

2023

Year in Recap

In the past year, KD experienced significant growth, welcoming over 100 staff members and 70 attorneys to our expanding family. We presented over 60 continuing education presentations to our clients, and our commitment to community engagement remained steadfast, making a measurable impact in surrounding communities.

Recognized for our contributions to diversity, equity, and inclusion, as well as outstanding legal services, we reflect on our achievements with pride.



Newsletter Highlights

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NEWS + ANNOUNCEMENTS

Florida Bar Association Diversity Symposium

KD's Chief DEI Officer, Charles Watkins, participated on a panel at the Florida Bar Association's Diversity Symposium. The panel's discussion "From Inclusion to Engagement," explored strategies for effective talent retention, the nurturing of diverse talent, establishing pathways for sustained engagement, and the implementation of diversity by design within organizational frameworks. Watkins and his fellow panelists highlighted the importance of not just achieving diversity but actively cultivating an environment where inclusion flourishes and engagement becomes a lasting commitment.



2024 Best Companies to Work For: Law Firms

We are thrilled to announce KD has been named one of the 2024 Best Companies to Work for by U.S. News and World Report! In their comprehensive evaluation, U.S. News assessed publicly available employee sentiment and other data points. The rankings evaluate factors such as employee benefits, company culture, and opportunities for professional growth.



Barry University Career Day

Toni Turocy, from our Orlando office, recently took part in Career Day at Barry University, where she had the opportunity to connect with aspiring students interested in pursuing a legal career.

NEWS + ANNOUNCEMENTS



The Palm Beach County Bar Association Diversity and Inclusion Summit

KD was a proud sponsor of The Palm Beach County Bar Association Diversity and Inclusion Summit, in which KD team members, Danielle Capitini and Mark Young, attended and got to engage in a series of insightful presentations that delved into innovative methods aimed at advancing diversity, inclusion, and equity within the legal industry.

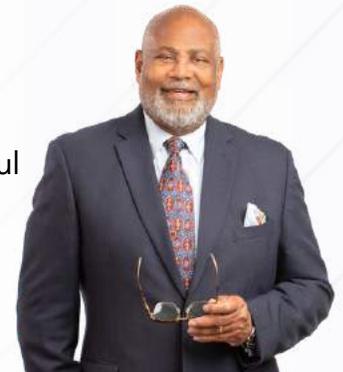


KD Team Members Celebrate Breast Cancer Awareness Month

KD's dedication to spreading Breast Cancer awareness remains as strong as ever. Let's continue to stand together sharing knowledge, extending support, and striving for a world free from breast cancer! We are proud of our team and their efforts to raise awareness and support.

Charles Watkins, Top 100 Powerful DEI Leader

Congratulations to Charles Watkins for making Provenbase's Top 100 Powerful DEI Leaders list. The list recognizes individuals who have demonstrated exceptional leadership and commitment to advancing diversity, equity, and inclusion within their respective industries.



Valerie Dondero Elected to ABOTA

Valerie Dondero, of our Miami office, was voted into the American Board of Trial Advocates (ABOTA). ABOTA is an invitation-only organization dedicated to promoting and improving the American civil justice system and to preserving the right to civil jury trial. We are happy to have yet another KD member join this important group.



NEWS + ANNOUNCEMENTS



Celebrating La Cultura: Law Mixer

Maegan Bridwell, Marsha Moses, and Teodora Siderova, from our Tampa office attended the "Celebrating La Cultura: Law Mixer" hosted by Stetson University College of Law's Hispanic Bar Association. The event aimed to create connections between Stetson students and law firms from Pinellas & Hillsborough County. It was a wonderful opportunity for our firm to meet students, foster mutually beneficial relationships, celebrate Hispanic Heritage Month, and promote diversity. The KD team enjoyed connecting with talented and enthusiastic individuals!



Association of Legal Administrations, Florida Chapter

Marlene DeTour, one of our regional managers, was honored with the CFCALA Presidents' Council Award for Professionalism. This accolade stands as a testament to Marlene's dedication and proficiency in legal administration, and we take great pride in having her as a vital part of our team.

Leeza Newman, Board Certified in Construction Law

Congratulations to Leeza Newman, our newest Florida Bar Board Certified attorney in Construction Law! With a focus on complex construction law matters, Leeza excels in representing a diverse clientele, from owners to contractors, in intricate disputes and high-stakes projects. Her strategic counsel minimizes liability, making her an invaluable asset to clients.



NEWS + ANNOUNCEMENTS

“Employer on the Bricks” at University of Miami

Jennifer Remy-Estorino, Lily Hutchinson and Nicole Wulwick, visited the University of Miami (UM) campus for an “Employer on the Bricks” event. This event, organized by UM’s Office of Career and Professional Development, provided an opportunity for our team to connect with law students at various stages of their academic journey. The team enjoyed engaging with students and discussing the exciting opportunities our firm has to offer. It was a rewarding experience that further solidified our commitment to supporting the next generation of legal professionals.



2024 Best Law Firms

We are proud to be recognized in the 2024 Best Lawyers®, "Best Law Firms®" list with 3 national rankings and 11 metropolitan rankings! Best Lawyers is a respected peer review research and accolades company that meticulously evaluates legal expertise and achievements by collecting and assessing peer reviews. We are deeply honored to be included -- it is a testament to our commitment to excellence.

North American Executive HR Summit 2023

Our Chief DEI Officer, Charles Watkins, attended the North American Executive HR Summit (NAHRES) hosted by Executive Platforms. NAHRES brings together industry experts to network, collaborate, and discuss potential solutions to some of today's top HR-related issues from every facet.



NEWS + ANNOUNCEMENTS

CONGRATULATIONS!

B A B Y



Lindsey Hinton's baby girl, Emery



Zhara Hernandez's baby boy, Jahaan



Jarred Dichek's baby girl, Mackenzie



Dayana Lemuz's baby girl, Penelope Skye

Are Underwriting and Claims Files Discoverable?: Recent Developments in Florida Law

By: Sarah Goldberg



In first-party property insurance lawsuits in Florida, the central question often revolves around coverage—whether the reported claim is covered under the insurance policy. Attorneys for policyholders commonly seek the production of underwriting and claims files via written discovery or corporate representative depositions.

Traditionally, insurers object to such requests, citing work product protection and asserting that the files are not relevant and undiscoverable until the underlying coverage dispute is resolved. The precedents below have supported this objection:

- *State Farm Florida Ins. Co. v. Kramer*, 41 So. 3d 313, 314 (Fla. 4th DCA 2010), stands for the proposition that the insurer's claim, underwriting, and litigation files are protected work product until the breach of contract issues are resolved; and
- *State Farm Mut. Auto. Ins. Co. v. Tranchese*, 49 So. 3d 809, 810 (Fla. 4th DCA 2010), holds “[U]ntil the obligation to provide coverage and damages has been determined, a party is not entitled to discovery related to the claims filed or to the insurer's business policies or practices regarding handling of claims.”

However, recent cases have found there is no hard rule that the underwriting file or claims file is not discoverable during the litigation of a coverage dispute. *Avatar Prop. & Cas. Ins. Co. v. Simmons*, 298 So. 3d 1252, 1254 (Fla. 5th DCA 2020), holds that a blanket objection to production of the claims file in a coverage dispute was insufficient to support a work product objection.

The issue was examined further in *People's Trust Ins. Co. v. Foster* (333 So. 3d 773, Fla. 1st DCA 2022), where the court rejected the notion that underwriting manuals are never discoverable in a coverage dispute. The court acknowledged that while requests for underwriting files or manuals may sometimes be premature, they are never categorically protected from production in such disputes. This case involved Mr. and Mrs. Foster's water damage claim due to a pipe leak, with the carrier objecting to their request for the underwriting manual. The trial court compelled the carrier to produce it. On appeal, the court found the underwriting file relevant as the carrier claimed pre-existing damage, emphasizing the absence of a privilege log as grounds to uphold the discovery order.

Most recently, the First District Court of Appeal, in *Homeowner's Choice Property & Casualty Insurance Company v. Thompson*, 2023 WL 8100735 (Fla. 1st DCA Nov. 22, 2023), held that "[d]ocuments in claims or underwriting files are not automatically work product." The Court went on to explain the carrier did not demonstrate that requested documents, such as field photographs and inspection notes, were prepared in anticipation of litigation. Additionally, the court noted the insufficiency of the carrier's privilege log in supporting work production objections.



Suggested Carrier Strategy

Plaintiffs will push for production of the full underwriting and claims files based on the Foster and Thompson cases. To prepare and safeguard production of documents the carrier does not believe should be produced, the carrier should:

1. carefully review their affirmative defenses, and
2. identify relevant documents to those defenses

For instance, if the damages being claimed by the insured was documented in inspection photographs from a prior claim or within an underwriting inspection completed before the policy was issued, those documents would be relevant to a pre-existing damage defense. Photographs from an underwriting inspection or photographs from a prior claim may not be relevant if the carrier is not asserting overlap in damages with a prior claim.

After making a careful assessment, all documents contained within the underwriting and claims file relevant to the affirmative defenses asserted should be produced without objection. For documents not relevant to the defenses, a detailed privileged log should be prepared, specifying objections like prematurity or irrelevance to the case's issues or defenses. This approach to responding to discovery aims to prevent the court from granting the insured complete access to the files and encourages the court to focus on documents relevant to the case's coverage issues.

Class I and Class II Distinctions for Uninsured Motorist Coverage: Stacked and Non-Stacked Coverage

By: Valerie Dondero

It's always a good idea to take a refresher course on the Class I and Class II distinctions for Uninsured Motorist Coverage. As far back as 1971, the Florida Supreme Court divided the class of insureds who are entitled to seek Uninsured Motorist coverage under a Florida auto policy.

In *Mullis v. State Farm*, 252 So.2d 229 (Fla. 1971), the Supreme Court gave named insured and resident relatives of their household the distinction of a "Class I Insured" and other permissive drivers or occupants of the insured auto, who were not named insureds or resident relatives, the distinctions of a "Class II Insured." The importance of this distinction arises when a claimant seeks stacked UM



under the policy. As a Class I Insured, the claimant is entitled to the stacked UM coverage purchased on the policy of insurance; a Class II insured has no opportunity for stacked UM even if stacked UM was purchased and paid for by the named insured. It simply does not apply to a Class II insured. The rationale was set forth in *Florida Farm Bureau v. Hurtado*, 587 So.2d 1314 (Fla. 1991), wherein the Supreme Court confirmed that Class I Insureds are covered regardless of their location when they are injured by an uninsured motorist; on the other hand, coverage for a Class II Insured is limited to occupancy of a particular insured auto, therefore limiting recovery to the UM coverage available for that particular vehicle.

Guidance for Insurers

It is necessary for insurers to determine whether the claimant is a named insured or a resident relative of that household or merely an occupant of an insured auto; that distinction determines the insurer's exposure for stacked UM coverage.

Understanding HB 837 and its Effects on Attorney Fees in Florida No Fault/PIP Cases

By: Paul Michael Gabe, Maria E. Santos, and Daniel A. Freire

The enactment of House Bill 837 (HB 837) on March 24, 2023, by Governor Ron DeSantis has introduced notable changes to the landscape of attorney fees entitlement in Florida No Fault/PIP cases in Florida. This legislation repealed the previous "one-way" attorney fee provisions found in Section 627.428 of the Florida Statutes. Florida Statute 627.428 granted a Plaintiff the right to recover reasonable attorney fees from the insurer upon any recovery in a PIP lawsuit. While HB 837 eliminated Florida Statute 627.428, it did not completely extinguish the ability for a Plaintiff to recover attorney fees in a PIP lawsuit. The following avenues under HB 837 still provide the Plaintiff an opportunity to recover attorney fees in a PIP lawsuit on policies that inceptioned or renewed post 3/24/23:

- **PREVAILING ON A PROPOSAL FOR SETTLEMENT PURSUANT TO FLORIDA STATUTE:** If the Plaintiff files an Offer of Judgment / Proposal for Settlement pursuant to Florida Statute 768.79 and/or Florida Rules of Civil Procedure 1.442, and it is not accepted within 30 days, the Plaintiff may be able to recover attorney fees if the plaintiff recovers a judgment at least 25 percent greater than the offer. In that case, the Plaintiff shall be entitled to recover reasonable costs and attorney's fees incurred from the date of the filing of the Offer of Judgment.
- **UPON A FULL DENIAL OF COVERAGE TO THE PREVAILING PARTY IN A DECLARATORY ACTION:** If an insurer denied a claim in full, pursuant to HB 837, the Plaintiff can file a Declaratory Action to establish coverage. The Declaratory Action can only be filed by the named insured and not the medical provider or assignee. If the Plaintiff prevails on the Declaratory Action, they can recover reasonable attorney fees and costs. Please note, HB 837 has provided an expedited process for handling these Declaratory Actions.
- **PREVAILING ON A FLORIDA STATUTE 57.105 MOTION FOR SANCTIONS:** HB 837 did not eliminate the right to pursue sanctions under Florida Statute 57.105. Florida Statute 57.105 states in part, "upon the court's initiative or motion of any party, the court shall award a reasonable attorney's fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:
 - Was not supported by the material facts necessary to establish the claim or defense; or
 - Would not be supported by the application of then-existing law to those material facts.
 - At any time in any civil proceeding or action in which the moving party proves by a preponderance of the evidence that any action taken by the opposing party, including, but not limited to, the filing of any pleading or part thereof, the assertion of or response to any discovery demand, the assertion of any claim or defense, or the response to any request by any other party, was taken primarily for the purpose of unreasonable delay, the court shall award damages to the moving party for its reasonable expenses incurred in obtaining the order.

- **UPON PROVING FRAUD PURSUANT TO FLORIDA STATUTE 627.736:** Florida Statute 627.736 (h) allows the prevailing party to recover reasonable attorney fees and costs under the following circumstances:
 - If a person has committed, by a material act or omission, insurance fraud relating to personal injury protection coverage under his or her policy,
 - If the fraud is admitted to in a sworn statement by the insured or established in a court of competent jurisdiction.



What should you do if you receive a lawsuit seeking attorney fees and costs as relief on a policy with an inception date post 3/23/23?

In post-HB 837 cases, Defense counsel must prioritize moving both for dismissal and to strike fee entitlement at the commencement of the suit. Plaintiff counsel will attempt to retain their fee entitlement any way they can, and we must zealously defend our clients' rights by ensuring that they do not pay unnecessary and statutorily non-compensable fees. Further, once Plaintiff's lose the easy avenue for attorney fee entitlement, they are often much more receptive to settlement and closing out the case.

In *Associates MD a/a/o Joel Gonzalez v. GEICO General Insurance Co.*, Broward County Case No: COINX-23-056777, "The plaintiff filed a PIP complaint for declaratory relief and attorney fees pursuant to Fla. Stat. 627.428 against the defendant for the alleged underpayment of CPT code 99204. The Defendant filed a Motion to Dismiss and Motion to Strike arguing that the policy had a post March 24, 2023, effective date, thus triggering the provisions of HB 837. The Defendant argued that the plaintiff's claim for attorney fees under Fla. Stat. 627.428 was a nullity as the statute did not exist at the time the underlying contract was entered into. The court agreed and issued an order granting the motion to strike and order that the plaintiff's claim for attorney fees is stricken." Source: County court ... HB 837, JD Supra. [Source](#)

Good Contracting: Your First Insurance Policy to Minimize Your Exposure

By: Frank P. Delia

When did Noah build the Ark?

In the movie "Spy Games (2021)," a character emphasizes the importance of preparation by asking, "When did Noah build the ark, Gladys?" The response, "Before the rain, before the rain," underscores the significance of proactive measures. This analogy resonates in business, where careful contract review before execution is crucial to avoid stress, financial risks, and wasted time. Unfortunately, many businesses overlook this pre-contract review, leading to issues later on, such as lawsuits and legal conflicts that distract from legal goals. It's advisable to have an attorney review or draft contracts "before the rain," especially for dealings with customers, vendors, suppliers, banks, and landlords.

Since Hammurabi codified law with chisel and stone approximately 3,800 years ago, a simple contract or agreement – whether written or oral -- is binding when key parts and concepts are present. A basic understanding of contract formation involves an offer, acceptance, mutual assent and the exchange of "consideration." The courts interpret consideration very broadly, encompassing acts, promises to perform or refrain from actions, as well as promises to provide services, money or goods.



In my experience, problems and litigation often arise not from the main terms but from the small details specific to the type of agreement and business involved. Major issues occur because of inadequate contract reviews, excessive trust, failure to foresee potential problems, reluctance to request changes, fear of upsetting the other party, and losing business, or denial about potential problems.

Here are some tips derived from my years of litigation and drafting contracts:

- Approach contracts with caution, as they may not favor you and include protective language.
- Contracts often combine various templates, leading to confusion and contradictions that can cause significant problems in the future.
- Avoid reusing contracts from previous deals as they may not fit the current transaction or account for changes in law or circumstances.
- Lack of contract review and understanding can lead to unnecessary disputes.
- Both parties may read the contract and think they understand the terms but do not.
- Ensure the party signing the contract is authorized, and legal requirements are met, especially in situations involving multiple contracting departments.
- Unique terms, conditions or specifications may be overlooked (i.e., in a commercial lease your business needs a certain amount of parking spaces or a curbside-drop off location.)
- The best time to negotiate your terms is at the formation of the contract. You never want to leave something out and beg for a change later.
- The best time to negotiate a contract is when both sides want something and have something to give. Do not rely on the other's charity.
- Know your business and what it requires to be successful so the terms in your contract advances, matches and protects those goals.
- Ask the other party for clarifications, changes or accommodations if you need them. (This is a good way to ascertain what is important to the other party and may give you insight as to leverage points that could be used to bargain for your terms.)
- Have one person or team handle your contracts, so they will become in-house experts in the drafting and review of same.
- Limit who can contract and bind the company. (Not just the contracts for your work but also vendors who service your business.)
- Set a monetary exposure limit for contracts without legal representation or review. (Be sure to include legal fees and costs to defend or enforce the contract.)
- Insurance may not cover all issues. Also, a judgment may exceed your coverage.
- A fair-minded potential business partner will never question your desire for reasonable self-protection and preservation of your business interests. (Be cautious of people who will not budge on reasonable changes to an agreement.)
- Ensure timely adherence to contract obligations by promptly calendaring deadlines upon execution. Additionally summarize and calendar key requirements at the time of execution, communicating these essential details to your team members to avoid a breach.
- Ensure your essential conditions, terms and requirements make into the contract pre-execution, so they are enforceable. (Do not ever place your faith in a verbal agreement to do, or not to do something. Everything you want or need in an agreement needs to be written into the contract or it basically does not exist.)
- Email and/or document all discussions (whether verbal or otherwise) while the contract is being negotiated and during the life of the contract.



A Cautionary Tale and Conclusion

The list above is not exhaustive but serves as a good starting point for approaching contracts. Consider contracts not just as guides for good times but as protective measures if the relationship sours.

A few years ago, I helped a client dealing with a legal dispute between their association and a construction contractor. Although they had other lawyers for the litigation, I served as their personal counsel for different matters. The problem arose from various agreements, including one with an "exclusivity agreement" that the contractor wanted to enforce. The association's stance was that the exclusivity only applied to potential hurricane damage, for which they had previously hired the contractor. However, when they put out bids for other repairs two years later, choosing a different contractor, the original one claimed exclusivity for all work. The root issue might have been a falling out during the bidding process due to difficult personalities. The original contract, using the contractor's form, was vague, and the association's attorney wasn't involved in drafting or reviewing it, leading the case to trial.

As the disagreement progressed, an association representative apologized to the contractor in an email, despite the association arguing in court that there was no such agreement or, if any, it was solely for hurricane damage. Despite having insurance, the association had to pay a substantial sum or risk losing more at trial. With an estimated \$1000-2000 in legal work during contract negotiations, the situation could have been avoided. The lesson is clear: preventive measures during the contract phase are invaluable. A transactional attorney's role is to safeguard your business interests, anticipating potential harm in case of a business relationship breakdown. If such a breakdown occurs, a well-drafted contract can help swiftly and economically navigate the situation.

As we enter the New Year in this booming Florida business environment, I encourage you to consider having your contracts, forms and agreements professionally reviewed, drafted and negotiated by a skilled attorney to align with your business goals and ensure protection. With over 60 years of excellence and a team of over 230 attorneys throughout Florida and southern part of Alabama, Kubicki Draper offers a broad spectrum of business transaction legal services with the added benefit of also being business litigators should you have to pursue a remedy in court. Trust us for all your transaction needs, contract review or drafting, so you do not have to think about us when economical pre-suit options are off the table.

Frank is a seasoned attorney who can be reached 24/7 for consultation at 561-307-4533 on all of these matters.



LEGAL UPDATES

Third District Court Holds That Plaintiff Failed to Meet Burden of Supporting Jurisdictional Allegations Against Out-of-State Insurer, Affirming Dismissal

In *United Medical, LLC, a/a/o Roberto Prin v. Progressive Preferred Insurance Company, et al.*, No. 3D23-01 (Fla. 3d DCA Jan. 17, 2024), the Third District Court of Appeal reviewed an order granting an out-of-state insurer's motion to dismiss based on a lack of personal jurisdiction under the test established in *Venetian Salami Co. v. Parthenais*, 554 So. 2d 499, 502 (Fla. 1989). The Court determined that Plaintiff met the first element of the test by alleging as a statutory basis for jurisdiction that the insurer was licensed to transact business in Florida and maintained agents there to do so. However, the out-of-state insurer presented a legally sufficient affidavit averring that it was incorporated in and a resident of Ohio and did not conduct business in Florida. Thus, the burden shifted to Plaintiff to produce an opposing affidavit or other sworn proof establishing the basis of jurisdiction. The Third District held that Plaintiff "acted at its own peril" by electing to rely on three website pages that did not refute the sworn affidavit, obligating the trial court to grant the motion to dismiss. [Opinion](#)

Fourth District Court Holds Florida PIP Statute Reference to "Year" Means Service Year, Not Calendar Year

In *United Automobile Insurance Company v. ISO-Diagnostics Testing, Inc.*, No. 4D2022-1735 (Fla. 4th DCA Jan. 10, 2024), the Fourth District Court of Appeal held that the term "year" as it appears in Florida's No-Fault Statute, section 627.736, refers to a service year and not a calendar year. Importantly, while the Florida Legislature made this clear in its 2015 amendment to section 627.736(5)(a)2, replacing the term "year" with "service year" and defining it as "the period from March 1 through the end of February of the following year," the Fourth District explained that even prior to the Legislature's 2015 amendment, the Legislature intended the word "year" to mean a service year beginning on March 1. The Fourth District reasoned that although the Legislature had not previously used the term "service year" or defined that term in the Statute, it still referred to the March 1 date, supporting the plain meaning to be that a service year—not a calendar year—applied. [Opinion](#)



Third District Court Holds That Notice of Supplemental or Reopened Property Damage Claim Need Not Include Damages Estimate

In *Patios West One Condominium Association, Inc. v. American Costal Insurance Company*, No. 3D22-1895 (Fla. 3d DCA Jan 3, 2024), the Third District Court of Appeal (DCA) reversed and remanded a trial court's order denying an insured's motion to compel appraisal on the grounds that the insured's notice of supplemental or reopened claim was legally insufficient since it failed to incorporate an estimate for damages. In reversing the order, the Third DCA explained that neither section 627.70132, Florida Statute, nor the insurer's policy language expressly require an insured to submit any such estimate with its notice of a supplemental or reopened claim. It further held the facts in *Goldberg v. Universal Property and Casualty Insurance Company*, 302 So. 3d 919 (Fla. 4th DCA 2020), were distinguishable, explaining the Goldberg requirement that an estimate be submitted with a notice of supplemental or reopened claim is nothing more than dicta, and to the extent that this was the holding in Goldberg, it ignores the plain language of section 627.70132. [Opinion](#)

LEGAL UPDATES

Conflict Certified: Third District Court Says Sister Court Erred on Citizens' Untimely Notice Case

In *Arce v. Citizens Property and Casualty Insurance Corporation*, No. 3D22-0722 (Fla. 3d DCA Jan. 3, 2024), the Third District Court of Appeal (DCA) affirmed summary judgment in favor of Citizens, holding it was prejudiced by the nearly three-year-late filing of a Hurricane Irma claim. In doing so, the Court rejected the holding in *Perez v. Citizens Property Insurance Corporation*, 345 So. 3d 893 (Fla. 4th DCA 2022), which created a "policy language exception" to the well-established Florida rule that an insurer is entitled to a rebuttable presumption that it was prejudiced by the untimely reporting of a claim, holding instead that since Citizens' policy language in its "Duties after Loss" provision incorporates the term "prejudice," the burden is Citizens'—not the insureds—to prove Citizens was prejudiced. The Third DCA soundly rejected the holding *Perez*, calling it "counterintuitive" and explaining it "upends the commonsense notice/presumption framework that has evolved from years of practical application." It has certified conflict with *Perez*. [Opinion](#)



New Trial Ordered in Citizens' Case After Homeowner's Inflated Estimate Admitted into Evidence

In *Citizens Property Insurance Corporation v. Salazar*, No. 3D20-0367 (Fla. 3d DCA Oct. 4, 2023), the Third District Court of Appeal reversed a final judgment entered against Citizens and held that the trial court erred in denying Citizens' motion to limit damages to the actual cash value ("ACV") of directly-damaged property. The claim arose from a kitchen sink leak. Citizens calculated and paid the ACV as required under Florida Statute 627.7011(3)(a). The insured completed repairs for an amount less than the estimated ACV and never provided Citizens with receipts showing the completion of those repairs. Instead, she submitted an estimate over eight times higher than Citizens' original estimate, including matching costs, which are not considered ACV-related damages.

On appeal, the Third District agreed with Citizens, remanding the case for a new trial and explaining that the admission of the homeowner's estimate into evidence at trial was improper since the homeowner had not proven her covered (ACV-related) damages exceeded the amount already paid by Citizens. [Opinion](#)

KD IN THE COMMUNITY



KD PARTICIPATES IN BABY DJ PROGRAM DURING THE HOLIDAYS

KD Orlando joined Baby DJ Program to help bring holiday joy by collecting donations for children in need. The program began over 30 years ago when its founder "Johnny Magic" was inspired to provide assistance that would bring holiday joy to families of economic disadvantage in the Central Florida area by using his platform as a top-rated morning radio host.

KD SUPPORTS THE SALVATION ARMY'S ANGEL TREE PROGRAM

Marsha Moses and fellow KD team members from our Tampa office positively impacted the lives of children last holiday season through their active participation in The Salvation Army's Angel Tree program. This initiative plays a crucial role in ensuring children across the United States, who typically miss out on Christmas gifts, have the joy of finding new clothes and toys under their trees. In this heartwarming Christmas tradition, anonymous donors embrace these little "angels," creating a festive atmosphere that brings light and happiness to both the generous givers and the delighted recipients.



BRIDGE TO HOPE FOOD PANTRY

Kudos to KD team member, Oscar Arevalo, for stepping up and leading our Miami office to support our community the past holiday season. His leadership shined through as he spearheaded the collection of contributions for the Bridge to Hope Food Pantry—an organization dedicated to fostering food security and enhancing health, nutritional, and economic well-being for economically disadvantaged and crisis-stricken households.



KD IN THE COMMUNITY

GREAT AMERICAN TEACH-IN

Joseph Monte, of our Tampa office, had the pleasure of participating in the "Great American Teach-In" hosted by Ippolito Elementary School in Riverview, Florida. The event invites community members to share information about their careers, hobbies, or areas of interest with students. We take pride in team members like Joseph who are dedicated to making meaningful contributions to our communities.



POLYCYSTIC KIDNEY DISEASE (PKD) WALK

For over ten years, KD team members from various offices have taken part in the annual Polycystic Kidney Disease (PKD) Walk in Tampa hosted by the PKD Foundation. This tradition was started by our very own, Harold Saul, who leads "Ivan's Investors for a PKD Cure" each year in memory of his father, Ivan. This year, Ivan's Investors not only joined the walk but also raised an impressive \$24,000. This generous contribution will help fund research to find a PKD cure. A big shout-out to Harold and the rest of the KD team for their commitment to this important cause!



BOYS AND GIRLS CLUB OF JACKSONVILLE

The PIP team in our Jacksonville left an impression in their community during back to school season, when thanks to the efforts led by Carey Taylor and her team, they were able to gather enough supplies for 20 students to go back to school fully stocked and prepared. We are proud of our team for making such a positive impact in these children's lives.



MEET YVETTE PACE:

From Childhood Dream to Legal Trailblazer



From a childhood dream inspired by a legendary TV attorney, to making case law in Federal Court, Yvette Pace's journey into the legal world has been nothing short of remarkable. Born and raised in the vibrant city of Miami, Florida, Yvette's story is one of passion, determination, and unwavering commitment to her clients and her craft.

Ever since she was a wide-eyed 9-year-old, Yvette knew she wanted to be a lawyer just like her childhood hero, Perry Mason. Yes, you read that right. Yvette began her path to the courtroom with a black-and-white TV show. Little did she know then that she would one day become a distinguished attorney and a respected figure in the legal community.

Fast forward to high school, where Yvette eagerly enrolled in every course related to law. She was committed to her dream, and when her college counselor pointed her path towards law school, she didn't object. She followed that winding path to the University of South Florida in Tampa and later to St. Thomas University School of Law in Miami.

Yvette's ambition propelled her to become an attorney at the young age of 25. She was sworn in by the judge she was assigned to while working as an Assistant State Attorney in Orange County in a bustling courtroom still filled with criminal defendants awaiting their fate. Moments later, State Attorney Lawson Lamar, also swore her in as a law enforcement officer – both events marking the beginning of an exhilarating legal adventure.

Yvette's love for the legal profession is deeply rooted in her passion for the investigative process. She relishes digging through records meticulously searching for the evidence she needs to support her clients' cases. In the courtroom, she shines brightest when arguing a motion and while cross examining her opponent's witnesses at trial. Her precision and ability to apply the facts of her cases to pertinent case law effectively make her a formidable advocate, no matter the side she's on. And, clients who work with Yvette can expect unwavering dedication. Her client-centered commitment means prompt and attentive responses, along with her support every step of the way.

Although Yvette has faced her fair share of challenges throughout her career, her approach to overcoming them is simple: "preparation, preparation, and more preparation." She adds that seeking guidance from her brilliant colleagues is invaluable as well. In fact, she expresses great appreciation for Harold Saul in KD's Tampa office who, despite being in different offices, always made himself available, supported her and steered her in the right direction with his tough love. She also cherishes the best advice received from Gregory Prusak in KD's Orlando office which became one of her guiding principles -- "be yourself."

Over the years, preparation and continual learning have helped Yvette navigate complex legal situations successfully. One of those successes stands out as her proudest – a directed verdict in her favor in a construction defect case in federal court, after she managed to exclude crucial evidence. This landmark case was appealed to the 11th Circuit and affirmed with an opinion, solidifying Yvette's place in legal history. Move over, Perry Mason, there's a new legend in town!

MEET YVETTE PACE:

From Childhood Dream to Legal Trailblazer

continued...



Yvette's achievements and dedication have not gone unnoticed. She is proud to be part of the faculty for the Advanced Trial Advocacy program organized by the Trial Lawyer's Section of the Florida Bar. And in 2021, Orlando Style Magazine recognized Yvette as one of the "Men and Women of the Year," a recognition that inspires her to keep pushing boundaries.

Who is Yvette behind the courtroom curtain? She's proud of her personal achievements, like hitting a milestone of 1000 plus rides at her local spin studio and running a 10k in under an hour. She's an avid traveler, fitness enthusiast, foodie and she enjoys reading and attending sporting events and concerts.

Yvette's friends and family, including her twin (yes, Yvette is a twin!) describe her as tough, stubborn and someone who sees things in "black and white." Yvette doesn't necessarily disagree; she attributes it to her wearing her heart on her sleeve and being tenacious in reaching her goals. Yvette's favorite quote sums it up: "The definition of crazy is doing the same thing and expecting a different result" which clearly highlights her adaptability and willingness to embrace change and growth.

Above all, Yvette is profoundly thankful for her loved ones and the unwavering love and support she receives from them. As a result of her life experiences and lessons learned, Yvette's advice to her younger self would be: "be patient; everything will work itself out. Trust the path."

Speaking of paths, Yvette hopes that one day, her path will lead her to one of her bucket list dreams -- to attend the Kentucky Derby in style -- complete with a statement hat!

Yvette Pace is not just an attorney; she is a passionate, goal-oriented, and authentic individual who brings her heart and soul to her work. Her journey from a childhood dream inspired by a television show to a successful legal career is a testament to her unwavering determination and dedication to the law. As she continues to make her mark in the legal world, her achievements and dedication serve as an inspiration to aspiring lawyers everywhere.



Straight from the source:

What's mostly on your playlist right now?

Right now, "Don't Stop Believin'" by Journey is on heavy rotation.



What superpower would you want to have?

If I could have any superpower, I'd choose the ability to see the future.



Who's your dream dinner guest, living or dead?

Bradley Cooper would be the life of the party at my dream dinner gathering (and not just because of his roles).

If you could only bring three things with you on a deserted island, what would you pick?

If I were stranded on a deserted island, I'd bring my yoga mat, eye glasses, and a trusty Stanley cup.



FIRST PARTY CONFERENCE PART 2 - RECAP



Our First Party Practice Group presented a fun and informative virtual conference “KD’s Super Bowl for First Party Claims” that combined the excitement of football with the intricacies of first-party claims handling.

The program equipped insurance professionals with the knowledge and strategies needed to navigate the complex world of property claims.

Congratulations to our presenters on a great conference!

- **Jill Aberbach**
- **Sarah Goldberg**
- **Kameron Romaele**
- **Emily Smith**
- **Toni Turocy**
- **Nicole Wulwick**

Special Guests:

- **Ed Andrie of Andrie Brothers Construction, Inc.**
- **Michael Rega of Complete Construction**

Watch the postgame recap [here](#) or read about it on the next couple of pages.

Safety: Navigating Managed Repair Contractor Network Program Endorsement

"Litigation of Managed Repair and Option to Repair Endorsements typically concern matters of law that require close reading of the requirements set out in the policy language."



Sarah Goldberg



Emily Smith



Risking 4th Down: Defending Valued Policy Law Claims in Florida

Special Guest: Ed Andrie of Andrie Brothers Construction, Inc.

"Be sure you utilize the expertise of both a general contractor and an engineer when analyzing whether a property sustained a total loss or constructive total loss when evaluating a valued policy law claim."



Nicole Wulwick



Toni Turocy

No Longer "Deflate Gate" but Inflate Gate: Spotting Exaggerations and Defending Against Fraudulent Estimates

Special Guest: Michael Rega of Complete Construction

"Utilize your experts - talk to them about the estimates that were provided from the Insured and have them provide important analysis as to the claim and industry standards regarding estimates and charges."

Jill Aberbach



Kameron Romaele





THE TAKEAWAYS



DEFENDING GEOTECHNICAL CLAIMS

From structural foundations, to earthwork and vibrations to seawalls and sinkholes, Florida is no stranger to geo technical related claims. The key to the defense of these claims is nailing down the statutes, standards and building codes associated with your particular issue.



Presented by:

Michelle Krone, Tracie Reese, Chris Thompkins



DAMAGES IN CONSTRUCTION CASES

Damages in construction cases can vary greatly not only in their size and scope, but also in their complexity. By understanding the theories, knowing the law, and having the right experts, you can put yourself in the best position to challenge them.



Presented by:

Barbara Fox, Michael Suarez, Mark Young



THE TAKEAWAYS



FLORIDA CONSTRUCTION COVERAGE AND LEGAL UPDATE

CD cases pose unique coverage issues, and often involve multiple insurers. Examining potential exclusions, triggers and layers of coverage early on is an important step in transferring and assessing risk.



Presented by:
Caryn Bellus, Benjamin Carter



CONSTRUCTION ACCIDENTS AND OSHA VIOLATIONS

We covered OSHA investigation procedures, the importance of keeping OSHA investigations and fines separate from litigation, and strategies to counteract reptilian OSHA violation arguments. Always get counsel involved as soon as possible.



Presented by:
Jeremy Chevres, Charlie Kondla



THE TAKEAWAYS



ALTERNATIVE DISPUTE RESOLUTIONS- NON BINDING ARBITRATION AND MEDIATION

To increase the likelihood of securing favorable settlements in construction cases, keep these key points in mind: selection of the arbitrator is critical in non-binding arbitration; ensure a clear understanding of the claims against your client and the cost of repair before proceeding to mediation; if you're dealing with a construction defect case with no liability that is challenging to settle, consider suggesting non-binding arbitration or a summary jury trial.



Presented by:
Raquel Loret de Mola, Peter Baumberger,
Pedro Lopez



STATUTE OF LIMITATIONS AND STATUTE OF REPOSE IN FLORIDA

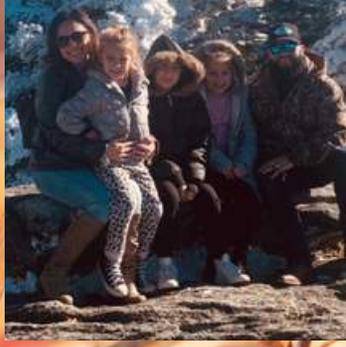
Every construction case should have a Statute of Limitations and Repose evaluation. The new statute should dramatically reduce litigation involving when those clocks start ticking, and may soon eliminate cases altogether when the Statute of Repose is reduced from 10 years to 7 years, after the grace period winds down.



Presented by:
Bryan Krasinski, Leeza Newman

KD CELEBRATES

Thanksgiving/ Month of Gratitude



KD CELEBRATES Winter Holidays



RECENT RESULTS

Jacksonville Office Secures \$0 Verdict in Hail Damage Case

Kara Cosse and **Chris DelBene**, of our Jacksonville office, successfully defended a hail claim in St. Johns County. The central issue was whether hail had caused damage, as both parties agreed that 0.75-inch hail had fallen on the property. During the trial, it was revealed that the insured's belief in hail damage was based on the assessment of a roofing salesman with no roofing experience who had canvassed their neighborhood.

The cross-examination of the insured's cause of loss expert, a public adjuster, showed that their opinion relied on 20 blurry photographs, which were not presented to the jury. The defense engineering expert presented demonstrative examples of genuine hail damage on other roofs and compared them to the photographs of this house, demonstrating that the only markings on the roof were from aging, granule loss, blistering from the sun, and tool marks from previous repairs.



Ultimately, the jury returned a verdict of \$0, concluding that there was no hail damage to the property on the reported date of loss.

Significant Victory in Complex Rear-End Collision

Harold Saul and **Zachery Udell**, of our Tampa office, obtained an outstanding verdict in a case where the plaintiff alleged traumatic brain injury and sinus damage (resulting in 4 surgeries and multiple other procedures) from a rear-end automobile accident. The plaintiff claimed she hit her face on the steering wheel, which caused these damages. In the emergency room, she gave this history and the reading radiologist suggested she may have had a nasal fracture. Harold and Zach aggressively defended the causation of these injuries due to the varying versions in the medical histories provided by the plaintiff of whether or not she hit the steering wheel while wearing her seat belt.

In addition, through the use of their ENT expert, they were able to establish the sinus issues were not from the accident but from a long standing condition which ultimately was going to require the treatment whether or not the accident occurred. The plaintiff had incurred over \$325k in medical bills and asked the jury for \$3.5 million in total damages. Harold and Zach countered by suggesting some minimal post accident treatment to the point where any conditions resolved. After almost 3 hours of deliberations, the jury awarded just over \$80k in total damages which was substantially less than the last offer.

RECENT RESULTS



Defense Verdict: Auto Accident Trial in Alachua County

Brea Dearing and Kendra Therrell, from our Jacksonville office, successfully obtained a defense verdict in an Alachua County auto accident trial where liability was disputed. The plaintiff claimed her vehicle was totaled, alleging permanent neck and back injuries necessitating lifelong treatment. Defense countered by revealing the plaintiff's pre-existing chronic pain, previously denied, portraying her as an unreliable witness.

Despite the plaintiff seeking over \$2 million, the jury awarded only past medical expenses, determining no permanent injury. Post-trial motions led to a zeroed-out judgment via a stipulation triggered by the expired Proposal for Settlement.

Erin Johnston and Kendra Therrell Navigate a Contentious 5-Day UM Trial in Duval County

Kendra Therrell and Erin Johnston, of our Jacksonville office, tried an admitted liability contested damages 5-day UM trial in Duval County, a known volatile venue for insurance carriers. The at-fault driver was still a party to the case but was absent from the courtroom most of the week, leaving an empty chair. Numerous motions and objections were made before and during the trial to combat the Plaintiff's improper arguments and comments, particularly regarding UM coverage and insurance. The trial lasted all five days. After 3 hours of deliberations, the jury returned a verdict for an amount within the UM policy limits, lower than our last offer, and a finding of no permanency.

Summary Judgment In A Shower Leak Coverage Denial Case

Nina Williams, of the Tampa office, successfully obtained summary judgment for an insurance carrier in a coverage denial case related to a shower leak in a bathroom. The insured reported the claim, and within two weeks, the field adjuster found that repairs had already been completed with no documentation, photographs, or preserved parts. In response to Nina's motion, the homeowner submitted a lengthy 232-page argument, claiming policy ambiguity and lack of definition for prejudice. They also asserted the need for an engineer, contrasting it with the plaintiff's engineer's opinion. Nina refuted each point, and the court, after considering supplemental evidence and authority, granted summary judgment in favor of the insurance carrier about a month after the hearing.

RECENT RESULTS



Summary Judgment for a Florida Property Insurer

Ana Martino and **Nicole Wulwick**, of our Miami office, won summary judgment for a Florida property insurer due to Plaintiff's failure to file a Notice of Intent to Initiate Litigation to comply with Florida Statute §627.7152(9)(a).

Ana drafted a compelling MSJ based upon Plaintiff's failure to file a Notice of Intent to Litigate and failure to timely provide the AOB to Frontline within three days of the services being performed. The case was hotly contested by a high-profile opposing counsel who made false representations in several hearings. Judge Woodward, a tough judge, was not buying Plaintiff's arguments. Plaintiff went so far as to attempt to overcome summary judgment by showing "proof" of notice to Frontline with emails that were never produced in discovery, never sent to a valid Frontline email address, and not authenticated by Plaintiff's Corporate Representative in its deposition. Nicole quickly shot down those arguments and Judge Woodward agreed! Frontline is particularly happy to be able to recover both fees and costs on this case.

Judge Grants Reconsideration and Reverses Prior Summary Judgment Denial in a Late Notice/Prejudice Matter

Anthony Atala and **Samantha Kruss**, from our Miami office, successfully secured a judicial reversal in a late notice/prejudice case for an insurance carrier. Initially, the judge granted summary judgment in favor of the carrier, but later reversed himself sua sponte, as the order did not comply with the new summary judgment standards required by Florida Rule of Civil Procedure 1.510.

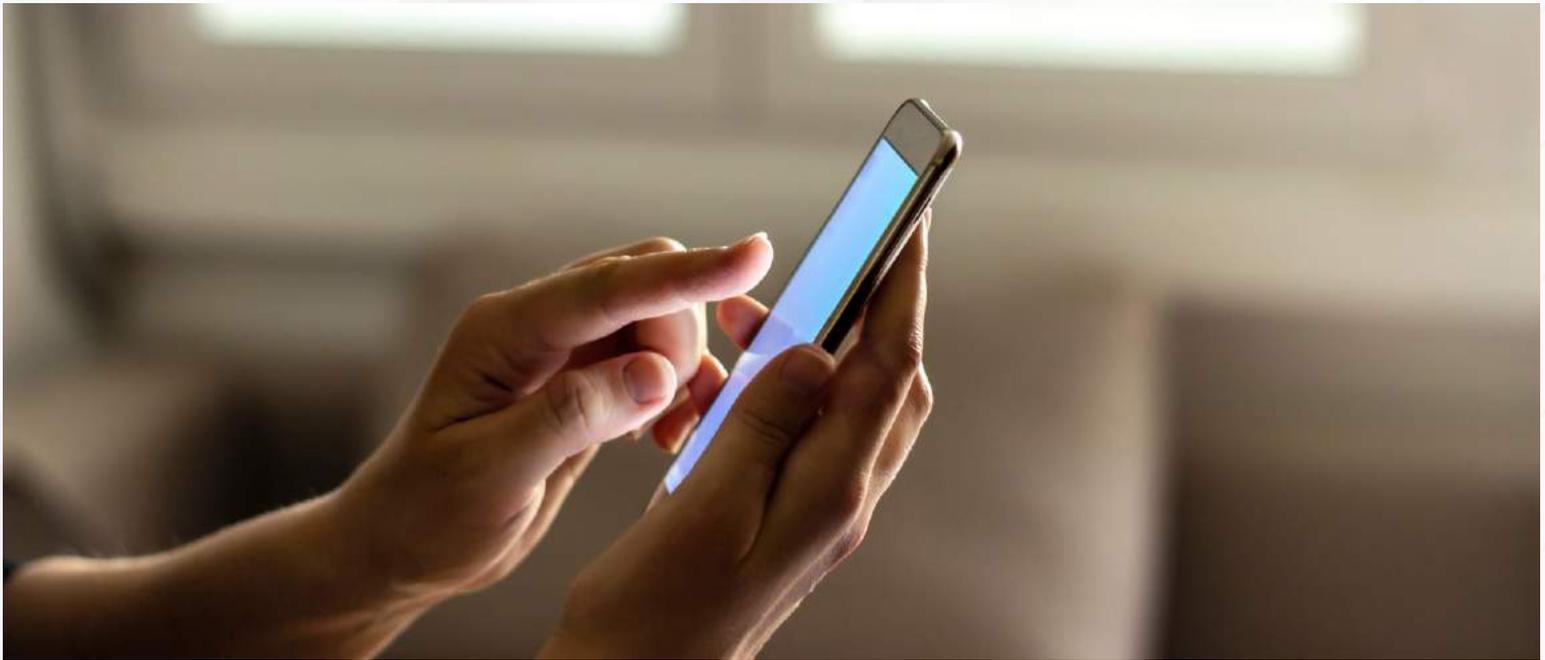
Samantha, assisted by Barbara Fox, also in our Miami office, carefully drafted a Motion for Reconsideration, arguing that the court's order did not comply with the Rule change, and, additionally, that the denial of the motion did not align with the Third DCA's Perez decision. They also cited the newly issued decision in Navarro vs. Citizens, and how the law in this district has changed since the Vega vs. Safepoint ruling on late reported hurricane claims. After hearing the arguments and reviewing the motions, the judge granted the reconsideration, reversed his previous denial of the summary judgment, and granted the renewed motion for summary judgment in favor of the carrier, citing both Navarro and Perez, and highlighted portions of the deposition testimony elicited, affidavits filed, and arguments made where due to the passage of time, subsequent repairs, lack of documentation, Plaintiff's memory lapses, and adjuster's inability to investigate, were factors showing prejudice to the carrier.

RECENT RESULTS

APPELLATE

Mobile Technology Meets Vicarious Liability: Fourth District Court Holds Employer Not Liable for Employee's Hit-and-Run Accident While on Work Call

In *McKee v. Crestline Hotels & Resorts, LLC*, No. 4D2022-3428 (Fla. 4th DCA Jan. 10, 2024), our very own **Sharon C. Degnan**, from our Orlando office, argued—and the Fourth District Court of Appeal held—that an employee was not engaged in the course and scope of employment when he struck two pedestrians while driving his personal vehicle home and, around that same time, used his personal cell phone to make what might have been a work-related phone call. In holding the driver's employer was not vicariously liable for the employee's conduct at the time of loss, the court applied the vicarious liability test outlined in *Sussman v. Florida East Coast Properties, Inc.*, 557 So. 2d 74, 76 (Fla. 3d DCA 1990), concluding that the "act of using a personal cellular phone while driving home from work is not the kind of act [the employee] was hired to perform," nor was driving or using a personal cell phone an integral part of the employee's job. The court explained that "[t]he cost of negligence in such circumstances should be imposed on the owner or operator of the vehicle—not the employer."





Our team presents continuing education seminars on a variety of topics throughout the year. Below are some of the topics presented recently.

- Legislative Update
- OSHA: Investigation, Findings, Application and Detection of Fraud in First Party Property Damage Estimates and Admissibility of OSHA requirements at Trial
- Construction Accidents and OSHA Violations
- Defending Geotechnical claims
- Damages in Construction Cases
- Florida Construction Coverage and Legal Update
- Alternative Dispute Resolutions: Non-Binding Arbitration and Mediation
- Statute of Limitations and Statute of Repose in Florida
- Anatomy of a Lawsuit and Florida Tort Reform: Practical Considerations for the Claims Professional
- Florida 4-Hour Law and Ethics Update
- Effective Case Resolution: Thinking One Step Ahead
- Training for Conditions Precedent
- Navigating Managed Repair Contractor Network Program Endorsement
- Spotting Exaggerations and Defending Against Fraudulent Estimates
- How to Navigate and Defend Valued Policy Law Claims in Florida
- Traumatic Brain Injury Litigation
- The Use of Human Factors Experts
- Out of Line - Evaluating PIP Coverage With a Non-Florida Policy, or When a Motor Vehicle Accident Occurs Outside of Florida
- Taking the Fraud Out of the Public Adjuster's Estimate
- Construction Defect Claims: Overview and Current Trends on Indemnity Law (FL & CA Credits)
- Wind vs. Wave Damage from Hurricane Ian

We welcome the opportunity to host a complimentary webinar for you and your team on any topic(s) of your choice. All presentations are submitted for approval of continuing education credits. You can also follow our social media accounts to learn about upcoming webinars!

For more information, please contact Aileen Diaz
(305) 982-6621 | ad@kubickidraper.com.

KD TEAM UPDATES

Please join us in extending warm congratulations to this distinguished group of individuals who have achieved Shareholder status this year! Their hard work and dedication have truly made a significant impact, and we're excited to witness their continued success.

LAW OFFICES
KUBICKI
DRAPER

Congratulations!
TO OUR NEWEST SHAREHOLDERS!

Cristina Pineda | Kameron Romaele
FORT LAUDERDALE

David Frantz | Emily Huang
FORT MYERS

Samantha Valley
JACKSONVILLE

Benjamin Carter | Erika Cordovi | Erin Haney | Samantha Kruss
MIAMI

Lisette Chacon | Ryan Elias | Josue Monrouzeau | Tara Ratanun
ORLANDO

Donovan Lovelock
PENSACOLA

Mary Joyner | Joseph Monte | Kristin Normandeau
TAMPA

Alicia George | Lauren Lombardo
WEST PALM BEACH

KD TEAM UPDATES

NEW ADDITIONS

FT. LAUDERDALE Associates: Ashley Findeisen, Miguel Manrara, Ben Wainstein

FT. MYERS Associates: Sameer Islam, Braulio Rodriguez

MIAMI Associates: Guillermo Brito, Daniel Freire, Roberto Garrote, Brian Heckmann, Julia Iancu, Amit Mathur, Alexander Salvador, Julian Santos, Maria Santos, Jeffrey Seiden

JACKSONVILLE Associates: Joshua Belcher, Patrick Considine, Ryan Scott

PENSACOLA Associates: Cassandra Buer

TALLAHASSEE Associate: Sarah Dalton

TAMPA Associate: Brandon Ngo, Manuel Souza

WEST PALM BEACH Associates: Denise Rushton, SueGweneth Venord

ORLANDO Associate: Ashley Dozier, Zeffery Mims, Michael Onatsko, Juliana Palmieri, Raymere Thomas

CELEBRATING KD MILESTONES

(5-YEAR INTERVALS)

We are proud and thankful for our team. Their dedication and hard work are a very special part of our success.

Name	Celebrating
Sherry Butler	5
Lindsey Hinton	5
Allyson Jenks	5
Anish Matchani	5
Jason Matthews	5
Kristin Normandeau	5
Shari Schaefer	5
Stephanie Suarez	5
Ashley Wolfe	5
Stefanie Capps	10
Sharon Degnan	20

Congratulations!

CONTACT INFORMATION

New Assignments

Brad McCormick	305.982.6707	bmc@kubickidraper.com
Sharon Christy	305.982.6732	sharon.christy@kubickidraper.com

Firm Administrator

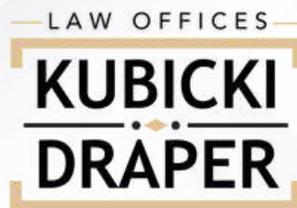
Rosemarie Silva	305.982.6619	rls@kubickidraper.com
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Seminars/Continuing Education Credits

Aileen Diaz	305.982.6621	ad@kubickidraper.com
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We invite you to connect with us on social media!



Locations

FLORIDA: Ft. Lauderdale | Ft. Myers | Jacksonville | Key West | Miami | Ocala | Orlando |
Pensacola | Tallahassee | Tampa | West Palm Beach | ALABAMA: Mobile

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.