KUBICKI DRAPER

THE KD QUARTERLY

FALL 2013

KD Congratulates Caryn Bellus

It is a great honor to announce that **Caryn L. Bellus**, a shareholder in our Miami office, was recently elected Chair of the Appellate Practice Section of The Florida Bar. The Appellate Section is dedicated to promoting excellence and professionalism in appellate practice. Caryn has served in several different leadership roles in the Section over the years, ranging from Editor of the Guide, to Chair of the Publications Committee, and Chair of the Programs Committee, in addition to her service as an officer of the Section in more recent years. Needless to say, we are very proud of Caryn for achieving this honor and congratulate her on her new role with The Florida Bar's Appellate Section.

Caryn is pictured seated in the front row, 3rd from left

KD in the Community

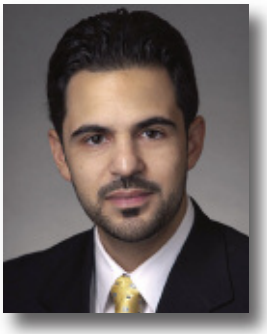
Our Jacksonville office recently participated in the Ronald McDonald House Charities' Caring Chefs Program. This program provides hot meals to families of hospitalized children who are suffering from serious injuries or illnesses. This was a great and rewarding opportunity for our Jacksonville team to work together and give back to the community.

EDITOR
Bretton Albrecht

IN THIS ISSUE

Successfully Attacking Class Certification

Peter Baumberger and Michael Suarez



As one may expect, defending against a class action is a daunting task. They are all complex, only increasing in complexity as dictated by the subject matter of each case. Peter S. Baumberger and Michael F. Suarez understand this.

Peter and Michael recently succeeded in obtaining a denial of class certification in a products liability class action suit in Palm Beach County. They represented a septic tank manufacturer, whom, along with other defendants, were sued by a putative class of contractors and property owners which asserted implied warranty, negligence, strict liability, and Florida Deceptive and Unfair Trade Practices Act claims, respectively. The claims initially sought to encompass each of the many thousands of tanks manufactured since the 1970s, leading Plaintiffs to value the claim in excess of $30,000,000. After more than a year of litigation, which culminated in a twoday evidentiary class certification hearing, the Judge issued a 21-page Order denying class certification. The case ultimately settled without an appeal for a microscopic figure when compared to the Plaintiffs' valuation. The clients were thrilled, and Peter and Michael were pleased with how much the hard work truly paid off.

Class actions in Florida state courts are governed by Fla. R. Civ. P. 1.220, which sets forth the prerequisites to class certification as follows: (1) the members of the class must be so numerous that separate joinder of each member is impracticable [numerosity], (2) the claim or defense of the representative party must raise questions of law or fact common to those raised by the claim or defense of each member of the class [commonality], (3) the claim or defense of the representative party must be typical of the claim or defense of each member of the class [typicality], and (4) the representative party must be able to fairly and adequately protect and represent the interests of each member of the class [adequacy of representation]. As an additional requirement, the claim or defense of each member of the class must predominate over any question of law or fact affecting only individual members of the class [predominance].[1] The burden is on the proponent of class certification to plead and prove all of the elements. **Sosa v. Safeway Premium Finance Co**., 73 So. 3d 91, 106 (Fla. 2011).

From the inception of their recent case, Peter and Michael honed in on attacking each of these elements. In particular, they focused on showing that it would require thousands of mini-trials for every single tank for plaintiff to prove causation. Florida courts have recognized that class treatment is inappropriate when mini-trials are necessary to assess liability. **InPhyNet Contracting Servs., Inc. v. Soria**, 33 So. 3d 766, 773 (Fla. 4th DCA 2010); **Kia Motors America Corp. v. Butler**, 985 So. 2d 1133, 1141-42 (Fla. 3d DCA 2008). Thus, Peter and Michael immersed themselves in highlighting why the individual issues and cases were so pervasive in this case, and, thus, why class treatment was inappropriate.

An essential aspect of class action litigation is that the court does not address the merits of the Plaintiff's claims at the class certification hearing itself, but instead conducts a "rigorous analysis" to determine whether class certification is warranted. **Chase Manhattan Mortg. Corp. v. Porcher** 898 So. 2d 153, 156 (Fla. 4th DCA 2005) (citing **Earnest v. Amoco Oil Co.**, 859 So. 2d 1255 (Fla. 1st DCA 2003)). Consequently, Peter and Michael delicately balanced their attack on the class certification elements while simultaneously portraying how the merits would be decided if the classes were ultimately certified.

To this end, through evidence and testimony (including Peter's tactical cross-examinations of the Plaintiffs' and their expert), Peter and Michael were able to establish that the septic tanks could fail due to myriad potential causes aside from defects, including poor installation, being driven over, and misuse—creating a clear scenario where mini-trials were necessary to determine causation with respect to each cause of action raised by the Plaintiffs. Peter drove this point home brilliantly in closing arguments, highlighting the fact that causation would be contested for every single tank and that the causes of all tank failures would have be investigated on a tank-bytank basis. The Judge agreed, ultimately opining that determining the cause of failure for each class member's tank would result in precisely the sort of mini-trials the courts have deemed inappropriate for class treatment. Consequently, the "commonality" and "predominance" elements were not met. The Judge also found the causation issue to be fatal to the "typicality" element, since one could not assume that each property-owner class member, for example, took the same precautions not to run over their tank and/or properly install and use them in the first place.

In a nutshell, it is fair to say that the case turned on the insurmountable obstacle, at least under these facts, of proving causation on a class-wide basis. However, it took the production of 100,000-plus documents, 20-plus depositions, hundreds of pages in court filings, and extensive legal research to get there. Class actions have very particular elements, and it is the Plaintiff's burden to prove that each of those elements is satisfied. In the end, Peter and Michael were able to establish that Plaintiffs failed to meet their burden, and, therefore, that this case was improper for class treatment.

[1] *See Fla. R. Civ. P. 1.220 for the other subdivisions and requirements*

SPOTLIGHT ON:

Steve Cornman

Steve Cornman,
a shareholder in the Miami office,
always knew he wanted to be a lawyer.

His interest in the legal and analytical process and public policy made the law a natural fit. But it was not until a law school moot court class that Steve found his true passion and calling to be a litigator. He found that he both excelled at and enjoyed arguing before a judge and jury. His first year of law school, he and his class teammate ended up winning the University of Miami Law School's moot court competition for their year, and Steve continued on with the moot court team throughout law school.

Steve was born and raised in Oklahoma City. His mom, the first in his family to go to college, worked her way through school at the University of Oklahoma, where she eventually became an associate professor of Latin. Steve followed in his mom's footsteps and also attended the University of Oklahoma, where he earned his B.A. in "Letters," which is a traditional Ivy League major that focuses on the study of ancient and modern languages, history, philosophy, and logic, which Steve knew would provide him with a solid pre-law foundation.

Law school brought Steve to Miami, Florida, where he earned his J.D. Steve started his legal career as an associate for a well known, prominent plaintiffs' lawyer, who trained Steve how to investigate, develop, and prepare a case to its fullest, before even filing suit. One of Steve's first assignments was to investigate and develop a major toxic tort case. He investigated the affected area personally, making the trek into the woods on a four-wheeler. He called the expert who was involved in the Erin Brockovich case, and got him involved on his side of the case. At the end of the day, the other side had no choice but to settle for a favorable amount.

A few years' later, Steve met Kubicki Draper's Brad McCormick as opposing counsel in a case. Not long after that, Steve decided it was time to transition from working for a solo practitioner to working at a larger law firm, and Brad offered him a position at KD. Steve used the same indepth, hands on preparation and litigation skills he had honed as a plaintiffs' lawyer even after he transitioned to the defense. He soon discovered that most plaintiffs' lawyers did not prepare their cases before filing suit, as he had been taught to do. Thus, by preparing his cases as a defense lawyer the same way he was trained to as a plaintiffs' lawyer, Steve has found he is often able to stay at least a few steps ahead of the opposition.

One of Steve's first cases at Kubicki Draper was also a toxic tort case, which, at its core, actually turned out to be more of a construction defects case. It was a multi-million dollar damages case following the carbon monoxide exposure to a father and son which resulted in severe brain damage and death, respectively. Steve defended the general contractor who built the hotel in Key West. This case laid the ground work for Steve to develop a specialty and expertise in defending complex cases involving construction defects, toxic torts, and products liability, to name a few. Recently, Steve obtained a favorable result in a complex construction case involving a Chinese Drywall claim. In the pre-trial phase, Steve and his team of KD attorneys persuaded the trial court that plaintiffs had failed to properly plead certain claims, and the trial court's ruling effectively limited plaintiffs to claiming around $11 million, instead of the approximately $34 million plaintiffs were trying to seek. At the close of the trial, the jury returned a verdict rejecting a certain category of the damages sought and awarded only $1.4 million. Plaintiffs have appealed and will next have to face off against KD's appellate team.

Outside of the law, the top priority in Steve's life is his family. He and his wife have been married for 4 years, and they have an adorable 2-year-old son. Steve says he has found that being a dad is the most challenging, but also the most rewarding, of life's great adventures.

REVISITING FLORIDA'S UNINSURED MOTORIST LAW AFTER Travelers Commercial Ins Co v. Harrington

By Valerie Dondero

In May, 2012, in **Travelers Commercial Ins. Co. v. Harrington**, 86 So. 3d 1274 (Fla. 1st DCA 2012), ***review granted***, 116 So. 3d 1264 (Fla. 2013), the First District Court of Appeal ruled that the daughter of a Named Insured was entitled to stacked Uninsured Motorist coverage because the daughter had not personally selected UM coverage nor signed the UM selection/rejection form. In the only ruling of its kind, the First District affirmed Summary Judgment in favor of the daughter, Crystal Harrington, finding that the non-stacking election form, signed by her mother, did not apply to reduce UM coverage available to the daughter under the auto policy issued by Travelers Commercial Insurance Company. Harrington argued that §627.727(1), Fla.. Stat., permitted a rejection (or selection) of UM coverage "on behalf of all insureds" to be signed by the Named Insured. Conversely, §627.727(9), Fla. Stat., provides for non-stacking elections to be signed by "a named insured, applicant or lessee." In light of the differing language, Harrington argued that the subsection (9) waiver must be personally made by the insured who is claiming benefits under the policy. The trial court agreed with Harrington's analysis and the First District affirmed under these same theories. At least the First District had the wisdom to certify the issue to the Florida Supreme Court as a matter of great public importance and the supreme court has accepted jurisdiction.

In the meantime, insurers have been flooded with demands for UM coverage by any insured who did not personally sign the UM Selection/Rejection form, arguing that long-standing rejections or selections of UM coverage made by a Named Insured were no longer binding and enforceable against non-signing insureds under the **Harrington** holding. Most insurers, however, appear to be defending these claims, asserting the validity of their signed forms and the decades of legal authorities that permit the named insured to select or reject UM coverage for themselves and in behalf of all insureds under the policy.

The Florida Legislature has quickly taken up the gauntlet. In March 2013, Travelers Commercial Insurance Company filed its Initial Brief in the Florida Supreme Court urging the reversal of the Summary Judgment entered in favor of Harrington and calling on the Court to enforce the validity of UM Rejection/Selection forms signed by the Named Insured. Thereafter, in April 2013, House Bill 341 was passed by both Florida's Senate and House of Representatives to "return insurance law governing Uninsured Motorist (UM) coverage to the status quo that existed before a recent judicial decision by Florida's First District Court of Appeal." (*See* Summary Analysis, HB 341, House of Representatives Final Bill Analysis). The House Bill clarifies that if the Named Insured signs a selection of non-stacked UM coverage, that selection is binding as to every family member or passenger insured under the policy. As a result of this House Bill, §627.727(9), Fla. Stat., has been amended effective June 14, 2013, to add the phrase "on behalf of all insureds" to subsection (9), so that the language parallels subsection (1). *See* Ch. 2013-195, laws of Fla. (amending §627.727(9)). This amendment should remove any assertion of ambiguity between the subsections, which led to the result in **Harrington**. The Legislature, by quickly amending the UM statute, correctly recognized that insurers would never have a way of contemplating all persons who may ride as passengers in an insured's vehicle (thereby subjecting them to potential UM coverage) and would never be in a position to obtain those passengers' consent to the selected UM coverage in advance. To uphold the ruling in **Harrington**, Florida insurers would never be in a position to offer any type of UM coverage other than stacked UM, causing significant increases in insurance premiums to Florida consumers.

Florida's House Bill 341, amending §627.727(9), Fla. Stat., and the Florida Supreme Court's anticipated ruling in **Harrington** will hopefully result in a return to the true state of UM coverage in Florida and confirm that when the Named Insured rejects UM coverage, or selects non-stacked UM coverage, that selection is binding and enforceable against all insureds under the policy. Until that ruling is made, insurers should continue to defend these types of UM coverage challenges.

Presentations & Speaking Engagements

Peter Baumberger, Michael Carney, Brad McCormick and **Michael Milne** presented on indemnity clauses in construction, construction defects and proposals for settlement at Westfield Group.

Steven Cozart, Jarred Dichek, Brad McCormick and **Michael Walsh** presented on proposals for settlement, production of documents and utilization of motions at Gainsco Insurance.

Bill Bissett, Brad McCormick and **Harold Saul** visited Mid-Continent Group to present on indemnity clauses in construction and on Florida Statute 725.06.

Betty Marion was a guest speaker at a meeting for the Marion County Chapter of the Florida Association of Women Lawyers. She presented *Animal Law in Florida*.

The International Association of Special Investigation Units (IASIU) invited **Jarred Dichek** to present *We Have Fraud, Can We Prove It*.

Caryn L. Bellus, was a guest speaker at The Florida Bar's Leadership Academy Program in July. The Academy is an organization founded and designed by The Florida Bar to assist the Academy Fellows, a select group of diverse lawyers, in becoming leaders within our profession and our communities. The Academy's mission is to identify, nurture and inspire effective leadership within the legal community.

Greg Prusak presented *Hot Topics in Products Liability* to Travelers.

Michael Clarke, Ken Oliver and **Greg Prusak** presented Multiple Claimant, Low Limits andChanges in the PIP Law to USAA.

Several members of the KD team presented at FIFEC's annual conference -- **Joseph Carey, Jarred Dichek, Kendra Therrell, Michael Walsh** and **Charles Watkins** presented *Depositions: The Litigation Adjuster and SIU Investigator's Survival Guide*.

Ethics for the Claims Professional was presented to Windhaven Insurance by **Peter Baumberger** and **Jennifer Remy-Estorino**.

Peter Baumberger and **Jorge Santeiro** visited Amerisure to present an update on premises liability and to present on indemnity clauses in construction.

Christin Russell was invited to speak at the 6th Annual HR Martin County Employment Law Conference. She presented *Current Developments in HR Law*.

Brad McCormick, Luis Menendez-Aponte and **Jarred Dichek** presented *SIU: Tips & Tactics* to Windhaven Insurance in Miami.

Michael Carney and **Ken Oliver** presented *Indemnity and Construction Contracts* to FCCI Group.

Ken Oliver, Harold Saul and **Charles Watkins** recently visited Infinity Insurance and put on a seminar about mediation strategies.

Jayme Idle, Michael Milne and **Greg Prusak** were invited to participate in a seminar recently put on by City Electric Supply Company for their customers. The group presented on various topics including: Florida Lien Law, Bond/Surety Law, Chapter 558 – Construction Defects and general liability and workers' compensation as it pertains to electrical contractors.

Peter Baumberger and **Steve Cozart** presented a seminar about set-offs to GEICO.

Michael Clarke recently visited Windhaven Insurance Company in Tampa to present a seminar to its claims personnel on the subject of evaluating the strength of the defense of PIP claims based upon an IME.

Jarred Dichek and **Jennifer Remy-Estorino** presented *Ethics for the Claims Professional* to Gainsco Insurance.

Joe Carey and **Chelsea Winicki** presented *SIU: Tips and Tactics* to Windhaven Insurance in Tampa.

Michelle Krone, Yvette Pace, Stuart Poage and **Harold Saul** visited Travelers to present on filing motions and finding coverage in construction defect cases.

New Additions to the Firm

We are pleased to announce the KD legal team is growing and welcome the attorneys below:

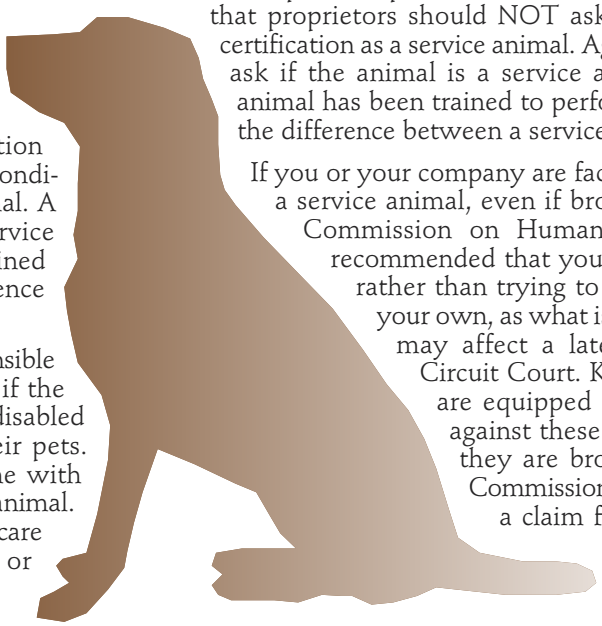
Don Detky – Shareholder, Jacksonville office
Alexander Knapp and **Kristin Wood** – Associates, Tampa office
Ralph Mora and **Lucretia Pitts Barrett** – Associates, Miami office
Melissa Alfonso – Associate, Orlando office

Service Animals? What's a Proprietor to Do?

By Betty Marion

An individual with a disability has the right under §413.08, Fla. Stat., to be accompanied by his or her service animal in all areas of public accommodation where the public or customers are usually allowed admittance. A person who is deaf, hard of hearing, blind, visually impaired or otherwise physically disabled, who may use amplification devices to discern speech sounds, or who has a physical impairment that substantially limits one or more major life activities would be considered "an individual with a disability." A service animal is one trained to perform tasks for an individual with a disability, such as guiding a person who is visually impaired, alerting a person who is hearing impaired, pulling a wheelchair, assisting with mobility or balance, alerting and protecting a person who is prone to seizures, retrieving objects and performing other special tasks. A service animal is not a pet. Critically, business proprietors should be aware that documentation that the service animal is trained is NOT a precondition for the animal to qualify as a service animal. A proprietor may only ask if the animal is a service animal or what tasks the animal has been trained to perform in order to determine the difference between a service animal and a pet.

An individual with a disability is generally responsible for any damage caused by the service animal if the public accommodation would also charge non-disabled persons for the same damages caused by their pets. The person with the service animal is the one with responsibility to take care of or supervise the animal. Proprietors are generally not required to provide care or food or a special location for the animal or assistance with removing animal excrement.



A proprietor is permitted to exclude or remove from the premises any animal, including a service animal, if the animal's behavior poses a direct threat to the health and safety of others. However, allergies or fear of animals is not a valid reason for denying access or refusing service. If a proprietor excludes the service animal, or if the animal is removed for being a direct threat to others, the proprietor must provide the individual with a disability the option of continuing access but without having the service animal on the premises. Note that trainers of service animals, while engaged in that training, have the same rights and privileges of a person with disabilities

An important point to take away from this article is that proprietors should NOT ask for proof of training or certification as a service animal. Again, proprietors may only ask if the animal is a service animal or what tasks the animal has been trained to perform in order to determine the difference between a service animal and a pet.

If you or your company are faced with a claim involving a service animal, even if brought through the Florida Commission on Human Relations, it is highly recommended that you consult with an attorney rather than trying to handle the complaint on your own, as what is said or done in that claim may affect a later claim for damages in Circuit Court. Kubicki Draper's attorneys are equipped to assist and defend you against these types of claims, whether they are brought through the Florida Commission on Human Relations or as a claim for damages in County or Circuit Court.

Recent Florida Supreme Court Case Impacts EUOs

By Michael Clarke

On June 27, 2013, the Florida Supreme Court issued its highly anticipated decision and opinion in **Nunez v. GEICO Gen. Ins. Co.**, 38 Fla. L. Weekly S440a (Fla. 2013). The Nunez court found that under §627.736, Fla. Stat. (2008), PIP insurers cannot require insureds to attend an examination under oath as a condition precedent to the payment of PIP benefits. The Court found that "[s]ection 627.736, Florida Statutes (2008) is silent regarding EUOs – it does not authorize their use, much less denial of benefits for failure to attend one." Thus, the court found a wellrecognized, policy-based right to obtain an EUO to be invalid where the right was contrary to the statute's terms.

The **Nunez** court then addressed §627.736(6)(g), Fla. Stat. (2012), effective January 1, 2013, requiring insureds seeking PIP benefits to "comply with the terms of the policy, which include, but are not limited to, submitting to an examination under oath." The court determined that the 2012 amendment was not just a legislative clarification of the PIP statute, but was instead a substantive change, which did not control the outcome of the case. The court provided the additional comment that no position was being taken "on the applicability or validity of the 2012 amendment." Of course, the court's decision to not address the amendment leaves open the possibility of further challenges to its validity and application.

In summary, the **Nunez** opinion affirmatively finds that a failure to attend an EUO cannot serve as a basis to deny a claim for fulfilling a condition precedent to payment. However, the question remains how the court will decide the issue under the 2012 amendment of an EUO as a condition for seeking benefits.

APPELLATE

Appeal successfully defended.

Sharon Degnan, of the Ft. Lauderdale office, obtained a great decision issued by the Fourth District Court of Appeal in **Elisias v. Geico Gen. Ins. Co.**, 38 Fla. L. Weekly D1630 (Fla. 4th DCA 2013), where the insured in a coverage case attempted to assert that GEICO could not bring its declaratory judgment action in circuit court because the bodily injury policy at issue had limits of only $10,000. Sharon successfully argued to the Fourth District that the circuit court had jurisdiction over the matter because the cost of GEICO having to provide its insured with a defense had to be included in the "amount in controversy" for jurisdictional purposes in a coverage action. This means insurers can hope to bring and keep declaratory judgment actions involving small policies in the circuit, instead of the county courts.

TRIALS, MOTIONS, MEDIATIONS

Favorable settlement in toxic tort case.

Karina Perez, of the Tampa office, achieved a favorable settlement in a toxic tort case in which two plaintiffs claimed injuries from inhaling fumes, allegedly from our client's roofing materials. Plaintiffs accepted a proposal for settlement for an amount far lower than any of their prior demands, and decided to continue the suit only against the co-defendants. Karina was also able to recover substantial fees and costs from the co-defendant. After settling with the plaintiffs, Karina pursued a cross claim against the co-defendant, who had previously been steadfast in its refusal to honor our tender demand under an indemnity agreement, in order to recover defense fees. After serving a strategic proposal for settlement and cornering the co-defendant's corporate representative in a deposition, the co-defendant agreed to pay the majority of the fees and costs incurred in defending the underlying claim.

Favorable trial result in complex construction case involving Chinese Drywall.

Steve Cornman, Michael Carney and **Ryan Charlson** recently obtained a favorable result in a complex construction case involving a Chinese Drywall claim. In the pre-trial phase, Steve and Ryan persuaded the trial court that plaintiffs had failed to properly plead certain claims, and the trial court's ruling effectively limited plaintiffs to claiming around $11 million, instead of the approximately $34 million plaintiffs were trying to seek. At the close of the trial, the jury returned a verdict rejecting a certain category of the damages sought and awarded only $1.4 million.

Motion for final summary judgment granted in premises liability case.

Yvette Pace and **Sarah Fogarty**, of the Orlando office, prevailed on a Motion for Final Summary Judgment in a premises liability case. The facts involved a Plaintiff who alleged she tripped and fell over a nurse's shoe as she was walking out of a doctor's office. The Plaintiff testified that she fell because the checkout area at the doctor's office was too small. Sarah prepared a persuasive motion, and Yvette tactfully argued that the size of the checkout area where the Plaintiff fell was not a dangerous condition. They also argued that people standing and/or walking in a checkout area of a doctor's office is a normal condition, which the Plaintiff should have anticipated. This was simply an accident. Seminole County Chief Judge Dickey held that the motion was well founded. Plaintiff's counsel could not provide a sufficient response to the arguments presented – Motion, granted.

Directed verdict in veterinarian professional negligence case.

Betty Marion, of the Ocala office, recently tried a matter before the Honorable Sara Ritterhoff. Our client/veterinarian was sued for professional negligence allegedly causing the death of a 13 year old Chow Chow. Betty obtained a Directed Verdict for the Defendant.

Favorable trial result in auto accident case.

Steve Cozart and **Grayson Miller**, of the Pensacola office, recently obtained a great result in an auto accident case. Plaintiff, who was a backseat passenger in the single-vehicle accident, was claiming over a quarter of a million dollars in damages for severe facial injuries that required extensive surgery. As a result of Steve and Grayson's tireless work and persuasive defenses, the jury returned a verdict assigning plaintiff 30% fault for comparative negligence, which together with the PIP set-off, reduced the $116,000.00 verdict to $71,000.00, which was less than the amount of plaintiff's stipulated medical expenses.

Summary judgment obtained in premises liability case.

Ryan Charlson and **Nicole Wulwick**, of the Miami office, obtained an Order from Judge Rosa Rodriguez entering summary judgment against Plaintiffs on a case involving an ankle fracture of a minor child at a fast food restaurant's play area. Ryan wrote an excellent motion, which Nicole argued to the Court. After taking the motion under advisement for several weeks, Judge Rodriguez sent an Order completely disposing of the case. There were several issues that looked like "issues of material fact" but Ryan and Nicole did a great job crafting fantastic legal arguments to persuade the Court that summary judgment was appropriate. Winning a Motion for Summary Judgment in Dade County is very difficult so this was quite an accomplishment.

Favorable trial result in lumbar discectomy case.

Mike Balducci, of the West Palm Beach office, obtained a favorable trial result in a case where the plaintiff, a 26-year-old with no prior injuries, had a lumbar discectomy as a result of the accident. The case was contentiously litigated -- five experts testified at trial. Ultimately, despite the surgery, the jury returned a verdict of only $1,750.00.

Dismissal with prejudice obtained in multi-party defamation lawsuit.

Carey Bos and **Jenny Remy-Estorino**, with the appellate support of **Caryn Bellus** and **Bretton Albrecht**, recently obtained a dismissal with prejudice on behalf of several defendants, corporate and individual, in a defamation case brought by an ex-franchisee of one of the corporate defendants. The dismissal with prejudice was based on the litigation privilege and lack of personal jurisdiction. Plaintiff has appealed and will next have to contend with KD's appellate team.

KUBICKI DRAPER

Announcements / News


APS Dinner Attendees

Angela Flowers, Betsy Gallagher, Bill Bissett, Sharon Degnan, and **Bretton Albrecht**, all members of our appellate team, attended The Florida Bar annual meetings in June, in honor of the 20th anniversary of the Appellate Practice Section and Caryn's installation as the elected Chair of the Appellate Practice Section.

Harold A. Saul, of our Tampa office, was nominated and accepted as a non-professional member to the Kidney Health Initiative (KHI). KHI is headed up by the American Society of Nephrology (ASN). Its mission is to advance scientific understanding of kidney health and patient safety implications of new and existing medical products and to foster the development of therapies for diseases that affect the kidneys by creating a collaborative e vironment in which FDA and the greater nephrology community can interact to optimize evaluation of medicines, devices, biologics, and food products. Harold is also actively involved with the PKD (Polycystic Kidney Disease) Foundation. He received a kidney transplant in June of 2012 at Tampa General Hospital.

Jane Rankin, of our Ft. Lauderdale office, has been selected by her peers for inclusion in the 20th Edition of the Best Lawyers in America in the practice area of Real Estate Law.

Jarred Dichek, of our Miami office, has been selected Chair of the Florida Insurance Fraud Education Committee's (FIFEC) Awards Committee.

For the 10th consecutive year, **Betsy Gallagher**, of our Tampa office, has been chosen by peers as one of the *Florida Legal Elite*™. Betsy was inducted into the *Florida Legal Elite*™ Hall of Fame and recognized in *Florida Trend* magazine's July 2013 issue.

We are pleased to announce **Michael Clarke**, of our Tampa office, has received the honor of the 2013 "Amicus Award" from the Florida Defense Lawyers Association.

Harold A. Saul, of our Tampa office, gave testimony before the Food and Drug Administration's (FDA) Cardiovascular and Renal Drugs Advisory Committee about the challenges of living with Polycystic Kidney Disease, its impact on his family and the need for approval of certain drugs to combat the disease.

We welcome the opportunity to host a complimentary continuing education seminar at your office, on the topic of your choice. For more information, please contact Aileen Diaz at (305) 982-6621 / ad@kubickidraper.com

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