KUBICKI DRAPER

THE KD QUARTERLY

www.kubickidraper.com WINTER/SPRING 2019

KD in the Community

For the 11th consecutive year, **Harold A. Saul**, of the Tampa office, captained "Ivan's Investors for a PKD Cure" at the annual PKD Walk. The team, named in honor and memory of Harold's father, helps raise money to support the Polycystic Kidney Disease Foundation's search for a cure for this disease. A large number of KD attorneys and staff participated in the walk and contributed to the team's fundraising efforts, helping it finish number three in the nation.

Our KD family comes together every quarter to make a difference in our local communities. An organization is selected from multiple entries made by staff, and funds are raised by paying to dress down. The organizations featured recently were **The Breast Cancer Research Foundation**, for Breast Cancer Awareness month and **The Down Syndrome Association of Tallahassee (DSAT)**, submitted by **Catherine Hourigan**, a paralegal in our Tallahassee office.

The **Breast Cancer Research Foundation** is committed to achieving prevention and a cure for breast cancer. They provide critical funding for cancer research worldwide to fuel advances in medicine. **The Down Syndrome Association of Tallahassee's** mission is to provide education, support, and resources to individuals with Down syndrome, their families, professionals, and the community, while building public awareness and acceptance of the abilities of individuals with Down syndrome. Catherine and her daughter have volunteered with DSAT for 12 years and each year, they participate in the Buddy Walk.

We are very proud of our firm's support of these organizations. In 2018, our team was able to raise close to $14,000 for various organizations, and we look forward to recognizing other worthy causes throughout the year.

Kubicki Draper participated in the Jacksonville Young Lawyers Association Chili Cookoff competition and took home the award for the "Most Spirited" law firm for the second year in a row. The event was held to benefit Best Buddies, a non-profit organization dedicated to creating integrated employment, one-on-one friendships, inclusive living, and leadership development opportunities for people with intellectual and developmental disabilities (IDD). The competition judges were made up of the general public and members of the judiciary.

left to right: Christine Day, Kara Cosse, Deborah Eiserman, Mario Errico, and Hillary Lovelady and her son, Nathaniel, in the shark hat.

EDITOR
Sebastian C. Mejia

IN THIS ISSUE

more KD in the Community

Jennifer Feld was 1 of 21 young professionals that graduated from this year's Hope Cohen Barnett Leadership Institute. The institute is one of the signature programs of the Tampa Jewish Federation and the Jewish Federation of Pinellas & Pasco Counties. It provides innovative leadership development experience designed to inspire young professionals to get involved and take on leadership roles in the community. The Hope Cohen Barnett Leadership Institute was created by community member Leslie J. Barnett in honor and memory of his beloved wife and mother of his children, Hope Cohen Barnett (z"l). An endowment fund has been created at the TOP Jewish Foundation to support, in perpetuity, this prestigious program that is an outgrowth of the previously named Jewish Leadership Training Institute.

Our Miami office has a new home!

The new address is:

9100 S. Dadeland Blvd.
Suite 1800
Miami, FL 33156

It's not too late to register for KD's Tampa Conference...

KD's CLAIM GAME

KUBICKI DRAPER

Friday, April 26, 2019

Renaissance Tampa International Plaza Hotel

Join Kubicki Draper for an all-day First Party Property Conference in Tampa. The program will begin at 8 am and includes lunch. Guests are invited to stay for a cocktail reception immediately following the seminar.

The event is complimentary and is designed to provide guests with information that will assist them in claims handling and management.

All courses have been approved by the State of Florida, and attendees will be eligible to receive up to six Florida Continuing Education Credits.

Program highlights:

- Playing Roulette with Policy Conditions
- Florida Hold 'Em Poker: Evaluating and Defending Attorney Fee Claims
- CRAPS - Civil Remedy Anatomy, Protocols, and Solutions
- Virtual Slots: Technology Solutions for First-Party Coverage and Claims
- Blackjack! - 25% (Not "21") on Litigating Roofing Claims
- At the End - The House Always Wins: Analyzing & Determining Coverage for Wind & Water Damage Claims

For questions or registration information, please contact Aileen Diaz at ad@kubickidraper.com.

Contracting Concerns: Exposure for the Acts or Omissions of Subcontractors

By Allison N. Henry and Peter S. Baumberger
on behalf of KD's Construction Practice Group

In Florida, there is a general rule that a contractor may not be held liable for the negligence of its independent contractor. *See* ***City of Coral Gables v. Prats***, 502 So. 2d 969, 971 (Fla. 3d DCA 1987); ***Fisherman's Paradise, Inc. v. Greenfield***, 417 So.2d 306 (Fla. 3d DCA 1982); ***Smith v. United States***, 497 F.2d 500 (5th Cir.1974); ***Mills v. Krauss***, 114 So. 2d 817 (Fla. 2d DCA 1959); *see also* ***Morrison Motor Co. v. Manheim Services Corp.***, 346 So.2d 102 (Fla. 2d DCA 1977) (as to third-party victims, the general rule of non-liability of an employer for the negligence of an independent contractor applies); ***Van Ness v. Independent Const. Co.*** 392 So.2d 1017 (Fla. 5th DCA 1981); ***Skow v. Department of Transportation***, 468 So.2d 422 (Fla. 1st DCA 1985)(Department of Transportation was not responsible for work of independent contractor although it actively participated in inspection of such work); ***Carrasquillo v. Holiday Carpet Service, Inc.***, 615 So.2d 862 (Fla. 3d DCA 1993) (Summary judgment affirmed in favor of general contractor who hired the subcontractor that installed the complained of carpet flooring because general contractor lacked control over subcontractor) (emphasis added); ***Paul N. Howard Co. v. Affholder, Inc.***, 701 So.2d 402 (Fla. 5th DCA 1997)(relationship between two parties was that of general contractor and subcontractor/independent contractor when subcontractor was responsible for providing all labor, tools, equipment, was in control of work, was responsible for payment to employees, etc.); ***Sterling Financial & Management, Inc. v. Gitenis***, 117 So.3d 790 (Fla. 4th DCA 2013) ("The rationale for the general rule is that since the employer of an independent contractor has no power of control over the manner in which the work is to be done by the [independent] contractor, it is to be regarded as the [independent] contractor's own enterprise and it is the [independent] contractor that is the proper party to be charged with the responsibility of preventing the risk, and bearing and distributing it."); ***Wiseman v. Miami Rug Co.***, 524 So. 2d 726 (Fla. 4th DCA 1988) (holding that a subcontractor was an independent contractor, in part, based on the lack of control exercised by the general contractor over the subcontractor).

This rule, however, has a number of exceptions of which a contractor must be wary. These exceptions include circumstances in which the independent contractor's work involves a non-delegable duty, such as a duty created by permit, contract, or by conducting an inherently dangerous activity. Additional exceptions arise in instances where a contractor engages in certain conduct that may subject it to liability for the conduct of its independent contractors, such as: (1) engaging in supervision, control, and/or instruction of the independent contractor and (2) negligent selection. Determining whether a contractor will be liable for the negligence of an independent subcontractor requires a fact intensive investigation. The following is a brief examination of situations in which a contractor may be found liable for the actions of its subcontractor.

A. Non-Delegable Duty

A contractor will be liable for the conduct of its independent subcontractor in situations where a non-delegable duty exists. A non-delegable duty may come from a number of sources. For example, a non-delegable duty may be created where a contractor is retained to perform an inherently dangerous activity. Additionally, a non-delegable duty may be created when a contractor "pulls" a permit for a project. Further, a nondelegable duty may be created by contract.

i. Inherently Dangerous Activity

The inherently dangerous activity doctrine provides that a party who employs an independent contractor to do work involving a special danger to others, which the employer knows to be inherent in or normal to the work, is subject to liability for physical harm caused to such others by the contractor's failure to take reasonable precautions against such danger. ***L.E. Myers Co. v. Young***, 165 So. 3d 1, 5 (Fla. 5th DCA 2015). This court has noted that the question of whether a particular activity is inherently dangerous may, in some circumstances, be treated as an issue of duty and thus decided by the court as a matter of law. *See* ***Smyth ex rel. Estate of Smyth v. Infrastructure Corp. of Am.***, 113 So.3d 904, 911 (Fla. 2d DCA 2013). An activity is inherently dangerous if the danger inheres in the performance of the work, such that in the ordinary course of events its performance would probably, and not merely possibly, cause injury if proper precautions were not taken. *Id.* Courts have held that an activity is to be deemed inherently dangerous if the evidence is sufficient to support a finding of a recognizable and substantial danger inherent in the work. ***Fla. Power & Light Co. v. Price***, 170 So.2d 293, 295 (Fla.1964). Examples of inherently dangerous activities include: crane operation, clearing land by fire, pile driving, and work involving wires charged with high voltage electricity. *See* ***Atlantic Coast Development Corp. v. Napoleon Steel Contractors***, 385 So. 2d 676, 679 (Fla. 3d DCA 1980); ***Midyette v. Madison***, 558 So. 2d 1126 (Fla. 1990); ***Bialkowicz v. Pan Am. Condo. No. 3, Inc.***, 215 So. 2d 767, 772 (Fla. 3d DCA 1968); and ***Florida Power & Light Co.***, 170 So. 2d 295-96. On the other hand, the Fourth District Court of Appeals held that removal of floor tiles from a roof deck does not constitute an inherently dangerous activity. *See* ***Gyongyosi v. Miller***, 80 So. 3d 1070, 1076 (Fla. 4th DCA 2012) (holding that tile removal is not of such a nature that in the ordinary course of events its performance would probably, not merely possibly, cause injury if proper precautions were not taken). Accordingly, when a contractor retains an independent contractor to perform an inherently dangerous activity, the contractor may be held liable for damages that arise out of said conduct during the performance of the work. *See* ***Smyth***, 113 So. 3d at 912. Even if the contractor is

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not the party performing the work, Courts have held that a contractor cannot escape liability by retaining a subcontractor to perform the dangerous activity.

ii. Permit

Obtaining a permit for a project creates a potential avenue of liability for a contractor. To determine whether obtaining a permit for a project creates a non-delegable duty to another requires a more nuanced investigation. A contractor's liability might be dependent on who the claimant is and, further, what the claim is about. For example, pursuant to Florida Statutes Section 489.105(4), a qualifying agent who obtains the permit for a project has the responsibility to supervise, direct, manage, and control construction activities for the work contemplated by the permit. *See* ***ABD Construction Co. v. Diaz***, 712 So. 2d 1146, 1147 (Fla. 3d DCA 1998) (finding a general contractor not liable for injuries to a plaintiff arising from work performed beyond the scope of the permit). The Third District Court of Appeals has held that the duty of care, with respect to the property of others, imposed by a city building permit upon a contractor cannot be delegated to an independent sub-contractor. *See* ***Bialkowicz v. Pan Am. Condo. No. 3, Inc.***, 215 So. 2d 767, 771 (Fla. 3d DCA 1968). Further, the Third District Court of Appeal has held that an owner may recover from a negligent qualifying agent under a common law theory of negligence or through the administrative remedies available under Fla. Stat. Chapter 489. ***Murthy v. N. Sinha Corp.***, 644 So. 2d 983, 986-87 (Fla. 3d DCA 1998). The case law, however, does not appear to make clear whether the ability to sue in these circumstances lies exclusively with the owner/developer, but we have seen instances where non-owner plaintiffs (like a condominium association) have made this argument. Based on the ***ABD Construction*** case, one might argue that deficient work performed under a permit acquired by a contractor, which was performed by a subcontractor hired by that contractor, and that was performed with that contractor's knowledge may expose that contractor to liability. *See* ***ABD Construction Co.***, 712 So. 2d 1146 at 1147-48.

iii. Contract

A contractor's contractual duty is another potential source of non-delegable duties. ***Fisherman's Paradise, Inc.***, 417 So. 2d at 308. As it pertains to duties to owners, a contract will serve as a source of a non-delegable duty for the contractor. "Where [a] contracting party makes it her or his duty to perform a task, that party cannot escape liability for the damage caused to the other contracting party by the negligence of independent contractors hired to carry out the task." ***Gordon v. Sanders***, 692 So. 2d 939, 941 (Fla. 3d DCA 1997); ***Mills v. Krauss***, 114 So. 3d 817, 821 (Fla. 2d DCA 1959). However, the contract might not serve as a source of a non-delegable duty to third parties who are not in privity of the contract. *See* ***Carrasquillo v. Holiday Carpet Serv., Inc.***, 615 So. 2d 862 (Fla. 3d DCA 1993).

A contract may nonetheless, serve as a source of liability to third parties based on the express terms of the contract. Specifically, a contract may impose a non-delegable duty upon a contractor by the inclusion of express terms creating a non-delegable duty. *See* ***City of Coral Gables v. Prats***, 502 So. 2d 969, 971 (Fla. 3d DCA 1987) ("The contract between the City and DOT expressly imposed on the City a nondelegable duty to protect the public from any 'trip and fall' hazards during construction, and thus, the City remained liable even though it delegated performance of the contract to an independent contractor.").

B. Contractor's Conduct

i. Supervision, Control, and/or Instruction

It is important for a contractor to be conscious of the level of supervision, control, or instruction it engages in as to its subcontractor's work. Although oftentimes this cannot (and should not) be avoided, if a contractor become too actively involved in a subcontractor's scope of work, the contractor may be subject to liability for the actions of its subcontractor. If a contractor actively participates in or interferes with a job to the extent that he directly influences the manner in which the work is performed, then the contractor may be found liable for the actions of its subcontractor. ***Morales v. Weil***, 44 So.3d 173, 176 (Fla. 4th DCA 2010) (quoting ***Johnson v. Boca Raton Cmty. Hosp., Inc.***, 985 So.2d 593, 595-96 (Fla. 4th DCA 2008)). Florida Courts have held that a "meddlesome employer" forfeits his immunity from liability under the general rule by so insinuating himself into his independent contractor's performance of the contract that the performance becomes his own. ***Indian River Foods, Inc. v. Braswell***, 660 So.2d 1093, 1097 (Fla. 4th DCA 1995). To prove the requisite control over a subcontractor, evidence must be presented showing that the contractor actually engaged in control over the manner in which the work was performed. ***Sterling Fin. & Mgmt., Inc. v. Gitenis***, 117 So. 3d 790, 794 (Fla. 4th DCA 2013). This control must extend beyond the general right to recommend a safe manner for an independent contractor to perform its work. *Id.* Indeed, it is not enough that an employer of an independent contractor orders work stopped or resumed, inspects the progress or receives reports, makes suggestions or recommendations which need not necessarily be followed, or prescribes alterations and deviations. *Id* at 795. Such a general right is usually reserved to employers, but it does not mean that the contractor is controlled by the contractor as to his methods of work, or as to operative detail to the extent that the contractor is not entirely free to do his work in his own way. *Id*. The key inquiry is whether the independent contractor is controlled as to his methods of work, or as to operative detail. ***Morales***, 44 So.3d at 176.

A contract between a contractor and a subcontractor can also serve as evidence of the degree of control of the general contractor over the independent contractor *See* ***Paul N. Howard Co. v. Affholder, Inc.***, 701 So.2d 402 (Fla. 5th DCA 1997). The ***Affholder*** court, upon examination of the circumstances surrounding the contractor-subcontractor relationship, determined that because the subcontractor was responsible for providing all labor, tools, and equipment and was otherwise in control of the details of the project, the contractor did not engage in supervision or control thereby subjecting it to liability for the subcontractor's conduct. *Id; see also* ***Wiseman v. Miami Rug***, 524 So. 2d 726 (Fla. 4th DCA 1988).

ii. Negligent Selection

A contractor may also be liable to one injured as a result of a subcontractor's fault where it is shown that the contractor was negligent in selecting a careless or incompetent person with whom to contract. ***Suarez v. Gonzalez***, 820 So. 2d 342, 344 (Fla. 4th DCA 2002). To state a claim for negligent selection of an independent contractor, a plaintiff must generally plead ultimate facts showing: (1) the contractor was incompetent or unfit to perform the work; (2) the employer knew or reasonably should have known of the

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Contracting Concerns
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particular incompetence or unfitness; and (3) the incompetence or unfitness was a proximate cause of the plaintiff's injury." ***Davies v. Commercial Metals Co.***, 46 So. 3d 71, 73-4 (Fla. 5th DCA 2010). As a threshold requirement, the contractor must have been hired: (a) to do work involving a risk of harm unless skillfully and carefully done, or (b) to perform any duty owed by the employer to third persons. *Id.* Once the existence of a duty is established, then a breach may be shown by proving the contractor possessed an incompetence or unfitness about which the employer knew or, in the exercise of reasonable care, should have known. The amount of care which should be required is proportionate to the danger involved in failing to use it. ***Suarez***, 820 So. 2d at 345. There is no duty to take any great pains to ascertain whether his reputation is or is not good. *Id* at 344. Merely knowing that the contractor engages in the type of work is sufficient, unless employer knows that the contractor's reputation is bad or knows of facts which should lead him to realize that the contractor is not competent. *Id.* Lastly causation is established by proving the plaintiff's injury was a foreseeable result of the particular incompetence. ***Davies***, 46 So. 3d at 74.

Conclusion

Based on the foregoing, it is clear that contractors are not always responsible for their subcontractors. However, there are indeed situations in which a contractor may become liable for its subcontractors' actions. The theories discussed above are among the more common theories asserted against contractors in construction cases. While one can never predict the future, contractors should be mindful of these theories and take whatever steps they can in effort to avoid exposure to them.

For more information on this topic, please contact us at Construction@kubickidraper.com.

SPOTLIGHT ON

Kenneth Oliver

"In it for the long run"

best sums up Ken Oliver's career as an Attorney and Equity Partner of the firm. Ken holds the distinction as the longest, continuously tenured employee at the firm, having started over thirty-four years ago. Ken started with the firm immediately out of law school when he was hired by Betsy Gallagher and Gene Kubicki.

Ken obtained his Juris Doctor at Nova Southeastern University Shepard Broad College of Law, and was a member of the law school's first class to graduate after full accreditation. While in law school, Ken was able to clerk at a law firm with fellow Equity Partner, Earleen Cote, starting a more than thirty year long friendship. When Ken started at Kubicki Draper, he was the 18th attorney in the firm, when it only had one office in Miami. In 1991, as Kubicki Draper continued to grow, Ken was given the opportunity to help the firm expand by opening the Fort Lauderdale office. Eleven years later, Ken went on to open the Fort Myers/Naples office, where he continues to be the Managing Partner.

Ken has been a part of the firm expanding over the years from one office with less than twenty attorneys, to a firm with thirteen offices and approaching 150 attorneys. While Ken enjoys practicing in the areas of bodily injury liability, premises liability, professional negligence, catastrophic/high exposure losses, and bad faith prevention matters, he also enjoys training claims professionals and having the flexibility to help mentor and train the firm's next generation of trial attorneys.

When he is not practicing law or helping run the firm as an Equity Partner, Ken enjoys spending time with his wife, Josie, his two daughters, and the grandchildren he and Josie share.

new additions to the KD family

We are pleased to introduce our new Associates:

Ft. Lauderdale: **Anish J. Matchanickal, Allyson S. Jenks** and **Kameron D. Romaelle**

Ft. Myers: **Lisa M. Taylor**, **Lindsey N. Ortiz** and **Christopher M. Thompkins**

Miami: **Megen M. Gold, Stephanie M. Suarez** and **Anthony Maneiro**

Tallahassee: **Christopher R. Clark**

Tampa: **Karun P. Rivero, Gina E. D'Amico, Kristin M. Normandeau** and **Andrew T. Lynn**

West Palm Beach: **Natasha V. Loubriel** and **Patrick M. Johns**

Jacksonville: **Cody G. Ingalls**, **Joel J. Kelley** and **Vincent K. Cano**

The Curious History of Florida Statute §46.021

By Eric V. Tourian

It is well known that Florida's survival statute (§46.021) allows the personal representative of a deceased to sue for torts which were suffered by the deceased but which were not the cause of his or her death. Likewise, Florida's Wrongful Death Act (§768.16-768.26) allows the personal representative of a deceased to bring suit for torts resulting in death. But prior to 1883, wrongful death suits were not allowed in Florida,[1] and before the twentieth century, the personal representative of a deceased Floridian could not sue for torts which the deceased suffered during his or her lifetime but which were not the cause of his or her death.[2]

Tort law was long shackled by the principle of *actio personalis moritur cum persona*, a principle which was fundamental to how courts and lawmakers viewed the death of a plaintiff or defendant. Both the current survival statute and Wrongful Death Act were outgrowths of the softening and eventual abandonment of this principle. Much could be written about the Florida survival statute and Wrongful Death Act; however, most articles written about the Wrongful Death Act would surely be longer, so in the interest of brevity, the remainder of this article will briefly trace the origin and development of Florida's survival statute.

Common Law Origins

Although its origin is not entirely traceable (one commentator calls it a "historical accident"),[3] from at least some time after the Norman Conquest[4] (1066) down to at least the nineteenth century[5], English common law operated according to the rule of *actio personalis moritur cum persona*[6] or "a personal right of action comes to an end with the death of either of the parties."[7] Based on this principle, personal injury actions abated with the death of either the plaintiff or the defendant.[8] Actions based on contract did not abate upon the death of a party.[9]

The first relaxation of the abatement rule came in 1330 when King Edward III and the Parliament of England enacted a statute which is known as "*statute de bonis asportatis*."[10] *De bonis asportatis* provided that executors of estates of persons who had died with wills could sue[11] for the recovery of personal property, torts involving trespasses to property and thefts which the plaintiff had suffered while alive.[12] However, *de bonis asportatis* did not change the principle that personal injury suits abated with the death of the plaintiff or defendant.[13]

The *statute de bonis asportatis* in particular and the principle of *actio personalis moritur cum persona* in general were both in effect in England on July 4, 1776.[14] On November 6, 1829, the Territorial Legislature of Florida adopted statute §2.01 thereby largely adopting and incorporating the statutory and common law of England.[15] The Territorial Legislature enacted the first survival statute on January 19, 1827[16] and this was later amended on January 19, 1828.[17]

Development Of Florida's Survival Statute

The 1828 version of the survival statute read "All actions for personal injuries shall die with the person, to wit: Assault and battery, slander, false imprisonment, and malicious prosecution; all other actions shall and may be maintained in the name of the representatives of the deceased."[18] This statute remained largely unexamined until the Florida Supreme Court's review in ***Jacksonville State Railway Company v. Chappell***, 1 So. 10 (Fla. 1886).

[1] John P. Wilcox & Harold G. Melville, *The Computation Of Damages Under The New Florida Wrongful Death Act*, 26 U. Miami L. Rev. 737 (1972)

[2] *See generally*, Florida AGO 74-100 (1974) available at **http://www.myfloridalegal.com/ ago.nsf/Opinions/81506301C15AA6E5852566B200566D85**; *See also*, ***Smith v. Lusk***, 356 So. 2d 1309 (Fla. 2nd DCA 1978)

[3] David Horton, *Indescendibility*, 102 Calif. L. Rev. 543, 590 (June 2014), *See also, Survival Of Actions Brought Under Federal Statutes*, 63 Colum. L. Rev.,. 290, 290-305 (1963); H. Goudy, *Two Ancient Brocards, in Essays In Legal History Read Before The International Congress Of Historical Studies Held In London In 1913*, 215, 216,(Paul Vinograff, F.B.A., Ed., London, Oxford University Press, 1913) available at **https://archive.org/details/essaysinlegalhis00inteuoft/page/214**

[4] Goudy *supra* 216-225

[5] *Survival Of Actions*, supra note 6, at 290

[6] *See*, William Blackstone, *Commentaries On The Laws Of England*, 773-774 (George Chase, LL.B., Ed., 3rd Ed., New York, Banks & Brothers Law Publishers, 1895).

[7] Goudy, *supra* at 216

[8] John D. Lawson, *Survival Of Actions*, The American Law Register, 353-364 (June 1883)

[9] *See*, Joseph Chitty, *A Treatise On The Parties To Actions, The Forms Of Actions And On Pleading. With A Second And Third Volume Containing Precedents Of Pleadings In Three Volumes*, Vol. 1, 37-94 (John A Dunlap, Ed., 3rd American Edition, Philadelphia, I, Riley, 1819) available at **https://archive.org/details/treatiseonpartie01chit/page/36** and *See* W. S. Holdsworth, *A History Of English Law*, 576-585 (3rd Ed., London, Methuen & Co., 1923) available at **https://archive.org/details/historyofengl3rd03holduoft/page/576**

[10] 4 Edw. III, Cap. 7. (1330), *See*, Wex S. Malone, *American Fatal Accident Statutes-Part I: The Legislative Birth Pains*, Duke L. J., 675-676, 673-719 (1965) and W. Mark Ormrod, *Edward III* (Yale University Press, 2011) 79, 106-107

[11] *Henshaw v. Miller*, 58 US 212, 215-216 (1854)("actions of trespass for goods taken or carried away in the lifetime of the testator or intestate, may be maintained against, as well as by, executors &c: and in that respect extends the provisions of the statute of 4 Edw. III which gives a remedy only to executors, and not against them.")

[12] Holdsworth, *supra* at 584, Blackstone, *supra* at 704-705, Chitty, *supra* at 94; ***Leonard v. Nat Harrison Associates, Inc.***, 122 So. 2d 432 (Fla. 2nd DCA 1960); ***Phillips Co. v. Wagner***, 155 So. 842 (Fla. 1934); and ***Quitman Naval Stores Co. v. Conway***, 58 So. 840 (Fla. 1912)

[13] Chitty, *supra* at 45 and Blackstone, *supra* at 773

[14] *See*, Florida Statutes 1941, Volume III: Helpful And Useful Matter, pg. 5 available at **http://fall.law.fsu.edu/databases/PDF/1941statutoryrevisions.pdf**

[15] *See, Id.*

[16] ***Jones v. Townsend***, 2 So. 612 (Fla. 1887)

[17] *Id* and ***Atlas Properties, Inc. v. Didich***, 226 So. 2d 684 (Fla. 1969)

[18] ***Atlas Properties, Inc. v. Didich***, 226 So. 2d 684, 686 (Fla. 1969)

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Laurie Adams | Peter Baumberger | Michael Carney | Caryn Bellus | Dan Miller

South Florida Legal Guide **Top Lawyers**

We are pleased to announce KD has been named as a "Top Law Firm" by South Florida Legal Guide. In addition to this honor, we had several team members included in the 2019 edition of South Florida Legal Guide's "Top Lawyers."

CONGRATULATIONS TO:

Laurie Adams	Civil Litigation
Peter Baumberger	Professional Liability – Defense, Corporate and Business Litigation
Michael Carney	Civil Litigation
Caryn Bellus	Appellate, Insurance
Dan Miller	Bankruptcy, Corporate and Business Litigation

The Curious History of Florida Statute §46.021

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In ***Jacksonville***, the Plaintiff suffered a personal injury while riding as a passenger on one of Jacksonville State Railway Company's trains. The Plaintiff later filed a personal injury lawsuit to recover for these injuries, and he apparently died while the suit was pending. The Duval County Court eventually entered judgment against Jacksonville State Railway Company, but on appeal, the Florida Supreme Court reversed.

In its opinion, the Court interpreted the survival statute in light of the *statute de bonis asportatis* and later English court cases[19] and held that the survival statute meant that "all actions for personal injuries should die with the person."[20] As such, the Plaintiff's estate recovered nothing.

The Florida Supreme Court had another opportunity to interpret the 1828 version of the survival statute in the tragic and disturbing case of ***Waller v. First Savings & Trust Co***. 138 So. 780 (Fla. 1931).

In ***Waller***, the Defendant planted a bomb at the Plaintiff's Plant City, Florida home. The bomb was happened-upon by the Plaintiff's wife, it detonated, and she was gravely injured but survived. While awaiting trial, the Defendant was murdered, and First Savings & Trust Company was appointed the executor of his estate.

The Plaintiff filed suit against First Savings & Trust Co. in order to recover for his wife's pain and suffering, the loss of his wife's society and services and for the costs of her medical care. First Savings & Trust Co. argued that the suit was barred by the abatement principle. The trial court agreed and entered judgment for First Savings & Trust Co. The Florida Supreme Court reversed the trial court.

In a lengthy written opinion, the Court found that the *actio personalis moritur cum persona* principle was not consistent with the Florida Constitution's guarantee that the courts be open to all litigants. The Court ultimately held that *actio personalis moritur cum persona* "never became a part of the common law of Florida at all."[21] The personal injury lawsuit was therefore allowed to proceed against the estate of the deceased Defendant.

While one contemporary publication labeled the ***Waller*** ruling an example of "judicial legislation,"[22] after the ***Waller*** ruling, Florida survival statute was read as allowing for an alive plaintiff to sue a deceased defendant for torts which the defendant had committed during his or her lifetime.[23]

In 1951, the Florida Legislature amended the survival statute to read "No action for personal injuries and no other action shall die with the person, and all actions shall survive and may be instituted, maintained, prosecuted and defended in the name of the personal representative of the deceased, or in the name of such other person as may be provided by law."[24] This amendment effectively abolished the abatement principle in Florida. The statute was last amended in 1967 at which time the language of the statute was modernized.[25]

Conclusion

While most people likely never give Florida's survival statute much thought, a close examination shows that it is the product of an almost eight hundred year quest to fashion just laws which guarantee due process, the right to recover for personal injuries and to bring a claim to court, event if that claim is brought or defended after a party's death.

[19] *Id.* at 11

[20] *Id.* at 15

[21] *Id.* at 786

[22] *Inadequacies of English and State Survival Legislation*, 48 Harv. L. Rev. 1008, 1013

[23] The abatement doctrine was even further eroded by the Florida Supreme Court in ***State ex. rel. H. E. Wolfe Construction Company et. al. v. Parks et. al***, 175 So. 786 (Fla. 1937) in which it held that where both a Plaintiff and Defendant are alive when suit is filed but the Plaintiff then dies during the pendency of the suit, the Plaintiff's personal representative may be substituted and continue with the suit as long as the suit was not based upon assault and battery, slander, false imprisonment or malicious prosecution. However, if the suit was based upon any of the enumerated torts, then the action still abated.

[24] ***Atlas Properties***, *supra* at 687

[25] The current version of the statute reads: "No cause of action dies with the person. All causes of action survive and may be commenced, prosecuted and defended in the name of the person prescribed by law."

TRIALS, MOTIONS, MEDIATIONS

Defense Verdict in Rear-End Collision Case.

Mario Errico, of the Jacksonville office, received a defense verdict after a very contentious 3 day trial. The young 26 year old Plaintiff was claiming neck, back, and knee pain related to the 2016 rear-end car accident. Plaintiff had accumulated around $16,000.00 of medical treatment over the last two years, and was seeking significant amounts of money for many years of future pain management until her own doctor testified that he would only give her a few years of additional conservative treatment. During closing argument, Plaintiff's counsel asked for a $150,000.00 verdict.

Mario had a filed a Proposal For Settlement for $12,500.00 against Plaintiff's Proposal For Settlement for $20,000.00. The jury ultimately awarded $15,000.00, which after setoffs triggered the defense's Proposal for Settlement.

Favorable Settlement in Advance of Summary Judgment.

Nicole Wulwick of the Miami had an excellent result in a first party property case involving a denied drain line backup claim. Plaintiffs' damages estimate, not including attorney's fees, was $200,000.00. Nicole immediately deposed the Plaintiffs and the tenant of the property, to eventually file a Motion for Summary Judgment. The Motion was set for hearing on a Monday morning, and late the Friday evening before the hearing, Plaintiffs accepted our $2,000.00 settlement offer.

Favorable Ruling Regarding Payment of Benefits Pursuant to a CRN not Being a Confession of Judgment.

Bretton Albrecht, Barbara Fox and **Caryn Bellus**, of the Miami office, obtained a written order providing that if an insurer pays benefits pursuant to a CRN, it is not a confession of judgment entitling plaintiff to fees. After a hearing on plaintiff's motion for summary judgment argued by Bretton, the court found that the tactic of filing suit and a CRN and waiting for the insurer to pay benefits before effectuating service is a "gotcha" tactic to which the confession of judgment rule does not apply.

Summary Judgment Granted for Failure to Comply with Conditions Precedent.

Eric Tourian, of the Orlando office, won a Motion for Final Summary judgment in a PIP matter, arguing that a demand letter was defective. Since it was defective, Plaintiff failed to comply with a condition precedent, and therefore Plaintiff had no standing. After an hour and a half long hearing, the Judge granted Eric's motion, and granted Summary Judgment for the carrier.

Favorable Settlement During Trial.

Sean Xenakis and **Maegan Bridwell**, of the Tampa office, received a very favorable settlement after four very tenacious days in trial.

The case involved a large amount of pain management and a spine surgery. The past medical bills were almost $130,000.00. The policy limits were rejected, and there was a proposal for settlement which was so low, the defendant would have owed attorneys fees because the amount which would have to be conceded was enough to trigger the fees.

However, due to Maegan's handling of the before and after witnesses, as well as Sean's skilled cross examination of the plaintiff, her case began to significantly erode. The claims by the plaintiff, her sister and mom (the two before and after witnesses) that her life was ruined and she was basically house ridden were revealed to be grossly exaggerated based on admissions of the plaintiff during Sean's cross in part due to some social media posts. The plaintiff even admitted that her sister's testimony may have gone too far.

Defense Verdict in Admitted Liability Trial.

Kenneth Oliver and **Angela Agostino**, of the Fort Myers office, obtained a defense verdict in Collier County on an admitted liability auto case. The plaintiff mother had left wrist surgery with over $65,000.00 in medical bills, the 22 year old plaintiff son had cervical and lumbar bulging discs with over $22,000.00 in medical bills, and the plaintiff father brought a loss of consortium claim. Since the accident, the defendant had passed away, unrelated to the auto accident. Ken and Angela were able to locate Facebook posts from the family business, UPS employment records from the plaintiff's son, and inconsistencies in the Plaintiffs' testimony and medical records during trial.

After a three day trial, the jury came back with a verdict less than 25% of the proposals for settlement filed, awarding only past medical expenses. After set-offs and collateral sources, the net verdict was less than the attorney's fees and costs exposure created by the verdict.

Defense Verdict in Insurance Coverage Trial.

Earleen Cote, of the Ft. Lauderdale office, obtained a defense verdict after a three-day trial in a Broward coverage case. Plaintiff was involved in a collision while driving a recently financed vehicle she claimed was added to her existing insurance policy at the time the vehicle was purchased. Plaintiff sued the carrier for the full value of the vehicle in addition to the amount financed, which was double what the car was actually worth. Neither the carrier, nor the dealership, had any record of the car ever being added to her existing policy, which covered two older vehicles. However, Plaintiff was able to survive summary judgment by arguing the car was added by a carrier representative via telephone while at the dealership. After granting partial summary judgment in favor of the carrier on Plaintiff's count for reformation, the Judge allowed the remaining claims of breach of contract and declaratory judgment to go to a jury. A defense verdict was returned after about 20 minutes of deliberation.

TRIALS, MOTIONS, MEDIATIONS

Summary Judgment in Roof Leak Claim.

Nicole Wulwick, of the Miami office, obtained Summary Judgment in a denied roof leak claim, which Nicole litigated for two years. The facts were not in the carrier's favor, but Plaintiffs' expert Affidavit failed to create issues of material fact and Nicole was ultimately able to prevail. Due to a Proposal for Settlement filed very early in the litigation, Nicole is now seeking both costs and attorney's fees.

Dismissal for Fraud on the Court Granted.

Michael Balducci and **Lillian Sharpe**, of the West Palm Beach office, obtained an Order of Dismissal for Fraud on the Court in a first party property case. Mike argued a motion drafted by Lillian arguing that dismissal was proper due to the insured lying about not having any prior claims or damage to her home (she had a claim against another carrier for similar damage at the home four years before this lawsuit). The Plaintiff denied prior claims in her application and in her EUO, only to try and fess up about it in her deposition, when she said she "forgot" about it, while still denying she had ever filed a lawsuit. Meanwhile, she had filed a suit against another carrier for her prior loss two months before the deposition, which was assigned to the same trial judge as this claim. Despite requests for an evidentiary hearing, the judge determined that Plaintiff had more than enough opportunities to be truthful, and ruled on Mike and Lillian's motion.

Voluntary Dismissal Following Post Suit Appraisal and MSJ on Entitlement to Fees.

Kara Cosse, of the Jacksonville office, obtained a voluntary dismissal in a first party property case after filing a Motion for Summary Judgment. The only issue in the case was a price and scope dispute following wind damage to the insured's home. The insurer demanded appraisal post-suit, and the judge required appraisal proceed mid-suit based on the insurance contract requiring appraisal proceed upon the demand of either party at any time. Appraisal proceeded, an award was given, and the carrier paid Plaintiff mid-suit.

Thereafter, Plaintiff's counsel moved to seek entitlement to attorney's fees and costs for the amount of loss being set mid-suit. Kara filed a Motion for Summary arguing that the policy advised attorney's fees and costs would not be awarded for participation in the appraisal process. Kara's MSJ discussed that only the actions of the Plaintiff were the catalyst to the lawsuit and that no action by the insured necessitated the filing of the lawsuit. Evidence was presented that the insurer reached out to Plaintiff nearly a dozen times to resolve the price and scope differences, prior to Plaintiff filing a lawsuit. Kara argued that the lawsuit was simply filed to generate attorney's fees and costs, as Plaintiff made no attempt to resolve the price and scope dispute with the insurance company pre-suit. Further, the argument was made that such actions violated the insurance policy's requirement that Plaintiff assist in making settlement upon request of the insurer. When Kara moved to have the motion set for hearing, she received a dismissal instead.

Favorable Verdict in Four Day Jury Trial.

Maegan Bridwell with assistance of **Sean Xenakis**, of the Tampa office, obtained a very favorable verdict after a four day jury trial.

Due to an expired Proposal For Settlement, and two very experienced Plaintiffs' attorneys, there was a significant risk of exposure to attorney fees and noneconomic damages due to the permanent injuries suffered. The two Plaintiff attorneys attended everything in light of a Proposal For Settlement served two years ago that was just slightly more than the past medicals at that time as they were armed with injuries involving objective fractures that caused an extended hospital stay following intake at the ER on the night of the incident. Given the nature of the objective fractures, permanency had to be conceded.

The case had many factual disputes and claims of what happened, essentially becoming a trial within a trial. Maegan was forced to juggle and simplify for the various factual disputes to the jury, as well as new matters that arose during trial due to the strategy of Opposing Counsel, such as Opposing Counsel raising an issue of criminal prosecution for perjury against the client in light of his trial testimony.

Notwithstanding these many issues, Maegan walked the jury through her well organized opening so they had a more clear picture of the issues requiring their attention and the inconsistency of the alleged facts/evidence. From there, she did her best to rehabilitate our client to clean up the credibility issues he created by his direct testimony. Then, she followed up with a three-hour cross-examination of the Plaintiff over two days, which was a monumental task due to the "street smarts" of the Plaintiff; her constantly changing testimony; and her volunteering of random, non-related information into her testimony to distract the jury Maegan remained polite, respectful, and professional during the extended impeachment process so as to not offend our jury. Through closing, Maegan took the jury on a journey of the actual relevant issues to be determined in the case and the disputed testimony/evidence allegedly supporting same.

After four days, the jury had what they needed to find the Plaintiff 49% comparatively negligent and return a verdict that was a fraction of the more than $300,000.00 requested by Plaintiff's counsel in his closing. Maegan's hard work will result in a recovery to the Plaintiff amounting to half of her past medicals.

Voluntary Dismissal After Successfully Opposing a Motion for Leave to Add a Breach of Contract Claim in PIP Action.

Jacqueline Zewski, of the Ft. Lauderdale office, successfully opposed Plaintiff's motion for leave to amend its complaint in a PIP case. The Plaintiff filed its complaint as a declaratory action seeking interpretation of whether a carrier's policy elects the permissive fee schedules. Two years later while the case was pending on the Court's trial docket, the Plaintiff moved for leave to amend the action to a breach of contract in order to assert underpayments. The Court denied Plaintiff's motion, finding that a procedure which allows an appellate court to rule and then allow the losing party to amend his initial pleadings to assert matters not previously raised renders a mockery of the justice system's finality concept. The Plaintiff subsequently dismissed the case with prejudice.

TRIALS, MOTIONS, MEDIATIONS

Motion for Summary Judgment Granted Following Payment Made Pursuant to Executed Proof of Loss.

William Sabinson, of the West Palm Beach office, won a summary judgment on a first party property case involving a roof damage claim where the company issued a denial of the roof claim but paid on the ensuing interior water damage. Under separate cover they sent a proof of loss in the amount of the covered damage indicating payment would be made upon receipt of the attached filled out proof of loss, which the insured signed, followed by payment by the carrier. Nothing happened further until suit was filed a few months later, followed by submission of a PA estimate of over $40,000.00.

The Court agreed with Billy that the case of ***Slayton v Universal*** dictated that summary judgment was warranted, despite some tinkering with that decision since, especially because again there was no dispute about the claim at the time the insured signed the proof of loss, which was the key fact here. A Proposal For Settlement was filed four months before Summary Judgment was granted, entitling Billy to seek attorney's fees and costs.

Voluntary Dismissal After Filing a Motion for Summary Judgment for Failure to Satisfy Conditions Precedent.

Kara Cosse, of the Jacksonville office, obtained a voluntary dismissal in a first party property case after filing a Motion for Summary Judgment. Suit was filed by an AOB contractor for water mitigation and rebuilding services. However, the insurer's inspection of the house showed no signs of water damage, let alone a need for water mitigation. Instead, it appears that the water mitigation company punched holes in the walls in search of "water leaks" that were never there, damaging the property. Plaintiff was unable to provide any correspondence proving they notified the insurer of water damage before the mitigation services commenced and/or date stamped picture proving water damage actually occurred after the loss. Kara's motion argued that such actions were a violation of the Duties After Loss provision of the subject insurance policy, and therefore, Plaintiff didn't satisfy conditions precedent to bringing the lawsuit. After pushing to have the motion set for hearing, Kara received a dismissal instead.

Voluntary Dismissal with Prejudice of Four Related Cases Arising out of Alleged Water Leaks.

Eli M. Marger, of the Tampa office, obtained voluntary dismissals with prejudice in four related lawsuits arising out of water leaks in the Plaintiff's kitchen and bathroom. Following a favorable expert report, discovery responses, and deposition testimony by the Plaintiff, Eli filed and argued a Motion for Summary Judgment, arguing the leaks were long-term in nature and not covered under the Plaintiff's insurance policy. The Court withheld a ruling and ordered the parties to a re-inspection of the property, giving the Plaintiff a final chance to defeat summary judgment. The week of the inspection, Plaintiff's counsel reached out and stated his intent to dismiss the claims without prejudice. Unwilling to have the cases dismissed without prejudice, Eli informed Plaintiff's counsel he would be seeking reimbursement of attorney's fees and costs. Plaintiff's counsel subsequently agreed to have all four lawsuits dismissed with prejudice.

KD news

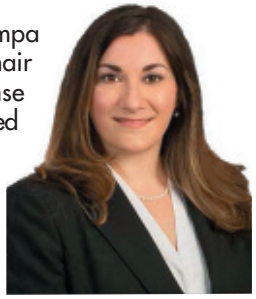
Alexandra Paez Rebecca Brock Laurie Adams

Alexandra Paez, Rebecca Brock and **Laurie Adams** participated at the Palm Beach County Bar Association's Bench Bar Conference on February 22nd.

Our team participated in two sessions at this year's conference focusing on "Breaking Barriers and Sharing Solutions."

Alexandra participated as a co-chair, and Rebecca as moderator, for a session on hot topics in personal injury. The esteemed panel for the session included Judge Rowe, Judge Nutt, Judge Keyser, Judge Gillen, Judge Gross, and Judge Artau. Together they covered everything from pre-trial and expert discovery to pre-trial disclosures, and voir dire.

Alexandra also co-chaired a panel Laurie was a part of along with Sean Dominick and Judge Sasser. They discussed bad faith and the recent Harvey v. GEICO opinion, as well as first-party property considerations, and ethical considerations, dilatory tactics, and compliance with local rules.



Marsha Moses

Marsha Moses, of the Tampa office, has been selected as Chair of the FDLA's (Florida Defense Lawyers Association) newly formed Diversity and Inclusion Committee. It makes us proud to see one of our own taking on such an important role, especially since we believe diverse law firms are stronger and more vibrant. The innovation that different backgrounds, cultural perspectives and life experiences bring to a firm's pool of thought, benefits firm culture and, ultimately, clients. Kudos to FDLA and Marsha for helping to bring more awareness to this important issue.

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

Presentations

Speaking Engagements

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

For more information, please contact Aileen Diaz at

305.982.6621
ad@kubickidraper.com.

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

- Post Trial Motions
- Trend in Low/Moderate Impact Auto Accidents Resulting in Surgeries Under A Letter of Protection and The Best Ways to Defend those Claims
- Investigating Property Losses/Subrogation and Evaluating Property
- Preservation of Error
- Post Trial and Appellate Issues (Appellate and Post Trial Issues & Interlocutory Appeals - Writs and Appeals from Non-Final Orders)
- Construction Indemnity Contracts
- Florida Statute 725.06 & Chapter 558: Purpose, Procedures, Effectiveness and The Altman Decision and Construction Project Insurance Policies
- A Tale of Two Rooftops: A Panel Review of Two Affirmative Action Fraud Lawsuits
- Taking an Effective Doctor's Deposition
- How to Know a Real House Guest from a Monkey's Uncle: Assessing Homeowners' Claims for Fraud Involving Airbnb or Home-Sharing Arrangements
- Bad Faith – Hot Topics
- Bad Faith – Top Ten Pitfalls to Avoid in Florida
- Good Faith Documentation
- Negotiating Small Limits/ Multiple Claims
- Alcohol, Cell Phones and the Law
- Social Media, Technology and its Utilization in the Evaluation of Insurance Claims
- Premises Liability Investigations
- Evaluating and Defending Attorney Fee Claims
- Policy Conditions
- Anatomy of a Civil Remedy Notice
- Virtual Technology Solutions for First-Party Coverage and Claims
- How to Analyze and Determine Coverage for Wind and Water Damage Claims
- Claims Challenges, Negotiations and Ethics for the Claims Adjuster
- Roof Construction: Materials and Damages

Valerie Dondero Nicole Wulwick

Valerie Dondero and **Nicole Wulwick**, of our Miami office, presented at the American Inns of Court (Spellman-Hoeveler Chapter) Bench & Bar Conference on March 1, 2019. Nicole presented "Taking the Winning Deposition" and Valerie covered "Bad Faith Fees in Insurance Litigation." The conference was attended by federal and state judges and the top attorneys across Florida.

Brad McCormick Caryn Bellus Charles Watkins

For over a decade, Kubicki Draper has been a proud sponsor of the CLM Alliance (Claims and Litigation Management Alliance) Annual Conference, and we were thrilled to once again have supported this great event this year as a Platinum Sponsor. The conference took place at the Orlando World Center Marriott on March 13-15. **Brad J. McCormick, Caryn Bellus** and **Charles Watkins** attended and enjoyed participating in some of the amazing sessions.

Rebecca Brock Laurie Adams

The American Board of Trial Advocates (ABOTA) Palm Beach Chapter's Annual Judicial Appreciation Picnic is attended by many members of the legal community, including over 20 judges and their families. We were happy to sponsor the event for the third consecutive year, and support the legal community, and our very own team members who serve on the Palm Beach Chapter's Board -- **Rebecca Leigh Brock**, President Elect and **Laurie Adams**, Vice President.

announcements | news

KD has been selected as a Tier 1 Metropolitan firm in U.S. News and Best Lawyers' 2019 Edition of "Best Law Firms." Our Ft. Lauderdale office was recognized in Real Estate Law and our West Palm Beach office in Personal Injury Litigation – Defendants.

Celebrating a dedicated lactation room, new to the 6th Judicial Court:
left to right: Sean Xenakis, William Backer, Harold Saul, Maegan Gold, Jennifer Feld.

Thanks, in large part, to **Jennifer Feld** of our Tampa office, the 6th Judicial Circuit now has a lactation room. It all started with an article Jennifer wrote for the Daily Business Review (DBR) about her experiences as a new mother in trial. "A New Mother's Guide to Pumping During a Jury Trial" was featured in DBR's August 2018 publication and sparked tremendous interest. Since then, Jennifer co-authored an article for the St. Petersburg Bar Association's Paraclete **(https://cdn.ymaws.com/www.stpetebar.com/resource/resmgr/docs/paraclete_1&2-2019.pdf)** and appeared on Fox 13 News **(https://cdn.ymaws.com/www.stpetebar.com/resource/resmgr/docs/paraclete_1&2-2019.pdf)** to talk about the importance of having dedicated spaces for new mothers in the legal profession, as well as visitors, such as jurors to the courthouse.

Jennifer has become a pioneer for lactation room awareness, and we are so proud of her going public with her experiences to bring much needed attention to this very important topic.

Congratulations to

Nicole Wulwick, of the Miami office, and her husband, on the birth of their baby girl, Emilia Lillian Klosky.

YOUR OPINION MATTERS TO US.

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

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