

KD in the community

Kubicki Draper is proud to be a Gold Sponsor of The Hillsborough County Bar Association’s (“HBCA”) Diversity and Inclusion Committee’s 12th Annual Diversity Networking Social. The online event was designed to connect law students from across the state with local attorneys, law firms, judges, local bar associations, public service organizations, and government institutions in a casual, friendly, and low-pressure environment. **Marsha Moses**, of our Tampa office and HCBA’s former Diversity Co-Chair, attended along with **Teodora Siderova**, of our Tampa office.

We are so proud of **Jennifer L. Feld**, of our Tampa office, and her continued efforts to ensure lactation spaces are established throughout Florida courthouses. Jennifer was selected by the Florida Association of Women Lawyers (“FAWL”) as the Chairperson for their Lactation Task Force. She will be working in conjunction with FAWL’s Legislative Committee to get their Senate and House Bills passed, which will establish much needed lactation spaces in Florida courthouses. Jennifer’s experiences as a new mother and a trial attorney made her a pioneer for parental leave and lactation room awareness to ensure other mothers do not experience the same struggles.



Jennifer L. Feld commemorates a newly designated lactation room.



Charles H. Watkins, our Chief Diversity Officer and one of our Equity Partners, joined the Advisory Board for Recognizing Inclusion for the Next Generation (“RING”), and Kubicki Draper is proud to be RING Certified! RING offers a new gold standard to identify, promote, and celebrate qualifying organizations. The organization is proud to demonstrate its support of diversity, equity, and inclusion by introducing a unique certification program for companies who share its commitment.

For more information, please contact: Charles Watkins at cw@kubickidraper.com.

To learn more about RING, please visit: www.ringcertification.org.

EDITOR: Raquel L. Loret de Mola

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save the date
KD’s Construction Conference
Nov 4, 2022 • Tampa, FL

check for updates on
www.kubickidraper.com



Jennifer L. Feld is honored with a Women of Distinction Award.

more **KD** in the community

KD sponsored the Miami Children's Museum 2021 Community Halloween. Miami Children's Museum is dedicated to enriching the lives of all children by providing environments for active learning, creative play, cultural explorations and self-discovery, and we are proud to support its efforts.

Congratulations to **Jennifer L. Feld**, of our Tampa office, on recently receiving the Women of Distinction Award from Tampa Jewish Community Centers and Federation. The Bobbe Karpay Women of Distinction Program, honors women who represent over twenty Jewish organizations and congregations in the area. The women being honored have worked diligently in creating a long list of accomplishments. They give their time, their enthusiasm, and their dollars to help make our community and our world a better place.

We are a proud sponsor of Florida Memorial University Social Justice Institute's Legal Scholars Pipeline Program. The program is designed to inspire students to consider careers in the legal profession. For more information, please visit: <https://www.fmuniv.edu/administration/university-advancement/giving/legal-scholars-pipeline-program/>

new additions

WE ARE PLEASED TO INTRODUCE OUR NEW TEAM MEMBERS:

- | | | |
|------------------------|-------------|---|
| FT. LAUDERDALE | Associates | Isabella R. Caproni, David Z. Moran, Cristina A. Pineda, Francesca R. Simonian, Alec Withee |
| FT. MYERS | Associates | Emily Huang, Abigail J. Parsons |
| JACKSONVILLE | Associates | Mark F. El-Bahri, Jason A. Gieger, Phytiema A. Johnson, Robert L. Leaird, Jacob D. Piasecki, Elliott W. Russ, Kayley R. Stoner |
| MIAMI | Shareholder | Jonathan O. Aihie |
| | Associates | Jacqueline M. Bertelsen, Johanna P. Cabanas, Benjamin B. Carter, Mellina Y. Fortunato, Jesus M. Hernandez, Samantha M. Joseph, Matthew H. Mackler, Ana L. Martino, Karenny Montan, Alberto J. Oquendo-Alvarez, Daniela F. Pessoa Valdes, Caroline A. Sand, Maziel M. Sodre |
| ORLANDO | Associates | Kristen M. Roberts, William D. Rosario |
| TALLAHASSEE | Associate | Alyssa R. Ward |
| TAMPA | Associates | Jonathan S. Chinchilla, Brent L. Davenport, Justine A. Elias, Jennifer L. Emerson, Kara L. Fredrickson, Clyde E. Mathes, Matthew A. Menendez, Alexandra V. Paez, Zachary T. Udell, Iasia B. Ward, Benndrick C. Watson |
| WEST PALM BEACH | Associates | Juan Arrubla, William P. Sepulveda, Kishel K. Stubbs, Ian M. Tygar, Gabrielle L. Wright |

CONGRATULATIONS

TO OUR 2021 FLORIDA SUPER LAWYERS

LAW OFFICES

**KUBICKI
DRAPER**

SUPER LAWYERS



Peter S. Baumberger
MIAMI



Caryn L. Bellus
MIAMI



Brad J. McCormick
MIAMI



Angela C. Flowers
OCALA

Super Lawyers®
2021



Bretton C. Albrecht
MIAMI



Jennifer L. Feld
TAMPA



Michael F. Suarez
MIAMI



Nicole L. Wulwick
MIAMI

Super Lawyers®
RISING STARS 2021

RISING STARS

Super Lawyers is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high-degree of peer recognition and professional achievement. Super Lawyers selects attorneys using peer nominations and evaluations combined with independent research. Each candidate is evaluated on 12 indicators of peer recognition and professional achievement. Selections are made on an annual, state-by-state basis. The objective is to create a credible, comprehensive and diverse listing of outstanding attorneys that can be used as a resource for attorneys and consumers searching for legal counsel. Since Super Lawyers is intended to be used as an aid in selecting a lawyer, we limit the lawyer ratings to those who can be hired and retained by the public, i.e., lawyers in private practice and Legal Aid attorneys. www.kubickidraper.com

announcements

We are proud to announce the following KD attorneys have been recognized as 2022 "Best Lawyers in America," by the highly-respected Best Lawyers® peer review guide.



Peter Baumberger
*Construction Law, Litigation –
Construction, Mass Tort Litigation /
Class Actions – Defendants*

Caryn Bellus
Appellate Practice

Brad McCormick
*Commercial Litigation, Personal Injury
Litigation – Defendants*

Charles Watkins
*Litigation – Insurance, Personal Injury
Litigation – Defendants*

Angela Flowers
Appellate Practice

Betsy Gallagher
Appellate Practice

Laurie Adams
Personal Injury Litigation - Defendants

Michael Carney
Litigation - Insurance

Jane Rankin
Real Estate Law

Recognition by Best Lawyers is based entirely on peer review. Their methodology is designed to capture, as accurately as possible, the consensus opinion of leading lawyers about the professional abilities of their colleagues within the same geographical area and legal practice area.

Best Lawyers employs a sophisticated, conscientious, rational, and transparent survey process designed to elicit meaningful and substantive evaluations of the quality of legal services. Their belief has always been that the quality of a peer review survey is directly related to the quality of the voters.

<https://www.bestlawyers.com/methodology>

Our West Palm Beach office relocated. The new address is:

1700 Palm Beach Lakes Blvd.
Suite 800
West Palm Beach, FL 33401

SPOTLIGHT ON **Brad McCormick**

Brad McCormick is an Equity Partner, a member of the Executive Board, and has served as President of Kubicki Draper for the past 13 years. Brad was born and raised in Coral Gables, Florida, and he is the youngest of three children to Art and Merle McCormick. Brad, along with his sister and brother, were destined to become attorneys as they are products of a family of lawyers. Their grandfather was an accomplished attorney in Chicago. Their father, a well-respected attorney in the South Florida community for over 55 years, notably argued – and won – before the United States Supreme Court.

Inspired by his mother's dedication to academia, athletics, and inter-personal skills, Brad attended Columbia University where he majored in political science and played football for the "Infamous Lions." Upon graduation, Brad followed in his families' footsteps by attending law school and, thereafter, building his own impressive and decorated legal career.

Brad joined Kubicki Draper in 1992 as a law clerk, quickly climbed the firm's ranks becoming a partner, and successfully taking over 40 cases to trial before the age of 40. At 32 years of age, Brad became the youngest Equity Partner in Kubicki Draper's history. At 40 years of age, Brad was elevated to President of Kubicki Draper when Gene Kubicki retired in 2009. Today, Brad's responsibilities are focused on managing Kubicki Draper, which has grown from 53 attorneys to over 190 during his tenure.

One may wonder how Brad stays up to task in successfully leading and managing Kubicki Draper, but those who know him best are hardly surprised and cannot imagine anyone else filling his role.

According to Peter Baumberger, also an Equity Partner and an 18-year Kubicki Draper veteran, Brad has always valued his relationships with the firm's attorneys, the legal community, and the firm's clients. Peter recalls being a young associate and frequently going out to lunch with Brad, then a young partner, who once told him: "one of the most special things about working at Kubicki is the people and the culture" and that it was "one of the reasons lawyers came and why they stayed."

Peter explains that Brad has a great vision as the firm's President:

"He knows what the clients need and what our law firm must do to meet those needs."

Along these same lines, Brad's former associate, Steve Rich, describes Brad as having an almost uncanny ability to recall details about people, which he uses to strengthen his relationships with friends, colleagues, and clients. Steve remembers when he first started working with Brad, and Brad invited him over to his house for dinner. To Steve's surprise, he heard a playlist of songs by Dave Matthews softly playing in the background. At that moment, Steve recalled casually mentioning to Brad that Dave Matthews was his favorite band. When Steve questioned Brad about the playlist that night, Brad said with a smile, "it's not a coincidence." Whether it's a fresh haircut, a new tie, a favorite sports team, or the names of family members, Brad is aware of everything about the people around him. More importantly, Brad observes and remembers the things that are important to people because he is genuinely interested in learning about them and in offering his help whenever it is needed. Steve believes these characteristics lend themselves to enabling Brad to forge meaningful relationships with friends, colleagues, and clients. Something else that stands out to Steve in terms of why he believes Brad is such a great leader, and why Steve "is proud to call Brad his mentor," is the confidence that Brad is willing to instill in his colleagues. Steve remembers back to an early trial where Steve was taking the lead, and the first witness (their client) performed very poorly during cross-examination. After Steve finished his re-direct and was feeling deflated, he walked back to the defense table where Brad was sitting. Brad reassuringly told him, "Steve, it is only the first inning in a nine-inning game." Brad let Steve continue to lead the trial over the next two weeks, which resulted in a defense verdict. Steve is grateful Brad had the confidence and wisdom to allow him to proceed and explains that this was a foundational point in his career: "If Brad hadn't believed in me, and if he would have taken over the trial, it could have potentially changed the entire trajectory of my career as a trial attorney."



It is clear that Brad's willingness to believe in his colleagues is a trait that was passed down to him by his own mentor, Peter Murphy. Peter remembers Brad as a young associate who would promptly and unwaveringly agree to cover any trial, even at the last minute. Peter remembers asking Brad to handle a wrongful-death trial in his first year of practice wherein Brad alone went up against an experienced Plaintiffs' attorney. As a consequence of Brad's unbeatable persuasion, passion, and preparation, Brad won the trial. Peter recalls that because of his confidence in Brad's abilities, coupled with Brad's unrelenting willingness to help him at all times, he allowed Brad to cover critical aspects of his cases, such as expert depositions, which Peter ordinarily would not feel comfortable passing off to other lawyers. According to Peter, Brad was easy to mentor because he has real passion, competitiveness and is an excellent lawyer. Peter recognizes that Brad is an excellent leader because his decisions are always centered on furthering the best interests of the firm, and he stands by those decisions irrespective of popularity or his own personal interests. Brad and Peter's mentor-mentee relationship exists to this day, though over the years, it has evolved into a close friendship. Peter remembers they initially bonded over playing basketball and tennis. They still talk nearly every day, and Brad frequently visits Peter at his lake house in Georgia.

According to Brad, he owes his success to the support he has received from his wife, Cheryl, his three sons, and his parents. Beyond family, Brad is forever grateful to Gene Kubicki for hiring him and entrusting him with the keys to the firm; his friend and mentor, Peter Murphy; his fellow partners, who trust and support him along the way; and his invaluable long-time assistant, Sharon Christy.

Brad and Cheryl, who just recently celebrated their 25th wedding anniversary, are proud parents to three sons, two of which are now in college and one who is in high school. When Brad leaves the office at the end of the day, he likes to unwind by cooking creative and delicious meals for his family and friends; attending his sons' sporting events; going on long walks with his German Shorthaired Pointer, Mako; boating; and traveling.

Although Brad's work ethic, drive, and unrelenting dedication to obtaining the highest standard in all facets of his life are second to none, Brad keeps in mind a quote Mr. Kubicki himself often said: "don't forget to have some fun along the way."



KD is in the top 3 of The National Law Journal's (NLJ) Women in Law Scorecard for 2021!

The scorecard ranks 350 of the largest law firms in the country by their representation of female attorneys and partners, and we are so honored to be a part of it!

We look forward to continuing our efforts in making sure ladders of opportunity remain open for everyone regardless of gender, race, ethnicity, age, sexual orientation, religion and other self-identifications. Access the NLJ scorecard here: <https://infogram.com/2021-nlj-500-womens-scorecard-1hd12yxnlyzx6k>

Jarred Dichek, of our Miami office, has been named Co-Chair of the Claims and Litigation Management Alliance ("CLM Alliance") Fraud Committee. In his new role, Jarred will help the committee proactively identify and analyze emerging fraud schemes and tactics and provide education on same.

Rebecca Leigh Brock, of our West Palm Beach office, was inducted as a Fellow of the International Society of Barristers. The organization was formed to recognize each era's best advocates and garner support of the retention of trial by jury, professionalism, and ethics. Membership is by invitation only, which is preceded by a rigorous screening process that considers the lawyer's ability, experience, accomplishments, and ethical standards as assessed by trial lawyers and judges. For more information, please visit: <https://www.isob.com/>

KD was selected as a Tier 1 firm in the U.S. News and Best Lawyers 2022 Edition of "Best Law Firms!" The Tier 1 recognition is reserved for the highest scoring firms during the annual review process.

Michelle Krone, of our Ft. Myers office, has been re-certified for the third time by the Florida Bar in Construction Law. She was in the inaugural certification class in 2005.

Caryn Bellus, of our Miami office, has been re-certified by the Florida Bar in Appellate Law. She specializes in the areas of civil appeals, complex litigation support and insurance coverage, and has been certified since 2006.



presentations | speaking engagements

Our attorneys present continuing education seminars on a variety of topics throughout the year.

Below are some of the topics that have been presented by our team in the last few months:

- Hot Topics in PIP
- Attractive Nuisances, Swimming Pool Liability, and Open and Obvious Conditions
- O.S.H.A Investigation, Findings and Admissibility
- Combating Fraudulent and/or Excessive Attorneys' Fee Demands
- The Good Faith, The Bad Faith and How to Avoid the Ugly
- Florida 5-Hour Law and Ethics Update
- Application of Vehicle Download and Environmental Video Data in Reconstructing Accidents
- Workers Compensation Immunity in Florida's Construction Industry
- Gym Liability: An Exercise in Civility
- Social Media, Technology, and Its Utilization in Claims Handling
- The General Specifics on Liability for Injuries on Adjacent Properties
- Radiology Evaluation in Personal Injury matters: Assessment of the Spine and Brain
- Collateral Sources, Setoffs and Liens
- The New Knew or Should have Known: Slippery Substances and Recent Impacts on Motion for Summary Judgment Standards
- Dogs Gone Wild: An Overview of Florida Law in Cases Involving Dogs
- Ace Your Pre-Suit Investigation
- Construction Accident Litigation: Pitfalls, Perils and Trends
- Advanced PIP Litigation
- Effective Case Resolution: Thinking One Step Ahead
- Material Misrepresentation in the Application
- Valued Policy Law Claims and Anti-Concurrent Causation Clauses
- Alabama Case Law Update
- Engineering a Successful Homeowner Claim
- It's 5:00 Anywhere: Tips for Vendors and Insurers on Florida's New Alcohol-to-Go Law
- Nursing Home Claims: How to Handle with Skilled Care from Pre-Suit Through Litigation
- Like a good neighbor, Stay Over There: Common Issues & Pitfalls in HOA Claims
- Alternative Defenses in Florida PIP Cases
- Indemnification and the Vouching-In Doctrine

We welcome the opportunity to host a complimentary webinar for you and your team on any topic(s) of your choice. All presentations are submitted for approval of continuing education credits.

For more information, please contact Aileen Diaz
(305) 982-6621 / ad@kubickidraper.com.

more KD news and announcements

Congratulations to these team members on their well-deserved promotion to Shareholder!

We proudly recognize their hard work and dedication is a key ingredient to our success.



PLEASE JOIN US IN WELCOMING THIS STELLAR GROUP OF ATTORNEYS TO EQUITY PARTNERSHIP!

Jarred Dichek

Miami

Michelle Krone

Ft. Myers

Sean-Kelly Xenakis

Tampa

Jarred, Michelle and Sean have consistently demonstrated excellence in their practice, commitment to their clients and dedication to the firm. We celebrate them and look forward to their contributions to the leadership team and our firm's future.

APPELLATE

Fourth DCA Holds PIP Insurer Can Contest Reasonableness of Provider's Charges by Expert Affidavit – Including the Fact Dependent Methodology Identified in § 627.736(5)(a)1., Fla. Stat.

Michael Clarke, of our Tampa office, obtained a reversal of a provider's Final Summary Judgment in *State Farm Mut. Automobile Ins. Co. v. Imaging Ctr. of W. Palm Beach, LLC*, 327 So. 3d 323 (Fla. 4th DCA 2021). The Fourth District Court of Appeal held that a PIP carrier can contest the reasonableness of a medical charge/service when the carrier relied exclusively on the Medicare Part B fee schedule amount in making its payment. The Fourth District Court of Appeal also held that an expert affidavit was sufficient to create an issue of fact on reasonableness under the Daubert standard noting that the expert relied on the reasonableness factors in 627.736(5)(a)1., Fla. Stat., including Medicare Part B rates to reach his opinion.

Reversal of Directed Verdict Warranted Where Record Showed Conflicting Evidence Regarding the Amount of Damages.

Caryn L. Bellus and **Barbara Fox**, of our Miami office, obtained a reversal of a directed verdict and a new trial on damages in a first-party insurance case. In *Avatar Property and Cas. Ins. Co., v. De Caires*, 325 So. 3d 247 (Fla. 3d DCA 2021), the Third District Court of Appeal agreed with the insurer's position that the evidence demonstrated that the defense vigorously contested the amount of damages claimed, and while the defense did not present its own expert witness on the amount of damages, that did not mean that the entry of a directed verdict for Plaintiff was correct. Rather, the record showed that significant conflicting testimony was elicited by the defense from Plaintiff's own witnesses. Consequently, it was error to enter a directed verdict on damages for \$80,830.16 where conflicting evidence regarding the amount of damages existed such that the jury could reach different reasonable inferences.

Affirmance of Trial Court's Dismissal with Prejudice Ruling that a Vehicle on a Tow Truck is Not a Dangerous Instrumentality.

Sharon Degan, of our Orlando office, obtained an affirmance of a trial court's order granting a Motion to Dismiss with prejudice in *Lewin v. Bourak*, 322 So. 3d 1231 (Fla. 3d DCA 2021), which involved a third party property damage case. Our client gave a tow-truck company possession of their Bentley to take it to a repair shop. While the tow-truck driver was lowering the vehicle off the truck, the client's Bentley somehow rolled off and smashed Plaintiff's Rolls Royce. We moved to dismiss arguing that the vehicle was not a dangerous instrumentality, and therefore, our client could not be held vicariously liable for the alleged negligence of the tow-truck driver. The Third District affirmed the trial court's dismissal with prejudice and confirmed "that a vehicle on a tow truck is not a dangerous instrumentality while it is under the exclusive control of the tow-truck driver."

KD Win: Attorney Fee and Cost Award After a Defense Proposal for Settlement.

Caryn L. Bellus and **Angela C. Flowers**, of our Miami and Ocala offices, obtained an affirmance of an attorney fee and cost award after a defense proposal for settlement. This is the second of two winning appellate decisions in *Pelecki v. Federated National Insurance Company*, 319 So. 3d 771 (Fla. 5th DCA, 2021). In the first appeal, the Plaintiff appealed a \$0 final judgment in favor of her insurer, which arose from a jury verdict in her favor for \$15,000 less a setoff of \$30,000 for the insurer's prior settlement with Plaintiff's husband. In this second appeal, Plaintiff challenged a judgment of \$126,047.14 for the insurer's trial attorney's fees and costs based on her rejection of the insurer's \$5,000 proposal for settlement. The Fifth District affirmed the award of fees and costs, except for a small award of costs for an expert who did not testify at trial.

Third DCA Holds Plaintiff Cannot Recover PIP Benefits for Treatment Rendered by a Licensed Massage Therapist.

Caryn L. Bellus and **Angela C. Flowers**, of our Miami and Ocala offices, obtained a reversal of Plaintiff's summary judgment in *Geico Gen. Ins. Co. v. Finlay Diagnostic Center, Inc.*, 320 So. 3d 276 (Fla. 3d DCA 2021). The Third District Court of Appeal reversed a trial court order granting Plaintiff PIP benefits for medical treatments rendered by a licensed massage therapist ("LMT"), confirming that such treatment is not recoverable under §627.736(1)(a)(5), Fla. Stat.

Affirmance of Final Defense Summary Judgment in a negligent use of excessive force case.

Bretton Albrecht, **Caryn L. Bellus**, and **Bill Bissett**, of our Miami office, obtained an affirmance of a summary judgment in favor of our client, the Law Firm of Akerman, LLP in *Tien v. Akerman, LLP*, 320 So. 3d 309 (Fla. 3d DCA 2021). Plaintiff had brought suit against the Law Firm, alleging negligence and excessive force, after he created a disturbance and was forcibly removed from the building by a security guard.

Affirmance of Summary Judgment Based upon the Doctrine of "Caveat Lessor".

Sharon Degan, of our Orlando office, won an appeal in a premises liability case in *Sanchez v. MAC Acquisition, LLC*, 324 So. 3d 1021 (Fla. 3d DCA 2021), where the appellate court affirmed a summary judgment in favor of a lessor, who rented its property to a restaurant, based on the "caveat lessee" doctrine. The Plaintiff alleged that she slipped and fell on pasta on the sidewalk leading from the restaurant to the parking lot. In its opinion, the appellate court reaffirmed the legal proposition that the duty to protect others from injury resulting from a dangerous condition on a premises does not rest on legal ownership of the dangerous area, but on the right to control access by third parties, which right usually exists in the one in possession and control of the premises, and concluded that the lessor was not liable since it had no right to control access by third parties under the lease.

TRIALS, MOTIONS, MEDIATIONS

Summary Judgment Granted Where No Evidence of Defendant's Actual or Constructive Notice.

Kenneth M. Oliver, of our Ft. Myers office, argued and won a Final Summary Judgment on a slip-and-fall case that occurred at a grocery store. The only evidence was a photograph showing a reddish liquid substance on the floor with Plaintiff lying on the floor next to it. The trial court found there was no evidence of actual or constructive notice.

Complete Defense Verdict in Leg Amputation Case Where No Causation.

Lisandra Guerrero, Francesca A. Ippolito-Craven, and Peter H. Murphy, of our Miami office, obtained a complete defense verdict in a premises liability case where Plaintiff claimed our client's negligence caused his leg to be amputated.

Summary Judgment Stands Where Court Previously Ruled That Plaintiff's Claims for New Damages during the Lawsuit Were Barred.

Charles H. Watkins, of our Miami office, obtained summary judgment in a case involving a price-and-scope dispute for Hurricane Irma damages. The court granted summary judgment on the grounds that Plaintiff's claims for new damages during the lawsuit were barred based on recent case law because they were not submitted to the carrier prior to the lawsuit.

Partial Summary Judgment Granted Where Plaintiff's "No True Acceptance" Argument was not Accepted by the Judge.

Michael Balducci, of our West Palm Beach office, won a partial summary judgment where the insured's public adjuster agreed to only accept the \$10,000 policy limits for the opt-out provision as opposed to utilizing one of the carrier's preferred vendors/contractors, which would have covered the entirety of their water damage loss.

No Negligence Where Only Duty Owed by Defendant was to Perform its Contractual Obligations in a Reasonably Safe Manner.

Kimberly A. Beckwith, of our Tampa office, obtained final summary judgment for our client arising out of a slip and fall at a hospital. The client contracted with the hospital to perform routine housekeeping services, which included a once-per-day spot clean of the public areas. At deposition, Plaintiff testified he did not see the client's employees cleaning, using any machines, or performing any duties. He further testified he had no knowledge as to how the water puddle got there, how long it had been there, or who put it there. Kim successfully argued the contractor's duty is not like that of the premises owner. Rather, it only owes a duty to perform its contractual obligations in a reasonably safe manner and no evidence existed to find our client had breached that duty.

Summary Judgment in a Slip-and-Fall Case Where Defense Counsel Strategically Took Advantage of New Rules.

Katherine N. Kmiec, of our Orlando office, obtained a summary judgment in a slip-and-fall case with serious alleged injuries. The hearing on the motion was set for a prior date, but Kate smartly reset the motion due to the new notice requirements for summary judgment. Her strategy paid off, and summary judgment was granted in her client's favor.

Summary Judgment Granted Under New Standard in Construction Defect Case.

Jeremy A. Chevres, of our Miami office, obtained summary judgment in a construction defect case that involved a \$3 million three-story custom home equipped with an elevator and a full kitchen inside the master bedroom, among other things. The biggest issue with the home was water intrusion throughout the home from the roof-top terrace; however, the roofer was an "empty pocket," and the roofer's carrier denied coverage because his policy had a residential-roofing exclusion. With an uncollectable, defunct roofing company, the homeowners turned their sights on our client, the plumber. The homeowners argued that all of the water intrusion resulted from plumbing leaks. Jeremy attacked the homeowner's/the developer's experts with *Daubert* motions, and filed motions for summary judgment on causation, common law indemnity, contractual indemnity, violation of 558.34, Fla. Stat., and breach of contract.

Defense Verdict in Arbitration on a Hurricane Irma Claim With Questionable Causation and Damages.

Kameron D. Romaele, of our Ft. Lauderdale office, obtained a defense verdict at arbitration. In a Hurricane Irma case, the insureds received a knock on their door from a roofing company who informed them (several years after the storm) that their roof was damaged and they needed a full replacement. Kameron argued that Plaintiff, the roofing company, failed to provide any evidence that the roof was, in fact, damaged from Hurricane Irma and that it needed a full replacement. In fact, Kameron was able to show that, even if the roof was damaged, a repair could be made and used the Florida Building Code to support his position. He even showed the arbitrator that the roof tiles were available to purchase for the repair. The arbitrator ultimately found that Plaintiff failed to meet its burden of proof.

Court Granted Summary Judgment in Coverage Case Where the Subject Vehicle was Excluded Under the Policy.

Ryan D. Elias, of our Orlando office, argued and won a summary judgment motion in a coverage case involving a vehicle driven by the named insured, which was owned by his resident-relative mother, but furnished and available for his regular use. As Ryan clearly explained to the court, the vehicle is excluded from the definition of an "owned or "non-owned auto," which is necessary to trigger liability coverage under the policy, and the court agreed granting summary judgment in his client's favor.

TRIALS, MOTIONS, MEDIATIONS

Arbitration Win in Dog-Bite Case with Bad Injuries.

Victoria S. Hammonds, of our Ft. Lauderdale office, prevailed in arbitration on a dog-bite case involving severe facial injuries. Victoria successfully established that Defendant, a hotel, 1) had a reasonable belief they needed to permit its night manager to have the dog on premises, and 2) was not aware of any dangerous propensities as to the dog, and the arbitrator agreed.

No Record Evidence that the Plumber Caused Any Problems Results in Big Summary Judgment Win.

Charles Kondla, of our Miami office, obtained summary judgment for his plumber client in a construction defect case. The general contractor argued work performed by the plumber was causing issues with certain drains on several of the terrace balconies on the third story of the building. Arguing there was no record evidence the plumber did anything wrong, Charlie's motions for summary judgment on causation, common law indemnity, contractual indemnity, violation of 558.34, Fla. Stat., and breach of contract were granted as to all counts, and he got our client completely out of the case. In addition, a proposal for settlement was served early in the case, which should allow for recovery of a substantial amount of fees.

Summary Judgment Granted Where Court Ruled Plaintiff's Policy was Canceled and the Carrier's Post Office Receipt Secured Certificate of Mailing was Valid.

Sharon Degnan, of our Orlando office, prevailed on a motion for final summary judgment in a coverage case. In a nutshell, the insured failed to pay her policy premiums, resulting in the cancellation of her policy. About two months post-cancellation, she was involved in an accident and, of course, sought coverage under her policy arguing that she did not know the policy was cancelled and that the carrier's cancellation was legally insufficient and invalid because its Post Office Receipt Secured Certificate of Mailing failed to comply with U.S. Postal Regulations. With lots of time and energy spent (including putting together some incredibly thorough affidavits on this subject), Sharon challenged Plaintiff's arguments, convinced the judge, and scored a victory!

Arbitration Win in Late-Reported Hurricane Irma Case.

Anthony Atala, of our Miami office, obtained a favorable outcome in non-binding arbitration in a first-party property/Hurricane Irma case. Here, the insured did not submit the claim for 872 days and only after she observed a roofer on her neighbor's property. The carrier-client denied the claim for several reasons, including lack of prompt notice, lack of wind damage, and faulty sworn proof of loss. At arbitration, Anthony argued that Plaintiff failed to provide any evidence to show that the carrier was not prejudiced by the late reporting or that the damages alleged were caused by the Hurricane. The arbitrator agreed with Anthony on all points and found that Plaintiff failed to establish the carrier violated any portions of the policy.

Defense Verdict Reached in Late-Reported Hurricane Irma Claim.

Michael Balducci and **Lillian Sharpe**, of our West Palm Beach office, obtained a defense verdict in a late reported Hurricane Irma claim. This was Lillian's first trial, and she did a great job handling both the field adjuster and our expert, and she and Michael successfully "uncovered" the deficiencies in this roof claim. Needless to say, the client saved a lot of money and was thrilled with the result.

Summary Judgment Entered on UM Claim Where Coverage was Properly Denied.

Valerie Dondero and **Barbara Fox**, of our Miami office, won summary judgment on behalf of our client in a claim for underinsured-motorist benefits. Plaintiff sued the carrier alleging entitlement to coverage under his wife's policy after his own insurance policy had paid the full underinsured-motorist coverage available. The carrier denied additional coverage as neither Plaintiff nor his vehicle was insured on the wife's policy, and the wife had selected non-stacked underinsured-motorist coverage. The underinsured-motorist statute and underinsured-motorist selection form both permit an insured to select underinsured-motorist coverage to exclude any person injured in a vehicle that is not a covered vehicle under the policy. Plaintiff attempted to create an electronic-signature challenge to the wife's signed underinsured-motorist form under Florida law, but the court granted protective orders and ruled in favor of the carrier.

Summary Judgment Granted Where Wrong Vehicle Owner was Sued.

Cristina Pineda, of our Ft. Lauderdale office, secured a summary judgment win for our carrier-client in a tender rejection case. The case had been pending for six years, and the carrier very recently discovered that the alleged owner of the vehicle was not the actual owner. Both the driver and the alleged owner were represented by another defense firm, and our singular task was to get the wrong owner out of the case. Cristina persuaded the court and won the day.

Complete Defense Verdict in Two-Impact Trucking Accident With Severe Injuries.

Earleen Cote and **Jason Friedman**, of our Ft. Lauderdale office, won a defense verdict in a serious trucking accident case. The subject accident involved two separate impacts with three 18-wheeler trucks and occurred at 4:00 am on a foggy morning. We argued that the first impact, which was a huge impact, caused all of the injuries to Plaintiff. In the second impact, our client was traveling in the same direction as Plaintiff and scraped the side of Plaintiff's trailer. The main tortfeasor had limited coverage and settled early on, so Plaintiff and his experts changed their stories and sought to blame our insured for all of the injuries. Earleen spent every second of her hour-and-fifteen minute closing explaining how each witness, including Plaintiff, changed their stories and that it was impossible that our impact caused Plaintiff's injuries. The jury was out for 70 minutes, including lunch, and came back with a complete defense verdict. A proposal for settlement should allow for the recovery of our fees.

Summary Judgment Win in One of Three Related First-Party Property Claims.

William A. Sabinson, of our West Palm Beach office, received a summary judgment in a first party property case. Billy argued various defenses against the claim brought by the mold contractor, including late notice and that the insured failed to provide a recorded statement.

No Liability for Retail Store Where Thief Injured Plaintiff.

Victoria S. Hammonds, of our Ft. Lauderdale office, prevailed on summary judgment in a case where Plaintiff was injured while descending an exterior escalator in a shopping center, having just departed from our client’s retail store. A thief (having just stolen items from the same store) essentially climbed over Plaintiff on the escalator in the process of fleeing the scene and caused her injuries. The court agreed that there was no liability, and granted our motion for summary judgment.

Summary Judgment Granted Where Engineer’s Affidavit Failed to Convince the Court.

Sarah Goldberg, of our Miami office, obtained summary judgment in a first-party property case. Plaintiff filed an affidavit of an engineer in opposition to the motion, which opined that there was a sudden and accidental leak even though this engineer had inspected the property after it was completely remodeled. The judge rejected the affidavit and found that the insured’s deposition testimony proved the insured knew of the leak at least one year prior to the date of loss.

TRIALS, MOTIONS, MEDIATIONS

Summary Judgment Granted in Hurricane Irma Claim Where Engineer’s Boilerplate Causation Testimony is Insufficient to Create an Issue of Fact.

Sarah Goldberg, of our Miami office, secured a summary judgment in a first-party property case on a claim that had been denied for prejudice resulting from late notice. At the initial summary judgment hearing, the trial judge concluded that there was late notice as a matter of law, but held there was an issue of fact as to whether Plaintiff could overcome the presumption of the client’s prejudice by the late notice. Plaintiff filed an affidavit from an engineer where the engineer opined that the insured’s roof exhibited signs of “classic wind damage.” Sarah then deposed the engineer and got him to admit that he was relying solely upon weather data showing high winds on a particular date to prove that the insured property was damaged by Hurricane Irma. Sarah persuasively argued at the second summary judgment hearing that causation testimony alone (supported by no facts), does not create an issue of fact as to whether Plaintiff can overcome the prejudice under a number of Florida cases. The court agreed, finding that the client is not required to accept the insured’s engineer’s findings from an inspection occurring more than three years post loss and was, in fact, prejudiced because there was no opportunity to inspect the property in the condition it was immediately after Hurricane Irma.

The information provided about the law is not intended as legal advice. Although we go to great lengths to make sure our information is accurate and useful, we encourage and strongly recommend you consult an attorney to review and evaluate the particular circumstances of your situation.

**KD
BOOT CAMP**

We are pleased to share that 70 of our talented associates participated in an in-house boot camp led by Equity Partner, **Laurie Adams**, of our West Palm Beach office. The program was designed to have our experienced mentors support and train our younger lawyers and assist them in honing and perfecting their craft.

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FOR MORE INFORMATION
Laurie Adams
la@kubickidraper.com
www.kubickidraper.com



congratulations

sugar and spice
and everything nice...

to **Gina D'Amico**,
of our Tampa office,
and her husband, Brian,
on the birth of their baby girl,
Rylan MaryAnn Chorney.

to **Melonie Bueno**,
of our West Palm Beach office,
and her husband, Ian,
on the birth of their baby girl,
Isla Mackenzie Duncan.



YOUR OPINION MATTERS TO US.

We hope you are finding the *KD Quarterly* to be useful and informative and that you look forward to receiving it. Our goal in putting together this newsletter is to provide our clients with information that is pertinent to the issues they regularly face. In order to offer the most useful information in future editions, we welcome your feedback and invite you to provide us with your views and comments, including what we can do to improve the *KD Quarterly* and specific topics you would like to see articles on in the future. Please forward any comments, concerns, or suggestions to Aileen Diaz, who can be reached at: ad@kubickidraper.com or (305) 982-6621. We look forward to hearing from you.

CONTACT INFORMATION

LAW OFFICES



Professional Association
Founded 1963

	New Assignments
Brad McCormick	305.982.6707 bmc@kubickidraper.com
Sharon Christy	305.982.6732 sharon.christy@kubickidraper.com
	Firm Administrator
Rosemarie Silva	305.982.6619 rls@kubickidraper.com
	Seminars/Continuing Education Credits
Aileen Diaz	305.982.6621 ad@kubickidraper.com

OFFICE LOCATIONS

FLORIDA: Ft. Lauderdale Ft. Myers/Naples Jacksonville Key West Miami Ocala Orlando
Pensacola Tallahassee Tampa West Palm Beach ALABAMA: Mobile

www.kubickidraper.com