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LEGAL UPDATE

VOLUME 23, ISSUE 2 NOVEMBER 2024

VERDICTS, SUMMARY JUDGMENTS, APPELLATE RESULTS

Four-Day Jury Trial — Plaintiff Requested Millions in Damages — the Jury Returned a Complete Defense Verdict

Benjamin Pahl, Esq.

On May 17, 2024, Partners Benjamin Pahl, Esq. and Nora Bailey, Esq., obtained a complete defense verdict after a four-day jury trial in a premises liability matter styled *Plaintiffs v. South Florida Fair and W.G. Wade Shows*. The lawsuit arose out of a claim by the Plaintiff, an older female, wherein it was alleged that Defendants acted negligently in allowing a stair handrail leading to a portable restroom trailer to exist in a dangerous condition – specifically, Plaintiff claimed there was a paint chip on the railing that poked her left hand, causing her to startle and fall backwards down the stairs, resulting in a tibia fibula fracture and two surgeries as well as extensive rehabilitation and ongoing attendant care. *Read more on page 4.*

INSIDE LEGAL UPDATE

FORT LAUDERDALE EAST AND FORT MYERS OFFICES: Please note that our Fort Lauderdale office has recently moved to a new suite. Our updated suite number is 1401 (110 S.E. 6th Street - STE 1401, Fort Lauderdale, FL 33301). Our Fort Myers office has moved to a new location at 6810 International Center Blvd., Fort Myers, FL 33912. All other contact information remains the same. We look forward to continuing to serve you at our new locations.

IMPORTANT WEBINAR: Luks & Santaniello will be presenting a repeat session for its clients of the complimentary, non-accredited one-hour webinar on **Changes to Trial Deadlines** in Florida Effective January 1, 2025, on Wednesday, December 4, 2024, at 12:00 PM EST. Please register using this link.

$875K Final Pre-Trial Demand | Jury Awarded $27K. New England Trial Team Convinced a Jury to See Things Their Way and Deny a Plaintiff a Highly Inflated Claim for Damages

Paul Michienzie, Esq.

On November 4, 2024, Boston Managing Partner Paul Michienzie and Rhode Island Partner David Maglio obtained a favorable verdict in a trucking liability matter styled *Plaintiff v. TST Trucking, Inc., et al*.

In 2017, the Plaintiff suffered a disc herniation while participating in a CrossFit workout and underwent a surgery (L 4/5 discectomy and laminectomy) to repair the injury. Subsequently, in 2018, she was rear ended by a fully loaded tractor trailer driven by the insured driver/Defendant. Despite being diagnosed with a lumbar strain as a result of the accident, Plaintiff claimed the accident caused further, permanent injury to her back. Adding further complexity to the matter, Plaintiff injured her back two more times after the accident: once in 2019 and once in 2020, ultimately undergoing a second surgery in 2020 to repair a further disc herniation. *Read more on page 5.*

DEFENDANTS BEWARE:

How *Dominguez v. Omana* and Florida's New Discovery Rules Open the Door to Plaintiff's Discovery Abuse

by Jack Garwood, Esq., Associate

Florida's discovery rules were implemented "to simplify the issues in a case, to eliminate the element of surprise, to encourage the settlement of cases, to avoid costly litigation, and to achieve a balanced search for the truth to ensure a fair trial."[1] To that end, and until now, those rules have "liberally allow[ed]" for the discovery of medical records in a personal injury matter so long as "reasonably calculated to lead to the discovery of admissible evidence."[2] Florida's discovery standard, however, will change on January 1, 2025. The *new* rule reads as follows: *Read more on page 2.*

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DEFENDANTS BEWARE: How *Dominguez v. Omana* and Florida's New Discovery Rules Open the Door to Plaintiff's Discovery Abuse, *CONT.*

by Jack Garwood, Esq., Associate

(1) *In General*. Parties may obtain discovery regarding any nonprivileged matter, that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.[3]

This new standard is narrower than the old. Defense counsel and clients should be aware that this new rule contains a proportionality requirement — starting January 1, 2025, parties may only discover information regarding any non-privileged matter *relevant* to any party's claim or defense, and *proportional* to the needs of a case.[4] Because of this, it is expected that plaintiffs' firms will more aggressively make blanket objections to subpoenas for medical records from pre-accident providers and non-treating physicians.[6] Not only could this substantially delay discovery of critical records, but it is also less likely to result in extensions of trial deadlines given that Florida's new rules will disfavor continuances.

While this is a narrower scope to discovery, the new standard does maintain that "[i]nformation within this scope of discovery need not be admissible in evidence to be discoverable."[5] So, while the upcoming rule changes will seemingly make accessing certain information more difficult, and perhaps more time-consuming due to objections, pre-accident and other medical records — even if inadmissible — are arguably still discoverable as relevant and proportional to the needs of personal injury cases.

Despite the well-established principle that information need not be admissible to be discoverable, a recent decision of the Sixth District Court of Appeal in *Dominguez v. Omana*[6] muddies the water. In *Dominguez*, the plaintiff filed suit alleging that a physician negligently removed a fatty nodule from her armpit during a 2019 procedure causing permanent or continuing injuries.[7] When the defendants sought to serve subpoenas on non-parties seeking the plaintiff's medical records for the previous ten years, the plaintiff objected.[8] The plaintiff argued that the subpoenas were overbroad and "invaded her constitutional right to privacy" as "it was highly probable that irrelevant medical records would be produced."[9] The plaintiff asked the trial court to either sustain her objections, or alternatively conduct an in-camera inspection.[10] However, the trial court held that the plaintiff waived her right to privacy by putting her physical condition at issue and concluded that the subpoenas were "reasonably likely to lead to the discovery of admissible evidence." Accordingly, the plaintiff's objections were overruled and her request for an in-camera inspection was denied.[11]

On appeal, the court first recognized that the Florida Constitution protects a right to privacy regarding one's medical records.[12] It then noted that because of this, while the plaintiff waived her privacy rights regarding *relevant* medical records, she "still ha[d] that right as to medical records that are *irrelevant*."[13] Consequently, the court concluded that the plaintiff "established irreparable harm[,] because the improper disclosure of medical records causes a material injury that cannot be remedied on appeal."[14] Further, while the trial court did not depart from the essential requirements of the law by finding that the subpoenas were reasonably likely to lead to the discovery of admissible evidence, the court agreed with the plaintiff that it was "highly probable" that irrelevant medical records "would accompany the relevant medical records" due to the breadth of the subpoenas.[15] Because of this, the trial court was required to do one of the following: (1) limit the scope of the subpoenas; or (2) hold an in-camera inspection.[16] Though the court recognized "the burden that in-camera inspections put on busy trial judges," it believed "that burden may be necessary to protect privacy rights."[17] The trial court's order was therefore quashed.[18]

The *Dominguez* case is likely to have troubling implications for the defense, especially when paired with the new rule's already narrower standard of relevance and proportionality.[19] Defense counsel may fairly argue that pre-accident and other medical records are both relevant to claims and defenses and proportional to the needs of a case, where personal injury plaintiffs necessarily place their medical condition at issue. Such records often show pre-existing injuries like those alleged in the subject lawsuit, are used to impeach a plaintiff who has disclaimed previous similar injuries and are relied upon by defense experts in formulating opinions. That "irrelevant" records are not subject to production is one thing, but the key question is who makes that determination? And who is best placed to determine whether such records are *proportional to the needs of a case*?

The *Dominguez* court seemed to conclude that trial courts were to make this determination via in-camera inspections. But this approach raises more questions than answers. The impending changes in Florida's rules will bind parties to more stringent deadlines, and the rules strongly disfavor continuances.[20] Obtaining hearing time is already difficult, and it is only going to get worse. The burden on counsel and trial courts will necessarily be increased. So how will courts find the time to comb through potentially thousands of pages of medical records to determine their relevance and proportionality to a matter? Are trial courts now *obliged* to comb through thousands of

DEFENDANTS BEWARE: How *Dominguez v. Omana* and Florida's New Discovery Rules Open the Door to Plaintiff's Discovery Abuse, *CONT.*

by Jack Garwood, Esq., Associate

pages *every time* a defendant seeks records and a plaintiff objects? The likelihood of such a scenario being advocated for by plaintiffs is sky-high, especially given that the *Dominguez* holding essentially *invites* and even *incentivizes* such objections. Given the incentives to delay, and the increased burden on already-overburdened trial courts, serious due process concerns are implicated. Does an overburdened trial judge really have the time to carefully scrutinize thousands of pages of medical records to determine their relevance and proportionality? Courts no doubt would make good-faith efforts to comply with this standard, but the reality is that the burdens faced by courts means it is likely that such efforts would be rushed. This denies defendants due process, a highly troubling outcome.

Further, trial courts are neutral and disinterested. They have *no* incentive or interest to find information helpful to a party's defense. Defense counsel, and indeed a defendant's expert medical witnesses—individuals best placed to scan medical records for probative information—have that incentive. Yet the procedure mandated in *Dominguez* denies defendants the right to an *interested* advocate scrutinizing a plaintiff's medical records for information. Though trial courts are arbiters of relevance, a proposition beyond dispute, it is difficult to argue that they are better positioned than expert physicians in determining the *relevance* and *proportionality* of a plaintiff's medical records in a personal injury case. In the medical records context, the typical relevance objection—of which there is no doubt trial courts are qualified to decide—is not presented. Instead, a more nuanced approach is warranted—one that includes defense counsel (with an *incentive* to find useful information) and defense experts (who are more *qualified* to do so in the medical context).

Another suggestion made by the *Dominguez* court was that trial courts could narrow the scope of subpoenas. But how might that be achieved? There are two plausible manners: (1) a court could enter an order compelling production of *relevant* and *proportional* information only; or (2) a court could impose an arbitrary time limit on which records are discoverable.

Going to the first, if a court orders that only relevant and proportional medical information should be produced, *who* makes that determination? This route would seem to give plaintiffs and their attorneys authority to decide which medical records are relevant and proportional. Evidently, the incentive here would be to omit medical records harmful to a plaintiff's case from discovery, and neither the court nor the defendant would be afforded the opportunity to challenge this information. Such a scenario runs afoul of the well-established principles of an adversarial judicial system.

Going to the second, what if the court orders production of medical records for a limited, arbitrary period of time—say, no more than 5 years before the date of the accident? This would ignore the reality that many individuals experience multiple medical problems over the course of a lifetime. Consider the situation of a hypothetical plaintiff suing for a motorcycle incident that occurred in 2016: would medical records from 2008, outside of the arbitrary five-year pre-accident records limitation, showing prior injuries from a similar motorcycle accident, not be highly relevant and proportional to the case? Both as to the issues of causation *and* the plaintiff's operation of her motorcycle? Of course they would, yet the *Dominguez* court's approach to this issue risks shielding plaintiffs from producing highly relevant information, obviously proportional to the needs of a case, at the expense of a defendant's right to put on a defense.

None of this is to say that the Florida Constitution's explicit protection of privacy rights should be discarded. It should not. But there *are* ways to balance a plaintiff's privacy interests without kneecapping defendants' abilities to carefully scrutinize a plaintiff's medical records. For example, parties may seek, and trial courts may issue, protective orders limiting who might see such information. And there are statutes and regulations in place providing harsh penalties for those who improperly access or use otherwise private medical information. There is simply no need to tip the scales so far in favor of plaintiffs, when there are already proven, workable methods to handle the situation at hand.

Going forward, it would be wise for defendants to anticipate *Dominguez*-style objections to requests for a plaintiff's medical records. Plaintiffs' firms are already relying on *Dominguez* by blanket objecting to routine discovery requests, and this situation will only get worse when the new rules become effective in January. Whether *Dominguez* would ultimately be affirmed by the Florida Supreme Court is unknown, but unless and until that happens, defendants across the State of Florida should be ready to combat an approach that impedes their ability to fully and fairly defend injury matters brought against them. The Florida Supreme Court is holding oral argument on November 7, 2024 to address comments to the changes, however, major revisions are not anticipated. Therefore, defense counsel and claims professionals should prepare for the new rules to go into effect substantially as written.

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[1] Elkins v. Syken, 672 So. 2d 517, 522 (Fla. 1996) (citing Dodson v. Persell, 390 So. 2d 704 (Fla. 1980); and Surf Drugs, Inc. v. Vermette, 236 So. 2d 108 (Fla. 1970)).

[2] Hett v. Barron-Lunde, 290 So. 3d 565, 570 (Fla. 2d DCA 2020) (citing Amente v. Newman, 653 So. 2d 1030, 1032 (Fla. 1995)).

[3] Amente, 653 So. 2d at 1032 (citing Fla. R. Civ. P. 1.280(b)(1)).

[4] Fla. R. Civ. P. 1.280(c)(1), effective January 1, 2025.

DEFENDANTS BEWARE: How *Dominguez v. Omana* and Florida's New Discovery Rules Open the Door to Plaintiff's Discovery Abuse, *CONT.*

by Jack Garwood, Esq., Associate

[5] Daniel Santaniello, Janine Menendez-Aponte, and Zoe Nelson-Monge, *LAW ALERT: FLORIDA OVERHAULS TRIAL PROCEDURES. STRICT TRIAL DEADLINES AFTER MASSIVE CHANGES IN PROCEDURE. RECOMMENDATIONS AND CONCERNS DISCUSSED*, LUKS, SANTANIELLO, PETRILLO, COHEN & PETERFRIEND (Sept. 6, 2024), https://myemail.constantcontact.com/FLORIDA-OVERHAULS-TRIAL-PROCEDURES--STRICT-TRIAL-DEADLINES-AFTER-MASSIVE-CHANGES-IN-PROCEDURE--.html?soid=1127624370706&aid=VEsnJcHb15s (last visited Sept. 24, 2024).

[6] *Id.*

[7] *Id.*

[8] Fla. R. Civ. P. 1.280(c)(1), effective Jan. 1, 2025.

[9] *Dominguez v. Omana*, 381 So. 3d 1271 (Fla. 6th DCA 2024).

[10] *Id.* at 1272-73.

[11] *Id.* at 1273.

[12] *Id.* Of course, such medical records need not be *relevant* to be discoverable. *See* current version of Fla. R. Civ. P. 1.280(b)(1), and Fla. R. Civ. P. 1.280(c)(1) effective on Jan. 1, 2025.

[13] *Dominguez*, 381 So. 3d at 1273.

[14] *Id.*

[15] *Id.* (citing Art. I, § 23. Fla. Const.) (other citation omitted).

[16] *Id.* (emphasis added).

[17] *Id.* (citations omitted).

[18] *Id.* at 1273-74 (citations omitted).

[19] *Id.* at 1274.

[20] *Id.* (citations omitted).

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. Read More.

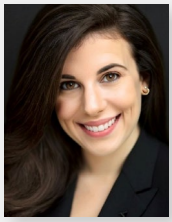
VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

Plaintiffs v. South Florida Fair and W.G. Wade Shows

Premises Liability | Defense Verdict

Attorney(s): Nora Bailey, Esq.; Benjamin Pahl, Esq.

Plaintiff Counsel: Haliczer Pettis & Schwamm



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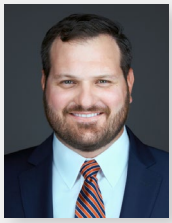

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The Defendants denied liability and asserted that Plaintiff had acted negligently by using the stairs instead of an ADA-accessible restroom next to the trailer, given her left-sided deficits after a stroke approximately eight months prior to the fall at the Defendants' premises, and further asserted that there was no paint chip or dangerous condition.

At trial, testimony from Defendants' employees was that there were never any complaints or concerns related to the railing, nor were any repairs or inspections ever requested as to same; an Emergency Medical Technician who had worked at the Fair for 20+ years testified that the Plaintiff's incident was the only fall at that location to which she had ever responded. The defense was also able to elicit testimony and introduce evidence that the Plaintiff had been in ongoing therapy for difficulties related to the left hand and deficits therein as recently as two weeks before the fall, and was receiving 36 hours per week of attendant care related thereto up through the day of the incident. The Plaintiff admitted she had arrived at the Fair on the day of the incident in a wheelchair and had used a cane when ambulating, but did not utilize either when she chose to take the stairs to the restroom. She relied on a photograph she took of her left pinky several days after the incident to suggest that a cut on the finger was caused by a 'sharp' paint chip that felt like 'an ice pick' in her hand.

Plaintiffs retained no liability expert but utilized Craig Lichtblau, M.D., as their life care planner. Despite preparing a nearly 300-page "Comprehensive Report," Dr. Lichtblau admitted on cross-examination by Ms. Bailey that he did not consider the pre-existing stroke related deficits to be relevant to his evaluation of the Plaintiff. He further testified that his own evaluation of the Plaintiff indicated that she could not feel pins or pick up small objects with her left-hand due to weakness and numbness therein, undercutting Plaintiff's contention that she was poked in that hand which caused her to fall. Nonetheless, Dr. Lichtblau recommended nearly $1.34M in future care for the Plaintiff, which was supported by the testimony of economist Frederick Raffa, Ph.D.

Read more on page 5.

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

Defendants' CME physician, Mark Rubenstein, M.D., testified at trial that the Plaintiff was a fall risk with left-sided weakness and numbness and should not have used the stairs that day; he further testified that any need for ongoing care was related to the sequelae from the previous stroke, and not any consequences from the fall. Dr. Rubenstein also walked the jury through multiple notes in the medical records after the fall wherein Plaintiff told her treating physicians she had missed the grab rail and fell, but never made any mention of a dangerous condition.

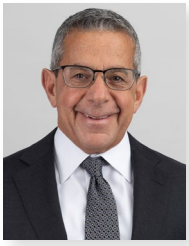
Over the course of four days, the jury listened to the Plaintiff testify about the devastating impact of the incident and the injuries on her life, as well as to her husband's testimony in support of his consortium claim, and the testimony of their adult son. Mr. Pahl emphasized in closing that the jury had to use common sense to evaluate the evidence and that the Plaintiffs simply had failed to meet their burden of proof.

Plaintiffs' counsel asked the jury in closing for an award of $4.67 – $4.91M ($576,854 in past medical expenses; $1,337,633 in future medical expenses; $500,000 past pain and suffering; $2M future pain and suffering; $250-500K consortium claim). After deliberating for about three hours, the jury rendered a complete defense verdict in favor of South Florida Fair and W.G. Wade Shows.

Plaintiff v. TST Trucking, Inc., et al.

Trucking Liability | Favorable Verdict

Attorney(s): Paul Michienzie, Esq.; David Maglio, Esq.
Plaintiff Counsel: The Bottaro Law Firm, LLC



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Plaintiff claimed medical bills of $92,000 for the second alleged surgery and related care, and projected future medical costs of over $310,000 for treatment and for a spinal fusion. Her claims also included requests for compensation due to pain and suffering, leading to a final pretrial demand of $875,000. The Defendant conceded liability for the motor vehicle accident, but denied that it caused the extent of injury that the Plaintiff claimed. To the contrary, our attorneys and medical expert successfully demonstrated to the jury that the Plaintiff's own timeline proved her reherniation was caused by the additional injuries that happened after the motor vehicle accident. Any additional costs therefore were not the responsibility of the Defendant.

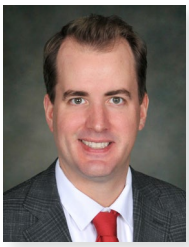
Through careful analysis of Plaintiff's injury history combined with compelling testimony of the Defense medical expert, our team successfully limited the damage award to compensate Plaintiff only for the *actual* cost of treatment related to the motor vehicle accident. Significantly, the jury did not award damages for any further treatment or surgery.

Importantly, as a result of pre-trial *Motions in Limine*, the Court excluded all evidence of liability related to the cause of the accident and limited Plaintiff's introduction of medical bills. In the end, the jury award totaled $27,000 or less than 5% of the amount sought by Plaintiff in the trial.

Plaintiff v. Defendant Retail Big Box Store

Premises Liability | Favorable Verdict

Attorney(s): Jeffrey Benson, Esq.; Anthony Petrillo, Esq.
Plaintiff Counsel: Morgan & Morgan



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Favorable Verdict | Morgan & Morgan | $266K Net Verdict | $2.5 Million Demand | Admitted Liability

On October 25, 2024, Tampa Partners Jeff Benson and Tony Petrillo obtained a favorable verdict for a big box store in matter styled *Plaintiff v. Defendant Retail Big Box Store*. Plaintiff was struck and orthopedically pinned by an allegedly overloaded industrial freight cart. Liability was admitted and there was no comparative fault defense. *Read more on page 6.*

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

Plaintiff claimed the incident aggravated significant prior degenerative disc disease resulting in a laminectomy at L4-5 as well as other substantial chiropractic and pain management treatment. Plaintiff also claimed she would require a future SI joint fusion and future cervical surgery. Trial involved several experts on complex medical issues, the most notable being pre-existing undiagnosed neurogenic claudication.

The jury returned a verdict of $166K for past medical expenses (exact amount claimed) and only $100k for past pain and suffering. The jury made no award for Plaintiff's claimed future medical expenses and future pain and suffering. The gross verdict was remarkably close to the pretrial offer and a substantial victory given Plaintiffs demand of $2.5M.

Plaintiff v. Defendant Retail Store

Premises Liability – Struck on Head | Defense Verdict

Attorney(s): Dorsey Miller, Esq.; William Peterfriend, Esq.
Plaintiff Counsel: Rubenstein Law

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Defense Verdict – Rubenstein Law – Premises Liability

On October 22, 2024, Senior Partner Dorsey Miller and Managing Partner William Peterfriend obtained a compete defense verdict in a premises liability matter styled *Plaintiff v. Defendant Retail Store*. The Plaintiff claimed Defendant Retail Store negligently allowed a 10-foot downspout to fall out of its display, thereby striking Plaintiffon the head. The Plaintiff subsequently claimed that she suffered a neck injury which resulted in surgery. The court bifurcated liability and damages. At trial, Plaintiff argued that the display dangerouslyallowed a downspout to be 14 feet off the ground with inadequate protection from falling and striking customers. The Defense was able to elicit testimony from Plaintiff and her partner that they never saw the downspout before it hit her, had no idea where it fell from, have no idea where it was before it hit her and admitted there were two other customers within the vicinity of the display. During closing arguments, Defense argued Plaintiff's case was solely based upon speculation with no direct evidence of negligence. The jury returned a verdict finding no negligence within 15 minutes.

Personal Representative of the Estate of Decedent v. Marley

Wrongful Death Auto Liability | Defense Verdict

Attorney(s): Juan Ruiz, Esq.; Michael Kestenbaum, Esq.
Plaintiff Counsel: The Schiller Kessler Group and McCullough & Leboff, P.A.

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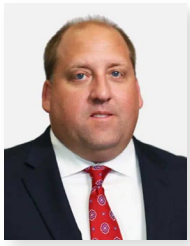

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Wrongful Death Auto Liability – Defense Verdict

On July 18, 2024, Orlando Partners Juan A. Ruiz and Michael H. Kestenbaum obtained a defense verdict in a wrongful death auto liability matter styled *Personal Representative of the Estate of Decedent v. Marley*. The plaintiff filed suit against defendant, Marley, alleging negligence in the wrongful death of Decedent.

Plaintiff alleged that the defendant was operating his vehicle on eastbound Interstate 4 in an unsafe manner leading to a motor vehicle accident, which caused his vehicle to spin and flip. As a result of the vehicle flipping, the decedent, an unbelted rear seat, passenger, was ejected, and killed. The defense, unable to rebut the allegations of negligence, chose to defend this matter on causation as a result of the plaintiff not wearing his seatbelt.

At trial, the defense presented testimony from, John F. Abercrombie, M.D., MS, FACEP, a biomedical expert, who testified that the failure to wear a seatbelt was the approximate cause of the ejection, which was the approximate cause of death. The jury deliberated for 2.5 hours before returning a complete defense verdict. Post trial motions are pending. The defense is entitled to prevailing party costs.

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

Plaintiff v. Versailles at Wellington Association
Premises Liability | Defense Verdict
Attorney(s): Franklin Sato, Esq.; William Peterfriend, Esq.
Plaintiff Counsel: Morgan & Morgan

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Defense Verdict – Trip and Fall – Morgan & Morgan – Plaintiff Demanded Approx. $600K

On September 26, 2024, Managing Partners Frank Sato and William Peterfriend obtained a compete defense verdict in a premises liability matter styled *Plaintiff v. Versailles at Wellington Association*. The Plaintiff claimed she tripped and fell on a raised sidewalk located within her community. The Plaintiff subsequently claimed she suffered a partial rotator cuff tear in her right arm. Attrial, Plaintiff's liability expert testified that the sidewalk violated various building codes. Her orthopedic surgeon testified she would need a surgery to her right shoulder. During closing arguments, Plaintiff demanded close to $600,000 for her pain and suffering, after dropping her past and future claim for medical bills. The defense was able to have Plaintiff admit on cross examination that the only reason for her trip and fall was that she wasn't watching where she was walking. The defense was also able to show that her conditions pre-dated the date of the fall. The jury returned a verdict finding no negligence.

Jesus Guerra v. Defendant Insurance Company
First-Party Property | Defense Verdict
Attorney(s): Otto Espino, Esq.; Karma Hall, Esq.
Plaintiff Counsel: Greenberg Stone & Urbano

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On September 17, 2024, Miami Partners Otto Espino and Karma Hall obtained a defense verdict in a First-Party Property matter styled *Jesus Guerra v. Defendant Insurance Company*. The Plaintiff filed suit against defendant alleging breach of contract in failing to pay benefits for a Hurricane Irma claim.

Plaintiff alleged he suffered roof damages and ensuing rain water leaks at his home as a result of the hurricane on September 10, 2017. However, the first notice of the claim was provided to Defendant on March 20, 2019, about 18 months later. During Defendant's inspection, the water damages inside the home were significant and advanced. However, the roof inspection did not find any wind-related damages. Defendant contended plaintiff let the damages worsen since the date of loss and had failed to properly protect the property from continued water damages. Prejudice from the failure to protect the property and mitigate damages was Defendant's first affirmative defense.

At trial, the defense presented testimony from Ryon Plancer, P.E. while Plaintiff presented testimony from Chris Thompson, P.E. The experts agreed as to the general weather conditions related to the storm. Both agreed the continued rain water intrusions would worsen damages.

The experts disputed whether there were any storm damages. At the close of the Defendant's case, the Court entered a partial directed verdict finding that notice was deemed late as a matter of law. The Court instructed the jury that they were only to consider whether Plaintiff had removed Defendant's presumed prejudice from this late notice. The jury deliberated for one hour before returning a defense verdict on the issue of prejudice. Post trial motions are pending. The defense is entitled to prevailing party costs and will be seeking recovery of attorney fees based on a proposal for settlement.

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

Plaintiff v. VyStar Financial Group, LLC
Premise Liability | Favorable Verdict
Attorney(s): Zachary Brewer, Esq.; Deana Dunham, Esq.
Plaintiff Counsel: Farah & Farah

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Deana Dunham, Esq.
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Plaintiff asked the jury for damages of approx. $14 million – Jury Returned Verdict of $307K

On August 23, 2024, Jacksonville Partners Zachary Brewer and Deana Dunham prevented a nuclear verdict in a premises liability matter styled *Plaintiff v. VyStar Financial Group, LLC*. The plaintiff filed suit against defendant, VyStar Financial Group, alleging that Defendant failed to maintain its premises in a reasonably safe condition and failed to warn Plaintiff of a hazardous condition about which Defendant knew or should have known.

Plaintiff alleged that, on June 3, 2019, while she was an invitee on Defendant's premises, Plaintiff entered an elevator which malfunctioned, causing the Plaintiff to fall and sustain injuries Plaintiff maintained that she was going to the 14th floor and, as she ascended, the elevator started to experience mechanical malfunctions, and then started to descent at a rapid, freefall pace, and suddenly stopped near or on the main level. As a result of this incident, Plaintiff claimed injuries to her neck and back, problems with her memory, and mental health conditions including depression, anxiety and post-traumatic stress disorder.

At trial, the defense presented testimony from three elevator technicians who had worked in the building and inspected the elevator to establish that it would have been impossible for the incident to have occurred as Plaintiff claimed. Specifically, that it would have been impossible for the elevator to have free fallen. The defense also offered testimony from mechanical engineer and Qualified Elevator Inspector, Lawrence Marley, to establish that the elevator came to a controlled stop. Biomechanical engineer, Ming Xiao, established that the force involved in the controlled stop would have been equivalent to the force felt in a half-inch hop off the ground.

During closing arguments, Plaintiff asked the jury for damages of approximately $14 million. The jury deliberated for 4 hours before returning a verdict of $307,000 against Defendant.

Susan Bolton v. DP Development
General Liability | Favorable Verdict
Attorney(s): Derrick Kelly, Esq.; Madeline Dixon, Esq.
Plaintiff Counsel: CMS Law Group

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Madeline Dixon, Esq.
Associate (Miami)
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Senior Partner Derrick M Kelly, Esq., and Associate Madeline Dixon, Esq., obtained a favorable result in a general liability negligence matter that prevented their client from incurring significant damages, including attorney's fees. Plaintiff Susan Rae Bolton, as trustee of the Betty J. Whitlock Trust, filed a property damage lawsuit against DP Development, LLC, alleging that its asphalt paving crew negligently applied hot asphalt near a wooden garage structure during a private parking lot paving project, that caused a fire that completely consumed the attached garage structure used for storage, and caused extensive smoke and soot damage to the main structure, estimated as high as $895,000 to repair. In addition, the fire resulted in a business tenant vacating the premises, as it was no longer inhabitable for business operation.

The case was contested on both liability and damages, and consisted of 17 depositions, including multiple depositions of experts, a corporate representative for FPL, and numerous fact witnesses. Plaintiff served a PFS in October 2023, when at that time, only four depositions had been taken. The disputed issues of liability involved contested evidence regarding whether the fire started inside or outside the garage based on fire patterns, consumption rate of wood and beams, and other information. Damages was contested based on the proper measure of damages, as well as what metric for the measure of damages to use. Defendant filed a Motion in Limine requesting that the Court determined that the proper measure of damages for the real property was limited to the diminution in value, as opposed to repair and replacement costs. *Read more on page 9.*

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

The Court, the Honorable George Paulk, agreed. The only issue remaining was the proper measure of the diminution in value. Plaintiff argued that the proper measure of diminution in value was $425,000, after consideration of retroactive valuation of property preceding fire, and post-fire valuation. Defendant argued that the proper measure of diminution in value was $192,000, as estimated by the Brevard County Property Appraiser's Office. The first day of trial, Plaintiff demanded $795,000. At trial, Defense counsel got Plaintiff's diminution in value expert to agree that the valuation of the Brevard County Property Appraiser's Office was a legitimate metric, even if he disagreed. In addition, at trial, Defendant filed a Motion for Directed Verdict on Plaintiff's claim of future loss business rent for failure to produce adequate document Terry evidence to support as payment of rent.

Liability was contested to the very end, with the jury asking questions of witnesses that went to the heart of liability. Plaintiff requested $495,000 from the Jury. Defendant strategically conceded certain hard cost and miscellaneous damages, while challenging the diminution in value and claims of lost future rent. Ultimately, the jury returned a verdict of $369,000. This led Plaintiff's lead counsel to request the Court poll the jury to ensure that it was everyone's verdict.

Steven Martin v. Progressive American Insurance Company

Coverage | Summary Judgment

Attorney(s): Jessalea Shettle, Esq.
Plaintiff Counsel: Rob Cook, P.A.

Jessalea Shettle, Esq.
Junior Partner (Tampa)
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On July 31, 2024, Jessalea Shettle, Tampa Partner, obtained a final summary judgment in a coverage matter entitled *Steven Martin v. Progressive American Insurance Company*. Plaintiff was struck by an underinsured motor vehicle while riding a motorcycle. Pre-suit, Progressive denied coverage under the subject insurance policy's exclusion which excluded UM coverage on non-stacked policies when the insured was injured while occupying a motor vehicle the insured owned that was not listed on the subject policy. Plaintiff filed a declaratory action seeking UM coverage by challenging multiple aspects of the Progressive policy, including the validity of the UM Selection rejection form, and the use of multiple definitions of a single word within different sections of the policy. Plaintiff also attempted to circumvent the exclusion in the policy by arguing because he was ejected from the motorcycle and landed on the the vehicle that hit him, he was in fact occupying an uninsured motor vehicle he did not own at the time of his injury. Ms. Shettle successfully defended the use multiple definitions for a word or phrase in different sections of the policy pursuant to the various applicable Florida Statutes and use of bolded vs. non bolded terms within the policy. In addition, Ms. Shettle defended the validity of the UM Selection form and successfully utilized the approval of the form by the Office of Insurance Regulation to prohibit the insured's challenge of same. Ms. Shettle also successfully argued the conclusion that occupancy in an accident remains with the original vehicle despite an involuntary ejection from the vehicle. The Court held that because Plaintiff was riding a motorcycle he owned at the time of the initial impact, the subject exclusion applied, and upheld both Progressive's form and policy language.

Chastain v. Imperial Lakes Estates Condominum Association, Inc.

Appeals | Litigation Support | Appellate Win

Attorney(s): Bonnie Sack, Esq.; Anthony Petrillo, Esq.

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Anthony Petrillo, Esq.
Managing Partner (Tampa)
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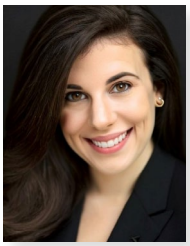
Miami Appellate Partner Bonnie Sack secured an appellate victory in the Second District Court of Appeal in the matter styled *Chastain v. Imperial Lakes Estates Condominium Association, Inc*. At the trial level, we obtained summary judgment on behalf of the condominium association based on workers' compensation immunity. The plaintiff was allegedly injured while working for one of our subcontractors. The nuanced legal issue concerned whether the association itself was a contractor that could avail itself of worker's compensation immunity as the statutory employer of the employees of its subcontractor. Plaintiff argued that the Association's duty to maintain association property is a statutory duty and therefore the association could not be a statutory employer under 440.10. *Read more on page 10.*

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

We argued that the Declaration of Association is a contract that] obligates the Association to provide a service to the unit owners, in this case landscaping and irrigation. There is arguably a split on this issue between the Third and Fourth Districts, with the trial court, Judge Charles Sniffen, Circuit Court for Manatee County, finding that the association was the statutory employer. The Second District agreed, affirming without a written opinion. Additionally, the appellate court granted our Motion for Appellate Fees based on a rejected proposal for settlement.

Plaintiff v. Lamplighter MHP Associates LC
Premises Liability | Motion for Summmary Judgment Granted
Attorney(s): Nora Bailley, Esq.; Zoe Nelson, Esq.
Plaintiff Counsel: Morgan & Morgan



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Zoe Nelson, Esq.
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Stuart Senior Partner Nora Bailey, Esq. and Stuart Associate Zoe Nelson, Esq. prevailed on a Motion for Summary Judgment in a premises liability matter styled *Plaintiff v. Lamplighter MHP Associates LC*. The insured was a property owner/landlord of a mobile home park. Plaintiff was hired by one of the tenants to perform pressure cleaning services on her mobile home, and allegedly sustained personal injury after he slipped and fell on the adjoining curtilage connecting the tenant's driveway to the street. Specifically, Plaintiff alleged that he slipped on an old, oily substance and was injured. However, the only evidence supporting Plaintiff's claim was his own testimony and one photograph of the subject location taken one month after the incident. Plaintiff admitted Lamplighter MHP Associates LC had no actual notice of a dangerous condition. Defendant argued that a slip and fall alone is insufficient to establish constructive notice; there must be more facts, for example, footprints indicating that the alleged transitory substance existed for a sufficient period of time that Defendant knew or should have known about its existence.

In addition, Defendant argued that this was a classic stacking of inferences case, and the Court could not rely on the inference that Plaintiff slipped on an allegedly old, oily substance to the exclusion of all other inferences and absent evidence to support same. The Defendant argued that it was equally possible that Plaintiff slipped on the pressure cleaning fluid that he used moments prior to the fall or water from the runoff of the pressure cleaning. Judge Naberhaus agreed and granted the Motion for Summary Judgment.

Plaintiff v. Wellington Regional Medical Center, et al
Medical | Healthcare | Summary Judgment
Attorney(s): Jerome Silverberg, Esq.
Plaintiff Counsel: Searcy Denney

Jerome Silverberg, Esq.
Senior Partner (Fort Lauderdale)
JSilverberg@insurancedefense.net

On September 13, 2024, Senior Partner Jerome Silverberg obtained summary judgments in favor of our insured physician and his employer in matter styled *Plaintiff v. Wellington Regional Medical Center, et al*. Plaintiff was expected to board total economic damages in excess of $25M. The matter involved a 46-year-old female that had suffered a stroke and underwent an embolectomy and was recovering well with minimal deficits. Approximately one week later, her neurological status changed. A third year resident was called who ordered a CT Scan. However, a stroke alert was not called for four hours later. The patient requires full time care. Our doctor was allegedly charged with supervising the resident in the hospital's residency program. Our doctor's employer participated and assisted the hospital in the residency program and was obligated to provide qualified physicians to perform professional graduate medical education and supervisory services to the hospital's residents. We were able to establish that our doctor was not on the schedule to supervise residents on the date in question and that the resident at no time sought supervision from our doctor or any other physician. We were also able to establish that the hospital's residency program was created, developed and operated by the hospital and a Chief Academic Officer employed directly by the hospital having nothing to do with our physician's employer.

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

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

Appeals | Litigation Support | Appellate Win – Affirmed the trial court's involuntary dismissal of this case.

Attorney(s): Edgardo Ferreyra, Esq.; Lucas Gargaglione, Esq.; Luis Menendez-Aponte, Esq.

Plaintiff Counsel: Rosenquest Law Firm, P.A.; Squire, Patton, Boggs

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Lucas Gargaglione, Esq.
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Luis Menendez-Aponte, Esq.
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On October 16, 2024, after having heard oral argument, the Third District Court of Appeal rendered a per curiam opinion affirming the trial court's order granting involuntary dismissal after a non-jury trial in the 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. To do so, the Plaintiff sought a declaratory judgment from the Court that the easements were appurtenant and 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 adjoining landowner/developer by establishing that the easements were in gross. The issue on appeal was whether the easements are appurtenant or in gross. On appeal, PAJ argued that the easements were appurtenant because they are perpetual, non-exclusive, granted ingress and egress, and allowed for other permissible uses, all of which would be essential to development of the property. While Senior Appellate Partner Edgardo Ferreyra, Jr., on behalf of the Association maintained that the easements were in gross, because the prior easement holder did not own any property, and therefore, not attached to an estate, as well as that the language of the easements did not reference any dominant estate. The appellate court agreed with the Association, finding that the easements were not connected to a dominant and the prior easement holder did not own the dominant tenement. Thus, an easement appurtenant never comes into existence. Although easements in gross are not favored by the common law the Third District noted that it could not ignore the fact that the necessary elements of easements appurtenant were missing. Accordingly, it affirmed the trial court's involuntary dismissal of this case.

Plaintiff v. Dr. David Berkower, Dr. Ignacio Zebaleta and Ventre Medical Associates

Medical | Heathcare | Motion to Dismiss without Prejudice Granted

Attorney(s): Jerome Silverberg, Esq.

Plaintiff Counsel: Gitkin Law

Jerome Silverberg, Esq.
Senior Partner (Fort Lauderdale)
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On September 17, 2024, Senior Partner Jerome Silverberg was granted Dismissal without Prejudice in matter styled *Plaintiff v. Dr. David Berkower, Dr. Ignacio Zebaleta and Ventre Medical Associates*. The Plaintiff was a psychiatric patient that allegedly overdosed on medications prescribed. The Plaintiff served a Notice of Intent that was deficient due to the claimed failure of the Plaintiff to comply with the statutory pre-suit requirements pursuant to Fla. Stat. 766.1065 requiring the Plaintiff to include medical authorizations for release of Plaintiff's medical records from health care providers as a part of the Notice of Intent. It was claimed that the Plaintiff's Notice of Intent was deficient in a number of other respects. However, the Court dismissed the case on the failure to comply with Fla. Stat. 766.1065. The defense further asserted that the case law is clear that the Plaintiff cannot now cure the defects in the Notice of Intent as the Statute of Limitations has expired.

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

Plaintiff v. Joseph Ryan Grider, DDS, Juan Alberto, DDS, Clear Choice Dental Implant Centers, et al.

Dental Malpractice | Voluntary Dismissal with Prejudice

Attorney(s): Jerome Silverberg, Esq.

Plaintiff Counsel: Law Offices of Klemick and Gampel, P.A.

Jerome Silverberg, Esq.
Senior Partner (Fort Lauderdale)
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On June 5, 2024, Senior Partner Jerome Silverberg was granted Dismissal with Prejudice in matter styled *Plaintiff v. Joseph Ryan Grider, DDS, Juan Alberto, DDS, Clear Choice Dental Implant Centers, et al*. The Plaintiff presented to Clear Choice with a history of prior jaw damage as a result of an injury that she had received years earlier. She had teeth missing and jaw damage. The Plaintiff sought to have a dental prothesis. The prosthodontist recommended a Zirconia DAO4 ("all on fours") upper and lower arch prosthetic replacement. Pursuant to the prosthodontic plan, Dr. Grider, a Board Certified Oral and Maxillofacial Surgeon removed the patient's remaining teeth and inserted the implants for placement of the prosthesis. The Plaintiff was dissatisfied with the fit and sued claiming damages. It was alleged that Dr. Grider removed too much bone when contouring the teeth extractions. Following the deposition of the Plaintiff's expert and a Motion to Strike the expert for the failure of the Plaintiff to present a qualified expert pursuant to Fla. Stat. 766.102(5)(a), as well as the inability to present testimony of how much bone was removed or that the amount of bone removed was below the standard of care, the Plaintiff voluntarily dismissed the action with prejudice as against Dr. Grider. The case is proceeding against the prosthodontist.

JG Prime Services, LLC (A/A/O Gavin Gosik) v. Defendant Insurance Company

First-Party Property | Summary Judgment

Attorney(s): Tabitha Jackson, Esq.; Alexis Oldham, Esq.

Plaintiff Counsel: Jose C. Leon

Tabitha Jackson, Esq.
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Alexis Oldham, Esq.
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Gainesville Junior Partner Tabitha Jackson, Esq. and Associate Alexis Oldham, Esq. obtained a favorable result in a first party property matter styled *JG Prime Services, LLC (A/A/O Gavin Gosik) v. Defendant Insurance Company*. Plaintiff filed suit against Defendant Insurance Company for breach of contract. Specifically, Plaintiff AOB company claimed that there was an alleged wind event in which a tree fell on the Insured's roof, causing damage to the soffits, shingles, and water entry damage to multiple rooms. Pre-suit, the insurance carrier issued benefits via arbitration and resolved the insured's claim. Aside from his own claim for insurance benefits, the insured executed multiple assignments of benefits purportedly permitting JG Prime Services, LLC to seek additional insurance benefits above and beyond what was already paid and agreed to. In total, there were four assignments seeking additional monies under the policy for water mitigation, shrink wrap, dry out, and mold.

Benefits were issued pursuant to the policy to JG Prime for mold, and for Emergency Services. Though the mold policy limits were exhausted – JG Prime was persistent in its claim for additional monies over and above the policy limits. Defendant filed its Motion for Summary Judgment, arguing that no additional policy benefits were owed to Plaintiff. Defendant based its argument on the policy language, their affirmative defenses, and §627.7152, Florida Statutes. The Court agreed with Defendant in total, adopting the proposed order almost word for word. Defendant carrier has an expired Proposal for Settlement and plans to pursue costs and fees per Rule 1.442, Florida Rules of Civil Procedure and § 768.79, Florida Statutes.

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

Ernesto Perez v. Defendant Insurance Company
First-Party Property | Summary Judgment
Attorney(s): David Pascuzzi, Esq.
Plaintiff Counsel: Natsha Floyd, Property Litigation Group, PLLC

David Pascuzzi, Esq.
Junior Partner (Boca Raton)
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Boca Raton Partner David J. Pascuzzi, Esq. obtained summary judgment on a named peril policy Ian claim denied for no wind damage/no peril created opening in matter styled *Ernesto Perez v. Defendant Insurance Company*. Plaintiff alleged a breach of a property insurance policy based on the denial of a Hurricane Ian claim for no wind damage to the flat roof of the home. At his deposition, the insured admitted that before Ian, he had water damage to a closet ceiling that he did not repair but repaired bubbles that had formed on the flat roof. He reported the claim because there were new bubbles. Insurer moved for summary judgment arguing there was no evidence supporting any wind damage and that the claimed interior damage existed before Hurricane Ian. The insured submitted an engineer report adopted by affidavit indicating that the roof had sustained Hurricane Ian damage that caused a leak and interior water damage. The insurer moved to strike the affidavit and report as conclusory, barred by Daubert and based on improper stacking of inferences. The Court agreed striking the affidavit and entering summary judgment in favor of the insurer.

Mercedes Mejia et al v. Defendant Insurance Company
First-Party Property | Final Summary Judgment
Attorney(s): Anthony Perez, Esq.; Cristina Sevilla, Esq.
Plaintiff Counsel: Mineo Salcedo Law Firm

Anthony Perez, Esq.
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Cristina Sevilla, Esq.
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Miami Senior Partner Anthony Perez and Junior Partner Cristina Sevilla secured final summary judgment in the matter styled *Mercedes Mejia et al 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 Tropical Storm Eta. As Plaintiffs reported their claim 1 ½ years after Tropical Storm Eta, 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 was entitled to a presumption of prejudice, and that Plaintiffs failed to rebut that prejudice, as the Affidavit of Guillermo Salinas on which Plaintiffs relied was conclusory, unsupported, and insufficient. Final Summary Judgment was entered in favor of Defendant.

Read more Summary Judgments & Appellate Results on page 14.

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

First Respond Mitigation Services a/a/o Thomas G. Downes v. Defendant Insurance Company

First-Party Property | Dismissal with Prejudice

Attorney(s): Anthony Perez, Esq.

Plaintiff Counsel: Vargas Gonzalez Baldwin Delombard

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

Miami Senior Partner Anthony Perez secured a dismissal with prejudice in the matter styled *First Respond Mitigation Services a/a/o Thomas G. Downes 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, 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 was also awarded entitlement to the recovery of its attorneys' fees and costs incurred defending this lawsuit. Plaintiff reimbursed Defendant for those fees and costs.

Tarp & Restoration Geeks Corp. a/a/o Libia Jamaica v. Defendant Insurance Company

First-Party Property | Dismissal with Prejudice

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

Plaintiff Counsel: Roger A. Alvarez, P.A.

Miami Senior Partner Anthony Perez and Associate Brittany Pryce secured a dismissal with prejudice in the Lee County matter styled *Tarp & Restoration Geeks Corp. a/a/o Libia Jamaica 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. In advance of the hearing on Defendant's motion, the case was dismissed with prejudice.

Mold Details Corporation a/a/o Michael Sapoznik v. Defendant Insurance Company

First-Party Property | Dismissal with Prejudice

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

Plaintiff Counsel: Kandell, Kandell & Petrie

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Brittany Pryce, Esq.
Associate (Miami)
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Miami Senior Partner Anthony Perez, Junior Partner Cristina Sevilla, and Associate Brittany Pryce secured a dismissal with prejudice in the matter styled *Mold Details Corporation a/a/o Michael Sapoznik v Defendant Insurance Company*. Plaintiff filed its initial 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 for Summary Judgment, contending that Plaintiff's notice of intent to initiate litigation was premature and failed to comply with Florida Statute §627.7152. In advance of the hearing on Defendant's motion, Plaintiff dismissed the case without prejudice. Two years later, after attempting to correct its defective notice of intent, Plaintiff filed this second lawsuit. Pursuant to §627.7152(10), Defendant sought to collect the attorneys' fees and costs incurred defending the first lawsuit dismissed by Plaintiff. In lieu of reimbursing Defendant for those fees and costs, Plaintiff dismissed the matter with prejudice.

Read more Summary Judgments & Appellate Results on page 15.

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

Brickhouse Inspections, Inc. a/a/o Shameka Murphy v. Defendant Insurance Company

First-Party Property | Dismissal with Prejudice

Attorney(s): Anthony Perez, Esq.

Plaintiff Counsel: Insurance Litigation Group

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

Miami Senior Partner Anthony Perez secured a dismissal with prejudice in the matter styled *Brickhouse Inspections, Inc. a/a/o Shameka Murphy 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. Just minutes before the hearing on Defendant's motion, the case was dismissed with prejudice.

Hilda Irene Lopez v. Defendant Insurance Company

First-Party Property | Dismissal with Prejudice

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

Plaintiff Counsel: Gold Litigation

Miami Senior Partner Anthony Perez and Associate Brittany Pryce secured a dismissal with prejudice in the matter styled *Hilda Irene Lopez v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for her claim for damage to the roof and interior of her property resulting from a windstorm. Defendant maintained its position on the denial of coverage based on the policy's exclusion for damage caused by wear and tear, and the lack of any evidence of a peril created opening in the roof that allowed rainwater to enter the property. On the eve of the hearing on Defendant's motion for order to show cause regarding Plaintiff's failure to comply with a court order, Plaintiff dismissed the case with prejudice.

Vincent Baumert et al v. Defendant Insurance Company

First-Party Property | Dismissal with Prejudice

Attorney(s): Anthony Perez, Esq.; Keyondra Parrish, Esq.

Plaintiff Counsel: Duboff Law Firm

Keyondra Parrish, Esq.
Senior Associate (Miami)
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Miami Senior Partner Anthony Perez and Associate Keyondra Parrish secured a dismissal in the Broward County matter styled *Vincent Baumert et al 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 Ian. Defendant maintained its position on the denial of coverage based on the policy's exclusion for damage caused by wear and tear, and the lack of any evidence of a peril created opening in the roof that allowed rainwater to enter the property. With a trial date approaching, Plaintiff dismissed the case with prejudice.

Payless Response Team d/b/a Waterresto USA a/a/o Yasmina Martinez v. Defendant Insurance Company

First-Party Property | Dismissal with Prejudice

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

Plaintiff Counsel: Insurance Litigation Group

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

Miami Senior Partner Anthony Perez and Senior Associate Alec Teijelo secured a dismissal with prejudice in the matter styled *Payless Response Team d/b/a Waterresto USA a/a/o Yasmina Martinez 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 Plaintiff's engineer, Alfredo Brizuela, where Mr. Perez secured testimony undermining his expert opinions, Defendant filed its Motion to Strike Alfredo Brizuela. In advance of the hearing on Defendant's motion, and with an approaching trial date, Plaintiff dismissed the case with prejudice.

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

Virginia Freitas Pinto v. Defendant Insurance Company

First-Party Property | Dismissal with Prejudice

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

Plaintiff Counsel: Mario Serralta & Associates

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Alec Teijelo, Esq.
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Miami Senior Partner Anthony Perez and Senior Associate Alec Teijelo obtained a dismissal with prejudice in the matter styled *Virginia Freitas Pinto v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for her claim for damage to the roof and interior of her property resulting from Tropical Storm Alex. Following the deposition of the insured, during which Mr. Teijelo secured favorable testimony in support of Defendant's position that the damage pre-existed the policy period, Plaintiff dismissed the case with prejudice.

Procesa Corp v. Defendant Insurance Company

First-Party Property | Dismissal with Prejudice

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

Plaintiff Counsel: Vargas Gonzalez Baldwin Delombard

Miami Senior Partner Anthony Perez and Senior Associate Alec Teijelo secured a dismissal in the matter styled *Procesa Corp v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for its claim for damage to the roof and interior of its property resulting from a windstorm. Defendant filed its Motion for Summary Judgment, based on the policy's exclusions for existing damage, and the lack of any evidence of a peril created opening in the roof that allowed rainwater to enter the property. In advance of the hearing on Defendant's motion, Plaintiff dismissed the case with prejudice.

Oristilla Orihuela v. Defendant Insurance Company

First-Party Property | Dismissal with Prejudice

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

Plaintiff Counsel: De Prado De La Osa

Miami Senior Partner Anthony Perez and Senior Associate Alec Teijelo secured a dismissal in the matter styled *Oristilla Orihuela v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for her claim for damage to the roof and interior of her property resulting from a windstorm. Defendant filed its Motion for Summary Judgment, based on the policy's exclusions for damage cause by wear and tear and inadequate repairs, and the lack of any evidence of a peril created opening in the roof that allowed rainwater to enter the property. Just before the hearing on Defendant's motion, Plaintiff dismissed the case with prejudice.

Well Done Mitigation LLC a/a/o Oristilla Orihuela v. Defendant Insurance Company

First-Party Property | Dismissal with Prejudice

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

Plaintiff Counsel: Florida Insurance Law Group

Miami Senior Partner Anthony Perez and Senior Associate Alec Teijelo secured a dismissal with prejudice in the matter styled *Well Done Mitigation LLC a/a/o Oristilla Orihuela 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, 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. Just minutes before the hearing on Defendant's motion, Plaintiff dismissed the case with prejudice.

Read more Summary Judgments & Appellate Results on page 17.

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

Gloria Gonzalez v. Defendant Insurance Company
First-Party Property | Dismissal with Prejudice
Attorney(s): Anthony Perez, Esq.; Zuriel Denmark, Esq.
Plaintiff Counsel: Morgan Law Group

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Miami Senior Partner Anthony Perez and Tallahassee Associate Zuriel Denmark secured a dismissal with prejudice in the Leon County matter styled *Gloria Gonzalez v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for her claim for damage to the roof and interior of her property resulting from a windstorm. During mediation, Plaintiff was shown evidence of existing damage to her roof that directly contradicted the allegations asserted in this lawsuit. Plaintiff immediately dismissed the case with prejudice. Defendant further argued that Plaintiff's Response in Opposition lacked any admissible evidence opposition evidence creating a material fact as Plaintiff's sworn deposition testimony makes clear she never witnessed any overflow or leaking of water on or about the date of loss, and relies entirely on what others have told her. Defendant argued one Affidavit submitted in opposition was inadmissible as the witness was previously stricken and that any deposition testimony made by Plaintiff regarding what she was told by other persons is inadmissible hearsay.

The Court agreed. Although Plaintiff argued Defendant failed to present evidence of excluded damage caused by constant or repeated seepage or leakage of water and that Defendant's Corporate Representative's Affidavit was inadmissible due to lack of personal knowledge, the Court found that the Field Adjuster's Report was properly introduced as a business records via Defendant's Corporate Representative's Affidavit, as permitted by Florida Rule of Evidence 90.803(6), and that Florida's 3d DCA, in *Mesa v. Citizens*, 358 So.3d 452 (Fla. 3d DCA 2023), expressly contemplated that a field adjuster's report can be admissible as a business record. The Court held no admissible evidence was introduced by Plaintiff to dispute Defendant's position that the damage is the result of constant or repeated seepage or leakage of water. Moreover, to the extent that Plaintiff's deposition testimony is a recitation of Plaintiff's understanding of events as told to her by others, such statements are inadmissible hearsay. Defendant's Motion for Summary Judgment was granted. Post trial motions are pending. The defense is seeking fees pursuant to a PFS as well prevailing party costs.

Carleen Carthy v. Defendant Insurance Company
First Party Insurance Litigation | Summary Judgment
Attorney(s): Karma Hall, Esq.
Plaintiff Counsel: Your Insurance Attorney, P.L.L.C.

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On May 01, 2024 (Order entered May 10, 2024), Karma Hall, Miami Partner, obtained a final summary judgment in a first-party matter entitled *Carleen Carthy v. Defendant Insurance Company*. Plaintiff sued Defendant for breach of contract based on a denial of claim letter issued by Defendant Insurance Company citing the Policy's exclusion for constant or repeated seepage or leakage of water provision.

Dialys Cabello Gonzalez and Ainier Ramon Vidal Plasencia v. Defendant Insurance Company
First-Party Property | Summary Judgment
Attorney(s): William Dennis, Esq.
Plaintiff Counsel: Garcia-Menocal, Irias & Pastori

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Senior Associate Attorney William Dennis, Esq., obtained a favorable result in a first party property matter styled *Dialys Cabello Gonzalez and Ainier Ramon Vidal Plasencia v. Defendant Insurance Company*. Plaintiffs filed suit against Defendant Insurance Company for breach of Contract. They specifically claimed that their

Read more on page 18.

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

bathroom and kitchen sinks were backing up, causing flooding/water damage. Defendant Insurance Company requested a recorded statement from the Plaintiffs, as well as other documents, but never received them. Defendant also hired a Professional Engineer, who opined that any damage to the bathroom and kitchen area was caused by wear and tear. The Plaintiffs sent an invoice for $22,207.67 as well as an estimate of damages for $117,698.41.

Defendant filed its Motion for Summary Judgment, arguing that the Plaintiffs failed to comply with their post loss duties, which indemnified Defendant from payment for this claim. Further, Defendant argued that any damage to the subject property was caused by wear and tear, which is not covered under the Plaintiffs' insurance policy. The Court, and Honorable Judge Don T. Hall agreed with Defendant, and entered an Order for Final Summary Judgment in favor of the Defendant. The plaintiffs rejected Defendant's Proposal for Settlement, which means that they will be required to pay for Attorneys fees and costs incurred by Defendant.

Debora Pratz v. Defendant Insurance Company
First-Party Property | Dismissal
Attorney(s): Anthony Perez, Esq.; Mike Ortiz, Esq.
Plaintiff Counsel: Morgan Law Group

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Miami Senior Partner Anthony Perez and Tampa Associate Mike Ortiz secured a dismissal in the Hernando County matter styled *Debora Pratz v. Defendant Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for her claim for damage to the roof and interior of her property resulting from a windstorm. Defendant filed its Motion for Summary Judgment, based on the policy's exclusion for damage cause by wear and tear, and the lack of any evidence of a peril created opening in the roof that allowed rainwater to enter the property. Just minutes before the hearing on Defendant's motion, Plaintiff dismissed the case.

Marjorie Normand v. TransWaste, Inc.
Property | Judgment in Favor of the Defendant
Attorney(s): Cassian Harman, Esq.
Plaintiff Counsel: Law Offices of Samuel S. Reidy

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After a trial before a Magistrate on November 1, 2024, Boston Associate Cassian Harman obtained a Judgment for the Defendant, TransWaste, Inc. in the property matter styled *Marjorie Normand v. TransWaste, Inc*. The Plaintiff claimed Defendant negligently drove a tractor-trailer across her driveway while delivering a dumpster to her neighbor, causing significant damage. The Plaintiff subsequently claimed that she lost the ability to use her driveway and that it required total reconstruction. At trial, Plaintiff used photographic evidence, witness testimony, and police report to argue that the weight of the truck and the route the driver took during the delivery proved Defendant was liable for the damage. The Defense was able to use the photographic evidence to cross-examine the Plaintiff's witness and elicit testimony that another trucking company removed a dumpster from the property prior to Defendant's delivery. Further, Defendant was able to show that the tire tread prints on Plaintiff's driveway were not the same as those on the tires used in Defendant's trucks. Defense argued Plaintiff's case was solely based upon speculation with no direct evidence of fault. On 11/5/2024, the Magistrate entered a Judgement in favor of the Defendant.

GAINESVILLE OFFICE OPENING

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Luks & Santaniello is pleased to announce the opening of its Gainesville office located at 602 South Main Street, Suite 207. John Bringardner, Gainesville Managing Partner will be joined by Partners Tabitha Jackson, Brandon Peters and Associates Alexis Oldham, Kariss Gainey and Ana Mulet. The new office is within walking distance to the courthouse and will allow us to meet growing demands surrounding the north central Florida area. The office will handle matters venued in Alachua, Marion, Levy, Citrus, Dixie, Lafayette, Gilchrist, Suwannee, Hamilton, Columbia, Baker, Union, Bradford and Taylor counties. For more information, visit our website or reach out to Managing Partner John Bringardner.

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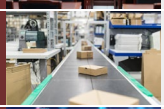
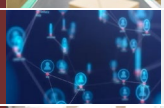
21 NOV		**Leaving No Stone Unturned in Claims Investigations** ***(November 21, 2024 at 12:30 PM ET)*** *Matt Anderson (AIC Companies), Greg Lois (CT), Daniel Murdock (CA), Mark Franco (ME/NH), Luis Menendez-Aponte (FL)*
19 DEC		**Where's the Dirt? Top 5 Case Investigation Techniques** ***(December 19, 2024 at 12:30 PM ET)*** *Ashley Larson (CO), Jillian House (KY), Elisa Hatlevig (MN), Taylor Perri (AIC Companies), Giana Calzola (OH), Jessalea Shettle (FL)*
30 JAN		**Damaged if You Don't: Avoiding the Highway to Verdict Hell** ***(January 30, 2025 at 12:30 PM ET)*** *Amanda Matthews (GA), Ashley Brown (IN/KY), Craig Pelini (OH), Bill Austill (AL), Dr. Dan Cousin (Medsurity), Daniel Santaniello (FL)*
20 FEB		**Fuzzy Logic: AI and Potential Impact on Liability Claims** ***(February 20, 2025 at 12:30 PM ET)*** *Shanks Leonhardt (AZ), Paul Michienzie (MA), Tim Wolf (MO), Mike Gaudet (J.S. Held), Richard Underwood (TN), Max Smith (IN/KY)*
20 MAR		**Private Eyes are Watching You... Using Surveillance and Social Media in Defending Claims** ***(March 20, 2025 at 12:30 PM ET)*** *Alison Fleming (PA) Kate Adams (VA), Steve Olson (NE/IA), Curt DeVries (Fraudsniffr), Dr. Eric Rudich (Blueprint Trial Consulting), Nora Bailey (FL)*
17 APR		**Construction Arbitration** ***(Arpril 17, 2025 at 12:30 PM ET)*** *Bob Sims (CA), Greg Hirtzel (PA), Sarah Bishop (IAT Insurance), Kirk Wolf (SEA), David Harrigan (FL), Normand Vermette (Alan Gray LLC)*
22 MAY		**Defenses in Class & Collective Action Litigation that Drive Settlements** ***(May 22, 2025 at 12:30 PM ET)*** *Daniel Finerty (WI), Clark Monroe (MS), Sean Partrick (NC), Stewart Appelrouth (Citrin Cooperman), Andie Cox (FL), Chuck Bailey (WV)*
19 JUN		**Setting Up Your Claims Professional and Biomechanical Expert for Success** ***(December 19, 2024 at 12:30 PM ET)*** *John Messersmith (VA), Joe Fowler (PA), Steve Olson (NE/IA), Dr. Lars Reinhart (BRC), Luis Menendez-Aponte (FL), Kevin Melchi (LA)*
17 JUL		**Voir Dire and Winning the Jury** ***(July 17, 2025 at 12:30 PM ET)*** *Jennifer Bruder (NY), Brad Hansmann (MO), Wade Quinn (TX), Norm Revis (Revis Trial Strategies), Daniel Santaniello (FL), Jeff Smith (AZ)*
21 AUG		**Defending Product Defect Claims - Risk Sharing & Ais** ***(August 21, 2025 at 12:30 PM ET)*** *Paul Michienzie (MA), Mark Franco (ME/NH), Derrick DeWitt (OK), Pat Madden (TX), Marty Pujolar (WA), Al Gray (Alan Gray)*
18 SEPT		**Impact of Artificial Intelligence/ Large Language Models** ***(September 18, 2025 at 12:30 PM ET)*** *Greg Lois (CT), Courtnee Reid (FL), Celeste Webb (WV), Taylor Perri (AIC Companies)*
16 OCT		**Effective Mediation Strategies for Claims Professionals** ***(October 16, 2025 at 12:30 PM ET)*** *Daniel Santaniello (FL), Ryan Saylor (NM), Young Bui (Exponent), Trina Hall (Utica National Insurance Group), Tessa McEllistrem*
20 NOV		**Real World Indemnity & Risk Transfer** ***(November 20, 2025 at 12:30 PM ET)*** *Bob Sims (CA), Miguel Archuleta (NM), Grant Lingg (WA), Diane Zimmer (J.S. Held), Hayley Newman (FL), Brandon Jones (SC)*
18 DEC		**Politics & Litigation in Transportation Claims: Emerging & New Laws Affecting Claims Management** ***(December 18, 2025 at 12:30 PM ET)*** *David Farina (IL), Vanja Pemac (WI), Tammy Warn (Swift/Mohave), David Cades (Exponent), Matthew Fox (FL), Ashley Larson (CO)*

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KEY WEST OFFICE – MONROE COUNTY

LEARN MORE ABOUT OUR KEY WEST OFFICE SERVING MONROE COUNTY

The Key West office is located in the heart of Old Town on 1101 Simonton Street and a 1/2 mile from the Monroe County Courthouse. Patrick Zalman, Managing Partner and Larry Atwood, Associate handle matters in Monroe County. Partners Anthony Perez, Karma Hall, and Rey Alvarez also handle matters in Monroe County. The office is just 11 minutes from the Key West International Airport.

Patrick Zalman has a decade of litigation experience. His litigation experience encompasses a diverse field of insurance defense related practice areas including wrongful death, UM/UIM claims, general liability, first-party property, bad-faith claims, product liability and general commercial litigation. He also handles premises liability cases including negligent security, slip/trip and falls, and claims concerning various alleged property defects. Patrick's practice also involves matters with surgical and catastrophic injuries resulting from automobile, boating and trucking accidents. He has substantial experience handling time limit and policy limit demands and tender matters.

Larry Atwood, Associate focuses his practice on general liability, insurance coverage and sexual misconduct liability cases. Larry also handles automobile negligence and premises liability matters. Prior to joining the firm, Larry served as a Staff Attorney at the Office of the General Counsel for the 11th Judicial Circuit of Florida. As Staff Attorney, he assisted Judges and Administrators with research, drafting orders and memorandums of law, procedure, and compliance matters on many varied cases in the Civil, Family, Criminal, and Probate divisions.

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