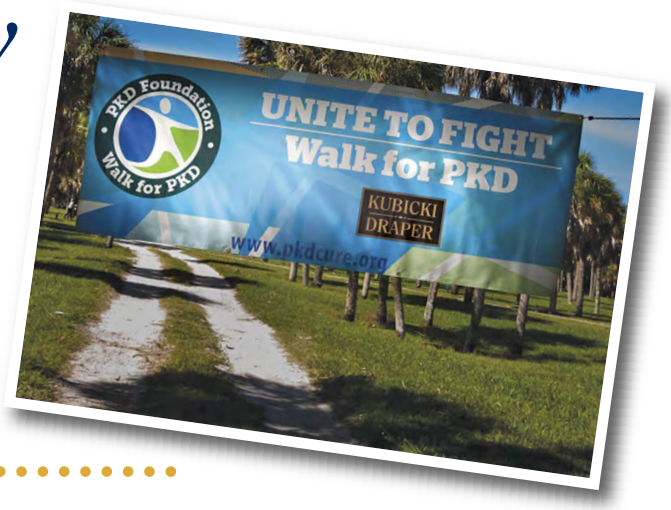
KUBICKI DRAPER

THE KD QUARTERLY

FALL 2014

KD *in the Community*

For the 7th consecutive year, our Tampa office, along with attorneys and staff from other KD offices, participated in the Walk for PKD. **Harold Saul**, of the Tampa office, captained "Ivan's Investors for a PKD Cure." The team, named in honor and memory of Harold's father, raised over $19,000 to help the Polycystic Kidney Disease Foundation seek a cure for this disease. Ivan's Investors took the prize for the most funds raised by a team, and Harold was the individual who raised the most. Thanks to everyone who supported this great cause!



Hospital Lien Law Found Unconstitutional

by Valerie Dondero
(published in Claims Management Magazine, September 2014)

A special law applicable only to Lee County, Florida, was enacted in 2000 by the Florida State Legislature allowing the public health care system in Lee County to be named Lee Memorial Health System (LMHS) and providing for the execution and enforcement of liens on their patient's private causes of action and settlements for injuries that allegedly necessitated the hospital treatment. Chapter 2000-439 not only entitled LMHS to a lien on its patient's claims and settlements but permitted the enforcement of the lien against a third party liability insurer who pays to settle the patient's injury claim without having satisfied the hospital lien. The Lien Law further allowed LMHS to seek recovery of all reasonable charges for services, irrespective of the amount of payment made in settlement by the liability insurer. Lee County has been flooded with suits filed by LMHS seeking to enforce Chapter 2000-439 against various insurers for impairment of the hospital's claim of lien. Several insurers have defended enforcement of this Lien Law by alleging it is unconstitutional under Article III, Section 11(a)(9) of the Florida Constitution, which provides: "[t]here shall be no special law or general law of local application pertaining to the creation, enforcement, extension or impairment of liens based on private contracts, or fixing of interest rates on private contracts". Insurers cited to ***Shands Teaching Hospital and Clinics, Inc. v. Mercury Ins. Co.***, 97 So.3d 204 (Fla. 2012), wherein Florida's Supreme Court struck down an Alachua County Lien Law on the same constitutional grounds. Despite several prior rulings in Lee County refusing to find the LMHS Lien Statute unconstitutional, a recent Circuit Court decision in LMHS v. Progressive Select Insurance Company, Case No: 11-CA-003312, receded from that finding and held the LMHS Lien Law was, in fact, unconstitutional under Article III, Section 11(a)(9). The Lee County Court, citing to the Shands decision, indicated that the contract between the hospital and its patient was private in nature and because the lien purported to attach to a patient's private assets, it fell within the prohibition under Article III, Section 11(a)(9). Although LMHS argued that it was a "public hospital" and thus, entered into "public" rather than private contracts with its patients, the Court found the statutory language allowing the lien to attach to the patient's private rights determinative of the issue. An Appeal is expected.

EDITOR
Bretton Albrecht

IN THIS ISSUE

www.kubickidraper.com

SPOTLIGHT ON:

Valerie Dondero

For Valerie, truth and justice are more than abstract concepts. They are the reason she went to law school and the driving force that gives her practice a fierce tenacity.

Valerie Dondero, a shareholder in our Miami office, began her career as an attorney practicing with a sole practitioner who had a reputation for being a top trial lawyer. Being the only associate, she was able to dive right into her cases and she quickly gained a wealth of trial experience in just a few years' time. In addition to helping Valerie hone her natural litigation skills, this seasoned sole practitioner gave Valerie some wise advice that she says she will always remember: If you want to hunt the tiger, you have to think like the tiger. In other words, it's crucial to be able to view your case from the perspective of your adversary, in order to anticipate and counter their likely arguments and actions.

When Valerie later joined a defense firm that specialized in all aspects of first and third party insurance defense and coverage litigation, she found insurance defense to be a perfect fit. She saw how plaintiffs' lawyers often engaged in overreaching and trying to take advantage of people. She also saw how she could use her litigation and trial skills to step in, call them out, and often put a stop to it. Valerie found she especially enjoyed the complexities and challenges presented by insurance coverage cases.

Thus, it is not surprising, Valerie has developed her practice with a strong focus on insurance coverage and defense litigation. She specializes in all aspects of first and third party defense and coverage litigation, and her practice extends to numerous areas, including state and federal maritime claims, premises liability, products liability, trucking, hospitality, automobile cases, wrongful death, catastrophic injury claims, negligent security, and "special lines" claims, to name a few. Valerie has been at the forefront in representing insurers in the defense of their on-line application processes and defending against electronic signature challenges on a statewide basis. In addition, she is experienced in handling broker and agent liability claims for auto, vessel, trucking, ATV and RV coverage, and has been a frequent lecturer on topics ranging from Uninsured Motorist Coverage, Marina Operator's Liability, Bad Faith Litigation and Traumatic Brain Injury Claims. Valerie was recently featured in the "Around the Nation" column of the September issue of the Claims Management Magazine for her win in persuading a trial court to overturn its decision in prior cases and to instead hold that the Lee Memorial Health System Lien Statute is unconstitutional, as Valerie asserted it was. (http://claims-management.theclm.org/home/article/Around-the-Nation-September-2014).

Valerie, now a seasoned litigator in her own right with almost 25 years' experience, says some of her most important skills as a defense litigator include her experience, confidence, passion, and persistence. Valerie believes in her cases and she is passionate about winning. At the same time, she is also committed to providing her clients with an honest and objective evaluation of the pros and cons of their cases to help them evaluate the best course of action, whether that means fighting it out in court, negotiating a settlement, or something in between. Valerie also believes strongly in mentoring young lawyers. This is one of the many reasons Valerie has found Kubicki Draper to be such a good fit, as the firm encourages mentoring, training, and teamwork.

Valerie was born and raised in West Chester, Pennsylvania, near Philadelphia. She earned her B.A. in history, with a minor in political science, from Immaculata College in Immaculata, Pennsylvania, and her J.D. from St. Thomas University School of Law in Miami, Florida. Her husband, George Mahfood, is a partner with the law firm of Broad and Cassel. George's sons, Marcus and Alex are also both accomplished lawyers, as are their wives. Valerie and George are also very proud of their 11-year old daughter, Juliet, a competitive figure skater who also enjoys math and science.

Assignment Prior to Adjustment of Claim Not Valid

by KD's First Party Practice Group

Despite most insurance policies explicitly forbidding assignments without consent, Florida courts have routinely upheld the assignment of post-loss claims regardless of the insurer's consent. "The policy was assigned after loss, and it is a well-settled rule that the provision in a policy relative to the consent of the insurer to the transfer of an interest therein does not apply to an assignment after loss." ***W. Florida Grocery Co. v. Teutonia Fire Ins. Co.***, 77 So. 209, 210-11 (Fla. 1917).

The ***Teutonia*** decision dealt with a post-loss assignment of a defined amount of insurance proceeds. In fact, the insurer had already deposited the proceeds into a deposit account prior to the initiation of the lawsuit. While the Court appeared to leave little doubt that in the case of post loss assignments, a non-assignment clause was not enforceable, the issue of whether or not a claim was adjusted prior to assignment will become a point of distinction in modern case law.

While the issue of post loss assignments appeared well settled, the Florida Supreme Court again addressed the issue in ***Lexington Ins. Co. v. Simkins Indus., Inc.***, 704 So. 2d 1384, 1385 (Fla. 1998). In ***Lexington***, the Florida Supreme Court determined non-assignment clauses may still be enforceable. "Accordingly, based on the unambiguous language of the statute and the policy, we hold that the policy's non-assignment clauses are dispositive and WAK's purported assignment of the policy was ineffective." ***Id.*** at 1386.

The statute referenced by the Court in ***Lexington*** was Section 627.422, Florida Statutes, which states:

> A policy may be assignable, or not assignable, as provided by its terms. Subject to its terms relating to assignability, any life or health insurance policy under the terms of which the beneficiary may be changed upon the sole request of the policy-owner may be assigned either by pledge or transfer of title, by an assignment executed by the policy-owner alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer. Any such assignment shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment, until the insurer has received at its home office written notice of termination of the assignment or pledge or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment.

§ 627.422, Fla. Stat.

In light of ***Lexington***, most courts have interpreted this statute to apply to the actual insurance policy and not post-loss claims; however, some Florida courts are starting to recognize that while the right to receive proceeds from an insurance policy might be assignable not withstanding the presence of nonassignment clause, the amount of proceeds owed must first be determined or the claim adjusted before a valid assignment of claim takes place. Most recently, Judge Wayne Durden of Florida's 10th Judicial Circuit (Polk County) ruled a homeowner's assignment of rights prior to the adjustment of loss was prohibited by the policy language requiring the insurer's consent to any adjustments. Specifically, Judge Durden's order reasoned this assignment prior to adjustment assigned the right to adjust the claim to a non-party to the contract. As a result, the assignment was invalid. While the decision is still on appeal, it does illustrate that not all assignments are created equal and the timing of such an assignment can ultimately determine the validity of such an assignment.

Before accepting an assignment of rights, claims professionals should determine what details of the claim were worked out prior to the purported assignment taking place. While Florida law still recognizes the validity of an assignment of a fully adjusted claim, an assignment prior to adjustment may not be valid. Absent a valid assignment, any non party attempting to sue under the insurance contract would lack proper standing and their case should be subject to dismissal.

Presentations and Speaking Engagements

We welcome the opportunity to host a complimentary seminar at your office or event on the topic(s) of your choice. All presentations are approved for continuing education credits. For more information, please contact Aileen Diaz at 305.982.6621 ad@kubickidraper.com.

Some of the topics our attorneys presented during the last quarter include:

- Avoiding Bad Faith in UM Cases
- Florida 5 Hour Law & Ethics Update
- Negotiating Small Limits
- Trying Cases with Risk of an Excess Verdict
- Mild and Traumatic Brain Injury
- Ethics for the Claims Professional
  Alcohol, Cell Phones & the Law
- Staged Accidents
- Medical Coding
- Confession of Judgment
- Negligent Security
- PIP Hot Topics & Fraudulent Claims
- Transferring Risk in Construction Defect Cases

THE FLORIDA COURT SYSTEM:

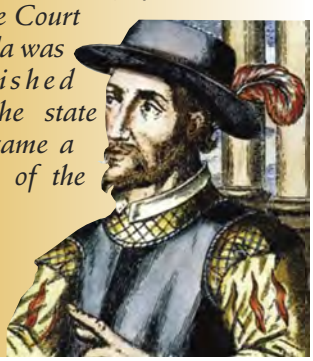
The Basics and A Dose of Trivia to Help the Medicine go Down

By Betsy E. Gallagher and Michael C. Clarke

A Little Perspective

Florida was first "discovered" and claimed for Spain by Ponce de Leon in 1513. Two other countries, England and France, as well as Native Americans fought for control of the territory. England initially gained it in the first Treaty of Paris signed in 1763 but the territory was inexplicably returned to Spain in the second Treaty of Paris signed at the end of the Revolutionary War – twenty years later. Florida was ultimately ceded to the United States in 1819. The Florida territory was not admitted to the Union as the State of Florida for over 25 years.

In 1845, Florida became the 27th state to join the United States. At that time, Florida's population was approximately 70,000 individuals primarily living near Tallahassee and neighboring counties with established cotton plantations. Florida inherited most of its legal principles from English law–its "Common Law" in effect on Independence Day, July 4, 1776. A very "primitive" Supreme Court of Florida was established when the state first became a member of the Union.



The Present Florida Court System

The Florida court system has had a very controversial history, but we'll save that for another day. Florida presently has a four-tiered system of courts in contrast to the three tiers employed by the federal courts.

County Courts

This is the lowest tier of the Florida court system. There are sixty-six (66) county courts in Florida–one for each county. Often the earlier Florida county courthouses were built in the town square like many other courts in other southern states. Many were stately buildings with dome-tops and massive columns. An example is Gadsden County's courthouse in Quincy, Florida which has been in continual use since 1827. County courts are trial courts only. Their jurisdiction generally includes:[1]

a. All civil actions in which there is less than $15,000 in controversy not including interest, costs and attorney's fees, except those actions which are within the exclusive jurisdiction of the circuit courts. Therefore, actions for PIP benefits are generally filed in county court.
b. "all misdemeanor cases not cognizable by the circuit courts;"
c. "violations of municipal and county ordinances;"
d. certain disputes involving home owners' associations and landlord/tenant actions within the courts' jurisdictional limits; and
e. the determination of the right to possession of real property and the enforceable or unlawful detention of lands and tenements, etc.

The Circuit Courts

There are twenty (20) circuit courts in Florida, which serve as both trial courts and appellate courts for appeals from county courts. As trial courts, they have general jurisdiction over matters not specified by statute to the county courts. Some counties are so large that they merit their own circuit court, e.g., Dade County and Hillsborough County. Those circuit courts have appellate jurisdiction over their one county. Many circuit courts are comprised of multiple county courts, and those circuit courts hear appeals from the county courts within their jurisdiction.
The jurisdiction of the circuit courts generally includes:[2]

a. Actions at law where the matter in controversy is $15,000 or more, exclusive of interest, costs and attorney's fees;
b. "original jurisdiction not vested in the county court;"
c. Jurisdiction of appeals when provided by law;
d. Jurisdiction to issue writs of mandamus, quo warranto, certiorari, prohibition, etc.;
e. Jurisdiction over felonies and certain misdemeanors, etc.

District Courts of Appeal

Until the late 50's, the Supreme Court of Florida heard all appeals in the state. The supreme court became very congested, and Florida's Constitution was revised to provide for intermediate appellate courts–the district courts of appeal. Originally, there were only three district courts. Since that time, two additional district courts of appeal have been added. The five district courts of appeal are located in Tallahassee, Lakeland, Miami, West Palm Beach and Daytona Beach. Usually, the district courts of appeal are the courts of final resort, as the Supreme Court of Florida has very limited jurisdiction. Thus, most litigated cases end with review by the district courts of appeal.

continued on page 5

[1] *See generally § 34.017, Fla. Stat. (2013).*
[2] *See generally § V (b), Fla. Const.*

continued from page 4

THE FLORIDA COURT SYSTEM:

The Basics and A Dose of Trivia to Help the Medicine go Down

Jurisdiction of the district courts of appeal includes:

a. **Civil Jurisdiction of the District Courts of Appeal as a Matter of Right**:[3]

1) Jurisdiction to hear appeals that may be taken as a matter of right from final judgments or orders of a trial court (usually circuit court orders); and
2) Jurisdiction to hear certain appeals from non-final orders as listed in rule 9.130, Florida Rules of Appel late Procedure including, but not limited to, non-final orders which determine: jurisdiction of the person; entitlement of a party to arbitration or to an appraisal under an insurance policy; that, as a matter of law, a party is not entitled to workers' compensation immunity; that a class action should be certified.

b. **Discretionary Jurisdiction of the District Courts of Appeal:**

1) questions certified by the county court as involving as a question of great public importance;
2) second-tiered certiorari to review appellate decisions of the circuit court–a very high standard must be met;
3) certiorari from interlocutory orders entered by the trial court (such as discovery orders);
4) issuance of writs of mandamus, quo warranto, certiorari, prohibition and habeas corpus (criminal proceeding):[4]

The First District Court of Appeal has jurisdiction over the 1st, 2d, 3d, 4th, 8th and 14th circuit courts. The Second District court of Appeal has jurisdiction over the 6th, 10th, 12th, 13th, and 20th circuits. The Third District Court of Appeal has jurisdiction over the 11th and 16th circuits (Dade and Monroe counties). The Fourth District Court of Appeal has jurisdiction over 15th, 17th and 19th circuits. Finally, the Fifth District Court of Appeal oversees the 5th, 7th, 9th and 18th Circuits.

The Supreme Court of Florida[5]

This is the highest court in the state dating back to 1845 when the state was sparsely populated continuing today with its opinions affecting the entire state and, sometimes the entire nation. The supreme court is comprised of seven judges called "justices." Unless recused, all seven judges entertain every appeal.

The supreme court's direct jurisdiction is quite limited and includes: (1) decisions of district courts of appeal which declare **invalid** a state statute or provision of the state constitution; (2) final orders imposing death sentences; and as provided by general law, final orders in proceedings for validation of bonds or certificates of indebtedness, and actions of statewide agencies related to rates or service of electric, gas, or telephone service utilities.

The supreme court has discretionary jurisdiction to review decisions of district courts of appeal that:

(1) Expressly declare valid a state statute; expressly construe a provision of the state or federal constitution;
(2) expressly affect a class of constitutional or state officers;
(3) expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law;
(4) pass upon a question certified to be of great public importance;
(5) is certified to be in direct conflict with decisions of other district courts of appeal.

The supreme court also has discretionary jurisdiction to review orders and judgments of trial courts certified by the district court of appeal in which the appeal is pending to require immediate resolution by the supreme court, and involves an issue of great public importance; or an issue which will have a great effect on the proper administration of justice. In addition, the high court has jurisdiction to review questions of law certified by the Supreme Court of the United States or a United States court of appeals that are determinative of the cause of action and for which there is no controlling precedent of the Supreme Court of Florida.

JUDICIAL SELECTION SYSTEMS AND MANDATORY RETIREMENT

County and circuit court judges are elected by popular vote. The judges have six year terms so they come up for reelection when their term ends.

Florida's governor appoints new district court of appeal judges and supreme court justices from a list of three to six names submitted by a Judicial Nominating Commission. A year after their appointment, the names of new appellate judges are submitted to the voters who answer the question of whether the new judge should be retained–this requires a "yes" or "no" answer on the ballot. The merit retention vote of newer supreme court justices involve a state-wide race. The merit retention of district court of appeal judges are decided by voters who reside in the area governed by the specific district court on which the jurists sit. If retained the judges have a six year term before they again come up for a merit retention vote.

Under the Florida Constitution, there is a mandatory retirement age for judges. If a judge becomes 70 during the first half of his term, than his or her birthday is the mandatory retirement date. If a judge becomes 70 in the second half of the six-year term, than the judge may remain on the bench until the end of the term.

CONCLUSION

An article addressing the workings of the Florida court system may not provide scintillating reading and indeed may be a good substitute for sleeping medications. However, every good citizen should have a basic understanding of the courts' jurisdiction and selection processes. Also, if you are involved in claims handling and litigation, knowing your way around the court system can assist in making strategic decisions.

[3] *For the jurisdiction of district courts of appeal, see generally Art. V, § 4(b), Fla. Const.; Fla. R. App. P. 9.130.*

[4] *We will also save a discussion of the purposes of writ for another day.*

[5] *See generally Art. V, § 3(b), Fla. Const.*

APPELLATE

Plaintiff's Appeal Defeated on Jurisdictional Grounds.

Sharon C. Degnan, of our Fort Lauderdale office, successfully defended an appeal in ***Joseph v. GEICO Indemnity Co.***, 137 So. 3d 503 (Fla. 4th DCA 2014) wherein the Fourth District Court of Appeal dismissed the plaintiffs' appeal for lack of subject matter jurisdiction. The appellate court was persuaded by the jurisdictional issue raised on behalf of GEICO that the Plaintiffs' untimely filing of a motion for additur following a favorable verdict in a UM case precluded the appellate court from considering the issues raised on appeal. Following the decision, GEICO's motion for appellate attorney's fees was granted.

Affirmance of Summary Judgment in Slavin Doctrine Case

Angela Flowers ,of our Ocala office, recently obtained an affirmance of a summary judgment in ***Transportation Engineering, Inc. v. Cruz***, 5D13-923, 2014 WL 5782251 (Fla. 5th DCA Nov. 7, 2014), a wrongful death case in which Plaintiff's decedent, a front-seat passenger, was killed in a single-vehicle collision on the Florida Turnpike. The accident occurred when the driver lost control of the vehicle and crashed into a guardrail. The driver settled with Plaintiff, and Plaintiff sued multiple Defendants, including our Defendant, the company that constructed the guardrail, and a Co-Defendant who had designed the guardrail. At the trial level, **Harold Saul**, of our Tampa office, prevailed in obtaining summary judgment in favor of our Defendant based on the ***Slavin*** doctrine, whereby a contractor ordinarily cannot be held liable for injuries to third parties that occur due to an alleged patent defect after the work has been completed by the contractor and accepted by the property owner. However, the trial court denied the summary judgment of the Co-Defendant engineering company that designed the guardrail.

While Plaintiff did not appeal the summary judgment for our Defendant, the Co-Defendant who designed the guardrail did appeal. On appeal, Angela persuaded the appellate court that the ***Slavin*** doctrine applied in this case and required a holding of no liability for our Defendant contractor as a matter of law. In addition to affirming summary judgment for our Defendant, the appellate court went one step further and held that the trial court should also have entered final summary judgment in favor of the Co-Defendant/Appellant that had designed the guardrail, finding that the Florida Supreme Court had extended the ***Slavin*** doctrine to architects and engineers in subsequent case law. (While the Plaintiff may seek rehearing of the decision due to the Court granting summary judgment for Co-Defendant, such a motion should not alter the affirmance for our Defendant).

Affirmance of Summary Judgment for Insurance Company in UM Stacking Case.

Sharon Degnan, of our Fort Lauderdale office obtained a per curiam affirmance of a summary judgment in favor of a UM insurer in ***Gilliam v. Allstate Property and Casualty Insurance Company***, 141 So. 3d 573 (Fla. 4th DCA 2014). The appellate court affirmed a summary judgment finding that the insured had made an informed and knowing rejection of stacked UM coverage when the policy was first issued, which remained valid and effective each time the policy renewed since the insureds never changed or increased the limits of liability coverage under the policy and never requested, in writing, a change of selection from stacked to non-stacked coverage.

Affirmance in Plaintiff's Appeal Seeking a New Trial on Damages.

Angela Flowers, of our Ocala Office, obtained a per curiam affirmance in ***Gray v. Belizaire***, 146 So. 3d 1175 (Fla. 1st DCA 2014), a case involving crippling injuries to Plaintiff, who suffered paraplegia as a result of the automobile accident. Plaintiff appealed, seeking a new trial on damages in an effort to obtain higher economic and noneconomic damage awards. In the case tried by **Carey Bos**, of our Orlando office, the jury awarded Plaintiff, who was in his early 40's, a mere $1.3 million in future economic damages and a total of $310,000.00 in past and future noneconomic damages. Angela persuaded the appellate court that there was sufficient evidence to support the jury's conclusion that Plaintiff's past and future pain and suffering were minimal, notwithstanding his catastrophic injuries, and the court per curiam affirmed, rejecting Plaintiff's arguments that the trial court erred by denying him a new trial on damages.

The ConstructionConnection

Brought to you by Kubicki Draper's Construction Practice Group

The attorneys in our Construction Practice Group not only have the core knowledge and understanding of the intricacies of construction litigation, including representation of architects, engineers and contractors, but they are also dedicated to staying informed of the latest trends and developments in all areas of construction and related fields. Beginning Winter 2015, this specialized group will share their knowledge and feature articles in the KD Quarterly. "The Construction Connection" column will be dedicated to construction related issues and will include tips and insight into emerging topics and recent case law. The group looks forward to keeping you informed and welcomes suggestions on topics and issues you would like to see featured, so please submit suggestions to construction@kubickidraper.com.

TRIALS, MOTIONS, MEDIATIONS

Summary Judgment of no Coverage Based on Intentional Act Exclusion.

Caryn Bellus and **Bretton Albrecht**, of our Miami office, obtained a final summary declaratory judgment of no coverage based on the intentional act exclusion in a homeowners' policy. The insured sought coverage and a defense after he was sued based on allegations that he followed his ex-girlfriend to a shopping center parking lot, where he shot and killed her in broad daylight. Plaintiff in the underlying wrongful death lawsuit attempted to plead around the intentional act exclusion in the insured Defendant's homeowners' policy by incorporating allegations of negligence and a count for conversion of the decedent's personal property. However, Caryn and Bretton argued that "creative" pleading such as this could not alter the fundamental fact that the acts alleged were clearly and indisputably intentional. The trial court agreed and entered final summary judgment of no coverage in the declaratory judgment action they brought on behalf of the insurer.

Summary Judgment of no Coverage for PIP and Med Pay Benefits.

Eric Tourian, of our Orlando office, obtained a summary judgment of no coverage in a PIP case involving a claim for PIP and med pay benefits by the insured's grandson, who did not reside with the insureds and who was involved in an accident while riding as a passenger in a friend's vehicle, which was registered in a different state (although the accident occurred in Florida). The claimant's grandson obtained medical treatment following the accident and then attempted to claim PIP and Med Pay benefits under the insureds' policy, on which he was listed as an additional driver. Eric sought summary judgment on behalf of the insurance company, arguing that PIP and Med Pay benefits are only available to named insureds, and not additional drivers while occupying a vehicle not listed on the policy. The trial court agreed and entered summary judgment of no coverage and no entitlement to benefits in favor of the insurance company. The insurance company will be able to seek fees and costs based on prevailing on the summary judgment and an unaccepted proposal for settlement.

Summary Judgment of no Coverage Under Homeowners' Policy.

Karina Perez, of our Tampa office, obtained a final summary judgment of no coverage in a case where the 27-year old Plaintiff in the underlying case tripped and fell down the stairs at the insured's residence. Plaintiff sustained serious injuries in the fall, requiring a lumbar fusion that did not take and which aggravated or triggered a pre-existing auto-immune disorder that may result in his death. Plaintiff settled with the insured homeowner, who assigned his rights to Plaintiff, and Plaintiff sued the insurance company. Karina moved for a summary judgment of no coverage on behalf of the insurance company. She prevailed, successfully arguing that two policy exclusions applied to preclude coverage since the insured was not living on the premises and was instead renting it to the injured plaintiff at the time of the loss.

Dismissal Obtained Based on Plaintiff's Failure to Comply with Court Orders.

Joe Etter, of our Tampa office, obtained a dismissal of a case due to Plaintiff's continued failure to comply with several court orders regarding discovery. The case arose from a slip and fall due to a known water leak. Plaintiff was recalcitrant during discovery. He refused to answer numerous questions at his deposition, refused to sign a Medicare authorization form; and, he failed to comply with numerous discovery orders. During the various hearings, Joe argued that Plaintiff's repeated discovery violations warranted dismissal. The judge eventually agreed and dismissed the case.

Summary Judgment in First-Party Property Case.

Scott M. Rosso, of our Fort Lauderdale office, obtained a final summary judgment in a first party property case. The Insured made a claim on her homeowner's insurance, alleging that her home was damaged by a water event. The Insured timely reported the claim to the Carrier and assigned her benefits to a Public Adjuster and water mitigation company, the Plaintiff in the case. Coverage was found during pre-suit and a check was issued to the Insured made payable to the Insured, Public Adjuster, and Water Mitigation Company. The monies were issued and accepted by the Insured, but the check was never cashed. The Plaintiff did not receive payment as the Insured was holding onto the check. Plaintiff filed suit alleging that the Defendant was in breach by not paying the Plaintiff directly for services provided, pursuant to the assignment of benefits which was executed with the Insured. Scott maintained the Defendant did adhere to the Policy's loss payment clause which required them to pay the Insured who in turn was to distribute payment to the water mitigation company. Plaintiff's counsel attempted to argue that our position was contrary to assignment law. However, the Court agreed with Scott's persuasive argument and granted final summary judgment in favor of the Defendant.

Arbitration Decision of "No Award" in Environmental Case.

Steven Cornman, of our Miami office, obtained an arbitration decision of "no award" in an environmental case involving allegations against a geologist for an alleged failure to discover underground storage tanks at a former gasoline station in Naples, FL. In a 30-page decision, the arbitrator sided with the defense and agreed that the plaintiff could not prove the subject underground storage tanks caused the contamination found on the property. Plaintiff had asked for $2.7 million in damages, plus carrying costs.

ANNOUNCEMENTS / NEWS

New Additions to the Firm

We are pleased to announce that our team continues to grow

Anthony G. Atala, Maegan Bridwell, Michael Fogarty, Jennifer R. Levy and **Patricia Concepcion**
Associates, Miami

Jill Aberbach and **Justin P. Roberts**
Associates, Ft. Lauderdale

Brian D. Orsborn
Associate, Ft. Myers

Fotini Z. Manolakos
Associate, Tampa

Kubicki Draper's Tampa Office Has Moved!

NEW ADDRESS:

400 North Ashley Drive
Suite 1200
Tampa, Florida 33602
Phone: (813) 204-9776
Fax: (813) 204-9660

We are very happy to announce that **Chelsea Winicki**, of the Jacksonville office, has been elevated to Shareholder.

The Board of Directors of the Academy of Hospitality Industry Attorneys (AHIA) elected officers and directors at their fall meeting in Phoenix AZ. We are pleased to announce **Francesca Ippolito-Craven**, of our Miami office, was added to the Board. Membership in AHIA is open to lawyers with more than 10 years' legal experience in the hospitality industry and have at least 50% of their clients in the hotel, restaurant, meeting, convention, travel, tourism and related hospitality industries. Membership includes both in-house corporate counsel and lawyers in private practice. The next AHIA meeting will be held at the Peabody Hotel in Memphis TN on April 23-25, 2015. For more information about AHIA, visit AHIAttorneys.org or contact Fran Rickenbach, CAE, IOM, AHIA Executive Director at 937.586.3703.

Angela Flowers, of the Ocala office, was selected for inclusion in the 2014 edition of **Top Rated Lawyers in Insurance Law**.

Betsy Gallagher, of the Tampa office, was selected as one of "Tampa's Top Rated Lawyers of 2014" by Legal Leaders and listed in the 2014 edition of The Best Lawyers in America, Woodward/White, Inc., in appellate practice. She was also reappointed to Chair the Outreach Committee of the Board of Trustees for the University of Florida Levin College of Law.

Kubicki Draper is a proud sponsor of the upcoming 2014 CLM Annual Holiday Party and the Insurance Bad Faith & Coverage Conference in New York City. Top insurance leaders and outside counsel will share their insights on challenges and issues facing the industry at the Insurance Bad Faith & Coverage Conference. **Laurie Adams**, of our West Palm Beach office, will be participating on a seminar panel that will address the topic of "Defending and Defeating Punitive Damages in Extra Contractual Litigation."

About the CLM

The Claims and Litigation Management Alliance (CLM) promotes and furthers the highest standards of claims and litigation management and brings together the thought leaders in both industries. CLM's Members and Fellows include risk and litigation managers, insurance and claims professionals, corporate counsel, outside counsel and third party vendors. The CLM sponsors educational programs, provides resources and fosters communication among all in the industry. To learn more about the CLM, please visit www.theclm.org. Contact: Susan Wisbey-Smith, Communications Manager, Claims and Litigation Management, Alliance, 847-317-9103, susan.wisbey-smith@theclm.org.

LAW OFFICES
KUBICKI DRAPER
Professional Association
Founded 1963
www.kubickidraper.com

CONTACT INFORMATION

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

Statewide Coverage in Florida from 11 Offices

MIAMI KEY WEST FORT LAUDERDALE WEST PALM BEACH NAPLES/FORT MYERS
TAMPA OCALA ORLANDO JACKSONVILLE TALLAHASSEE PENSACOLA

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 that 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.