

KD in the Community



Mock Trial Team

Michael Carney, Joshua Polsky and **Scott Rosso** of the Ft. Lauderdale office and **Charles Watkins** of the Miami office, serve as volunteer mentors and outside coaches of the mock trial team at Miami Carol City High School. The competitors are students in a law magnet program, one of the few of its kind in South Florida.

Peter Baumberger and **Charles Watkins**, both of the Miami office, participated in the American Board of

Trial Advocates' (ABOTA) Annual Teacher's Law School at Miami Dade College in November. Peter Baumberger served as Master of Ceremonies and as a moderator in the session on "Pretrial Procedures: A Look Behind The Curtain." Charles Watkins spoke on "Why I prefer Trial by Jury," and was a moderator in the session presented by Judge Spencer Eig on "The Legal Implications of Bullying in School." This event was attended by over 200 Miami-Dade teachers and was extremely well received. Kubicki Draper fully supports ABOTA's mission of preserving civil jury trials and educating the public on their VII Amendment rights.



Mentoring Picnic



The Annual Minority Mentoring Picnic was held at Amelia Earhart Park in Miami-Dade in November. Kubicki Draper remains a gold sponsor and supporter of this mentoring initiative. Several hundred minority law students from across the State of Florida participate in this event each year, where mentors (lawyers and judges) and mentees (students) are paired in an effort to advise, assist, and network with talented future lawyers. This year, under the leadership of **Charles Watkins** of our Miami office, several Kubicki Draper attorneys attended and supported this worthy cause, including: **Peter Baumberger, Nicole Ellis, Jennifer Remy-Estorino, Lucretia Barrett, and Radia Turay**, all of our Miami office. They were able to mentor and advise well over 100 students.

Once again, our Tampa office along with many attorneys and staff from other KD offices participated in the Walk for PKD. This is the 6th consecutive year KD joins "Ivan's Investors for a PKD Cure" captained by **Harold Saul** of the Tampa office. The team, named in honor and memory of Harold's father, raised \$20,483 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 money. Thanks to everyone who supported this great cause.



Walk for PKD

EDITOR

Bretton Albrecht

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CD CASES



The Economic Loss Rule is Still Alive!

By Kenneth "Jayme" Idle and Michael E. Milne

Last March, in **Tiara Condominium Association, Inc. v. Marsh & McLennan Companies, Inc.**, 110 So. 3d 399 (Fla. 2013), the Florida Supreme Court issued an opinion that many thought would prevent the continued application of Florida's long-standing Economic Loss Rule ("ELR") in construction defect ("CD") cases. Almost immediately after **Tiara** was published, the majority of plaintiffs' HOA attorneys amended their pleadings to add counts for negligence. However, as CD cases weave their way through the local trial courts after **Tiara**, some Circuit Judges have breathed new life into the ELR.

As background, the ELR has prohibited most tort actions when the only damages suffered are economic losses. The rule prevents parties from circumventing the allocation of losses set forth in a contract by bringing a tort action as opposed to a breach of contract action. The rationale is that contract principles, as opposed to tort, are more suitable for determining remedies in a breach of contract action. However, **Tiara** held the ELR only applies in the context of products liability cases. As a result of **Tiara**, many thought the application of the ELR in CD cases was dead.

Fortunately, some crafty lawyers have persuaded some Circuit Judges to continue the application of the ELR in CD cases with a rather simple argument: buildings are completed products and the ELR still applies to products liability cases.

For example, in May 2013, Circuit Judge Thomas Mihok, whom presides in Orange County, issued an order granting a contractor's motion for summary judgment finding the ELR precludes the plaintiff condominium association "from bringing a tort because the only damages it suffered are to the homes, that is, the products themselves...[W]ithout an accompanying personal injury or injury to other property, a negligence claim cannot stand." **Central Park LV Condominium Association, Inc. v. Summit Contractors**, No. 2010-CA-015748-O (Fla. 9th Cir. Ct. May 24, 2013).

Additionally, in September 2013, Circuit Judge Scott Polodna, who presides in Osceola County, issued a similar order indicating the same products liability rationale. The Judge noted the condominium association's complaint alleged the "defective conditions of [condominium] units have caused damage to other units within the Subject Property. However, the finished product is the entire structure, not the individual units. Therefore, the [ELR] still applies as no damage to any property other than to itself was alleged..." **Siena at Celebration Master Association, Inc. v. Winter Park Construction Co.**, No. 2009-CA-6474 (Fla. 9th Cir. Ct. Sept. 4, 2013).

Although the above orders indicate the ELR is still viable in CD cases, persistent plaintiffs' counsel will inevitably challenge them at the appellate level. But at least for the time being, defense counsel should continue to use the ELR to attack tort claims in CD cases.

Presentations

Speaking Engagements

Our PIP/SIU Team and guest speakers from the Department of Insurance Fraud, United Automobile Insurance and Direct General Insurance put together a comprehensive one-day seminar in Tampa. The seminar provided guests with an update on the future of PIP, an overview of what SIU evidence is admissible in civil and criminal trials and information on attacking attorney fees through fee hearings. Many thanks to all who joined us for our program and a special thanks to our guest speakers.

In addition to the Tampa PIP Seminar, several other seminars were presented by our attorneys in the last quarter.

Some of the topics presented were:

- Ethics for the Claims Professional
- Negligent Security Cases
- S.I.U. Tips and Tactics
- Case Law Update
- PIP IME Statute
- Bad Faith – Top Ten Pitfalls to Avoid in Florida
- First Party vs Third Party Uninsured Motorist/Underinsured Motorist
- Legal Concepts for Defending Automobile Matters
- Utilization of Motions in Construction Defect Matters
- Comparative Negligence
- PIP Qualifications

We welcome the opportunity to host a complimentary seminar at your office, 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

SPOTLIGHT ON:

Don Detky



Don Detky is a shareholder in our Jacksonville office. He is a seasoned trial lawyer who brings a wealth of experience and knowledge to the firm. Over the years, Don has handled a wide variety of

negligence matters, transportation cases, first and third-party matters, and special investigations involving staged accidents and institutional fraud, just to name a few.

Born in Philadelphia, Pennsylvania, and raised in nearby Willingboro, New Jersey, Don grew up in a working-class Hungarian family. His grandparents on his father's side spoke seven languages, and Don's father was the first in the family to go to college. From an early age, a love for learning and a strong work ethic were instilled by Don's family. Don not only went to college, he was also the first in his family to pursue an advanced degree. After earning his B.A. in history at the University of Louisville in Kentucky, where he was a Dean's Scholar, Don initially planned to pursue a Masters or Ph.D. in history. His mother, knowing Don perhaps better than he knew himself, and having seen his love for a good argument grow, along with his gift of persuasion, told him he should go into law. Don initially resisted the pull of his true calling, but within six months of that conversation, he was taking the LSAT and applying to law school. The rest, as they say, is history, and Don earned his J.D. in 1996 from Cleveland-Marshall College of Law in Ohio.

Don's ultimate decision to become a lawyer was also heavily influenced by his Step-Father, Albert Trentalance. Albert's example of hard work, tireless dedication, and passion for excellence had a profound impact on Don. Albert, a general surgeon from Argentina, served in both the Argentine Army and the U.S. Army, including deployment as a combat surgeon in the Dominican Crisis in 1965. After being Honorably Discharged from the Army, Albert opened his own practice, and then later started a second career as a medical director for Blue Cross/Blue Shield, and then Prudential. Don explains that Albert is one of the most driven and focused people he knows. He taught Don to refuse to settle for less than his best and to strive to reach his full potential. Don says that it is to Albert, and his living example, that he owes his decision to pursue a career in Law.

When Don graduated from law school, he had a job offer waiting for him at a defense firm in Cleveland; the job offer came as a result of his outstanding performance in a trial advocacy class, in which he was awarded the Spangenberg Trial Practice Award. His wife said he was more than welcome to stay and take that job in freezing Ohio, but, as for her and the kids, they would be moving back to sunny Florida, specifically the Jacksonville area, where she was originally from.

Don loves litigating, and he does so with persistence and determination.

His favorite part is closing argument, where he gets to wrap up the carefully presented evidence into a neat package for the jury.

The decision to move his family to Florida turned out to be a good one (and not just because it kept his wife happy). He first worked with Prudential Insurance, working as special counsel. After a few years, he opened his own practice where, as Don puts it, he practiced "threshold law," meaning he took whatever cases crossed his "threshold." This broadened his practice areas and eventually led him to go with a plaintiff's personal injury firm. After about six years with that firm, Don was fed up with the plaintiff's side of the "v." He explained that for every valid case that came in, there were 10 frivolous ones. That is how he found his true calling as a defense advocate, and he has been litigating cases on the defense side ever since, including working for a number of years for State Farm, and then another defense firm, before joining Kubicki Draper.

Don's excellence has been recognized by his peers, as reflected by the "AV Preeminent" rating he has received from Martindale Hubbell. Don is an active member of the Florida Defense Lawyers' Association, the Jacksonville Association of Defense Counsel, and the Jacksonville Claims Association. He is the President of the Columbian Association, which is affiliated with the Knights of Columbus, a charity organization. In addition he serves on the Executive Committee for the Bruce Seldon Community Center Project, which is raising funds to build a community center in the Durkeeville area of Jacksonville, one of the poorest and underserved areas of the city.

Don's penchant for excellence even carries over into his hobbies. Unwilling to settle for less than the best, he enjoys tending his vegetable garden (the best are home-grown), creating homemade craft beer and wine, and he even plans to learn how to roast his own coffee. Don is also a film buff, and especially enjoys old comedy and musical films, which he still watches on his 16mm projector. Don also enjoys spending time with his family. His wife, Renee is a Doctor of Natural Health. They have four children, Rachele, a Paralegal with the University of Oregon, Tyfani, a professional Sky Diver ranked 3rd in the Nation in Female Freestyle, as well as Christopher and Maryrose, who are tearing through their teen years with a passion!



Moving Beyond Diversity and Cultural Awareness

By Karen Rice and Brad J. McCormick



Looking back over the last 20 or so years, we can clearly see the positive impact that cultural awareness and diversity programs have had on the advancement of women and minorities in the workplace. In that time, we have seen the face of the workforce change to reflect the communities served and have listened to corporate executives make their case as to how they shattered the “glass ceiling” by making conscious efforts to promote women and minorities.

According to *The American Lawyer's* 2013 Diversity Report Card, law firms in the United States have made up some lost ground in their levels of diversity too. The most recent survey, issued in May 2013, shows that last year, minority lawyers made up 13.9 percent of all lawyers at the 228 firms that participated. This is a slight increase from the previous year, and it is exactly the same percentage as in 2008, before the recession took hold and the overall minority percentage began to dip. In 2000, the Diversity Report Card found that minorities constituted only 9.7 percent of all attorneys at the biggest firms.

While these organizations have every right to be proud of their diversity achievements, in today's world of shrinking borders and instantaneous communication, simply creating and talking about diversity programs is not enough. In this global economy, organizations must foster collaboration across gender, social, and cultural lines; encourage and reward diversity of thought; and embrace their employees' diverse experiences and perspectives. Most importantly, these organizations must figure out how to *integrate* these very elements into their core to establish a competitive advantage in the marketplace.

Diversity vs. Inclusion

Diversity and cultural awareness programming was an important first step in the evolution of the traditional corporate structure. The C-suite executives welcomed and endorsed the programs because they benefited from the positive financial and public relation effects of being good corporate citizens. The rank and file embraced them because it meant additional career opportunities to a population of the workforce that had been historically overlooked or outright ignored.

As is the case with most trending corporate initiatives however, the effectiveness of the once heralded diversity programs grew stagnant due to lack of evolution and eventually were pushed aside by corporate executives in favor of newer, hotter trends. The C-suite executives felt as if they did their corporate duty by endorsing the diversity programs initially. However, they failed to see the long-term value of their newly diverse workforce. That is, they failed to see the added value of diversity and the different perspectives,

additional cultural awareness, and understanding, and, of course talent that can contribute to more effectiveness and success with a broader array of clients. Once again, women and minority workers found themselves trapped in the lower hierarchical layer of the corporate world unable to ascend to the next level. What executives failed to realize was that creating a diverse workforce alone is not enough to remain a competitive force in today's market — there needs to be inclusion.

The difference between diversity and inclusion is minimal, yet substantial. Diversity seems to be more superficial, calling for recognition because it paints a colorful and interesting picture. However, inclusion is the meaning behind the painting of diversity (focusing more on making each element within the painting count). A workforce that embraces the combination of diversity and inclusion challenges an organization to become more respectful and open, which in turn allows the flow of new and fresh information and smarter results (through the competition of new and old ideas). This new, diverse thinking generates innovative solutions and stimulates creativity.

The Breakthrough

Organizations who want to develop a sustainable competitive advantage over their competition need to alter their DNA, because that is where inclusion starts — at the cellular level. It has to permeate all levels of an organization existing organically in all policies and procedures, development, initiatives, recruitment, compensation and incentive systems. When this is achieved, diversity (gender, cultural, thought) is not viewed as an afterthought or a special box to check off, it is embraced as critical to business success. Inclusion fosters communication, broadens perspective and stimulates innovation, giving organizations a sustainable competitive advantage.

Where to begin? There are many approaches to take, however one place to start is with an internal audit to help identify which programs and initiatives encourage inclusion and which ones need to be overhauled or outright discarded. By creating a team of auditors who are a cross-section of an organization's diverse workforce (including each level of the hierarchy), an evaluation of an organization's core operations/programs/initiatives can be carried out using three the E³ Inclusion Audit (see sidebar).

These questions in the audit may appear deceptively easy to answer, however for this truly to be an effective evaluation, they must be asked at all levels of the organization and across cultural, social and gender lines. They are designed to inspire more questions, to challenge traditional thinking and ultimately to lead to recognition and comprehension.

Inclusion Breakthrough continued

Organizations that learn how to foster collaboration across gender, social, and cultural lines, inspire and reward diversity of thought, and embrace the importance of an inclusive culture will reap the rewards of sustained competitive advantage. They will be able to identify new opportunities and adjust to changing industry trends more quickly than their competitors, be more innovative and creative and will be able to engage and retain high performing employees.

Do employees want to be part of an organization that excludes their perspective, is slow to change and stifles collaboration? Or, would they rather be part of one that engages, encourages, enlivens and most importantly, includes their employees' diverse perspectives in each business decision? Now *that* is an easy question to answer.

*Karen Rice is Vice President,
Head of Construction Claims for XL Insurance*

The E³ Inclusion Audit

**In what way does
(company/firm/program):**

Ensure

collaboration across gender,
social and cultural lines?

Encourage

diversity of thought?

Engage and **Enliven**

your workforce to give their best
effort every day?

Some specific examples to consider:

- How specifically does your learning and development plan for high potential employees engage and enliven your workforce?
- What elements within the performance evaluation system ensure ongoing collaboration across gender, social and cultural lines?
- Does your compensation and incentive program encourage diversity of thought or does it reward safe, traditional thinking?
- How does your recruitment strategy encourage diversity of thought?
- Are your offices set up in a way to foster or stifle collaboration and communication?

APPELLATE

Affirmance of Summary Judgment for Defendant in Workers' Compensation Immunity Case.

Sharon Degnan, of the Ft. Lauderdale office, once again successfully defended against a plaintiff's appeal in a workers' compensation immunity case. In **Herrera v. List Indus., Inc.**, 123 So. 3d 665 (Fla. 4th DCA 2013), the plaintiff sued his employer after his right hand was crushed by a power press at work. Summary judgment was entered in favor of the defendant employer on the basis of workers' compensation immunity. On appeal, plaintiff argued that the intentional tort exception to the immunity applied and that the summary judgment should be reversed. Sharon persuasively and successfully countered that the summary judgment was entirely proper, and must be affirmed, as the record evidence was simply insufficient to overcome workers' compensation immunity under the intentional tort exception, as plaintiff's evidence failed to satisfy the stringent test laid out in §440.11, Fla. Stat. The appellate court agreed and affirmed *per curiam*.

Affirmance of Summary Judgment for Defendant in UM Coverage Case in Federal Court.

Angela C. Flowers, of the Ocala office, obtained an affirmance of a final summary judgment in favor of the Defendant insurer in an uninsured motorist (UM) coverage case in **Manfredi v. State Farm Mut. Auto. Ins. Co.**, 12-16499, 2013 WL 6596817 (11th Cir. 2013). The case arose from an accident in which Plaintiff, Mr. Manfredi, was injured while driving his Ford F-150 pickup truck. State Farm paid the Manfredis the \$100,000 in UM benefits available under the stacking policy applicable to the F-150, but the Manfredis nevertheless filed suit after State Farm denied they were entitled to the additional \$100,000 in UM benefits they sought under a different, nonstacking policy that was issued to cover their Ford Expedition SUV. The policy applicable to the F-150 involved in the accident provided stacking UM benefits, but the Manfredis had rejected stacking coverage for the policy applicable to the SUV that was not involved in the accident.

In successfully defending the summary judgment in favor of State Farm on appeal, Angela argued, and the U.S. Eleventh Circuit Court of Appeals held, that, under Florida law, the Plaintiffs were not entitled to "stack" nonstacking UM coverage from other policies for which stacking was rejected with the stacking policy that provided coverage for the subject accident. The Court explained: "Here, the Manfredis purchased only one insurance policy that applies. The F-150 policy applied because 'stacked' UM coverage applies 'whenever or wherever' the insured is injured by an uninsured motorist. The Expedition policy, however, does not apply because 'nonstacked' UM coverage only applies when the insured is injured while driving the covered vehicle, and Mr. Manfredi was not injured while driving his Ford Expedition." *Id.* (citation omitted). Accordingly, the Court affirmed summary judgment in favor of State Farm.

Affirmance of Final Declaratory Judgment in Favor of Insurer.

Sharon C. Degnan, of our Fort Lauderdale office, obtained an affirmance of a final declaratory judgment in favor of the insurer in **Long v. GEICO**, 121 So. 3d 1055 (Fla. 4th DCA 2013), in a coverage case where the plaintiff had filed an action against GEICO seeking UM benefits under a policy of auto insurance. The Fourth District Court of Appeal affirmed the trial court's entry of final summary judgment in favor of GEICO based on a determination that an "Other Insurance" provision contained in the policy, which automatically terminated coverage under the policy upon the insured's obtaining of a similar policy of insurance, was valid and enforceable and precluded UM coverage from being owed since the insured had obtained a substitute policy prior to the accident.

TRIALS, MOTIONS, MEDIATIONS

Final Summary Judgment in Premises Liability Case.

Valerie A Dondero, of our Miami office, obtained a Summary Final Judgment in favor of a prominent hotel chain after brief discovery indicated the Hotel did not control or direct the method by which an independent contractor performed dangerous work on its premises. The Plaintiff sued the Hotel and a product's manufacturer when he fell from a ladder while performing window washing services at the Hotel. The Plaintiff claimed to have sustained a massive brain injury, leaving him disabled from work and everyday activities, with millions of dollars claimed for long term care and treatment for the remainder of Plaintiff's life. Valerie successfully argued Florida law that exculpates a property owner from liability for injuries sustained on its premises by independent contractors who are engaged in the dangerous work which they were hired to perform. Valerie was able to prove the Hotel did not maintain any control over the method by which the independent contractor performed the work, and did not direct or supervise the window washing activity. The Summary Final Judgment was entered without extensive discovery or depositions and extinguished the Hotel's exposure for significant damages and defense costs.

Defense Verdict in Slip-and-Fall Case.

Steven Cornman, of the Miami office, obtained a defense verdict from a Miami-Dade County jury in a slip and fall case against Anthony's Coal Fired Pizza (Kendall, Florida location). Plaintiffs, a 57 year-old seamstress, and her husband, claimed that Anthony's was negligent for failing to warn Plaintiff of an alleged dangerous condition (ice/water on the floor) and for allegedly failing to maintain the premises in a reasonably safe condition. Plaintiff alleged that she slipped and fell on a slippery substance while walking down a ramp inside the restaurant.

Anthony's presented evidence at trial, through three fact witnesses, that there was no ice or water on the floor, and that Plaintiff tripped because she was distracted, not watching where she was walking, and because she was wearing unstable shoes. Plaintiff suffered a left patellar fracture and was taken to Kendall Regional Medical Center after the accident. After a one month delay in treatment due to heart problems, Plaintiff underwent surgery to repair her kneecap, which was broken in half. Plaintiff claimed to have permanent injury to her left knee, including ongoing pain and loss of range of motion. She alleged that she experienced daily pain, could not walk long distances, could not ride a bike, could not play with her granddaughter, and could not bend or squat normally. The defense expert testified that Plaintiff had a good surgical result and would likely experience decreased pain and improved range of motion if she had the hardware removed from her knee. After approximately 15 minutes, the jury returned a complete defense verdict.



Final Summary Judgment in Comprehensive Negligence Action.

Harold A. Saul, and **Joseph W. Etter, IV**, of our Tampa office, prevailed on a Final Summary Judgment in a comprehensive negligence action. At issue was a fallen communications tower with claims for alleged damages totaling in excess of \$1,500,000.00, a large part of which was lost profits. Plaintiff, an owner of the tower, alleged the driver of a backhoe struck a guy-wire, causing the tower to collapse. Our client was a homeowner adjacent to the communications tower where the backhoe was located. Plaintiff alleged our client had an agency relationship with, and direction over, the driver of the backhoe. With the guidance of Harold Saul leading the charge, Joseph prepared a persuasive motion for summary judgment, and argued successfully that our client was not in any relationship with the driver, and, further, even if there was a relationship, it was, at most, as a gratuitous independent contractor. Joseph argued that, as a result, there was no basis for imposing liability on our client for the actions of the backhoe driver. The trial court agreed and granted final summary judgment. The issue of fees from an expired proposal for settlement remains pending.

Favorable Result in Workers' Compensation Case.

Brian Chojnowski, of our Tallahassee office, recently tried a matter before the Honorable John Lazzara as counsel for the employer and carrier in a workers' compensation claim. Claimant, an injured worker who was subsequently laid off from her job, was seeking an award of temporary total disability benefits, temporary partial disability benefits, penalties, attorney's fees, costs, and interest, as well as a continuing award of disability benefits for an undetermined length of time after the final hearing. By focusing on the specific details of the Claimant's treating physician's reports and the nuances of the law pertaining to temporary disability benefits, Brian persuaded Judge Lazzara to find that Claimant failed to carry her burden in providing sufficient medical evidence of functional limitations and an inability to earn her pre-injury wages. Judge Lazzara denied all benefits requested by Claimant.

Dismissal With Prejudice in Coverage Case.

Valerie A. Dondero, of the Miami office, obtained a dismissal with prejudice in favor of the insurer and against the injured third-party, who had obtained an assignment of coverage benefits from the insured. Valerie was able to show that the policy of insurance did not insure the vehicle involved in the loss, and that said insurance had lapsed more than one year earlier and the vehicle was never added back on to the existing policy. The parties subsequently agreed with Valerie's coverage analysis, and an Agreed Order of Dismissal with Prejudice was entered by the Court.



TRIALS, MOTIONS, MEDIATIONS

Dismissal in Construction Defect Case.

Joseph W. Etter IV and **Harold A. Saul**, of the Tampa Office, obtained a dismissal in a Construction Defect case. The case involved a three-story residence constructed in 2002 with allegations of water intrusion predominantly from the roof and windows. The estimated remediation costs were in excess of \$1.3 million. The homeowner sued the general contractor (GC) in 2008, and after litigating the case with the homeowners for 4 years, the GC brought all 26 subcontractors into the suit in 2012 via a third party complaint. The experts for both Plaintiffs and the GC agreed the home needed remediation in excess of \$1 million. As a result, about 2/3 of the subcontractors settled out early in the case.

Our client was originally subcontracted to perform trim work but also installed a large portion of the windows on all three-stories. Our client's superintendent was paralyzed from the waste down due to an unrelated construction accident and did not have any memory of the work on this house, so determining what windows we actually installed or work we performed was based on the records from the GC. The GC demanded \$230,000 from our client, one of three main target subcontractors.

At the outset, we filed a Motion to Dismiss based upon a statute of limitations defense and challenged the remaining indemnification counts by arguing they failed due to the lack of a special relationship and the fact that there was no monetary limitation in the contractual indemnity provision. Joe and Harold made strong and convincing arguments at the hearing. The other subcontractors who filed a similar motion joined their argument, and the remaining subcontractors who had answered the third-party complaint made *ore tenus* motions to join in our position. The judge seemed persuaded by Joe and Harold's argument but reserved ruling. Ultimately, after carefully considering our motion and arguments, the Court granted dismissal with prejudice.

Dismissal With Prejudice in Products Liability Action.

Valerie A. Dondero, of our Miami office, obtained a dismissal with prejudice in a products liability action against a device manufacturer and its supplier. The Motion to Dismiss was based upon Plaintiff's failure to respond to discovery and subsequent failure to respond to a Court Order directing that discovery responses be filed. When no action was taken by the Plaintiff, Valerie filed a Motion to Dismiss for Lack of Prosecution. The Plaintiff failed to provide any good cause why the matter should remain pending, and the Court dismissed the action with prejudice.

Dismissal of Catastrophic Injury Case.

Greg Prusak, of the Orlando office, successfully argued a Motion to Dismiss a catastrophic injury case. The Plaintiff suffered significant injuries during the underlying premises liability accident, which lead to post-traumatic stress and his internment in a mental health facility. On the eve of his deposition, the Plaintiff died. In response, Plaintiff's counsel (from Buffalo, NY) indicated that they were going to substitute in the Plaintiff's surviving three-year-old daughter and amend Plaintiff's Complaint to assert a claim for wrongful death arising from the original accident.

However, Plaintiff's counsel never filed a Suggestion of Death as required by Fla. R. Civ. P. 1.260. After the issue was researched thoroughly with the assistance of Greg's paralegal, Vicki Huff, the Defendants took a chance and filed their own Suggestion of Death back in June 2013. Rule 1.260 expressly states that the Motion to Substitute Party must be filed within 90 days after the Suggestion of Death or the action shall be dismissed. The 90-day period lapsed without out-of-state counsel moving for substitution of parties. On the 97th day, the Defendants filed their Motion to Dismiss with Prejudice, which the trial court granted.

Pre-suit Withdrawal of Plaintiff's Claims in a UM Case.

Valerie A. Dondero, of our Miami office, obtained a pre-suit withdrawal of Plaintiff's challenges to the electronic signatures contained within the insurer's Application for Auto Insurance Coverage and the Uninsured Motorist Selection/Rejection Form. Valerie was seeking to obtain pre-suit Examination Under Oath testimony from the insured regarding two auto policies which did not provide UM coverage. Despite the Plaintiff's claims that the signatures were not valid and that the Plaintiffs did not sign the documents, Valerie was able to provide the underwriting documents and electronic correspondence between the parties indicating confirmation of electronic signatures, user I.D. and passwords created by the Plaintiffs, a discount for "signing forms on line" and that the insurer had provided all Annual Notices of Renewal Options in compliance with Florida's UM statute. Before the Examination Under Oath testimony, Plaintiffs agreed with Valerie's coverage assessment and withdrew their claims to coverage.

Dismissal for Lack of Personal Jurisdiction in Trucking/Carmack Case in Federal Court.

J. Scott McMahon, of the Tampa office, obtained a dismissal for lack of personal jurisdiction in a federal court case. The case involved a motor carrier sued in Federal Court in Florida by a shipper under the Carmack Amendment, the statutory mechanism for cargo loss claims, and for other common law claims for relief. The claims were based on Plaintiff's allegations that the actions of our client, a California-based transport company and its driver, caused a significant cargo loss. Plaintiff, the shipper who owned the cargo, relied on Florida's long arm statute to invoke personal jurisdiction over our client. Scott moved to dismiss, arguing there was no personal jurisdiction due to a lack of minimum contacts, and he filed affidavits of the client in support. Although the Plaintiff's chose not to respond, the court found that, regardless, the facts submitted patently demonstrated the lack of personal jurisdiction and, thus, the court granted the motion to dismiss.

Favorable Result in Uninsured Motorist Case.

Ken Oliver, of the Fort Myers office, obtained a favorable verdict in an uninsured motorist case, even though the odds were against them. This was a case where the liability/negligence of the tortfeasor was admitted and the court had directed a verdict in plaintiff's favor on the issue of permanency. Past medical expenses alone totaled \$84,000. Still, at the end of the day, the jury returned a verdict that, while not a defense verdict, will result in a defense judgment after setoffs, which, in turn, should entitle the insurer to fees and costs.

Kubicki Draper, P.A., has been named a Tier 2 firm in Florida for Appellate Practice by *U.S. News – Best Lawyers®* “Best Law Firms” in 2014.

We are proud to announce that **Frank Delia** has been named as a Shareholder. Frank is in our West Palm Beach office in the firm’s Commercial Litigation Practice Group. He focuses his practice on creditor’s rights, commercial bankruptcy, commercial law and business litigation.

Christin Russell, of the West Palm Beach office, has been appointed as Legislative Committee Chair for HR Martin County, which is a non-profit organization dedicated to advancing the highest professional standards of HR ethics and performance by providing ongoing professional development, resources, networking and support for its members and the community.

Laurie Adams, of our West Palm Beach office, **Caryn Bellus**, of our Miami office and **Michael Carney**, of our Ft. Lauderdale office, have been nominated to be included in the 2014 “Top Lawyers” list of the South Florida Legal Guide.

Brad J. McCormick, of our Miami office, was selected by the Claims and Litigation Management Alliance (“CLM”) to co-author their new Florida Claims Handling Guide for Insurance Professionals. The Claims Handling Guide includes a wide range of topics providing insurance professionals useful, concise information in many claims areas. Access to the Claims Handling Guide can be found at <http://wiki.theclm.org/wiki/> and although membership is necessary to view the guide, joining CLM is free to non-attorney insurance professionals.

Frank Delia, of our West Palm Beach office, was recently featured in the Risk Management Association’s South Florida Chapter Newsletter. Frank also contributed an article, “Recognizing if Your Borrower Has SAREs.”

Betsy Gallagher, of the Tampa office, has been reappointed as Chair of the Outreach Committee for the University of Florida College of Law’s Board of Trustees for 2014.

*The firm continues to grow,
and we are pleased to announce the arrival of:*

- Edward D. Schuster** and **Steven B. Katz** – Shareholders, Ft. Lauderdale
- Katherine McGovern** – Associate, Ft. Lauderdale
- Amanda K. Hutchison** and **Stefanie D. Capps** – Associates, Ft. Myers
- Jonathan E. Mills** and **Rinaldo J. Cartaya, III** – Associates, Orlando
- Charles F. Kondla**, **Kyle B. Teal** and **Terron L. Clark** – Associates, Miami
- Alicia M. Zweig** and **David R. Miller** - Associates, West Palm Beach
- J. Scott McMahon** – Shareholder, Tampa

LAW OFFICES



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C O N T A C T I N F O R M A T I O N

New Assignments

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Sharon Christy	305.982.6732	sharon.christy@kubickidraper.com

Firm Administrator

Rosemarie Silva	305.982.6619	rls@kubickidraper.com
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Seminars/Continuing Education Credits

Aileen Diaz	305.982.6621	ad@kubickidraper.com
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