

KD in the Community

Kubicki Draper proudly supports the Wilkie D. Ferguson Jr. Bar Association and recently co-sponsored their 40th Annual Gala and Installation. Representing the firm at this great event were **Shuntal S. Dean**, of our Ft. Lauderdale office, **Jonathan O. Aihie**, of our Miami office, and **Sha-Mekeyia N. Davis**, of our Ft. Lauderdale office. Wilkie D. Ferguson, Jr. Bar Association is dedicated to serving the Miami-Dade community by cultivating excellence and inclusion in the legal profession, promoting diversity in legal education through financial assistance and mentorship and advocating for equal access, equal opportunity and equal justice in the legal system.



Attending the Bar Association Gala: Shuntal S. Dean, Jonathan Aihie and Sha-Mekeyia N. Davis.

For the fifth consecutive year, **Michael J. Carney**, of the Ft. Lauderdale office, was asked to speak to students at Miami Central Senior High School on Ethical Governance Day. The day was established by the Miami-Dade Commission on Ethics & Public Trust as part of its commitment to public education, training and community outreach and emphasizes the significance of civic engagement. Michael spoke to students about the importance of being active, engaged and ethical citizens.



Walid O. Mabrouk, of the Ft. Lauderdale office, ran the New York City Marathon for his mother in support of Lupus Research Alliance, the world's leading private funder of lupus research. Walid successfully completed the 26.2 mile course that included many hills and sharp turns through the five boroughs of New York City, raising over \$2,000 for Lupus research. We are very proud of Walid, and congratulate him on his great accomplishments!



Brad J. McCormick supporting Walid at the finish line!

NYC Marathon

We are pleased to introduce our new team members:

- FT. LAUDERDALE: **Walid O. Mabrouk**, Associate
- JACKSONVILLE: **Mario A. Errico, Hillary H. Lovelady**, Associates
- MIAMI: **Stephanie A. Seligman**, Shareholder; **Adam R. Rivera, Joshua S. Rice, Cristina M. Paneque** and **Joscelyn M. Sanchez**, Associates
- ORLANDO: **Donald Scott, Jr.**, Shareholder; **Carl E. McPhail**, Associate
- TAMPA: **Brenda M. Combs, Lauren M. Pulido** and **Paulette Z. Brown**, Associates
- WEST PALM BEACH: **Andrea E. Trax, Lillian R. Sharpe** and **Meryl H. Hendrix**, Associates

EDITOR
Sebastian C. Mejia
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Our KD family comes together every quarter to make a difference in our local communities. An organization is selected from multiple entries made by staff, and funds are raised by paying to dress down. The organizations featured recently were **PACE Center for Girls - Broward**, submitted by **Florence Crea**, a Legal Assistant in our Ft. Lauderdale office, and **Camp Kesem** In Memory of Debbie Bergin.

PACE Center for Girls makes positive changes in the lives of girls ages 11-18 by offering counseling, tutoring and other services. The work being done at PACE is changing the lives of our future female leaders. Through PACE, young girls are provided the support needed to stay in school, build self-esteem, and become positive members of their community.

Every year, Florence rallies the Ft. Lauderdale office and collects donated school supplies and other items on behalf of PACE. This year, all of our offices participated by collecting school supplies and donating to help these wonderful young girls start the year off right. Florence supports PACE because it is making a positive difference, empowering young girls, and giving them hope to reach for their dreams. KD is proud to have joined Florence in supporting this great cause.

Our KD Family recently lost one of our strongest, kindest and bravest members, **Debbie Bergin**. Our team came together for a cause especially important to Debbie, **Camp Kesem**.

Debbie Bergin passed away on August 5, 2018 in her home in Winter Park, Florida surrounded by family and friends who loved her. She was 48 years old. Debbie battled and survived breast cancer for 9 years before it claimed her.

Debbie was a shareholder at Kubicki Draper, and had been with the firm for over 10 years. Throughout her time at Kubicki Draper, Debbie fiercely and zealously advocated for her clients, recognizing that every person is entitled to a strong defense. Debbie gave her heart and soul to her clients. When defending clients in wrongful death cases, it was not unusual for Debbie to spend hours not just discussing the case, but also helping her clients deal with and process the stress of litigation.

In addition to supporting her clients, Debbie was a pillar not only in the Orlando office, but also throughout the firm. Debbie was always there to help her friends and coworkers who were dealing with cancer, deaths in their families, or just the everyday stress of life. Debbie filled the office with laughter and joy, and her passion for living life to the fullest spread to her coworkers. Debbie was also a mentor who took time out of her day to pass along her knowledge and encourage the professional growth of young associates. Similarly, she

more KD in the Community



PACE Center for Girls

offered her sound advice and strategies to her partners, colleagues, and peers. Debbie was always ready to debate the merits of any case or defense to achieve a better overall evaluation of the claim.

Most importantly, Debbie set a great example of balancing her career with her love of her family. Debbie is survived by her two children, Alexandra and Nicholas, and her husband, Andrew. Debbie made sure that she was actively involved in her family's lives.

Debbie loved traveling with her family, being outdoors, boating, skiing, going to the beach, camping, going to concerts and sporting events. For Debbie, life was meant to be lived to the fullest, and she made sure that she led by example.

Although Debbie can never be replaced, her work family will continue to live as she did: fighting fiercely, laughing loudly, and loving deeply.

Despite her battle with cancer, Debbie was determined to provide her children with a normal childhood. One of the ways she did this was by sending them to Camp Kesem, a nationwide community, driven by passionate college student leaders, that supports children through and beyond their parent's cancer. Camp Kesem provides a place where children do not feel alone and are learning important emotional skills to help

them deal with cancer. They are the largest national organization dedicated to this unique population – supporting children with innovative, fun-filled programs that foster a lasting community.

We are very proud of our firm's support of these organizations, and we look forward to recognizing other worthy causes throughout the year.



Debbie Bergin

Hello Seattle

Seattle Office Contact Information:
800 5th Avenue, Suite 4100
Seattle, WA 98104
Main: 206-453-3030
E-mail: swr@kubickidraper.com

We are proud to announce the opening of our Seattle, Washington office. Kubicki Draper looks forward to providing the Pacific Northwest with the same quality and personal service we have provided to our Florida, Alabama, Georgia and Mississippi clients for over 50 years. Our Seattle office is managed by **Steven Rich**. Steven is an AV rated litigator and trial attorney with experience in complex and multiparty civil litigation. He has successfully defended his clients against lawsuits on a variety of different issues, including construction defects, catastrophic injury, wrongful death, product liability, toxic torts, and environmental accidents.



Reservation for Exploitation: Confronting Human Trafficking in the Hospitality Industry

By *Lisandra Guerrero*
on behalf of *KD's Hospitality and Retail Practice Group*

A Pennsylvania teenager claims she was held captive and prostituted out of a motel room in Philadelphia for more than 2 years. A Texas mother alleges the same happened to her daughter in a Houston motel room before her body was found in a nearby ditch. A woman claims she was recruited in the Philippines to travel to the United States and work as a housekeeper in a Florida hotel, after which she became more and more indebted to the recruiter for bogus fees and was threatened with deportation if she failed to work and pay.

Cases like these have shed light on the prevalence of human trafficking in the United States, prompting many to look to the hospitality industry to join the fight against it.

Human trafficking, often referred to as “modern-day slavery,” is the fastest growing criminal industry in the world, generating billions of dollars in illegal profits each year.

The International Labour Organization estimates that 24.9 million people worldwide are victims of labor and sex trafficking. While there are no official statistics for the United States, there is evidence that human trafficking is rampant, with its victims totaling in the hundreds of thousands. It is likely occurring in every state, and hotels have often become the scene of the crime.

Florida is no exception. With millions of visitors traveling to Florida each year, the state is widely regarded as one of the nation's top tourist destinations. Unfortunately, the hospitality industry is an attractive venue for human trafficking. Perpetrators often use lodging establishments to imprison their victims while in transit, or as the location of their victims' forced services. According to the National Human Trafficking Resource Center (NHTRC), hotels and motels are the single most common venue for reported instances of human trafficking.

The federal government and every state have enacted laws criminalizing human trafficking. Additionally, the federal government and numerous states have passed laws providing civil remedies to victims of human trafficking against the perpetrator and others who knowingly benefitted from the act. Many argue this may include lodging establishments, which profit from the rental of rooms and the provision of other goods and services. Whether Florida will follow suit has been at the forefront of political debate in past years.

This year, bills were introduced in both the Florida House (HB 167) and Senate (SB 1044), providing a civil cause of action to human trafficking victims against their trafficker or any “facilitator.” These

bills define a facilitator as any person who “knowingly, or in willful blindness, assists or provides goods or services to a trafficker which assist or enable the trafficker to carry out human trafficking.” According to the bills, willful blindness exists when a person attains knowledge that would “raise suspicions in a reasonable person” and, in lieu of acting on such knowledge, chooses to “remain in ignorance.” These bills, however, also provided an affirmative defense to punitive damages for owners and operators of lodging establishments whose employees are trained to identify and report human trafficking activity pursuant to an established protocol. While neither bill passed this year, they are expected to resurface in the future.

Regardless, lodging establishments should begin taking proactive steps to recognize, prevent, and confront human trafficking by formally adopting and implementing anti-human trafficking policies and procedures. These should include methods for reporting and responding to suspected human trafficking activity, while at the same time meeting the hotel's privacy obligations. Moreover, hotels should train employees on recognizing the signs of human trafficking from the perspective of their specific position (i.e. front desk, housekeeping, security, valet, or food and beverage). The protocol to be followed and training details should be tailored to the venue's location, size, and guest/employee demographics, among other considerations. Ultimately, hotels must recognize the need to properly address the issue of human trafficking and, given their unique position, develop an action plan to mitigate the risk this illicit and dangerous activity poses to victims, guests, employees, and the hospitality industry as a whole.

Kubicki Draper's retail & hospitality team is very familiar with the emerging legislation and is experienced in handling the various legal issues concerning human trafficking in the hospitality industry. The team can provide guidance on developing the appropriate protocols and training necessary to address this important subject matter.

For more information on this topic and/or assistance in developing protocols for your organization, contact: Hospitality@kubickidraper.com



A New Mother's Guide to Pumping During a Jury Trial

By Jennifer Levine Feld



Published in the Daily Business Review, August 2018

My first five-day jury trial was four weeks after I returned from maternity leave. I knew I had to allot time for pumping, but I was not sure about the proper procedure. As I now gear up for my second jury trial, I decided to dictate this article to Siri (while pumping, nonetheless) so other new mothers might have some guidance.

My son was born premature.

After he was born, there came a point when I was discharged from the hospital, but he had to stay in the NICU. Leaving the hospital without a baby was hard enough. This was the first time I had to think about pumping. The first night I was away from him, he was given formula by a nurse, while I pumped milk at home. At the start of visiting hours the next morning, I showed up with my pumped breast milk to learn that he had been unable to digest the formula and had lost weight. It is normal for new babies to lose weight when they are first born. However, premature babies are already small to begin with, and there is a looming danger of a condition called failure to thrive. I soon learned that breast milk meant healthy weight gain for my child. I began pumping every two-and-a-half hours around the clock. My son gained weight steadily and was discharged from the NICU without any complications.

Every baby is different, and every mother is different. I never saw myself as a spokesperson for breastfeeding. I do not judge mothers who feed their babies formula. A fed baby is a healthy baby. A short stay in the NICU will make you stop worrying about every ingredient in your organic applesauce, and you might even rinse off a pacifier without sterilizing it too. Because trust me—none of that matters. However, if you WANT to, you should be able to return to work and continue to feed your child.

My first five-day jury trial was four weeks after I returned from maternity leave. I knew I had to allot time for pumping, but I was not sure about the proper procedure. As I now gear up for my second jury trial, I decided to dictate this article to Siri (while pumping, nonetheless), so other new mothers might have some guidance. Here's a step-by-step guide:

Reserve a conference room.

While I am lucky enough to practice in Palm Beach County, which has a beautiful lactation room, it is only accessible after 8 a.m. Even then, the room must be opened by a trial court administration employee. In the past, for UMC hearings, I was able to plan ahead and meet the administrative assistant at the lactation room right at 8 a.m., pump, and still make it to an 8:45 a.m. hearing. She was even kind enough to come in early at 7:45 a.m. on a few days when I had earlier special set hearings.

For trial, this is simply not practical. The room itself is on the fourth floor of the courthouse, which is a solid 10-minute elevator ride/walk from the civil courtroom where my case was being tried. Add on 20 to 30 minutes for the pump itself, plus set up and clean up, and I would have been away from the courtroom for almost an hour. I recommend you contact the bailiff to reserve one of the conference rooms next to the courtroom where your case will be held. Note: Do not leave your milk or pump in this room, as only certain bailiffs have the keys, and you will have to leave it unlocked between sessions. (Don't worry. You can lock the door from the inside while you're in there.)

File a motion for trial accommodations.

Next, you should file a motion for trial accommodations. As much as I dreaded attending the UMC hearing on this Motion, I found it to be necessary. First of all, the average new mother has to pump milk every three to four hours. The trial order for my first case set trial starting at 8:15 a.m. The first break would not be until lunchtime, nearly four hours later. I had no objection from opposing counsel, but there is no other way to amend a trial order other than to request this relief in writing. The substance of the motion is simple. Here's an example of what I wrote: "This case is currently set for trial on ___ date. Undersigned counsel recently returned from maternity leave. For medical reasons, counsel requests trial accommodations and an amendment to the trial order. Counsel may be required to leave the courtroom during the trial and may require a juror recess." Thus far, every one of my motions has been granted.

However, on the off chance that one of yours is denied, you will be glad that you filed that motion because you will have some form of recourse.

Request a jury instruction.

Let's say you are trying your case with a partner, and you will be able to call your witnesses around your pump schedule. If you're going to be leaving the courtroom for any reason while the jury is still present, you may want to think about requesting a specific jury instruction. I simply requested that the judge advise the jury that attorneys may be coming and going from the courtroom during the trial and that this is normal practice. The jurors are not to think anything one way or another about an attorney leaving the courtroom during testimony.

If necessary, take witnesses out of order.

During my first trial post-maternity leave, my partner and I decided to call one of our witnesses out of order. In other words, we called a defense witness during the plaintiff's case. This particular witness was not appearing live, and had instead appeared via video for trial. I was able to leave to pump during the video, while my partner stayed in the courtroom. If this is a possibility for you, make sure to confer in advance with both opposing counsel and the judge, to confirm that you are permitted to call witnesses out of order.

Plan ahead for milk storage and other logistics.

You may be wondering about logistics. How do I store my milk? What do I do with the pump? Every morning, I pack two bags: a pump bag and a lunchbox. I carry my pump in a nondescript black vinyl bag. Inside, I keep the pump itself with all of the parts in a large gallon-sized Ziploc bag. I have a small towel, a pumping

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Living Through the Storm

By Stuart Poage



Published in the CLM Magazine, November 2018

Growing up in Northeast Ohio, we knew the weather was distinct and predictable. Winters were cold and summers comfortable. With the exception of an occasional blizzard, we knew what to anticipate. Then came Florida. Eighty degrees and sunshine in January are the normal, but the yearly threat of tropical storms and hurricanes looms. When they strike, the storms can be terrifying. During Hurricane Ivan in 2004, our family's all brick home was actually breathing as the freight train of wind and rain roared outside in the darkness for nearly four hours. With every "breath" – a sound we never want to hear or experience again – it felt like the entire house was going to crumble around us. Somehow, it didn't.

It's fascinating how when each hurricane makes landfall, it has its own personality and unique set of circumstances. When Hurricane Michael hit, the nearly Category 5 winds reached 155 mph and were so strong that towering pines, enormous oak trees, and countless power poles were twisted and snapped like toothpicks in all directions. Giant trees weighing thousands of pounds were tossed and tumbled like toys, and even small twigs impaled the ground, having been propelled like bullets. It took four days to clean up our yard alone.

Once a storm like Michael is over, the realization sets in. Going outside, inspecting the house and property, and checking on the neighbors became the top priorities. Tallahassee was hit hard, but missed complete destruction by roughly 25 miles. The army of out-of-town electrical workers, tree trimmers and first responders was a miraculous sight. Although 99 percent of Leon County lost power, most of it was restored within five days. Cell towers were knocked down, and it took four days for cell service to be completely restored in Tallahassee.

The real apocalypse took place one county west. How bad is it? No one saw the total destruction that would come to communities 50-70 miles north of the coast. The pictures and videos do not tell the story. The heat and humidity do not abandon this area as hundreds of thousands are left without power. The sounds of generators and chainsaws are constant. The emotional toll and mental effects will linger for months or years as the communities slowly begin to rebuild.

Port St. Joe and Mexico Beach where Hurricane Michael's eye hit, are smaller communities where everything is gone. There are no schools for their children. Jobs and incomes have been lost. Tallahassee has become the hub where those affected come to find gas, food and shelter. Tent cities have been set up to house the National Guard and workers who have come to help clean and rebuild.

But Florida is strong. The neighbors come together. The local officials work around the clock as they try to bring a sense of normalcy to each community. Volunteers come from all over the country, and claims professionals put policyholders on the path to recovery. There is hope and there is good. Communities come back stronger and better prepared for the next hurricane.

Stuart Poage is a shareholder in our Tallahassee office. His wife, Stacey, assisted in writing this piece. To view this article on CLM please visit: <http://online.pubhtml5.com/adfn/shac/#p=28>

NEW MOTHER'S GUIDE continued from page 4

bra, and pack of Medela wipes (for when you do not have access to a sink). I also have a small cooler that fits inside my black bag, with enough empty bottles to last the entire day, and two ice packs.

I pack a lunch every day because inevitably my lunch break will also be a pump session. This also allows me to pack a few extra ice packs in case I need to supplement my milk cooler.

Getting through security.

The first few times I entered the courthouse, I separated my cellphone and keys, but I didn't think twice about my pump. Sure enough, it set off the X-ray on the conveyor belt. The entire bag was taken apart. Unless you want your breast pump handled by a bunch of strangers, you should remove the mechanical device before you put your bag on the conveyor belt.

Some courthouses require you to drink or throw away liquids, such as water bottles, before you enter. Liquids should not be an issue because you are only leaving with milk. You are entering with empty bottles.

Supportive partners at home and at work.

The plan I have laid out above simply cannot be done without supportive partners, at home and at work. My amazing, encouraging husband, who is also a lawyer, literally cheers me on during my middle-of-the-night pumps, and has washed hundreds of bottles by hand at this point. My top-notch, incredibly accommodating firm made it easy to return to work. My talented (male) trial partner and mentor could not have been more understanding. The judiciary, the court, and opposing counsel were all so cooperative. To all of you, I thank you. I truly appreciate it, and so does my son.

APPELLATE

Reversal of Order Granting Motion to Amend to Add Punitive Damages.

Angela C. Flowers, of the Ocala office, obtained reversal, on certiorari to the Fifth District Court of Appeals, of a trial court order granting Plaintiff leave to amend her complaint to add a claim for punitive damages.

Plaintiff is a developmentally disabled adult who is a client of a non-profit corporation which operates a facility providing day-programs including training, work planning, school services and art programs. Plaintiff brought suit alleging negligent conduct and statutory violation of her individual rights by Defendant in failing to protect and oversee her care while in its custody. Plaintiff asserted the corporate Defendant violated her rights through its agents, servants and employees in failing to protect her from the acts of another client. Nearly four years after bringing suit, Plaintiff sought leave to amend to include a claim for punitive damages. The trial court granted the motion despite Defendant's arguments that Plaintiff failed to meet the legal standard for asserting a punitive damages claim. On appeal, the Fifth District agreed and reversed noting that the trial court departed from the essential requirements of law by applying the wrong legal standard when it evaluated the punitive damages claim. The court further affirmed that a punitive damages claim against a corporate defendant is governed by the standard established in **Schropp v. Crown Eurocars, Inc.**, 654 So. 2d 1158 (Fla. 1995), which requires a showing of willful and wanton misconduct on the part of a corporate officer or managing agent.

Dismissal of Writ of Certiorari.

Barbara Fox and **Caryn L. Bellus**, of the Miami office, obtained an order from the Third District Court of Appeals dismissing a writ of certiorari in a construction defect lawsuit.

A writ was being sought by the appellant condominium association following the granting of partial summary judgment in our client's favor. As a result of summary judgment, the majority of the associations claims were disposed, which is why appellants sought a writ to reverse summary judgment. Barbara and Caryn argued that because there was no irreparable harm, and there existed viable alternatives for the association to protect their interests (e.g., appeal at end of case, claims against other parties, etc.), such that certiorari should not be had. Following full briefing and oral argument, where at least one of the appellate judges did not appear to be siding with our arguments, the panel issued a unanimous order dismissing for lack of jurisdiction. With the writ dismissed and summary judgment remaining in effect, the remaining claims are likely worth less than the fees spent in seeking the writ of certiorari.

Summary Judgment Affirmed in County to Circuit Appeal.

Betsy E. Gallagher and **Michael Clarke**, of the Tampa office, obtained an affirmance of a summary final judgment in an action for PIP benefits and an award of appellate attorney's fees conditioned on the enforcement of the proposal for settlement. The issue before the three-judge 17th Judicial Circuit panel was whether the carrier properly limited PIP benefits to \$2,500 under Florida's No-Fault Law as there was no timely, qualified medical opinion that the insured sustained an emergency medical condition (EMC) before Provider's demand letter was mailed and before suit was filed. The panel found that the provider presented an EMC opinion after suit was filed, which was too late.

SPOTLIGHT ON

Valerie Dondero



Valerie A. Dondero is a shareholder in Kubicki Draper's Miami office and has been with the firm for seven of her twenty-eight years of practice.

A native of West Chester, Pennsylvania, Valerie attended Immaculata University just outside of Philadelphia. After obtaining her bachelor's degree, Valerie obtained her Juris Doctor at St. Thomas University School of Law.

Prior to joining the Firm, Valerie was an equity partner at a South Florida firm and served as the Chair of Property and Casualty Claims, where she honed her skills as a litigator and coverage attorney.

From a young age, Valerie knew she wanted to practice law in large part because she desired to be in a position where she would be able to protect and help others.

After twenty-eight years, Valerie still holds true to those same principles of fairness and justice for her clients.

In addition to her desire to help others and achieve the fairest result, Valerie's passion for the law comes through in her embracing the intellectual challenges she deals with every day. In her coverage-based work, Valerie "lives" with a file from start to finish, analyzing issues from the pre-suit phase to the trial, appellate, and enforcement phases. Valerie's wide-ranging experience has taken her to the Florida Supreme Court where she will be pressing forward with a challenge to the constitutionality of a Lee County hospital lien ordinance.

Valerie is lucky in that she has found not only a life partner in her husband, George, but also a law partner who she can use as a sounding board. When they are not practicing, Valerie and George enjoy being with their family, including his two sons, their daughter, Juliet, and their grandchildren. Valerie and her family also enjoy being on the water and are involved in the Coconut Grove Sailing Club, a callback to Valerie's days as a competitive swimmer.

Whether it's tackling a complicated legal issue for a client, providing mentorship to the lawyers she works with, or focusing on her family, Valerie prides herself on being the kind of person that people feel they can come to for support, and it is what makes her such a strong asset to the firm.

TRIALS, MOTIONS, MEDIATIONS

Defense Verdict in Premises Liability Trial.

Michael Balducci and **Jennifer Levine Feld**, of the West Palm Beach office, received an extremely favorable jury verdict in Palm Beach County on a premises liability case where the plaintiff tripped over a camouflaged rusted, metal stake in a landscaped median that should have been removed by the defendant years before. Nonetheless, they were able to pin 35 percent comparative fault on the plaintiff by showing she was inattentive while traversing the area. As to damages, the plaintiff had serious shoulder and ankle surgeries along with a cervical fusion, with close to \$300,000 in medical bills. The case was complicated by the fact that the plaintiff had a severely developmentally disabled child. Plaintiff sought additional damages for the remainder of her life expectancy in order to care for the child since her accident-related physical limitations allegedly prevented her from doing so. Between the two parties, ten experts testified at trial. The jury adopted Mike and Jen's no causation defense based on some prior complaints, delays in treatment and other causation issues, and only awarded \$50,000, which was reduced to \$32,500 with the comparative fault. A very hefty proposal of settlement had been offered of \$850,000 which was triggered, so the final judgment will be in the defendant's favor for around six figures.

Defense Verdict.

Douglas F. Miller, of the Pensacola office, obtained a defense verdict in Santa Rosa County. Doug was representing a site contractor who had been hired to work on a new subdivision to clear land and dispose of debris. It was undisputed that debris from the land clearing had been buried on site, making a complete defense verdict unlikely. The developer was offered \$50,000 at mediation and, at trial, boarded \$600,000 in hard damages. After a four day trial, the jury came back with a verdict of \$27,000.

Motion for Summary Judgment on Worker's Compensation Immunity.

Jeremy A. Chevres, of the Ft. Myers office, obtained summary judgment in a case involving the death of a 21-year-old husband and father of a 6 day old infant. The deceased was crushed while working under a bulldozer where the supports failed. Jeremy was able to keep the focus of the Court on the case law and legal burden in the face of inflammatory evidence. Prior to the hearing, Jeremy laid the groundwork for his win by defeating an attempt to amend the complaint for punitive damages and securing an order denying the amendment with prejudice. As the Court noted, negligence and even gross negligence was ample and proven but did not rise to the conduct required under the statute for employer liability under the virtual certainty standard.

Dismissal with Prejudice Granted.

Jason Byrd and **Stuart Poage**, of the Tallahassee office, secured a Dismissal with Prejudice in Leon County in a case where the plaintiff sued a State of Florida agency seeking \$850,000 in alleged damages. Jason and Stuart litigated and argued that Plaintiff failed to meet the statutory pre-suit notice requirement as required by Section 768.28(6), Florida Statutes. Despite a properly filed and served formal operative complaint, the circuit court judge upheld the strict statutory requirements and granted the dismissal with prejudice as the applicable statute of limitation had already expired.

Motion for Fraud on the Court Granted.

Stuart Poage, of the Tallahassee office, successfully defended a matter wherein Plaintiff alleged a roadway construction company's industrial dump truck ran him off the road causing an accident which left Plaintiff paralyzed with more than \$1.5 million in past medical expenses. Plaintiff originally reported the accident as a single vehicle accident but later filed formal litigation alleging negligence against a roadway construction company. Investigation and discovery revealed that no company trucks were present, that no witness testimony supported the allegations, that Plaintiff was under the influence of drugs at the time of the accident, and that Plaintiff threatened suicide prior to the accident. A motion for fraud was filed based largely upon misstatements made by Plaintiff during his deposition. The motion was granted and a consent judgment for fee recovery was executed.

Favorable Settlement in Anticipation of Motion for Summary Judgment.

Jonathan O. Aihie, of the Miami office, successfully resolved a property damage claim. Plaintiff alleged that she suffered a covered loss stemming from a storm-created roof leak. Jonathan requested a reinspection with a roofer/GC to determine the cause and origin of the damage. The roofer opined that the damage was not sudden and accidental, but rather from long term wear and tear. Afterwards, Jonathan deposed the insured to obtain more information about the timeframe of the damages. The insured testified that a tree had been growing over her roof for an extended period of time, which caused the roof damage. As such, Jonathan immediately filed a motion for summary judgment based on the fact that there was no peril-created opening to trigger coverage under the policy. Jonathan also filed an inclusive \$500 Proposal for Settlement to reduce the carrier's fee exposure. Due to Jonathan's investigation and aggressive motion practice, opposing counsel informed Jonathan of plaintiff's intention to accept the Proposal a few days before the Motion for Summary Judgment hearing.

Voluntary Dismissal with Prejudice in Roof Leak Claim.

Sarah R. Goldberg, of the Miami office, obtained a voluntary dismissal with prejudice in a denied roof leak claim following favorable testimony from a Plaintiff. During Plaintiff's deposition, Sarah secured testimony from Plaintiff that he did not have a sudden leak on the reported date of loss in 2016, but rather his roof had been leaking since his prior roof claim in 2012. Following the deposition, Plaintiff reached out to settle the case for \$20,000.00. Plaintiff's counsel said his client was "confused" when testifying that there was an ongoing leak at deposition because the underwriting inspection report completed in 2015 stated that the roof was in good condition and had 5 useful years left. Sarah had multiple phone conferences with Plaintiff's counsel informing him that there was no basis to argue that his client was "confused" during his deposition nor did the underwriting inspection report do anything to meet Plaintiff's burden to prove that wind caused an opening in the roof. Recognizing the weaknesses of his case, Plaintiff's counsel filed the voluntary dismissal on the eve of Sarah's motion for summary judgment.

TRIALS, MOTIONS, MEDIATIONS

Motion for Summary Judgment Granted in Tornado Claim.

Jonathan O. Aihie, of the Miami office, obtained summary judgment where Plaintiff contended that he suffered a covered loss stemming from a tornado, even though there was no weather evidence of a tornado on the date of loss. Jonathan requested a re-inspection with an engineering expert to determine the cause and origin of the claimed damages. The expert determined that the damage was long-term and not from a sudden weather event. Jonathan then requested the plaintiff's deposition to see if he could obtain helpful testimony to set the case up for a dispositive motion. Plaintiff could not refute the engineer's findings. The insured's public adjuster refused to appear for his deposition twice. Jonathan moved to strike the PA for failing to appear at his deposition and the court granted the motion to strike. Jonathan then drafted a motion for summary judgment based on plaintiffs' testimony and the expert's opinion, showing that the claimed damage was excluded under the policy because it was long term. Plaintiff retained a roofer and relied on the roofer's affidavit at the summary judgment hearing. Jonathan was able to discredit the roofer's affidavit because the roofer was not qualified and did not render an opinion about the causation and duration of the damages. The court granted the motion for summary, after our client had served a \$1,500 proposal for settlement.

Voluntary Dismissal with Prejudice in Roof Leak Claim.

Jessica L. Murray, of the Tampa office, obtained a voluntary dismissal with prejudice in a claim of questionable fraud. Upon receiving the file, Jessica investigated the claim and took the necessary depositions which revealed the roof leak occurred over a period of time and was not from a covered peril. She then obtained an affidavit from our expert and filed a motion for summary judgment. The day before the hearing, Plaintiff's counsel called and asked if the client would waive fees and costs for a dismissal without prejudice. Jessica, on behalf of the client, informed Plaintiff's counsel that she would only agree to a dismissal with prejudice. Just prior to the hearing on the motion for summary judgment Plaintiff voluntarily dismissed the case with prejudice.

Motion to Amend Complaint to Add Bad Faith Count Denied.

Alexandra Paez and **Melonie Bueno**, of the West Palm Beach office, successfully opposed a motion seeking to amend a complaint in a UM case to add a bad faith count and breach of contract count. Melonie drafted the motion and Alex argued it in Pasco County. Despite rarely prevailing on these issues, the Court denied Plaintiff's motion to amend following oral argument.

Motion to Dismiss for Lack of Personal Jurisdiction Granted.

Jennifer Remy-Estorino and **Benjamin Cohen**, of the Miami office, obtained a dismissal for lack of personal jurisdiction in a trademark dispute in the Middle District of Florida. Their client (individually) and his corporation, a resident and corporation of Washington State, were sued for trademark infringement (amongst other causes of action) in the Middle District of Florida, as a result of a failed business relationship in place between the parties dating all the way back to 2007.

The parties entered into an oral agreement/contract for our client to license the trademarked "Gazelles" mark from Plaintiffs, for use in building up our client's coaching business which provided training, networking and lead generation for business coaches who provided consulting services to mid-size businesses seeking to achieve high growth rates.

After a disagreement over the nature and scope of the oral agreement/contract and business relationship, Plaintiffs terminated the existing business relationship with our client and soon thereafter, began interfering and meddling in our client's business affairs, resulting in a lawsuit brought by our client against the Florida Plaintiffs in Washington State.

In response, the Florida Plaintiffs filed a 200 plus page Complaint, against our clients alleging: (1) trademark infringement; (2) two counts of unfair competition and false designation of origin; (3) cybersquatting; (4) cancellation of trademark registration; (5) deceptive and unfair trade practices under Florida law; (6) breach of contract; and (7) conversion on the heels of some fabricated, complex, and convoluted scheme that our clients allegedly hatched to divert assets away from Plaintiffs. In addition, after removing our clients' Washington State action to Federal Court (US District Court for the Western District of Washington), the Florida Plaintiffs succeeded in getting our client's Washington State suit dismissed for lack of personal jurisdiction. Thereafter, we moved for dismissal as well in the Middle District of Florida.

After much briefing, the Court granted Jenny and Ben's Motion to Dismiss for lack of personal jurisdiction.

Favorable Settlement Reached.

Amy E. Ray, of the Tampa office, obtained a very favorable settlement in a case involving a teenage girl who fractured her ankle on our client's property inside the tenant's premises while tumbling and landed in a "pit" which was surrounded by various mats. The tenant was a cheerleading school, but our client admitted he owned all the equipment that was being used. Medical bills were \$28,000 which included a surgery. At mediation the plaintiff would not take less than \$100k largely because her mother is a paralegal for the plaintiff attorney. At mediation, our client offered \$15,000, which was then reduced to a proposal for settlement. Following mediation, Amy drafted a motion for summary judgment arguing that our client was not in possession and control. Amy refuted all the arguments raised in Plaintiff's response, and as the hearing on the motion for summary judgment got closer, Plaintiff's counsel started dropping his demand. Amy held firm at her number, and Plaintiff's counsel finally accepted the proposal on the eve of the hearing.

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 that you consult an attorney to review and evaluate the particular circumstances of your situation.

CONGRATULATIONS

Six KD attorneys were recognized as 2019 "Best Lawyers in America," by the highly-respected "Best Lawyers" peer review guide.



Caryn L. Bellus
Appellate Practice

Angela C. Flowers
Appellate Practice

Betsy E. Gallagher
Appellate Practice

Brad J. McCormick
Personal Injury Litigation Defendants and Commercial

Laurie Adams
Personal Injury Litigation Defendants

Jane Carlene Rankin
Real Estate Law

Receiving this designation reflects the high level of respect a lawyer has earned among other leading lawyers in the same communities and the same practice areas for their abilities, their professionalism, and their integrity.

Our attorneys present continuing education seminars on a variety of topics throughout the year. Below are some of the topics presented by our team in the last few months:

Presentations and Speaking Engagements

We welcome the opportunity to host a complimentary presentation at your office or event, on any topic(s) of your choice. All presentations are submitted for approval of continuing education credits.

For more information, please contact Aileen Diaz at 305.982.6621 / ad@kubickidraper.com

- Medicare, Liens and Set Asides
- Helpful Tips Regarding the Activities of Public Adjusters and Contractors
- Multiple Claimants - Low Limits
- Early Case Resolution
- UM/UIM
- Managing the Catastrophic/Complex Case from Coverage to Conclusion
- Using Social Media to Detect Fraud
- Defending Against Fraud Litigation
- Florida 5 Hour Law & Ethics Update
- Bad Faith Prevention
- When Old Claims Rise from the Dead
- AOB Matters: Defense Against Water Mitigation
- First Party - Cost Effective Ways of Resolving Plaintiff's Fees and Costs and Medical Coding
- Soft Tissue Injuries
- Bad Faith – Trying Cases with Excess Verdict

ANNOUNCEMENTS

We are pleased to share that **Stuart Poage**, of the Tallahassee office, has been admitted to the American Arbitration Association's Construction Arbitration Panel. Stuart is a board certified construction attorney and is available to handle construction arbitrations throughout Florida and the southern parts of Georgia. For more information, please feel free to contact Stuart: sp@kubickidraper.com.



Charles Watkins, of the Miami office, will serve as the Treasurer of the newly formed Florida Chapter of the National African American Insurance Association (NAAIA). The NAAIA was organized to create a network among minorities who pursue careers in the Insurance Industry, and we proudly support it. For more information, please visit: <https://www.naaia.org/>



Florida Chapter / NAAIA



Melonie Bueno, of the West Palm Beach office and her husband welcomed their baby girl, Milena Aurelia.

Congratulations Congratulations



Kristin Wood Elza, of the Tampa office and her husband welcomed their baby boy, Miles Richard.

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

Brad McCormick
Sharon Christy

New Assignments

305.982.6707bmc@kubickidraper.com
305.982.6732sharon.christy@kubickidraper.com

Rosemarie Silva

Firm Administrator

305.982.6619rls@kubickidraper.com

Aileen Diaz

Seminars/Continuing Education Credits

305.982.6621ad@kubickidraper.com

OFFICE LOCATIONS

FLORIDA: Fort Lauderdale Fort Myers/Naples Jacksonville Key West Miami Ocala Orlando
Pensacola Tallahassee Tampa West Palm Beach ALABAMA: Mobile WASHINGTON: Seattle

www.kubickidraper.com