its parking lot area and, as a result, was the direct cause of the incident. *Read more ... page 5.*

### Jury Verdict of $35,122 | Decedent 74-Year-Old Nursing Home Resident | In closing argument, Plaintiff Counsel asked for $510K | Miami Dade

Michael Schwartz, Esq.

Boca Raton Managing Partner Michael J. Schwartz and Associate Leonard (Wilbert) Sojor obtained a favorable verdict after three days of trial before Judge Reemberto Diaz in Miami. The case involved the 9/1/2020 alleged choking death of a 74-year-old nursing home resident with two surviving adult children. Central to Plaintiff's case were the 9/1/2020 EMS report stating that Plaintiff Deceased "appeared to be choking on rice and peas", as well as a 3/18/2020 physician's order for a swallow evaluation that was never done, in violation of Sinai Plaza's policies and procedures. Plaintiff's case was supported by a PhD in nursing who opined that Sinai Plaza fell below the standard of care by failing to supervise Plaintiff Deceased while she was eating, and failing to respond appropriately to the emergency when Plaintiff Deceased was found unresponsive. *Read more ... page 5.*

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# THIRD-PARTY LITIGATION FUNDING, *CONT.*

**by Jack Garwood, Esq., Associate**

Such regulation is necessary to preserve the integrity of the litigation process, and to protect plaintiffs, defendants, and taxpayers alike. As stated by The American Property Casualty Insurance Association's ("APCIA") vice-president, Logan McFaddin, such regulation is important because, "predatory lenders are currently able to act in secret, without courts or defendants knowing who they are or even that they are involved, while charging exorbitant interest rates that leave victims with little to no award money … [which] can lead to increases in frivolous lawsuits and drive up the costs of products, services, and insurance across Florida."[3]

But what exactly is TPLF? Senate Bill 1276 defined a "litigation financing agreement," or "litigation financing" as follows:

> [A] transaction in which a litigation financier agrees to provide financing to a person who is a party to or counsel of record for a civil action, administrative proceeding, claim, or other legal proceeding in exchange for a right to receive payment, which right is contingent in any respect on the outcome of such action, claim, or proceeding or on the outcome of any matter within a portfolio that includes such action, claim, or proceeding and involves the same counsel or affiliated counsel. . .[4]

The legislation made several carveouts, such as providing that the definition did not apply to lawyers working on a contingent fee basis.[5]

One might think that the existence of such agreements would already be relevant to lawsuits filed in Florida, considering the influence that those engaged in TPLF can exert over a case. But cases addressing the issue have tended to hold otherwise. For example, in *Matthews v. City of Maitland*, the Fifth District Court of Appeal held that the defendant had failed to show how the names of individuals contributing to the plaintiffs' litigation fund bore "any relevancy" to the issues in the lawsuit.[6]

In *Matthews*, the plaintiffs sued the defendant-city to challenge a development order authorizing an allegedly out-of-scale seven-story, multi-use structure.[7] Plaintiffs created a website to advocate for their position, and citizens contributed to the website, which also sought monetary contributions for the lawsuit.[8] Funds would be deposited into a litigation fund, and the contributors allegedly included professionals seeking to remain anonymous for fear of retaliation.[9] At deposition, the defendant-city asked one of the plaintiffs the names of those who had contributed to the website and fund; whether any were "accountants, architects, or attorneys"; whether any had clients who were developers in Central Florida; and whether those developers had contributed.[10] The defendant-city then propounded interrogatories to another plaintiff seeking substantially the same information, and then filed motions to compel answers to both the deposition questions and interrogatories.[11] The plaintiffs objected to the sought-after discovery as irrelevant and solely intended for purposes of harassment, and appealed when the trial court granted the motions and compelled answers.[12]

On appeal, the district court held that the funding of the lawsuit was not relevant to an issue in question.[13] Citing the U.S. Supreme Court's decision in *NAACP v. Alabama*,[14] the court determined that the defendant-city had failed to show that the sought-after discovery was relevant to any of the pending issues.[15] The court reasoned that allowing the discovery would require the plaintiffs "to defend against claims that may be raised but [we]re currently unstated," and that the "compelled disclosure of the names of citizens exercising their right to participate in the democratic process would create a chilling effect on their rights to organize and associate."[16] Finally, in granting the plaintiffs' petition for certiorari, the court stated that the plaintiffs would be harmed because the disclosure of their contributors would subject them to "possible intimidation or coercion," and "likely affect [their] ability to raise funds."[17]

Other Florida courts have reached similar conclusions. In *Liebreich v. Church of Scientology Flag Serv. Org., Inc.*, the Second District Court of Appeal quashed an order compelling the identification of who was providing funds, and how much they were providing, to any counsel defending the plaintiff-estate.[18] The court held that the discovery of financial sources was "irrelevant and … not 'admissible or reasonably calculated to lead to admissible evidence...'"[19] And the Second District reached the same conclusion in *Estate of McPherson ex rel. Liebreich v. Church of Scientology Flag Serv. Org., Inc.*, when the defendant—in its 47th request for production—requested all documents regarding the payment "by any person or entity … of any sum of money over the amount of $500" to the plaintiff's attorney or representative, "used to pay for any cost, expense, or fee associated with" the litigation.[20] The court held that such disclosure would have created a "chilling effect" on receiving future funding, and given the defendant an unfair insight into how long the plaintiff could afford to litigate, causing irreparable harm.[21] Further, the court held that such information was not relevant or reasonably calculated to lead to the discovery of admissible evidence regarding the plaintiff's wrongful death claim.[22]

What the above decisions failed to account for were many of the scenarios that the proposed TPLF bills sought to consider. For example, section 69.103 of SB 1276 sought to allow courts to consider the existence of litigation financing agreements in class action suits or already/potentially consolidated cases to determine whether the class representative or counsel could adequately and fairly represent the interests of the class or parties.[23] Section 69.105 sought to prohibit litigation financiers from: (a) directing or making decisions regarding the course of litigation, reserving this right for the parties

# THIRD-PARTY LITIGATION FUNDING, *CONT.*

**by Jack Garwood, Esq., Associate**

and their counsel of record; (b) contracting or receiving, indirectly or directly, larger shares of the proceeds than the share of proceeds collectively recovered by the plaintiffs after the payment of attorneys fees and costs; (c) paying referral fees or commissions for the referral to the financier; (d) assigning or securitizing a financing agreement; and (e) being assigned rights other than the right to receive a share of the proceeds.[24] Finally, section 69.107 sought to codify required disclosures and obligations for litigation financiers and regarding litigation financing agreements, including: requiring the attorney entering the agreement to inform their client; disclose the agreement to the parties, the court, and any entity with obligations to indemnify or defend a party to the action, among other provisions.[25] Thus, "the existence of a litigation financing agreement and the identity of all parties to the agreement" would be "discoverable … unless the court, for good cause shown, determines otherwise," and such disclosure obligations would be ongoing.[26]

The absence of such regulations can have a detrimental effect on the litigation process. The Government Accountability Office (GAO) has noted that, while there are some potential benefits to such arrangements in certain circumstances, it can be "costly to plaintiffs and defendants..."[27] In a detailed report, the GAO recognized that TPLF is "expensive" and "can be costly to obtain" because those financing such agreements "assume a lot of risk."[28] Thus, the fees associated with such financing can "significantly" cut into a plaintiff's recovery amount.[29] Further, TPLF may also deter settlement, because plaintiffs using it "may be inclined to reject a fair settlement offer" and "seek extra money to make up the amount that has to be repaid."[30] Additionally, as noted earlier, the increased expenses are not exclusively limited to plaintiffs: TPLF can increase litigation costs for defendants by encouraging the filing of meritless lawsuits, increasing discovery costs, and increasing expenses in general "since plaintiffs may be less inclined to settle."[31]

Perhaps most importantly, TPLF agreements risk the scenario where the financier may exert control over the case, "such as influencing decisions about litigation strategy or whether to settle."[32] This also risks creating conflicts of interest between attorneys, who may put the financier's interests first, and their clients, whose interests may be conflicting with the financier's.[33] And of note, users of TPLF may not be fully aware of the costs involved, and there is also a risk of financiers exploiting vulnerable and desperate consumers.[34]

With these concerns in mind, several states have enacted laws regulating the practice of TPLF. For example, financiers are required to be registered with the state in Maine, Nebraska, Tennessee, Vermont, and West Virginia; and licensed in Nevada and Oklahoma.[35] Other states, such as Arkansas, Ohio, and Wisconsin, regulate TPLF, including requiring certain disclosures either in discovery, to the parties, or both.[36] Thus, the regulation of TPLF is not associated with states being perceived as "conservative" or "liberal." Instead, states across the political spectrum recognize the need to regulate what is currently a generally unregulated area of the law.

Consider a recent case involving TPLF Burford Capital.[37] Burford Capital invested $140 million in price-fixing litigation against meat producers.[38] While Burford claimed not to control strategy or settlement decision-making, when the plaintiff attempted to settle and avoid costly litigation, Burford "objected and sought to block settlements that it considered insufficient."[39] This caused a "wasteful and unnecessary legal battle" between the financier and the litigant, in which the financier ended up taking over the litigant's remaining court cases.[40]

Burford's conduct exemplified the negative aspects of TPLF as discussed in the GAO report. An outside entity possessing the right to veto a settlement agreement "because it would not make them enough money sounds shocking," however "such stipulations are now commonplace across the TPLF space."[41] The TPLF "trend" is negatively influencing the legal system, with a "troublesome lack of disclosure guidelines" making it "impossible" to fully understand the effect that TPLF is having on litigation.[42]

Not only does TPLF influence decision-making *during* a lawsuit, it can actively *create* lawsuits.[43] An outsider's investment in a case might be used "to cover the cost of the mass tort lawsuit advertising" and the call centers dealing with responses.[44] Such advertisements "often urge viewers who have taken a prescription drug, been treated with a medical device, or used a consumer product" to call in, because they may be entitled to compensation.[45] Even when such claims are unsupported by sound science, those engaged in TPLF understand that "quickly generat[ing] thousands of claims tying a widely used product to a common illness" can create "strong pressure" to reach a substantial global settlement, resulting in huge payouts to both the attorneys and the financiers.[46]

Even those engaging in TPLF recognize the true nature of the practice. The head of one such fund "equated mass tort lending to 'payday lending.'"[47] As previously discussed, the costs to plaintiffs can be substantial. Loans to law firms often carry interest rates "as high as 18%."[48] Even sovereign wealth funds have begun to invest in TPLF, and given that such funds do not have to publicly disclose their investments, the true involvement of such funds in TPLF is unknown.[49] Though an Arabian Gulf Business article implied that the Abu Dhabi Investment Authority has engaged in TPLF, and litigation firms including Burford Capital, Fortress Investment Group, IMF Bentham, and Therium Capital Management have announced that they have received sovereign wealth investment,[50] the lack of transparency is concerning. Specifically,

# THIRD-PARTY LITIGATION FUNDING, *CONT.*

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sovereign wealth funds and foreign governments could "seek to advance foreign policy or military goals" through TPLF.[51] United States Senator John Kennedy, of Louisiana, has echoed these concerns, suggesting that hostile "state actors like China and Russia" engaging in litigation financing "could have dire national security implications."[52] In that vein, Senator Kennedy and Senator Joe Manchin of West Virginia introduced bipartisan legislation seeking to address these issues.[53]

In the Sunshine State, transparency is supposed to be a given. We have Sunshine laws and robust transparency requirements in many areas of the law, but the light has yet to reach the TPLF arena. Instead, the practice goes unregulated at the federal level, despite attempts to address the national security concerns implicated by TPLF, and there is little recourse for persons and entities seeking to understand the current state of TPLF in Florida. Given the "mounting evidence" that financiers control or influence the litigation they fund,[54] and that TPLF's increasing prominence has raised "new questions about potential manipulation of the U.S. judicial system,"[55] Florida law should be expanded to mandate the disclosure of TPLF arrangements. This would protect vulnerable, desperate plaintiffs from exploitation; protect defendants from unnecessarily expensive and prolonged litigation; enable funders to be held accountable; and protect the integrity of the legal system.

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1 *See HB 1179 – Litigation Financing, Florida House of Representatives,* https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=79834&SessionId=103https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=79834&SessionId=103 (last visited Mar. 13, 2024); see also CS/SB 1276: Litigation Financing, Florida Senate, https://www.flsenate.gov/Session/Bill/2024/01276/?Tab=BillText (last visited Mar. 13, 2024).

2 *See* Marck Schoeff Jr., *Florida bill targeting third-party litigation financing stalls in House*, INSURANCE BUSINESS (Feb. 22, 2024), https://www.insurancebusinessmag.com/us/news/legal-insights/florida-bill-targeting-thirdparty-litigation-financing-stalls-in-house-478321.aspx.

3 *See* Mika Pangilinan, *APCIA calls for regulation of third-party litigation financing in Florida,* INSURANCE BUSINESS (Mar. 11, 2024), https://www.insurancebusinessmag.com/us/news/breaking-news/apcia-calls-for-regulation-of-thirdparty-litigation-financing-in-florida-480541.aspx.

4 *Litigation Investment Safeguards and Transparency Act,* FLORIDA SENATE, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.flsenate.gov/Session/Bill/2024/1276/BillText/c1/PDF (last visited Mar. 13, 2024).

5 *Id.*

6 *Matthews v. City of Maitland,* 923 So. 2d 591, 595 (Fla. 5th DCA 2006).

7 *Id.* at 592.

8 *Id.*

9 *Id.*

10 *Id.* at 592-93.

11 *Id.* at 593.

12 *Id.*

13 *Id.* at 594.

14 *NAACP v. Alabama*, 357 U.S. 449 (1958).

15 *Matthews*, 923 So. 2d at 595.

16 *Id.*

17 *Id.*

18 *Liebreich v. Church of Scientology Flag Serv. Org., Inc.*, 816 So. 2d 776, 777 (Fla. 2d DCA 2002).

19 *Id.* (citing Allstate Ins. Co. v. Langston, 655 So. 2d 91, 94 (Fla. 1995)).

20 *Estate of McPherson ex rel. Liebreich v. Church of Scientology Flag Serv. Org., Inc.*, 815 So. 2d 678, 679 (Fla. 2d DCA 2002).

21 *Id.* at 679-80.

22 *Id.* at 680.

23 *Supra* note 4, at 5-6.

24 *Id.* at 6-7.

25 *Id.* at 7-12.

26 *Id.* at 10-11.

27 *Third-Party Litigation Financing*, p. 18, UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE (Dec. 2022), chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.gao.gov/assets/gao-23-105210.pdf.

28 *Id.* at p. 20.

29 *Id.*

30 *Id.*

31 *Id.* at pp. 20-21.

32 *Id.* at p. 21.

33 *Id.*

34 *Id.*

35 *Id.* at 45-46.

36 *Id.*

37 *See* Timothy Lee, *Third-party litigation financing requires greater regulation*, THE HILL (Sep. 13, 2023, 8:15 AM), https://thehill.com/opinion/congress-blog/4201419-third-party-litigation-financing-requires-greater-disclosure/#:~:text=Third%2Dparty%20litigation%20funding%20(TPLF,lawyers%20as%20they%20pursue%20litigation.

38 *Id.*

39 *Id.*

40 *Id.*

41 *Id.*

42 *Id.*

43 *See Trial Lawyer Playbook*, AMERICAN TORT REFORM ASS'N, p. 4.

44 *Id.*

45 *Id.*

46 *Id.*

47 *Id.* at 5.

48 *Id.*

49 *Id.* at 7-8.

50 *Id.* at 8.

51 *Id.* (quoting Maya Steinitz, law professor at the University of Iowa).

52 *Id.*

53 *Id.*

54 *Letter to Secretary of the Committee on Rules of Practice and Procedure at 2 (May 8, 2023) chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://instituteforlegalreform.com/wp-content/uploads/2023/05/Coalition.Comments_ThirdPartyLitigationFunding77.pdf (last visited Mar. 13, 2024).*

55 *Id.* at 4.

## ABOUT THE AUTHOR

**Jack Garwood, Esq.,** is an Associate in the Jacksonville office. Jack focuses his practice on automobile negligence, general liability and premises liability matters. He also handles appeals.

Jack earned a Bachelor of Science from Concord University after moving from the United Kingdom to the United States to study, graduating *magna cum laude* (2019). He obtained his Juris Doctor from Ave Maria School of Law, graduating *summa cum laude*, (2022). In law school, Jack worked as a judicial intern for Judge Sheri Polster Chappell, U.S. District Judge for the Middle District of Florida, in Fort Myers. Prior to bar admission, he was also a law clerk for Luks, Santaniello in the Jacksonville office. Jack received 12 book awards in Legal Analysis, Writing, and Research I, Civil Procedure I, Torts I, Torts II, Constitutional Law, Jurisprudence, Advanced Essay Writing, Fourteenth Amendment, Complex Litigation, Advanced Torts, Advanced Evidence and Conflicts of Law. Jack was also a member of the Ave Maria Law Moot Court Board and prepared the brief for the Wagner Labor Law Competition and served as Publication Manager of the Ave Maria Law Review.

Jack is admitted to practice law in Florida (2022). Read More.

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# VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

***Plaintiff, as Personal Representative of the Estate of Plaintiff Decedent v. Defendant Retail Mall and Co-Defendant Driver***

**Premise Liability; Wrongful Death | Complete Defense Verdict**

Attorney(s): Jack D. Luks, Esq.; Allison Janowitz, Esq.; Jacqueline Vazquez-Aldana, Esq.

Plaintiff Counsel: Eriksen Law Firm (Michael D. Eriksen); Crary Buchanan (David Knight)

**Allison Janowitz, Esq.**
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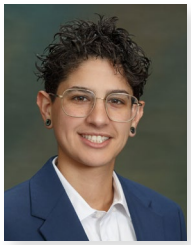

**Jacqueline Vazquez-Aldana, Esq.**
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In arguments, Plaintiff attempted to establish liability based on failure to have additional crosswalks, stops signs and other safety traffic control devices in its parking lot. Nonetheless, in depositions, it was established that the Co-Defendant driver, was at a complete stop prior to making the left turn and was also familiar with the parking lot layout as he had been visiting the Mall since 1987. This key testimony aided in dismantling Plaintiff's theory that the Mall was negligent in its design of its parking lot, which was the cause of the accident and injuries alleged. The Mall argued that the inclusion of most of the traffic control devices recommended by the Plaintiff's liability experts would not have altered the outcome of the accident.

Further, Defense expert, Roland Lamb, testified that based on his expertise and experience, the parking lot design was reasonable. Despite naming the driver as a Co-Defendant, Plaintiff's counsel continued to argue that the driver should not bear any responsibility for the accident and solely focused Plaintiff's case on the Mall as the responsible party. Trial partners Jack D. Luks, and Allison I. Janowitz highlighted this fact coupled with their position that the Mall was not negligent in its parking lot design and/or it was not a legal cause of the accident.

Following closing arguments, the jury deliberated for two hours and returned a complete Defense verdict establishing that Defendant Mall and Co-Defendant driver were not the legal cause of loss or damage.

***Plaintiff as Personal Representative of the Estate of Deceased (74-Year-Old) v. Hebrew Home Sinai, Inc., d/b/a Sinai Plaza Nursing and Rehab Center***

**Nursing Home | ALF | Jury Verdict of $35,122**

Attorney(s): Michael Schwartz, Esq.; Leonard Wilbert T. Sojor, Esq.

Plaintiff Counsel: Ford, Dean & Rotundo (William A. Dean and Nicole Masri)

**Leonard Wilbert T. Sojor, Esq.**
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Also testifying for the Plaintiff was a medical doctor who stated that choking was the cause of death. The adult children testified as to the effects on them of the loss of their mother. The defense presented as witnesses three Sinai Plaza staff members, plus three experts: a cardiologist who opined that the cause of death was a pulmonary embolism, a speech language pathologist who opined that Plaintiff Deceased did not choke, and the medical director of a nursing home, who opined that Sinai Plaza did not fall below the standard of care. In closing arguments, Plaintiff's counsel asked for $510,000. The jury awarded $35,122 for the survival claim of Plaintiff Deceased, which included her medical bills, and zero dollars for the claims of the adult children and the estate.

*Read more Verdicts and Summary Judgments on page 6 ...*

# VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

***Plaintiff v. Trucking Company and Defendant Driver***
**Trucking Liability | Net Defense Verdict $14,500**
Attorney(s): John Bringardner, Esq.; Tabitha Jackson, Esq.; Alexis Oldham, Esq.
Plaintiff Counsel: Morgan & Morgan (Brian McClain, Jeff Humphries, Brandi A. Gartrell)

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**Trucking Liability | 5-Day Jury Trial | Morgan & Morgan | $6M Demand | Net Verdict $14,500| PFS Previously Filed — Defendants Seeking Costs and Fees | Plaintiff found 60% At Fault | Taylor County**

On April 12, 2024, Managing Partner John Bringardner, Esq., Junior Partner Tabitha Jackson, Esq., and Associate Alexis Oldham, Esq. obtained a favorable result in a trucking liability matter in Taylor County in matter styled *Plaintiff v. Trucking Company and Defendant Driver*. Plaintiff filed suit against a trucking company and its driver as a result of alleged injuries she sustained at the Foley Georgia Pacific Mill in Perry, Florida. Plaintiff worked as a ground rover, directing traffic in and out of the mill. At the time, she waved the defendant driver in to check his truck. While the defendant driver was having his paperwork and truck checked, Plaintiff waved in another vehicle (improperly and against her training). Just prior to the accident, two vehicles (including the defendant driver) were parked side by side in the thoroughfare. At all relevant times, there was a one vehicle in and one vehicle out policy. While both vehicles were side-by-side, Plaintiff waved in the defendant driver through the gate. Immediately after, the defendant driver's trailer made contact with the second truck (improperly guided to the spot in the thoroughfare via Plaintiff). Plaintiff had caused herself to be "caught" between the two vehicles. Thankfully, she was able to avoid danger, as she rolled under the parked truck. The jury found that Plaintiff herself was 60% at fault in permitting two vehicles in the thoroughfare at the same time (against her training and policies), and responsible for directing and "waving" defendant driver into the gate. Jury found no permanency/pain and suffering.

Plaintiff claimed that the defendant driver operated his vehicle negligently at the mill, hit a parked vehicle, and as such – caused Plaintiff to be caught between the two vehicles. Plaintiff was forced to fall to the ground, sustaining (allegedly) permanent injuries. All parties to the suit admitted and CCTV showed the Plaintiff herself waved the Defendant driver into the mill. Evidence further proved that Plaintiff herself created the chaos and multiple vehicle situation at the time of incident.

Plaintiff demanded $6,000,000 during closing. The jury returned a verdict of $42,436.00. After setoffs for medical benefits from Plaintiff's worker's compensation carrier, the net verdict was $14,500. Defendants had previously filed a Proposal for Settlement exceeding the amount awarded, permitting Defendants to seek costs and fees pursuant to § 768.79, Florida Statutes.

*Read more Verdicts and Summary Judgments on page 7 ...*

# VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

***Plaintiff v. Defendant Driver***

**Vehicular Liability | Net Verdict $23,980**

Attorney(s): Juan Ruiz, Esq.; Michael Kerwin, Esq.
Plaintiff Counsel: Jeffrey N. Byrd, P.A. (Jeffrey N. Byrd, Bryce T. Hill)

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**Motor Vehicle Accident | $14.7M Demand | Net Verdict $23,980 | Admitted Liability | Jury found no permanency/pain and suffering - awarding no future medical bills, loss of future earnings | Brevard County**

On April 8, 2024, Senior Partner Juan Ruiz, Esq., and Junior Partner Michael Kerwin, Esq., obtained a favorable result in a motor vehicle negligence matter styled *Plaintiff v. Randy Lane Rhoades, III*. Plaintiff filed suit following a rear-end motor vehicle accident of March 2011. She specifically claimed she was struck at 40mph in the rear, causing herniations in her cervical and lumbar spine and resulting in ACDF at C5-6 and C6-7, as well as more than two dozen epidural steroid injections between the date of the loss and the April 2024 trial. Plaintiff claimed more than $257,000 in past medical bills, sought up to $452,000 in future lost earnings, and asked the jury for a total award of up to $14,747,023.57.

Defendant had admitted liability for this incident but disputed it caused permanent injuries, conceding only a short-lived sprain/strain post-accident, supported by orthopedist Steven Weber, D.O., radiologist Michael Foley, M.D., and anesthesiologist/physiatrist Ira Fox, M.D. to refute permanency. The jury ultimately agreed, awarding only $23,980 in past medical bills and lost wages and rejecting Plaintiff's claims of permanent injury, awarding no future medical bills, loss of future earnings, or future pain and suffering.

***Plaintiff 52-Year-Old Landscaper v. Defendant Retail Store***

**Premise Liability | Complete Defense Verdict**

Attorney(s): Anthony Petrillo, Esq.; Jeffrey Benson, Esq.
Plaintiff Counsel: Morgan and Morgan (Michael Vaughn and Doug Martin)

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**$1.7M Sought | Morgan and Morgan | Jury Returned a complete Defense Verdict | Slip and Fall | Orange County**

On January 19, 2024, Managing Partner Tony Petrillo and Senior Partner Jeff Benson obtained a complete defense verdict in a premises liability matter styled *Plaintiff 52-Year-Old Landscaper v. Defendant Retail Store* in Orange County, Florida. The Plaintiff claimed he slipped and fell as he was walking out of the Defendant's store due to accumulated water from an employee's unauthorized use of a watering hose. The Plaintiff subsequently had a two-level anterior cervical discectomy and fusion at C3-4 and C4-5. His orthopedic surgeon testified he would need another neck surgery due to adjacent level disc disease that would cost $75,000.00 and a separate low back surgery in the future that would cost $100,000.00. Plaintiff started trial claiming over $400,000.00 in past medical bills but ended trial conceding to $165,000.00 in past medical bills due to the defense proving that was the true reasonable and necessary value. The Defendant avoided any spoliation jury instruction because Plaintiff failed to prove that a duty to preserve surveillance video existed, even though a generic preservation letter was sent 18 days after the alleged incident. During closing arguments Plaintiff demanded $1.7 million. The jury returned a verdict finding no negligence.

# VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

***Plaintiffs v. Susan Dever, West Side Transport, Inc., Andrew Kayworth, Comm. Source Data, Inc., Domonic Webster, and IMR Development Corp.***

**Trucking | Defense Verdict**

Attorney(s): G. John Veith, Esq.; Jack Garwood, Esq.
Plaintiff Counsel: Glober + Glober, Attorneys, P.A.; and Winters & Yonker, P.A.

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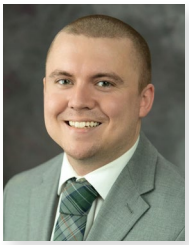


**Jack Garwood, Esq.**
Associate (Jacksonville)
JGarwood@insurancedefense.net

Senior Partner John Veith, Esq., and Associate Jack Garwood, Esq., obtained a defense verdict on February 14, 2024 in a difficult trucking case involving a multi-vehicle accident. The case had been transferred from another well-known law firm and reassigned to Luks & Santaniello for trial. The accident occurred in the southbound lanes of I-95 just south of Jacksonville and involved four separate vehicles. Three plaintiffs in two of the vehicles alleged severe injuries after being rear-ended. Mr. Veith's client, who was driving a tractor trailer hauling a forklift with a total weight of about 40,000 lbs., struck the rear of a Chevrolet pick-up truck at a high rate of speed. The force of the first impact propelled the pick-up truck forward, causing that vehicle to hit another pick-up truck towing a U-Haul trailer and then continue on to hit a fully stopped Volkswagen Jetta. Despite the presumption of negligence, Mr. Veith's client denied liability and alleged the pick-up truck changed lanes right in front of the semi, effectively cutting her off and eliminating the safe zone in front of the tractor trailer.

The case was bifurcated and only the liability issues were tried to a jury. At trial, the Plaintiffs argued that the operator of the semi was primarily at fault, claiming she was distracted by an accident that had just occurred in the far left lane ahead and, therefore, she failed to see the Chevrolet pick-up truck right in front of her. Defendant Kayworth, the driver of the Chevrolet pick-up truck, however, denied cutting off the semi and testified he had been in the center lane all the way from downtown Jacksonville.

The defense called accident reconstruction expert Robert Ketchum P.E., who testified that the driver of the semi was not negligent and that accident was actually caused by the negligence of co-defendant Webster, the driver of a separate vehicle who had caused the accident in the far left lane, thereby setting in motion a chain reaction of collisions which none of the defendants could have avoided. Due to the entry of a default against Defendant Webster, the jury was instructed the Court had determined he was negligent and that his negligence was a contributing cause of the accident. The night before closing arguments, one of the Plaintiffs settled with the defendants. As a result, only the claims asserted by the two remaining Plaintiffs were given to the jury for deliberations. After four hours of deliberations, the jury returned a defense verdict finding Defendants Dever and Kayworth not negligent.

***PAJ Investment Group, LLC v. El Lago N.W. 7th Condominium Association, Inc.***

**Land Use | Trial-Directed Verdict**

Attorney(s): Luis Menendez-Aponte, Esq.; Lucas Gargaglione, Esq.
Plaintiff Counsel: Rosenquest Law Firm, P.A. (John B. Rosenquest, IV); Weiss, Serota, Helfman, Cole & Bierman, P.L (Co-Counsel for Plaintiff - Mitchell J. Bernstein)

**Luis Menendez-Aponte, Esq.**
Senior Partner (Miami)
LMenendez-Aponte@insurancedefense.net

**Lucas Gargaglione, Esq.**
Senior Associate (Miami)
LGargaglione@insurancedefense.net

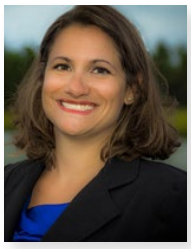
On October 18, 2023, trial team Luis Menendez-Aponte and Lucas Gargaglione, with the assistance of appellate counsel Ed Ferreyra, prevailed on directed verdict in a land use matter styled *PAJ Investment Group, LLC v. El Lago N.W. 7th Condominium Association, Inc*. The case arose out of a dispute over easement rights to access and fill adjoining submerged lands which had been under contract for over $30 million dollars. The Plaintiff sought to sell the submerged property to a developer, fill in the lake, and build over 600 condominium units. *Read more ... page 9.*

# VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

They sought a declaratory judgment from the Court that the easements granted them unfettered access to the easements on our client's land for the purposes of developing their adjoining property, along with an injunction which would have our client tear down their gates and surrender large portions of their parking lot to the Plaintiff. Senior Partner Luis Menendez-Aponte and Senior Associate Lucas Gargaglione successfully defended the condominium complex against the aggressive adjoining landowner/developer's attempts to expand the scope of these easements for the purposes of development of several residential and commercial buildings. If the Plaintiff had prevailed, the condominium would have had to surrender a large percentage of their property and it would have likely resulted in the displacement of many of the elderly residents as the proposed development was anticipated to last years.

***Smith v. Defendant Insurance Company*** **First-Party Property | Settled on First Day of Trial for Nominal Amount**

Attorney(s): Deana Dunham, Esq.; James Sparkman, Esq.



**Deana Dunham, Esq.**
Junior Partner (Jacksonville)
DDunham@insurancedefense.net

**James Sparkman, Esq.**
Senior Partner (Boca Raton)
JSparkman@insurancedefense.net

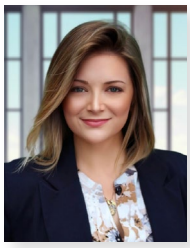
This case arose out of a property insurance claim, in which the Plaintiff claimed that the roof of his property was damaged as a result of a windstorm that occurred on either July 19, 2021, February 7, 2020, or July 7, 2021. Plaintiff initially reported the claim with a date of loss of July 19, 2021. After retaining a public adjuster (PA), the PA changed the date of loss to February 7, 2020. Then, during his deposition, Plaintiff testified that he believed the correct date of loss was July 7, 2021. The claim had been denied because there was no storm created damage to the roof and no peril created opening which allowed water to enter the interior of the property. The court granted Defendant's Motion for Summary Judgment in part as to there being no peril created opening, but found a question of fact as to whether there was storm damage to the roof. The parties proceeded to trial on December 8, 2023 and on the morning of the first day of trial, the parties settled for nominal amount.

***Plaintiff v. Miami-Dade County & Feick Security Corporation***

**Premise Liability; Security Negligence | Dismissal**

Attorney(s): Carissa Gangemi, Esq.

Plaintiff Counsel: Obront, Corey & Schoepp, PLLC Law Firm (Curt David Obront); The Brenner Law (Jason Brenner)



**Carissa Gangemi, Esq.**
Senior Associate (Orlando)
CGangemi@insurancedefense.net

Senior Associate Carissa Gangemi, Esq., obtained a dismissal with prejudice on March 7, 2024, in a Premise Liability and Security Negligence action styled *Plaintiff v. Miami-Dade County, Co-Defendant, & Feick Security Corporation*. The lawsuit arose out of a shooting incident, possible homicide, that allegedly occurred on January 30, 2021, at the Edison Courts Housing Unit Development in Miami, Florida. Per the Incident Report, Plaintiff suffered a gunshot wound to the knee when her vehicle was struck by gunfire in the intersection of NW 4th Avenue and NW 64th Street in Miami, Florida. Plaintiff asserted that the Defendant was negligent, as a security company for the property, in failing to keep the property in a reasonably safe condition against foreseeable criminal activity. Plaintiff also asserted that Defendant was negligent in their hiring, supervision, and retention as to their security guards and, as a result, was the direct and proximate cause of Plaintiff's injuries. Miami- Dade County and Feick Security Corporation, entered into a Contract for Security Guard Services for Miami-Dade County Public Housing Facilities on April 1, 2020, and the contract provided

*Read more ... page 10.*

# VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

specific Guard Locations. Security services for the Edison Courts property was not included in the contract's initial Guard locations. Furthermore, discovery revealed that Feick's services were not requested by Miami-Dade County for that specific Housing Development prior to the shooting. Documentation was obtained confirming that Feick had not been contracted until months after the shooting incident.

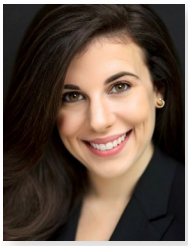
This key information aided Defendant in dismantling Plaintiff's theory that Feick was negligent in its security services and hiring, supervising, or retention of their guards, with Co-defendant's counsel eventually confirming that Feick had not been contracted for the Edison Court property at the time of, or prior to, the subject shooting incident. Following this confirmation, Plaintiff filed a Notice of Voluntary Dismissal with Prejudice as to Feick Security Corporation.

***Gonzalez, Eloisa E/O Torres v. S&M Services***

**Trucking Liability | Dismissal with Prejudice after Summary Judgment Filed and Argued**

Attorney(s): Nora Bailey, Esq.

Plaintiff Counsel: Hoskins Turco Lloyd & Lloyd (Mark Urban)



**Nora Bailey, Esq.**
Senior Partner (Stuart)
NBailey@insurancedefense.net

Stuart Partner Nora Bailey, Esq., recently received a Voluntary Dismissal with Prejudice in a wrongful death/trucking matter styled *Gonzalez, Eloisa as Personal Representative of the E/O Torres v. S&M Services*. The case arises from a trucking accident in Okeechobee, where an 18-year-old driver was unfortunately killed after striking the side of our insured tractor-trailer in an intersection. Plaintiff brought claims for his surviving parents, which is permitted under Florida's Wrongful Death Act, but also pleaded claims for lost support and services for three (3) surviving siblings, including two minors. Ms. Bailey moved for summary judgment on the siblings' claims, arguing that Plaintiff had provided no evidence to substantiate their lost support and services claims under section 768.18. After a hearing on the Motion, before a ruling, the Plaintiff voluntarily dismissed all three (3) siblings' claims with prejudice. This comes after Ms. Bailey was previously successful in the same case in securing an order dismissing the siblings' mental anguish claims, which are not permitted under section 768.21.

***BRE Point Parcel LLC v. Pavarini Construction Co. v. MC Velar Construction Corp. v. Command Rebar, Inc.***

**Construction Defect | Final Summary Judgment**

Attorney(s): Hayley Newman, Esq.; Christopher Burrows, Esq.; Aaron Carrio, Esq.; Dylan Levenson, Esq.

**Hayley Newman, Esq.**
Senior Partner (Boca Raton)
HNewman@insurancedefense.net

**Christopher Burrows, Esq.**
Managing Partner (Boca Raton)
CBurrows@insurancedefense.net

On September 8, 2023, Boca Raton Senior Partner Hayley Newman, presented oral argument on Defendant's Motion for Summary Judgment in a case involving construction and design defects at a condominium in Palm Beach County. Boca Raton Co-Managing Partner Christopher Burrows, authored the Motion for Summary Judgment with assistance from Associate Aaron Carrio. The proposed order was drafted by Christopher Burrows, with assistance from Associate Dylan Levenson. The Plaintiff initiated this lawsuit against the general contractor, alleging construction defects and deficiencies in the work performed on the project.

The general contractor filed a Third Party Complaint against its subcontractors, including the concrete subcontractor, who in turn filed a Fourth Party Complaint against its sub-subcontractor, our client the Post-Tension Cable sub-subcontractor. The Fourth Party Complaint included causes of action for contractual indemnity/breach of contract, common law indemnity, and negligence, alleging breach of its indemnification obligation in the sub-subcontract. We devised a plan to settle directly with the Plaintiff in exchange for a scope of work release for our client, the general contractor, and the Fourth Party Plaintiff. This enabled us to file a Motion for Summary Judgment as to the Fourth Party Complaint. We successfully argued that the Fourth Party Plaintiff's claims were pass through claims based on, and limited in scope, to the claims made by Plaintiff, which we eliminated. Ultimately, the trial court granted Final Summary Judgment in favor of our client.

# VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

***Shonte Bunch, as PR of the Estate of Martorell Williams v. Pilot Travel Centers LLC, SSA Delaware***
**Appeals | Litigation Support | Summary Judgment Affirmed**
Attorney(s): Laurette Balinksy, Esq.; Edgardo Ferreyra, Esq.

**Laurette Balinksy, Esq.**
Senior Partner (Orlando)
LBalinsky@insurancedefense.net

**Edgardo Ferreyra, Esq.**
Senior Partner (Miami)
EFerreyra@insurancedefense.net

**Shooting Wrongful Death 16-Year-old — Brevard County. Summary Judgment Affirmed, PCA'd by Fifth District Court of Appeal following oral argument**

After oral argument in October 2023, the Fifth District Court of Appeal recently per curiam affirmed final summary judgment in a negligent security case involving the shooting death of a 16-year-old, in the matter styled *Shonte Bunch, as PR of the Estate of Martorell Williams v. Pilot Travel Centers LLC, SSA Delaware and Northlake Foods, d/b/a Waffle House* in Brevard County, Florida. The PR alleged that Pilot/ SSA breached their non-delegable duty to decedent to provide a reasonably safe premise by allowing crowds to congregate on their premises, thereby creating a foreseeable zone of risk to invitees. The Complaint alleged that Defendants allowed hundreds of people to congregate on the premises and that multiple crimes purportedly occurred in the three years before the incident. The plaintiff was seeking $5M on the case.

Defendants moved for summary judgment shortly after the May 2021 amendment to Rule 1.510, Fla.R.Civ.P. Defendants' Motion was based on two distinct grounds: (1) that Defendants owed no duty to the decedent; and (2) decedent's claim was barred by Fla. Stat. §768.075(4) since he was involved in a felony at the time of the shooting.

Defendants' primary argument as to lack of duty was predicated on the fact that the shooter fired the deadly shot from the premises of our client, and that there was no record evidence as to the exact location of the decedent to our property line when he was shot. Defendants argued that decedent was, at best, within an easement granted to the adjoining property owner, and not within a location controlled by Defendants. As such, it was Defendants' position that there is no duty under Florida law to protect an invitee from a crime committed by a third party outside of its premises. To hold otherwise, would extend Florida law and turn premises liability on its head.

Plaintiff vigorously opposed Defendants' Motion for Final Summary Judgment and filed an Affidavit by security expert, Michael Zoovas. Within their Reply brief, Defendants moved to strike the Affidavit, arguing that it was essentially a sham, because the expert ignored evidence and completely failed to acknowledge the location of the shooter. Defendants further argued that the expert's opinion that the decedent was shot on Pilot's premises should be stricken because the opinion was not supported by any evidence and fell outside the expert's background, education, training, and expertise. Moreover, the location of the decedent was not germane to the duty argument, since it was clear that the tort was committed (i.e., the gun was fired) from a location outside of premises owned or controlled by Defendants. In other words, the expert's Affidavit was simply a distraction.

The Court conducted two lengthy hearings. Plaintiff submitted a total of four briefs; one was submitted the day after the conclusion of the second hearing. After consideration of Plaintiff's untimely Supplemental Memorandum of Law, the Court granted Defendants' Motion for Final Summary Judgment. In its opinion, the Court stated that it was "loathe to find a 'crowd' as inherently dangerous a hazard as buried electric cables or to extend a duty to property owners for crimes that occur off their premises where that property owner has not caused the conditions for the injury." The Court further found that the existence of an easement providing ingress and egress does not extend liability to Defendants, and that Defendants did not have a duty to decedent for criminal acts initiated on an adjoining property. This is a significant win for the defense bar, and protects property owners from an extension of liability for acts that occur outside of an owner's premises, and from acts which are outside of their control.

# VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

***Plaintiff (17-Year-Old) v. Living Orlando, LLC***
**Premises Liability | Motion for Summary Judgment Granted | Slip and Fall Down a Stairwell**
Attorney(s): Jorge Rodriguez-Sierra, Esq.

**Jorge Rodriguez-Sierra, Esq.**
Junior Partner (Fort Myers)
JRodriguezSierra@insurancedefense.net

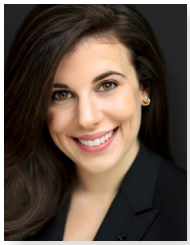
Fort Myers Junior Partner Jorge W. Rodriguez-Sierra was granted a Motion for Summary Judgment in a slip and fall action styled *Plaintiff v. Living Orlando, LLC*. The lawsuit arose out of a slip and fall down a stairway at an Orlando night club. The 17-year-old Plaintiff was transported from the scene by ambulance and was in the ICU for three days. The Plaintiff underwent two neurosurgeries, a Diagnostic Cerebral Angiogram and a Cerebral Angiography & Embolization. Her medical bills totaled over $350,000.00.

During her deposition, Mr. Rodriguez-Sierra was able to have the Plaintiff testify as to what she alleged caused her to fall down the stairs. The Plaintiff testified that she slipped on liquid on the first step as she went to descend the staircase. Follow up questions resulted in the Plaintiff not being able to identify any evidence that the Defendant had actual nor constructive notice of the liquid on the floor.

The Court Granted both the Defendant's Motion for Summary Judgment pertaining to all counts and Defendant's Motion for Sanctions due to the Plaintiff's failure to appear at multiple depositions and abruptly leaving in the middle of a deposition.

***Plaintiff v. Hallauer***
**Personal Injury | Motion to Strike the Pleadings Granted, Dismissal, with Prejudice**
Attorney(s): Zoe Nelson, Esq.; Nora Bailey, Esq.

**Zoe Nelson, Esq.**
Associate (Stuart)
ZMonge@insurancedefense.net



**Nora Bailey, Esq.**
Senior Partner (Stuart)
NBailey@insurancedefense.net

Stuart Associate, Zoe Nelson, Esq., prevailed on a Motion to Strike the Pleadings in a motor vehicle/personal injury matter styled *Plaintiff v. Hallauer.* Plaintiff alleged that she sustained personal injury in a three-vehicle accident said to have occurred on or about January 21, 2020, resulting in $250,000 in medical bills from a shoulder surgery, cervical fusion, and a potential traumatic brain injury. On November 28, 2022, Defendant propounded initial discovery and, subsequently, updated and expert discovery to the Plaintiff. However, in violation of Fla. R. Civ. P. 1.280, Plaintiff failed to respond to written discovery, and trial was anticipated to commence on the court's January 2024 docket. Ms. Nelson made numerous good faith attempts to confer with Plaintiff and filed Motions to Compel Plaintiff's overdue discovery responses, which were granted. When Plaintiff failed to comply with those rulings, Ms. Nelson filed a Motion to Show Cause for Failure to Comply with the Court's Order(s). Nevertheless, Plaintiff continued to disregard the Court's authority and failed to abide by the basic rules and principles of discovery. Accordingly, Ms. Nelson moved to strike the pleadings as a sanction, pursuant to *Kozel v. Ostendorf*. Judge Waronicki, in applying the Kozel factors, held that Plaintiff's flagrant disregard for the Court's authority mandated that the pleadings be stricken and that the case against Defendant be dismissed with prejudice.

# VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

***Francisco & Linda Espinosa v. Defendant Insurance Company***

**First-Party Property | Final Summary Judgment**

Attorney(s): Anthony Perez, Esq.

Plaintiff Counsel: Sheild Law Group of Florida

**Anthony Perez, Esq.**
Senior Partner (Miami)
APerez@insurancedefense.net

Miami Senior Partner Anthony Perez secured final summary judgment in the matter styled *Francisco & Linda Espinosa v. Defendant Insurance Company*. Plaintiffs filed suit alleging that Defendant breached the insurance contract by denying coverage for their claim for damage to their property resulting from Hurricane Irma. As Plaintiffs reported their claim 2 ½ years after Hurricane Irma, and made repairs to the roof and interior of their property prior to reporting the claim, Defendant filed its Motion for Final Summary Judgment, arguing that Plaintiffs had failed to comply with the policy's duties after loss, failed to provide prompt notice of the loss, and prejudiced Defendant's investigation of the loss. Defendant's Motion was granted, as the Court found that Defendant had established that its ability to determine the cause and the extent of the reported damage had been prejudiced due to the passage of time, the changes in the condition to the property, the repairs made, the absence of documentation, and the other storms that occurred between the date of loss and the date the claim was reported. The Court further found that Plaintiffs had failed to rebut this prejudice, and that the Affidavit of David Benjamin Money on which Plaintiffs relied was conclusory and unreliable. Final Summary Judgment was entered in favor of Defendant.

***US Mold Hunters, Inc. a/a/o Clementina Sanchez v. Defendant Insurance Company***

**First-Party Property | Final Judgment on the Pleadings & Sanctions**

Attorney(s): Anthony Perez, Esq.

Plaintiff Counsel: Mooneram, Serres, Vivanco, P.A.

Miami Senior Partner Anthony Perez secured final judgment on the pleadings and sanctions in the matter styled *US Mold Hunters, Inc. a/a/o Clementina Sanchez v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for its claim for payment relating to services rendered at the insured property pursuant to an assignment of benefits. Defendant filed its Motion for Judgment on the Pleadings, and its Motion for Sanctions Pursuant to Florida Statute §57.105, contending that Plaintiff's purported assignment was nothing more than a piece of paper without legal force or effect, as it was executed by the Insured/Assignor fifteen days after she had already executed a full and final release of her claim, leaving no benefits left to be assigned. Both of Defendant's Motions were granted, final judgment was entered in favor of Defendant, and Plaintiff reimbursed Defendant for the attorneys' fees incurred defending Plaintiff's frivolous claim.

***Dri-Force Restoration, Inc. a/a/o Ocean Breeze Condo, Inc. v. Defendant Insurance Company***

**First-Party Property (Commercial) | Dismissal with Prejudice & Sanctions**

Attorney(s): Anthony Perez, Esq.

Plaintiff Counsel: The Wier Law Firm, P.A.

Miami Senior Partner Anthony Perez secured a dismissal with prejudice and sanctions in the matter styled *Dri-Force Restoration, Inc. a/a/o Ocean Breeze Condo, Inc. v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the commercial insurance contract by denying coverage for its claim for payment relating to services rendered at the insured condominium pursuant to an assignment of benefits. Defendant filed its Motion to Dismiss, and its Motion for Sanctions pursuant to Florida Statute §57.105, 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 rendered Plaintiff without standing to maintain the lawsuit. Defendant's Motion to Dismiss was granted, as the purported assignment agreement did not contain the requisite written, itemized, per-unit cost estimate of the services to be performed by the assignee. Defendant's Motion for Sanctions pursuant to Florida Statute §57.105 was also granted, as Plaintiff should have known that its claim based on an invoice for services that had already been performed did not comply with Florida Statute §627.7152. Plaintiff reimbursed Defendant for the attorneys' fees incurred defending Plaintiff's frivolous claim.

# VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

***Water Dryout, LLC a/a/o Jackson Mauricette v. Defendant Insurance Company***

**First-Party Property | Dismissal with Prejudice & Sanctions**

Attorney(s): Anthony Perez, Esq.

Plaintiff Counsel: Precision Legal

**Anthony Perez, Esq.**

Senior Partner (Miami)

APerez@insurancedefense.net

Miami Senior Partner Anthony Perez secured a dismissal with prejudice and sanctions in the matter styled *Water Dryout, LLC a/a/o Jackson Mauricette v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for its claim for payment relating to services rendered at the insured property pursuant to an assignment of benefits. Defendant filed its Motion to Dismiss, and its Motion for Sanctions pursuant to Florida Statute §57.105, as Plaintiff's supplemental claim stemmed from a purported assignment executed more than three years after Hurricane Irma, and was thus barred by the statute of limitations set forth in Florida Statute §627.70132. Both of Defendant's Motions were granted, the case was dismissed with prejudice, and Plaintiff reimbursed Defendant for the attorneys' fees incurred defending Plaintiff's frivolous claim.

***Great 22 Restoration, LLC a/a/o Carlos A. Lopez Amaya v. Defendant Insurance Company***

**First-Party Property | Dismissal with Prejudice**

Attorney(s): Anthony Perez, Esq.

Plaintiff Counsel: Florida Insurance Law Group, LLC

Miami Senior Partner Anthony Perez obtained a dismissal in the matter styled *Great 22 Restoration, LLC a/a/o Carlos A. Lopez Amaya 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 rendered Plaintiff without standing to maintain the lawsuit. Defendant's motion was granted and the case was dismissed with prejudice.

***Aqua Docs Water Restoration, LLC a/a/o Huu Phuoc Dam v. Defendant Insurance Company***

**First-Party Property | Dismissal with Prejudice**

Attorney(s): Anthony Perez, Esq.

Plaintiff Counsel: Florida Insurance Law Group, LLC

Miami Senior Partner Anthony Perez obtained a dismissal in the matter styled *Aqua Docs Water Restoration, LLC a/a/o Huu Phuoc Dam 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 rendered Plaintiff without standing to maintain the lawsuit. Defendant's motion was granted and the case was dismissed with prejudice.

***Ana Busta v. Defendant Insurance Company***

**First-Party Property | Dismissal with Prejudice**

Attorney(s): Anthony Perez, Esq.; Alec Teijelo Esq.

Plaintiff Counsel: Vargas, Gonzalez, Baldwin, Delombard, LLP

**Alec Teijelo, Esq.**

Senior Associate (Miami)

ATeijelo@insurancedefense.net

Miami Senior Partner Anthony Perez and Senior Associate Alec Teijelo obtained a dismissal with prejudice in the matter styled *Ana Busta v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for her claim for damage to her property in the form of cracked flooring tiles. Following the deposition of the insured, during which Mr. Teijelo secured favorable testimony in support of Defendant's position, Defendant filed its Motion for Summary Judgment, arguing that the damage was the result of a dropped object and therefore excluded from coverage under the policy. In advance of the hearing on Defendant's motion, Plaintiff dismissed the case with prejudice.

# VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

***Margarita Alvarez v. Defendant Insurance Company***
**First-Party Property | Dismissal with Prejudice**
Attorney(s): Anthony Perez, Esq.; Alec Teijelo, Esq.
Plaintiff Counsel: Zipris Lavalle, P.A.

**Anthony Perez, Esq.**
Senior Partner (Miami)
APerez@insurancedefense.net

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

Miami Senior Partner Anthony Perez and Senior Associate Alec Teijelo obtained a dismissal with prejudice in the matter styled *Margarita Alvarez v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for her claim for damage to her property resulting from a kitchen leak. Defendant filed its Motion for Summary Judgment, maintaining the position that Plaintiff had failed to comply with the policy's duties after loss, specifically, a failure to show the damaged property. In advance of the hearing on Defendant's motion, Plaintiff dismissed the case with prejudice.

***Green Restoration Dryout, LLC a/a/o Silvia & Julio Aliaga v. Defendant Insurance Company***
**First-Party Property | Dismissal with Prejudice**
Attorney(s): Anthony Perez, Esq.; Alec Teijelo, Esq.
Plaintiff Counsel: The Cardenas Law Group, P.A.

Miami Senior Partner Anthony Perez and Senior Associate Alec Teijelo obtained a dismissal with prejudice in the matter styled *Green Restoration Dryout, LLC a/a/o Silvia & Julio Aliaga v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for its claim for payment relating to services rendered at the insured property pursuant to an assignment of benefits. Defendant filed its Moton for Final Summary Judgment, contending that Plaintiff stands in the shoes of the insured, who had failed to provide prompt notice of the loss, and that Plaintiff's services, rendered more than two years after the loss, did not constitute reasonable emergency measures, and were therefore not covered under the policy. Following the deposition of Plaintiff's corporate representative, during which Mr. Teijelo secured favorable testimony in support of Defendant's position, and with Defendant's Motion pending, Plaintiff dismissed the case with prejudice.

***Moisture Rid, Inc. a/a/o Qiana McKay v Defendant Insurance Company & Water Dryout, LLC a/a/o Qiana McKay 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 and Senior Associate Alec Teijelo secured dismissals with prejudice in the matters styled *Moisture Rid, Inc. a/a/o Qiana McKay v. Defendant Insurance Company & Water Dryout, LLC a/a/o Qiana McKay v. Defendant Insurance Company*. Plaintiffs filed suit alleging that Defendant breached the insurance contract by denying coverage for their claims for payment relating to services rendered at the insured property pursuant to an assignment of benefits. Defendant served each Plaintiff with its Motion for Sanctions pursuant to Florida Statute §57.105, maintaining the position that there was no loss to the property on the date alleged by either Plaintiff. Defendant's Motion was supported by an Affidavit from the Insured/Assignor attesting to the fact that the damage to her property had actually been present for ten years, and that there was no loss on the date fabricated by the Plaintiffs/Assignees. Upon Receipt of Defendant's Safe Harbor Letters, Plaintiffs dismissed both cases with prejudice.

# VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

***Swift Response Restoration, Inc. a/a/o Luis Grisolle v. Defendant Insurance Company***

**First-Party Property | Dismissal with Prejudice**

Attorney(s): Anthony Perez, Esq.; Brittany Pryce, Esq.

Plaintiff Counsel: Tabares Law, P.A.

**Anthony Perez, Esq.**

Senior Partner (Miami)

APerez@insurancedefense.net

**Brittany Pryce, Esq.**

Associate (Miami)

BPryce@insurancedefense.net

Miami Senior Partner Anthony Perez and Associate Brittany Pryce obtained a dismissal with prejudice in the matter styled *Swift Response Restoration, Inc. a/a/o Luis Grisolle v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the commercial insurance contract by denying coverage for its 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, and its Motion for Sanctions pursuant to Florida Statute §57.105, regarding Plaintiff's frivolous Quantum Meruit claim. In advance of the hearing on Defendant's Motions, Plaintiff dismissed the case with prejudice.

***Tarp & Restoration Geeks Corporation a/a/o Lady Marin Gomez v. Defendant Insurance Company***

**First-Party Property | Dismissal with Prejudice**

Attorney(s): Anthony Perez, Esq.; Brittany Pryce, Esq.

Plaintiff Counsel: Kandell, Kandell & Petrie, P.A.

Miami Senior Partner Anthony Perez and Associate Brittany Pryce obtained a dismissal with prejudice in the matter styled *Tarp & Restoration Geeks Corporation a/a/o Lady Marin Gomez v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for its claim for payment relating to services rendered at the insured property pursuant to an assignment of benefits. Following the deposition of the insured, during which Ms. Pryce secured favorable testimony in support of Defendant's position, and in advance of the hearing on Defendant's Motion for Judgment on the Pleadings and Defendant's Motion to Strike Plaintiff's Claim for Attorneys' Fees, Plaintiff dismissed the case with prejudice.

*Read more Verdicts and Summary Judgments on page 17 ...*

# VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

***Plaintiff v. YMCA, et al***

**Defamation | Defense Verdict**

Attorney(s): Katherine E. McKinley, Esq.; Zachary J. Brewer, Esq.

Plaintiff Counsel: Alexander Degance Barnett (Mark Alexander, Michelle Barnett, Chandler Jolly)

**Katherine McKinley, Esq.**

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**Zachary Brewer, Esq.**

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**Defense Verdict | Plaintiff 62-Year-Old | Defamation and Wrongful Death**

Junior Partners Katherine E. McKinley and Zachary J. Brewer obtained a full defense verdict on April 24, 2024 in a defamation case styled *Plaintiff v. YMCA, et al*. Plaintiff was the 62-year-old male chair of the board of advisors for a camp and one of the Defendants was a 20-year-old female waterfront director of the camp. Defendant reported Plaintiff for kissing her on the face, making inappropriate jokes, and holding her inappropriately on a jet ski ride. The camp terminated Plaintiff's volunteer status. Plaintiff sued the Defendants alleging his father's death was the result of alleged defamation and sought damages for the loss of his father.

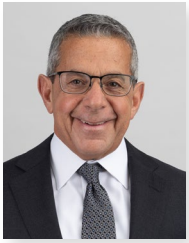
Plaintiff asserted that Defendant completely fabricated her complaints out of a political disagreement and/or to seek leverage in her employment. In arguments, Plaintiff blamed Defendant for the death of his father by suicide two months later and ultimately asked the jury to hold Defendants responsible for his father's death, as well as alleged severe and permanent mental anguish, with physical manifestations.

The Court granted directed verdict to two Defendants. Plaintiff proceeded solely against two others. Following closing arguments, the jury deliberated for less than two hours and returned a complete Defense verdict establishing that Defendant had not defamed Plaintiff with her reports of sexual harassment.

*Read more Verdicts and Summary Judgments on page 18 ...*

# VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

***Bernabe and Humberto v. Everett Property, LLC, et al.***
**Premise Liability | Motion to Dismiss Granted**
Attorney(s): Paul Michienzie, Esq.; Adam Brandon, Esq.
Plaintiff Counsel: Keches Law Group (Jonathan D. Sweet and Patrick J. Nelligan)



**Paul Michienzie, Esq.**
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**Adam Brandon, Esq.**
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Boston Managing Partner Paul Michienzie and Junior Partner Adam C. Brandon successfully argued for dismissal of all claims against our client, Everett Property, LLC ("EPL") in the premises liability/personal injury matter styled *Bernabe and Humberto v. Everett Property, LLC, et al.* pending in Essex Superior Court, MA. Plaintiffs' Amended Complaint alleged that the plaintiffs were injured while moving heavy panes of glass into a warehouse leased by EPL. The thrust of our argument for dismissal was that as lessee of the warehouse, EPL did not owe a duty to the plaintiffs to prevent injury under the circumstances alleged because the instrumentality of the alleged harm was unrelated to any feature of the premises, i.e. property structure or grounds. Notably, the Court's six-page order not only granted our motion to dismiss in its entirety, but denied the plaintiffs an opportunity to further amend their complaint to assert a basis for liability against Everett Property, LLC absent the discovery of factual support to do so. Plaintiffs' action continues against the remaining and separately represented general contractor and subcontractor at the warehouse site.

***Michael Whitney et al. v. Bucher Municipal NA, Inc.***
**Product Liability | Dismissal**
Attorney(s): Paul Michienzie, Esq.; Jason Caron, Esq.

**Jason Caron, Esq.**
Senior Partner (Boston)
JCaron@insurancedefense.net

Boston Managing Partner Paul Michienzie and Senior Partner Jason Caron successfully argued for dismissal of multi-million dollar loss of consortium claims against our client, Bucher Municipal NA, Inc. ("Bucher") in the products liability/personal injury matter styled *Michael Whitney et al. v. Bucher Municipal NA, Inc.* pending in United States District Court, District of Massachusetts. Plaintiffs' Complaint alleged that Mr. Whitney's wife, Jillian Whitney, was entitled to recovery for loss of consortium against Bucher, due to injuries Mr. Whitney allegedly suffered while operating a sewer cleaning truck sold by Bucher. Mrs. Whitney's claims were based on two distinct legal theories: one, that Mrs. Whitney had a viable loss of consortium claim based on Mr. Whitney's underlying claim under M.G.L. Chapter 93A for alleged unfair and deceptive trade practices; two, that Mrs. Whitney could bring a direct claim as an injured party under Chapter 93A, separate and distinct from Mr. Whitney's claim. As to the first theory, our position was that under Massachusetts law, a loss of consortium claim must be based upon an underlying tort claim by the injured spouse, and that Chapter 93A, while tort-like in certain respects, does not qualify for that purpose. As to the second, we argued that Mrs. Bucher lacks standing to bring an independent claim under 93A, because loss of consortium damages have never been recognized by a Massachusetts court as an independent category of damages. After extensive briefing, the Court agreed with us on both points, dismissing Mrs. Whitney's loss of consortium claims in their entirety.

# THE GAVEL GRUB CLUB SCHEDULE: UPCOMING WEBINARS

**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.

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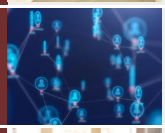
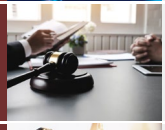
|---|---|---|
| 23 MAY |  | **"Show Me the Money" Priority of Payments, Preferences, and Who Pays When** ***(May 23, 2024 at 12:30 PM ET)*** *Alison Fleming (PA), Mike Hostetter (GA), Clark Monroe (MS), Abbie Dunn, Jr. (WV), Jack Frost (FL)* |
| 20 JUN |  | **Preparing the Adjuster to Defend a Bad Faith Claim** ***(June 20, 2024 at 12:30 PM ET)*** *Stephannie England (LA), Jackie Booker (CO), Heidi Goebel (UT), Russ Watters (MO), Daniel Santaniello (FL)* |
| 18 JUL |  | **Balancing Innovation and Liability in the Legal Field: AI and Social Media** ***(July 18, 2024 at 12:30 PM ET)*** *Paul Michienzie (FL \| MA), Jeb Stewart (AL), Vanja Pemac (WI), Derrick DeWitt (OK)* |
| 15 AUG |  | **Who Are You? Establishing and Maintaining the Relationship Between CMV Driver, Motor Carrier, and Defense Counsel** ***(August 15, 2024 at 12:30 PM ET)*** *Wade Quinn (TX), John Honeycutt (NC), Joe Aldridge (ID), Derrick Kelly (FL), Tammy Warn, Claims Examiner V for Swift \| Mohave Insurance* |
| 18 SEPT |  | **Reaching Across the Aisle: Effective Work with Plaintiffs' Bar** ***(September 18, 2024 at 12:30 PM ET)*** *Richard Underwood (TN), Patrick Madden (TX – Dallas), Zach Shook (IL), Bob Sims (CA – SLB), Tim Wolf (MO), Daniel Santaniello (FL)* |
| 17 OCT |  | **When Will the Cars Drive Us? AI, Automation, and the Transportation Landscape** ***(October 17, 2024 at 12:30 PM ET)*** *John Messersmith (VA), Steve Olson (NE \| IA), Joe Fowler (PA), Bill Peterfriend (FL), David Cades, Ph.D. (Exponent)* |
| 21 NOV |  | **Leaving No Stone Unturned in Claims Investigations** ***(November 21, 2024 at 12:30 PM ET)*** *Matt Anderson (AIC Companies), Greg Lois (CT), Daniel Murdock (CA – LMLA), Mark Franco (ME \| NH), Luis Menendez-Aponte (FL)* |
| 19 DEC |  | **Where's the Dirt? Top 5 Case Investigation Techniques** ***(December 19, 2024 at 12:30 PM ET)*** *Ashley Larson (CO), Elisa Hatlevig (MN), Jillian House (KY), Gianna Calzola (OH), Daniel Santaniello (FL)* |

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