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SPRING 2015

NEWSLETTER

FLORIDA LAW UPDATE

SOCIAL MEDIA POSTS BY THE PLAINTIFF ARE DISCOVERABLE

Thomas Paradise, Esq.
Vernis & Bowling of Broward, PA

Nicolette John, Esq.
Vernis & Bowling of Broward, PA

Attorneys Tom Paradise and Nicolette John of our Hollywood, Florida office represented the Defendant, Target, and successfully defended against a Writ of Certiorari filed by a Plaintiff who was represented by the law firm of Greenspoon Marder P.A., in a case where a personal injury Plaintiff objected to providing photographs which she had posted to Facebook. The Plaintiff, who was making a claim for personal injuries, mental anguish, and pain and suffering, was allegedly involved in a slip and fall incident that occurred at a Target store. The Defendant sought to compel the production of the photographs posted to the Plaintiff's Facebook account and provided the trial court with evidence from video surveillance showing the Plaintiff participating in activities which called into question the true extent of the injury the Plaintiff was claiming. The Plaintiff objected but the trial court overruled the Plaintiff's objections and ordered the production of any photographs which depict the Plaintiff posted on her social media accounts as well as on her cell phone.

The Plaintiff immediately appealed and filed the Writ to the Fourth District Court of Appeals with regard to her social media postings only, and did not address the ruling as it related to her cell phone. In the Writ, the Plaintiff claimed that her Facebook settings were set to private and that therefore the trial court's order unconstitutionally

Continue Reading p.12

G. Jeffrey Vernis, Esq., Managing Partner, was selected as a Top Lawyer by South Florida Legal Guide.

Robert C Bowling, Esq. Managing Partner, was selected as a 'Top Lawyer' by the South Florda Legal Guide, January 2015 edition.

Ramy P. Elmasri, Esq. (Miami, FL) has earned the highest possible Martindale Hubbel® Peer Review Rating™ AV® Perminent™.

NORTH CAROLINA LAW UPDATE

WAYS TO SLIM DOWN THE HIGH COSTS OF EMPLOYEE OBESITY IN WORKERS' COMPENSATION CLAIMS

Nicole Tackett, Esq.
Vernis & Bowling of Charlotte, PLLC

According to 2014 statistics from the Center for Disease Control and Prevention, more than one-third (34.9% or 78.6 million) of U.S. adults are obese.[1] This number is expected to climb to 50% by 2030.[2] The estimated annual medical cost of obesity in the U.S. in 2008 was $147 billion dollars; the medical costs for people who are obese were $1,429 higher than those of normal weight.[3] The statistics are even more staggering when examined in the workers' compensation arena.

A study completed at Duke University Medical Center found that obese workers file twice the number of workers' compensation claims as non-obese employees and have seven times higher medical costs. Additionally,

Continue Reading p.9

THIS NEWSLETTER ISSUE INCLUDES:

Florida Law Update p.1
North Carolina Law Update p.1
Premises Liability Update p.2
Georgia Law Update p.3
Alabama Law Update p.4
Verdicts & Dispositions p.5
Client Feedback p.11
Firm Announcements p.14
Office Locations p.16

PREMISES LIABILITY UPDATE

HAZARDS TO WALKING

Eric Knuth, Esq.
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The Florida Supreme Court recently denied rehearing in Wolf v. Sam's East, Inc. (September 5, 2014; 2014 WL 4403372), implicitly affirming yet another "open and obvious danger" which does not create liability by its mere existence. Wolf is the latest installment in a series of premises liability cases defining which commonplace conditions are "so open and obvious" that they are not dangerous *as a matter of law*, and not just as a matter of common sense.

Generally, premises owners or possessors owe two basic duties to their invitees: (1), the duty "to use reasonable care to maintain its premises in a reasonably safe condition, and (2), the duty to warn against concealed perils. Friedrich v. Fetterman & Assoc., P.A., 137 So.3d 362 (Fla. 2013). However, there is an exception. The owner /possessor of the premises has no duty to warn where the dangerous condition is "open and obvious." Under the "open and obvious danger" doctrine,

"[A]n owner or possessor of land is not liable for injuries to an invitee caused by a dangerous condition on the premises when the danger is known or obvious to the injured party, unless the owner or possessor should anticipate the harm despite the fact that the dangerous condition is open and obvious.

Wolf v. Sam's E., Inc., 132 So.3d 305, 307 (Fla. 4th DCA 2014) rev. den. (Fla. 2014).

If there is an "open and obvious danger," summary judgment is appropriate. Although a factual argument can be made on "open and obvious danger" in comparative negligence, a condition that is an "open and obvious danger" as a matter of law is a basis for summary judgment. Further, a premises owner / possessor is not the "insurer" of its invitees. Ramsey v. Home Depot U.S.A., Inc., 124 So.3d 415 (Fla. 1st DCA 2013). Aventura Mall Venture v. Olson, 561 So.2d 319, 321 (Fla. 3d DCA 1990); Circle K Convenience Stores, Inc. v. Ferguson, 556 So.2d 1207, 1208 (Fla. 5th DCA 1990); Gorin v. City of St. Augustine, 595 So.2d 1062 (Fla. 5th DCA 1992). However, because an open and obvious danger does not eliminate an owner / possessor's duty to maintain its premises, Plaintiffs can defeat summary judgment by arguing that the open and obvious condition was in a state of disrepair, i.e., a chipped or broken stair step or curb or a broken handrail. Often, Plaintiffs can defeat a summary judgment brought under the "open and obvious danger" doctrine by arguing that some special circumstance rendered the condition *not* so open or not so obvious—for example, poor lighting or visibility — and thus, the owner should anticipate harm despite the fact that the condition is open and obvious. Nevertheless, if there is an open and obvious danger, the Plaintiff is the one who has the duty to exercise reasonable care for his own safety, and "to look and see where he is going." Ramsey, supra; Aventura Mall Venture v. Olson, supra.

For years, the Florida courts have been slowly re-wording the definition of "open and obvious danger" to specifically include some of the many common and innocuous conditions that are capable of injuring people in Florida. Pedestrians, in particular, are exposed to constant danger from inanimate objects as they bravely navigate Florida's parking lots and sidewalks. Over the years, Florida courts have come to the aid of these pedestrians by identifying some of the different non-moving obstacles which are "open and obvious dangers" as a matter of law, For example, the following pedestrian obstacles are open and obvious dangers" as a matter of law:

- Uneven parking lot pavement. Circle K Convenience Stores, Inc. v. Ferguson, 556 So.2d 1207 (Fla. 5th DCA 1990).
- A tree with a surrounding brick border. K.G. By & Through Grajeda v. Winter Springs Cmty. Evangelical Congregational Church, 509 So.2d 384 (Fla. 5th DCA 1987).
- A 'wheel stop' in a parking space. Ramsey v. Home Depot U.S.A., Inc., 124 So.3d 415 (Fla. 1st DCA 2013).
- Steps and elevation changes that have surfaces which are the same color, Gorin v. City of St. Augustine, 595 So.2d 1062 (Fla. 5th DCA 1992); Aventura Mall Venture v. Olson, 561 So.2d 319, 320 (Fla. 3d DCA 1990).

Continue Reading p.8

GEORGIA LAW UPDATE

EVALUATING EMPLOYER LIABILITY TO THIRD-PARTY NON-EMPLOYEES FOR SEXUAL MISCONDUCT OF EMPLOYEES

Alisa Ellenburg, Esq.
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It is often said that making any new hire is a bit like rolling the dice. Despite all due diligence and investigation, an employer may still face claims and legal action from third party non-employees due to the alleged misconduct of its employees. So what does the law afford regarding protections for an employer in such a situation, especially when the behavior is characterized as sexual misconduct? This article contemplates such duties and protections pursuant to two legal theories: *respondeat superior* and negligent hiring.

In Georgia, as in many other states, an employer can be held responsible for the acts of its employees pursuant to a legal theory of *respondeat superior* or "let the master answer." However, in order to hold an employer liable for the acts of its employee, a third-party non-employee claimant or plaintiff must establish two essential elements: first, he/she must establish that the employee was acting in furtherance of the employer's business; and, second, he/she must establish that the employee was acting within the scope of the employer's business. If a tort is committed by an employee purely for that employee's personal reasons and not related to the employer's business, the employer should not be held liable. Sounds reasonable. However…

What about when the employee's actions are characterized as or alleged to be sexually related and directed to third party non-employees?[1] In such cases, arguably there is even greater potential protection for the employer. "Georgia courts have consistently held that an employer cannot be held liable under *respondeat superior* for an employee's sexual misconduct when the alleged acts were not taken in furtherance of the employer's business and were outside the scope of employment." Piedmont Hosp. v. Palladino, 276 Ga. 612, 614, 580 S.E.2d 215 (2003). However, this determination is not always a simple one, and can, as often as not, be left for the jury to decide except in those cases in which the evidence is considered to be "plain and indisputable." In such cases, the issue may be determined as a matter of law by a judge on dispositive motion.

In the case of Drury v. Harris Ventures, Inc. the Georgia Court of Appeals found sufficient "plain and indisputable" evidence to affirm the trial court's grant of summary judgment for the employer. In that case plaintiff homeowners called an employer to send two workers to their home to assist with landscaping work at the home. While at the plaintiffs' home doing the landscaping work, one of the workers attacked the plaintiff and sexually assaulted her. The trial court granted the employer/defendant's motion for summary judgment as to plaintiff's claim against the employer for *respondeat superior*. The Georgia Court of Appeals agreed with the trial court that during the attack the employee was not acting in accord with the employer's business. The sexually violent act was "plainly and indisputably" not within the scope of the employee's employment. Drury v. Harris Ventures, Inc., 302 Ga. App. 545, 691, S.E.2d 356 (2010).

> "an employer could be held liable for negligent hiring and/or retention if the risk of harm to others is reasonably foreseeable…"

However, the Georgia Court of Appeals made a different ruling altogether in the case of Johnson v. Allen. In that case the Georgia Court of Appeals found questions of fact where visitors to a women's restroom located in a storage company sued the company and its manager arising out of the company's installation and monitoring of video surveillance cameras installed in the women's restroom there at the facility. The cameras had been installed in order to police suspected drug activity in the women's restroom. Plaintiffs alleged that the manager watched the video surveillance for his own personal gratification during the course and scope of performing his job.

Read **Client Feedback**
Go to p.13

Continue Reading p.13

ALABAMA LAW UPDATE

2014 SUPREME COURT OF ALABAMA UPDATE ON INSURER'S RIGHTS IN UM/UIM CASES

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Plaintiff's attorneys in Alabama love nothing more than being able to name an insurance company as a defendant, and the Alabama uninsured/underinsured motorist benefits laws allows a Plaintiff to do just that. In 1988, the Alabama Supreme Court stated, "A plaintiff is allowed either to *join as a party defendant* his own liability insurer in a suit against the underinsured motorist or merely to give it notice of the filing of the action against the motorist". See Lowe v. Nationwide Ins. Co., 521 So.2d 1309, 1310 (Ala. 1988).

Fortunately, the Alabama Supreme Court provide insurers some manner of protection by allowing the UM/UIM carrier to "opt out" of the litigation. "If the insurer is named as a party, it would have the right, within a reasonable time after service of process, to elect either to participate in the trial (in which case its identity and the reason for its being involved are proper information for the jury), or not to participate in the trial (in which case no mention of it or its potential involvement is permitted by the trial court)." See Lowe v. Nationwide Ins. Co., 521 So.2d 1309, 1310 (Ala. 1988). Even when the insurer decides to "opt out" of participation at trial, it is still bound by any judgment in excess of the tortfeasor's policy limits. "Opting out" simply allows an insurer the ability to prevent the jury from hearing or knowing about insurance coverage as a matter of trial strategy.

The issue of what constitutes a "reasonable time after service of process" has been a subject of much debate and has led to a wide range of interpretation, usually dependent upon the whims of the assigned trial judge. In the fall of 2014, however, the Alabama Supreme Court weighed in on the reasonable time requirement in an opinion that will ultimately assist insurers in deciding when to "opt out" of trial.

On April 4, 2012, Paul Bolt sued Christopher Wilson for injuries arising out of an automobile accident. See Ex parte Electric Ins. Co., 2014 WL 4798736 (Ala. 2014). At the same time, Bolt named as a defendant his own UM/UIM carrier, Electric Insurance Company alleging that his injuries exceeded the amount of coverage held by Wilson. On May 17, 2012 Electric answered the Complaint and served written discovery. In September 2012, Electric attended and participated in the deposition of Plaintiff, Bolt. In the fall of 2013 and into early 2014, Electric participated in the deposition of four of Plaintiff's treating physicians. In December of 2013 the Court entered a scheduling order setting trial for May 12, 2014. The scheduling order also set March 15, 2014 as the last day for defendants to amend their answer.

On March 14, 2014, Electric filed a motion exercising its option to "opt out" of the trial. Plaintiff objected to the opt out on the grounds that it was not filed within a reasonable time after service of the initial complaint as required in Lowe v. Nationwide Ins. Co. The trial court denied Electric's motion to opt out. Electric filed a writ of mandamus to the Supreme Court of Alabama which reversed the trial court and directing the trial court to allow Electric the right to "opt out".

In its opinion, the Supreme Court of Alabama stated, "[w]e have noted that 'the insurer would not want to withdraw from the case too early, before it could determine, through the discovery process, whether it would be in its best interest to do so'." The Supreme Court went on to point out that Electric waited until after the treating physicians had been deposed in order to evaluate the extent of Plaintiff's injuries and whether the injuries were in fact related to the auto accident. The Supreme Court pointed out that Electric exercised its "opt out" right 56 days after the last treating physician was deposed, holding that its actions in participating in discovery did not create an unreasonable delay in "opting out".

The Ex parte Electric Ins. Co. case will assist insurers and their counsel in allowing them to participate in discovery in order to evaluate whether the Plaintiff's injuries will exceed the policy limits of the tortfeasor without the risk of waiving the right to "opt out".

What the Supreme Court of Alabama giveth, the Supreme Court of Alabama taketh away. While it was busy granting insurers time to evaluate cases for purposes of "opting out", the Supreme Court of Alabama also limited the right of UM/UIM to pursue subrogation claims. In Pennsylvania Nat. Mut. Cas. Ins. Co. v. Bradford, 2014 WL 4798773 (Ala. 2014), the Alabama Supreme Court ruled that a UM/UIM insurer's subrogation claim was barred by the two year statute of limitation governing negligence cases.

Continue Reading p.14

VERDICTS & DISPOSITIONS

Verdicts

Thomas Paradise, Esq. and Belinda Scott, Esq. (Broward/Hollywood, FL) (Foodborne Illness) obtained a Summary Judgment in the case styled Anthony Jackson v. C&S Restaurants LLC d/b/a Burger King.

The Plaintiff filed a lawsuit based on allegations that he became seriously ill after eating at the Defendant's Burger King restaurant. The Plaintiff indicated that as a result of the food he consumed from Burger King, he was hospitalized for a week and diagnosed with food poisoning. During discovery the Plaintiff made numerous allegations regarding the incident and the illness that he allegedly suffered. However, we were able to establish through the medical records and the Plaintiff's own testimony that the Plaintiff was unable to prove his case, specifically as to the issue of causation. Additionally, we filed an affidavit from the president/owner of C&S Restaurants indicating there had been no complaints of food poisonings on the day in question or for the entire year at the restaurant. Based on the above evidence or lack thereof, we filed a Motion for Summary Judgment based on the Plaintiff's lack of direct or circumstantial evidence that his illness was caused by the food purchased at Burger King. The judge agreed with our position and granted our Motion for Summary Judgment in favor of the Defendant.

Tom Paradise, Esq. and Belinda Scott, Esq. (Broward/Hollywood, FL) obtained a defense verdict in the case of Doudeau v. Target Corporation in US District Court for the Southern District of Florida.

Plaintiff, Marie Doudeau (age 54), sued Target for negligence due to a slip and fall incident involving a clear substance that she presumed to be rain water. Plaintiff alleged that Target was negligent in allowing a dangerous condition to exist that it knew or should have known, and in permitting rain water to be tracked into the store. She allegedly suffered a cervical disc herniation (C5-6) from her fall and underwent an anterior cervical discectomy and fusion. Plaintiff's medical bills were $155,000.00, all under letters of protection.

It was undisputed that there was water on the floor where Plaintiff fell. We argued that the condition could not have existed for a lengthy period of time since the surveillance video showed that in the 15 minutes before the fall, 30 people went through the area without incident. We pointed out that the description of the water (clear, void of cart marks, dirt or foot prints) strongly suggested that it had been on the floor only for a brief period of time. We also highlighted extensively the mandatory safety training Target employees undergo, the policies/procedures for maintaining the store, as well as the protocol that would be undertaken when it would rain outside to prevent water from being tracked into the store.

Plaintiff's surgeon testified that Plaintiff's cervical spine MRI showed a degenerative condition at level C5-6 and that the Plaintiff's condition was aggravated by the Target incident. During cross-examination, it was pointed out to the doctor that he had a copy in his medical file of the Letter of Protection, the Target incident report and a fax cover page which asked that the Plaintiff's attorney execute the Letter of Protection and forward the incident report to the doctor as soon as possible. It was then argued that the doctor reviewed the incident report to determine whether the Plaintiff had a "good enough case against Target" before moving forward with treatment. Once this was determined by the doctor it was then argued that the doctor performed the surgery and charged an excessive fee. It was pointed out to the jury as well that the Letter of Protection which was signed by the Plaintiff stated that the doctor was the first lien holder to be paid if the Plaintiff prevailed in the case. With this information we then made the argument that the doctor had a financial interest in the outcome of the case and that it was to his advantage financially to establish causation. The doctor attempted to deny this statement during cross-examination but then simply said that this is the type of issue that should be directed to his office manager.

Plaintiff's Counsel asked the jury to return a verdict for $485,000. The jury deliberated for approximately 25 minutes before returning a defense verdict.

Joseph Murasko, Esq. (Palm Beach, FL) (PIP) obtained a defense verdict in the case styled Accident Recovery Centers, Inc. v. State Farm Mutual Auto Ins. Co.

This was an action for No-Fault benefits and involved IME/record review denial for all dates of service from a Chiropractic Clinic's treatment to a six year old female. There were allegations and evidence admitted over objection that the entire family was solicited in person to treat at the Plaintiff chiropractic clinic. The patient's mother did not comply with the trial subpoena and defense counsel presented portions of her deposition testimony to the jury. The jury verdict form included 4 yes or no, fact-centered questions:

Verdicts & Dispositions, Continued

1. Was the patient involved in an automobile accident?
2. Were the services provided by Plaintiff to patient related to the automobile accident?
3. Were the services provided by the Plaintiff for the dates of service medically necessary?
4. Were the charges for the dates services reasonable?

These were "all or nothing" questions as a jury award for even one bill would have exposed the carrier to attorney's fees. The jury answered the first question in the affirmative; then they answered "No" to the other 3 questions. Shortly after the trial the plaintiff voluntarily dismissed the companion suits for the other family member patients.

Coincidentally, several persons affiliated with the clinic and the attorney for the patient(s) were arrested approximately one month after the trial. The arrests were unrelated to this specific set of cases however, the fact pattern appears similar. The Florida CFO Press Release concerning the arrests can be viewed here: http://www.myfloridacfo.com/sitePages/newsroom/pressRelease.aspx?id=4365

Steven Sundook, Esq. and Alexis Barkis, Esq. (SW FL, Ft. Myers) (Premises Liaibility) obtained a Summary Final Judgment in the case styled Schultheis v. JP Morgan Chase,. Mrs. Schultheis was walking in the lobby of a Chase Bank in North Naples when she claimed that she "suddenly and without warning, slipped on the very wet floor and fell violently to the ground". She claimed that as a result of the fall she suffered a full thickness rotator cuff tear to her right shoulder, and vertical tear through the body of the medial meniscus of her left knee, which required surgery. Medical bills totaled over $40,000. Although she qualified for Medicare, the 79 year old Plaintiff's medical bills were not submitted to Medicare. They were all outstanding on letters of protection to her doctors and other medical providers.

At her deposition, she testified that although it had rained earlier in the day, it wasn't raining at all when she parked her car next to the sidewalk, outside the bank. There were no puddles or any standing water in the parking lot or on the sidewalk, as she walked toward the bank. She first walked through a marble tiled vestibule area and then proceeded into the bank lobby. She walked across the marble tiled floor to a bank teller. She then walked to the right of a narrow, high table used to write checks and deposit slips, was looking where she was walking and did not see any water or other liquid on the floor. There was nothing to obstruct her vision of the floor. She fell as she reached the end of the table. She did not feel either of her feet slipping. She claims she saw water on the floor after she fell. She never told anyone who assisted her, or with whom she spoke after she fell, that there was water on the floor. She did not see anyone wipe up anything off the floor. She never told anyone at the bank at any time that she thought she had slipped on water. She did not know how the water she claimed she saw on the floor came to be there, or how long it had been there.

In the Motion for Summary Final Judgment, it was argued that §768.0755(1) Florida Statutes applied, and that under the statute a person who "slips and falls on a transitory foreign substance in a business establishment, ... must prove that the business establishment had actual or constructive knowledge of the dangerous condition and should have taken action to remedy it." In granting the motion for Summary Final Judgment, the court agreed that, in viewing the evidence in a light most favorable to the Plaintiff, she had not shown that the water, she now claimed was on the floor, existed for such a length of time that the Defendant should have known about it.

The Court Entered Final Summary Judgment against the Plaintiff dismissing the case with Prejudice and taxing costs against the Plaintiff.

Steven Sundook, Esq. and Alexis Barkis, Esq. (SW FL, Ft. Myers) (Premises Liaibility) obtained a dismissal with prejudice and award of attorney fees against the Plaintiff in the case of Michael Gilbert v. Coastal QSR. LLC et al. Coastal operates a Taco Bell in Arcadia Florida. Mr. Gilbert claimed he had been sitting a table in the restaurant, and then went to get a drink when he slipped on a wet floor. He claimed he may have possibly lost consciousness. He was diagnosed with a head injury and ankle pain in the emergency room. A month later, Alexander Fakaded, MD of Med-manage Group, Inc. reviewed CTs and MRIs and his impression was **1)** headache, **2)** mild concussion; **3)** cervical sprain/strain with herniated disc at C5-6; and **4)** lumbar sprain/strain. The Plaintiff later underwent a bilateral L3-

Read **Firm Announcements**
Go to p.14

S1 lumbar rhizotomy at Lake Worth Surgical Center, and a C5-6 maximal discectomy with arthroplasty or fusion, at the Palm Beach Gardens Medical Center, both performed by Dr. Thomas Roush. The Plaintiff's medical bills totaled over $185,000 and he was also making a lost income claim. Dr. Roush is well known to treat patients involved in personal injury litigation, and his charges are often well above usual and customary amounts.

Through the course of investigation of Mr. Gilbert's claim, it was discovered that his real name is "Victor Hugo Delgado-Garro" according to a federal indictment our investigator discovered. In the Federal indictment the Plaintiff is charged with knowingly, willfully, and falsely representing himself to be Michael Gilbert. It was learned that he was being held in Miami at the Krome Detention Center awaiting trial. He was later moved to the Charlotte County Jail to await trial on federal charges of impersonating a US citizen (Michael Gilbert). Prior to his arrest, he was on probation for felony altering of vehicle ID numbers, for which he was convicted of under the name Michael Gilbert. The real Michael Gilbert in New York found out that the Plaintiff was using his social security number. The federal government decided to prosecute him for identity theft, rather than deport him.

In the motion to dismiss for fraud on the court, it was argued that dismissal of the case with prejudice was appropriate as a sanction because of the Plaintiff's scheme to interfere with the judicial system's ability to impartially adjudicate a matter amounts to committing a fraud upon the court. Ironically, the Plaintiff served a proposal for settlement in the amount of $ 1 million just as the information concerning the Plaintiff's identity theft was discovered. The Court granted the motion to strike the Proposal for settlement , dismissed the case with prejudice and ordered the Plaintiff to pay attorney fees as sanctions for perpetrating the fraud on the court.

Nicolette John, Esq. and Thomas Paradise, Esq. (Broward/Hollywood, FL) represented Target Corporation and successfully defended against an appeal (Writ of Certiorari) filed by a Plaintiff in a case where a personal injury Plaintiff objected to providing photographs which she had posted to Facebook. The Plaintiff, who was making a claim for personal injuries, mental anguish, and pain and suffering, was allegedly involved in a slip and fall incident that occurred at a Target store. We sought to compel the production of the photographs posted to the Plaintiff's Facebook account. The Plaintiff objected but the trial court overruled the Plaintiff's objections and ordered the production of any photographs which depict the Plaintiff posted on her social media accounts as well as on her cell phone. The Plaintiff immediately appealed and filed the Writ to the Fourth District Court of Appeals with regard to her social media postings only arguing that her Facebook settings were set to private and that therefore the trial court's order unconstitutionally invaded her right to privacy and violated the Federal Stored Communications Act ("SCA"), 18 U.S.C. §§ 2701-2712. In its 11 page detailed opinion the appellate court ruled that the photographs being sought were reasonably calculated to lead to the discovery of admissible evidence as they are "powerfully relevant to the damage issues in the lawsuit" and further stated that "there is no better portrayal of what an individual's life was like than those photographs the individual has chosen to share through social media." Please see our article in this issue for more details.

Terry D. Dixon, Esq. (DeLand/Central FL) (Premises Liability) obtained a Summary Judgment in the case styled Dabkowski, Edward v. Jean Spaulding & Hands with a Mission.

The Plaintiff worked for Hands with a Mission (a contractor) that was hired by the insured to pressure wash and paint her home. As the Plaintiff was climbing down from pressure washing the roof, the ladder (owned by Hands with a Mission) gave way and the Plaintiff fell 2 stories onto the concrete patio. The Plaintiff alleged that the insured was negligent in that she hired a contractor who was not licensed or insured and that the Plaintiff's patio area was not maintained in a safe condition. Through discovery, we were able to show that there was nothing that the insured could have done to have prevented this incident from occurring. In addition, the Plaintiff testified that he noticed the ladder (brought by him and the owner of Hands with a Mission) did not have rubber stoppers on the bottom. Based on the information we were able to obtain through discovery, a Motion for Summary Judgment was filed on the basis that the insured did not owe a duty to an employee of an Independent Contractor and there was no evidence presented by Plaintiff that substantiated his claim that the insured breached her duty to use reasonable care in maintaining the property in a reasonably safe condition. After hearing arguments from both sides, the Judge granted the Motion for Summary Judgment. ❖

HAZARDS TO WALKING

Premises Liability Update, Continued from p.2

- Steps and elevation changes in an amusement park, which are recreations of "Main Street USA" Rosenfeld v. Walt Disney World Co., 651 So.2d 811 (Fla. 5th DCA 1995).

In Taylor v. Universal City Property Management, 779 So.2d 621 (Fla. 5th DCA 2001), Plaintiff walked into a landscaping planter, containing shrubbery, flowers and a large tree, which ran the length of Hollywood Boulevard through the Universal Properties theme park. Plaintiff claimed that the difference in elevation between the edge of the planter and the dirt inside it caused her to lose her footing, but acknowledged that she saw the tree and the planter and was not looking where she was going before she fell. The Fifth DCA affirmed summary judgment for the Defendant, stating:

"The trial court concluded…and we agree, that anyone who walks into a planter containing a Washington palm, greenery, and/or flowers and dirt is held to know that this is a *hazard to walking*." *At 622.*

Similarly, in City of Melbourne v. Dunn, 841 So.2d 504 (Fla. 5th DCA 2003), the Plaintiff attempted to cross over a raised planter, instead of following the path that went around the planter. When she walked through the planter, her foot was caught in a crevice caused by the separation of planks which formed a corner of the planter. The Fifth DCA held that the Plaintiff knew or should have known that the *"blatant, yawning separation"* in the planter planks was *"a hazard to walking."* The Court also recognized:

"Furthermore, the City had no duty to make the planter safe for walking, a function for which it was not designed… the City had no reason to suspect that a grown woman would consider the planter an exit path, or use it to perform a sort of tightrope act, instead of proceeding to the parking lot by simply walking around along the adjacent path." *At 506.*

More recently, in Dampier v. Morgan Tire & Auto, 82 So.3d 204 (Fla. 5th DCA 2012), the Court again held that "(l) andscaping features are generally found *not* to constitute a dangerous condition as a matter of law." In Dampier, Plaintiff used a raised landscape planter to take a shortcut from a parking lot to the sidewalk. The Court reiterated the concept that a landowner "has no liability for falls which occur when invitees walk on surfaces not designed for walking, *such as planting beds*." at 206. As the Court reminded Florida's pedestrians, the planting bed was not dangerous "when used as a planting bed and not for walking." *at 209.*

The holding and analysis of Wolf v. Sam's East Inc., expands these concepts. The prior cases involved areas which were clearly separated by a curb or a significantly elevated planter box. In Wolf, the landscaped area did not have that type of clear visual separation:

"The parking lot had landscaping areas with dirt, trees, grass, and mulch. The landscaping areas were a few feet wide, were not curbed, and had concrete walkways that allowed persons to cross from one side of the landscaping area to the other without the need to step into the landscaping area itself." *At 307.*

Plaintiff was crossing the landscaped area, without using the concrete walkway, when he tripped on a tree root and fell. Citing the cases mentioned above, and particularly Taylor, the Court said:

"Like the Court in Taylor, we conclude that anyone who walks into a landscaping area containing trees, grass, and mulch is held to know that the landscaping area presents *"a hazard to walking,"* particularly when concrete traverses have been specifically constructed to prevent this type of accident. Under these facts, we find that Sam's Club had no duty to make the landscaping areas safe for a pedestrian's encroachment." *At 308.*

The Court went on to reject Plaintiff's argument that knowledge of previous injuries would place a duty on Sam's Club. The Court held that "the prior falls did not create a duty on the part of Sam's Club to make the landscaping area safe for pedestrian traffic."

Therefore, with the denial of rehearing in Wolf, it appears that the Florida Supreme Court has implicitly approved the emerging line of cases on "open and obvious dangers" and the Plaintiff's duty to 'look where he is going.' We can hope this might one day lead to a rule requiring a Plaintiff to look where he is going even when he is not walking into a garden. In the meantime, it seems safe to say that if a Plaintiff decides to walk through landscaping that is clearly not intended to be used as a walkway, then the Plaintiff has the duty to look where he is going. So in cases involving landscaped areas, ask yourself whether it looks more like a path or a more like a planter. Then, ask the Plaintiff where he was looking. For additional information, please contact Eric Knuth at **EKnuth@Florida-Law.com.** ❖

WAYS TO SLIM DOWN THE HIGH COSTS OF EMPLOYEE OBESITY IN WORKERS' COMPENSATION CLAIMS

North Carolina Law Update, Continued from p.1

obese workers lose thirteen times more days of work due to workplace injuries.[4] There is also a greater risk that these claimants will become permanently disabled.[5] Many factors contribute to these increased costs.

Obese employees are at a greater risk of having more severe injuries due to the force that is created by extra weight during an accident. The back, wrists, ankles and knees are more vulnerable in overweight employees.[6] Obesity also hinders healing time for these body parts, as the extra weight puts additional pressure and force on the injured part. Laurie Ogsaen, the workers' compensation manager for Evergreen International Aviation Inc. in McMinnville, Oregon, reports seeing the number of obesity related claims on the rise.[7] In one of her cases, a worker weighing more than 300 pounds sprained an ankle. After seven months of light duty, physical therapy and other medical treatment, the claimant still had not reached MMI. Doctor's notes indicated the claimant would not reach MMI until he lost a significant amount of weight. Unfortunately, this type of scenario is not uncommon.

Obesity also increases the risk of comorbid conditions, such as diabetes, high blood pressure and heart conditions. These conditions can create medical complications that drive claim costs and increase healing time. Diabetes is of particular concern in workers' compensation cases. Over 20 million Americans are diabetic and another 40 million are pre-diabetic.[8] Wounds heal more slowly in diabetic and pre-diabetic patients. In one example, a 28 year old male weighing 325 pounds underwent a routine knee arthroscopy. Post-operatively, he developed an infection, which required antibiotics. The increased stress on his body sent his blood sugars out of control. Post-operative knee treatment was delayed until the claimant's blood sugars were back to normal, thus necessitating an additional seventeen weeks of TTD benefits in addition to the related medical costs.

Obese claimants have a higher risk of mental health issues and drug abuse.[9] Research indicates a high correlation between chronic pain and obesity. It is difficult to treat chronic pain through non-pharmaceutical measures, such as exercise and healthy lifestyle. An obese claimant may be hesitant to participate in an exercise program due to poor self-image.

Additionally, overall treatment costs can be much higher for obese claimants. Prescriptions cost more when dosed according to body weight.[10] The cost of bariatric durable medical equipment costs about forty percent more than equipment for normal weight individuals. Obese claimants may also require special MRI and CT scans and have special transportation needs.

These risks associated with obese claimants are only becoming more costly for employers and their workers' compensation carriers. For example, some states are requiring employers and insurers to pay for weight loss and extreme measures such as bariatric surgery as part of the treatment for a workplace injury. In 2009, the Court of Appeals of Indiana held in Boston's Gourmet Pizza v. Adam Childers that the employer had to pay for medical and temporary total disability benefits while the injured worker prepared for and recovered from weight loss surgery. The case involved a 25 year old 6 foot tall cook that weighed 340 pounds. He sustained a back injury when he was struck by a refrigerator door. His doctor opined he would continue to suffer back pain if he did not lose weight.[11] Consequently, the court concluded this procedure was necessary and related medical treatment needed to relieve the claimant's work-related back pain.

This type of ruling, although frustrating, is not surprising. Within the last two years, the American Medical Association has classified obesity as a disease. Although this designation has no legal standing, the organization's positions often have influence over state and national lawmakers.[12] A report from the California Workers' Compensation Institute predicts, "The result could be an increasing number of claims that include obesity as a comorbidity, as well as an increase in cases in which obesity is claimed as a compensable consequence of injury in the same way that sleep disorders, sexual dysfunction and psychological disorders became commonplace…" Thus, court ordered treatment for weight loss could easily become a common expense in workers' compensation claims, not only in cases where a claimant's pre-existing obesity causes complications in injury healing, but also in cases where claimants gain weight due to the workplace injury.

This designation opens the door to claimants making a claim for obesity as an occupational disease, particularly in sedentary jobs like office work or long-haul trucking." Employees could claim their sedentary jobs contributed to obesity, thus developing a completely new exposure for insurers and employers. This type of claim could be particularly threatening in employee-friendly jurisdictions that require minimal burdens of proof for claimants.

Continue Reading p.12

According to Jerry Azevedo, a spokesperson for the Workers' Compensation Action Network, "The implications are grim, especially if statutory or case law proves ineffective in limiting employers' liability to true industrial causation or direct compensable consequences."

Despite this growing problem, insurers and employers can take action to prevent and minimize claim loss. When claims are initially filed, the claims handler should immediately take note of the claimant's size and weight. Anything over 250 pounds should raise a red flag, as special durable medical treatment may be needed as well as accommodations for travel, testing, etc. Other comorbidities should be addressed and treated and any complications should be promptly managed.[13] Most importantly, a proactive return to work plan should be set in motion as early as possible. Claims involving obese employees are statistically longer and more expensive, thus a claims handler should treat these claims differently and be as proactive as possible so medical costs and lost time do not spiral out of control.

Additionally, insurers should have a more open mind to providing weight loss tools to claimants, such as gym memberships, personal training and participation in weight loss programs. If weight loss is recommended by a treating physician, why not authorize it? The alternative is far more costly and prone to create even more problems, such as longer time out of work, the need for long-term pain management, and the risk for depression, problems with sleeping, etc. A YMCA membership and a personal trainer for an hour a week costs far less than a prescription for opiates. Authorizing this type of assistance gives defendants an upper hand in a claim—either the claimant will lose weight, thus lowering the cost of the claim, or the claimant will not want to participate in weight loss measures. A refusal to comply with medical treatment could prompt suspension or termination of benefits, which can also be advantageous for defendants.

Additionally, employers can reduce the potential for high dollar workers' compensation claims by implementing employee wellness programs. Wellness initiatives do not have to be big to produce positive results. Companies should start small and build upon each successful initiative. For example, employers can provide healthier snacks in vending machines and in on-site cafeterias. Employers can also provide access to on-site workout facilities or provide subsidized gym memberships to employees. Programs to encourage walking are low-cost. Pedometers are inexpensive and easy to distribute and it is easy to set up fun competitions between departments.[14] Health insurance companies such as Blue Cross have several on-line resources for employers and employees. Another informative internet resource is The Centers for Disease Control's Heathier Worksite Initiative.

Ultimately, the key to developing a successful wellness program is company investment and involvement. Employees need to see involved and caring employers, regardless of the size or scope of the wellness program. Successful employee involvement in wellness programs starts at the top. According to Fik Isaac, Johnson & Johnson's Vice President for Global Health Services, "Just offering a health program doesn't work. Whether at a small, mid-size or large company, management must see the link between health, productivity and the bottom line and lead by example." Employee health should be a recognized company priority and strides to achieve that goal should be celebrated and rewarded.

In order to analyze the impact of an employee wellness program on workers' compensation claims, Lockton Companies, a Kansas City, Missouri provider of risk management, insurance and employee benefits consulting services, recommends that companies be proactively engaged in better understanding the scope of its wellness initiatives and data tracking. Insurers and TPAs should be encouraged to capture data on comorbid factors in workers' compensation claims. This information should be used to determine what health issues should be addressed by a company wellness program and how effective a company's wellness program is in reducing workers' compensation costs. Employers should use this information to regularly collaborate with safety, health and environmental professionals to develop the best way to incorporate employee wellness with workplace safety.[15]

For example, if a TPA documents claimant data over a period of time and notes a surge of high dollar claims due to obesity related factors and shares that information with the employer, company management could incorporate a wellness initiative to encourage weight loss. Once the initiative is in place, follow up data from the TPA could show whether there is any correlation between the initiative and a drop in claim costs. In turn, the company can utilize that second round of data to develop better wellness programs for its employees.

In conclusion, the financial impact of obesity on workers' compensation claims will continue to grow, given the increasing number of health issues related to obesity and how the courts will treat these factors, especially given the recent designation of obesity as a disease. Employers and insurers can best combat these increasing costs by proactively handling obesity related claims, encouraging employee wellness and by collaborating together to promote a healthier workforce.

If your company would like additional advice, tips or training on reducing workers' compensation costs in claims involving obese employees, please contact Nicole Tackett at **NTackett@NCarolina-Law.com.**

Continue Reading p.12

CLIENT FEEDBACK

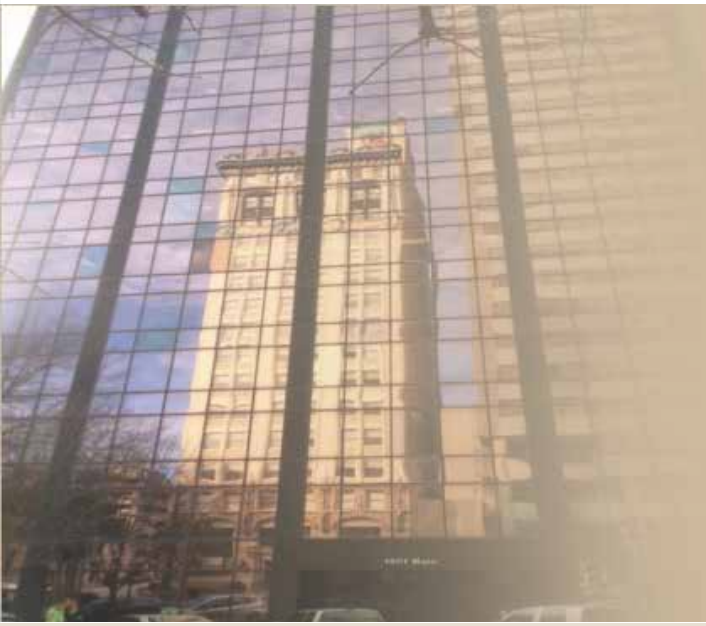
"Will, this is an excellent settlement! You and Jerry are just tearing it up down there and I thank you! That's two down in one day! We should have started working together years ago. Sky Chef's open claims would be reduced to a handful! Thank you so much! Great job!!!"

— **Carol Karcher,** Technical Claim Consultant, *Liberty Mutual Insurance,* in reference to **Jerry Hayden, Esq. and Will Ramhofer, Esq.**, (Vernis & Bowling of Miami)

"I couldn't be happier with Tom, Katie, Greg or any of the staff in your Charlotte office. One of my favorite (should I say that?) two defense attorneys, Tom and Greg, ARE incredible at their jobs. That's quite a combination.

Tom has always been a great resource for us at GEICO and I have many cases with him. I never hesitate to call or e-mail and he is fantastic to work with on this case and all others."

— **Sarelle Holliday with GEICO,** referring to Greg Lewis, Esq. and Tom Nance, Esq. (Vernis & Bowling of Charlotte)



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READ MORE ON P.15

SOCIAL MEDIA POSTS BY THE PLAINTIFF ARE DISCOVERABLE

Florida Law Update, Continued from p.4

invaded her right to privacy and violated the Federal Stored Communications Act ("SCA"), 18 U.S.C. §§ 2701-2712.

In its 11 page detailed opinion the appellate court ruled that the photographs being sought were reasonably calculated to lead to the discovery of admissible evidence as they are "powerfully relevant to the damage issues in the lawsuit" and further stated that "there is no better portrayal of what an individual's life was like than those photographs the individual has chosen to share through social media."

The appellate court further agreed with the Defendant's position that the Plaintiff's privacy interest in such posted photographs was minimal, if any. The court stated that "before the right to privacy attaches, there must exist a legitimate expectation of privacy" and that they "agree with those cases concluding that, generally, the photographs posted on a social networking site are neither privileged nor protected by any right of privacy, regardless of any privacy settings that the user may have established." The court held that the expectation that such information shared through social networking websites is private is not a reasonable one. As the Court aptly stated "Facebook itself does not guarantee privacy. By creating a Facebook account, a user acknowledges that her personal information would be shared with others. Indeed, that is the very nature and purpose of these social networking sites else they would cease to exist."

As to Plaintiff claim regarding the Stored Communications Act (S.C.A.), 18 U.S.C. §§ 2701-2712, the Court ruled that the S.C.A. had no application to this case. The Court stated that "generally, the SCA prevents 'providers' of communication services from divulging private communications to certain entities and/or individuals". "The act does not apply to individuals who use the communications services provided" and "does not preclude civil discovery of a party's electronically stored communications which remain within the party's control even if they are maintained by a non-party service provider."

This is a case of first impression in Florida State court. Not only is our law firm pleased with the favorable, and what we believe to be the correct result of this appeal, we are also very happy that the courts in Florida now have a definitive rule to follow with regard to what is discoverable in terms of the newly emerging issue of social media in the context of personal injury cases. Before this ruling, the trial courts throughout the State of Florida varied significantly in terms of what was discoverable. There is now a bright line for the courts to follow with this ruling.

The case is Maria F. Leon Nucci and Henry Leon v. Target Corp. et al., Fourth District Court of Appeal of the State of Florida; Case Number: 4D14-138. For additional information, please contact Tom Paradise at **TParadise@Florida-Law.com.** ❖

GET TO KNOW TOM PARADISE:

Family:
Married to Wendy with 3 kids (one in college, 2 in high school)

Favorite Place:
Costa Rica and the volcanos

Favorite Outside Activity:
Walking my Golden Retriever, Madi

Favorite Hobby:
Racquetball

Favorite Restaurant:
32 East in Delray Beach, FL

Favorite TV Show:
Seinfeld

Best thing about being an attorney:
Hearing the answer to the first question on the verdict form being "No"

Worst thing about being an attorney:
Waiting – for a judge, witness, or verdict.

Favorite Sports Team:
Miami Heat – even without Lebron

WAYS TO SLIM DOWN THE HIGH COSTS OF EMPLOYEE OBESITY IN WORKERS' COMPENSATION CLAIMS

North Carolina Law Update, Continued from p.9

[1] "Overweight and Obesity," last updated Sept. 9, 2014,www.cdc.gov/obesity/data/adult.html.

[2] Glennon, Kevin, "Obesity's Impact on Workers' Compensation," Nov. 1, 2014, www.rmmagazine.com.

[3] "Overweight and Obesity," last updated Sept. 9, 2014,www.cdc.gov/obesity/data/adult.html.

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[5] Shuford, Harry and Tanya Restropo, "How Obesity Increases the Risk of Disabling workplace Injuries," December 2010, NCCI Holdings, Inc. Research Brief.

[6] Glennon, Kevin, "Obesity's Impact on Workers' Compensation," Nov. 1, 2014, www.rmmagazine.com.

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[12] Jergier, Don, "Report: Obesity Moniker to Impact California Workers' Comp.," August 8, 2013, www.insurancejournal.com.

[13] Johnson, Denise, "Weighing the Obesity Factor in Workers' Compensation," May 6, 2014, www.claimsjournal.com.

[14] Milano, Carol, "A Prescription for Savings," April 2014, www.RMmagazine.com.

[15] "Obesity Drives Up Workers' Compensation Claims," November 21, 2013, citing a report from Lockton Companies authored by Michal Gnatek, www.benefitspro.com. ❖

EVALUATING EMPLOYER LIABILITY TO THIRD-PARTY NON-EMPLOYEES FOR SEXUAL MISCONDUCT OF EMPLOYEES

Georgia Law Update, Continued from p.3

The employer argued that it could not be held liable pursuant to a theory of *respondeat superior.*

However, the Court found there was no evidence that the manager acted solely for personal reasons as opposed to doing so in conjunction with conducting an investigation of suspected criminal activity for his employer.

Therefore, the court found a question of fact as to whether the employer could be held liable pursuant to a theory of *respondeat superior.*

The Court held it was impossible to distinguish as a matter of law on motion whether the observations were made purely for the manager's own personal reasons or as specifically authorized by the employer. Johnson v. Allen, 272 Ga. App. 861, 613 S.E.2d 657 (2005).

What about employer liability pursuant to theories of negligent hiring and retention? Is the employer expected to have a crystal ball to predict the potential employee's possible future sexual misconduct toward non-employees while on the job? In Georgia, an employer is bound to exercise ordinary care in the selection of employees. Georgia's appellate courts have recognized that an employer may be liable for hiring or retaining an employee the employer knows or in the course of ordinary care should have known was not suited for the particular employment. However, absent a causal connection between the employee's particular incompetency for the job and the injury sustained by the plaintiff, the defendant employer is not liable to the plaintiff for negligent hiring.

In Munroe v. Universal Health Services, the employer/defendant was a residential mental health care facility which retained a private investigation firm to conduct seven-year criminal background checks on all prospective employees who would be working with patients. The criminal background check on the accused employee mental health assistant came back clear in this case. Nonetheless, the employee was alleged to have drugged plaintiff, incapacitating her and then sexually assaulting her while a resident of the employer's facility.

During the course of the lawsuit it was discovered that the employee had lied on his employment application in order to conceal past criminal charges. The Court found that there was no way the employer should have known about the employee's criminal history at the time of hiring. The evidence was undisputed that the employer did not disregard indications of a propensity of this employee which should have prompted suspicion or further investigation. Furthermore, there was no evidence that the employer was not entitled to reasonably rely on the information provided by the private investigation firm. Therefore, as a matter of law, the employer could not be held liable for negligent hiring.

Additionally, in this case the plaintiff also argued that an employer, such as a residential nursing home, should be held liable for the acts of its employees simply by virtue of the fact that "but for" the employment, the victim would not have come into contact with the employee who perpetrated the alleged sexual misconduct. However, the Court rejected that theory and found it insufficient to hold an employer liable simply for providing the employee access to the victim. Munroe v. Universal Health Services, Inc., 277 Ga. 861, 596 S.E.2d 604 (2004).

Courts will hold an employer to the exercise of ordinary care in the selection of its employees and to a duty not to retain an employee after it obtains knowledge of the employee's incompetency. However, an employer could be liable if it hires an employee it knows or reasonably should have known, in the course of ordinary care, was not suited for that particular employment. In other words, an employer could be held liable for negligent hiring and/or retention if the risk of harm to others is reasonably foreseeable due to the employee's "tendencies and propensities" to cause the type of harm sustained by the plaintiff of which the employer knew or, in the exercise of ordinary care, should have known. For additional information, please contact Alisa Ellenburg at **AEllenburg@Georgia-Law.com** ❖

Congratulations

Will Ramhofer, Esq. on his promotion to Workers' Compensation Department Head of the firm's Broward/Hollywood, FL office.

Go to p.15

2014 SUPREME COURT OF ALABAMA UPDATE ON INSURER'S RIGHTS IN UM/UIM CASES

Alabama Law Update, Continued from p.4

In September of 2009, Jacob Walker was injured in an automobile accident by a car driven by Michael Bradford. Walker sued Bradford, who was insured by GEICO, and also named his own UM/UIM carrier Penn National as a defendant. Prior to trial, Walker reached a settlement with Bradford for the policy limits under his GEICO policy. Walker informed Penn National of the settlement requesting that Penn National consent to the settlement and waive any subrogation rights. Instead of consenting to the settlement, Penn National advanced the $25,000 to Walker in an attempt to preserve its subrogation rights. In June of 2013, Penn National reached a settlement with Walker on the UM/UIM claim.

In July 2013, Penn National filed a cross-claim against Michael Bradford and GEICO seeking to recover the $25,000 that it had advanced to Plaintiff pursuant to Bradford's settlement with Walker. Bradford filed a motion to dismiss on the grounds that the cross-claim was barred by the two year statute of limitations. The trial court granted Bradford's motion to dismiss and Penn National appealed.

The Supreme Court of Alabama affirmed the decision holding that the subrogation claim filed as a cross-claim in the litigation was filed outside of the two year statute of limitations. The Supreme Court pointed out, "the well established rule that a subrogee can acquire no greater rights than those possessed by the principal whose rights he asserts." at *2 (quoting Home Ins. Co. v. Stuart-McCorkle, Inc., 285 So.2d 468,472 (Ala. 1973)). The Court went on to hold, "[t]hus, in a subrogation case, the statue of limitations begins to run when the cause of action accrues". Since Penn National was asserting the rights of Walker and Walker's cause of action accrued at the time of the accident, Penn National's subrogation rights likewise began to run at the time of the accident, even though they had not fronted the settlement funds at that time.

Penn National argued that this created an inequality, in as much as Walkers suit was not filed until September 14, 2011, exactly seven days before the two year statute of limitations would run. The court pointed out that a subrogee has other remedies to protect its subrogation interests other than a direct action against the tortfeasor.

This situation may arise in many cases where the tortfeasor has low limits ($25,000) on their insurance policy and the Plaintiff's injuries clearly exceed the tortfeasor's limits. In many cases, Plaintiff and tortfeasor reach a policy limits settlement early in the case. If the UM/UIM carrier wishes to keep the tortfeasor in the case as a party, potentially so that it may later opt out and not have to try the case in the insurance carrier's name, statue of limitations issues must be looked at and other forms of protecting the subrogation rights may need to be considered. For addtional information, please contact Ryan Northrup at **RNorthrup@Law-Alabama.com.** ❖

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- G. Jeffrey Vernis, Esq., Managing Partner, was selected as a Top Lawyer by South Florida Legal Guide.

- Ramy P. Elmasri, Esq. (Miami, FL) has earned the highest possible Martindale Bubbel Peer Review Rating™ AV® Perminent™.

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THE FIRM WOULD LIKE TO CONGRATULATE WILL RAMHOFER, ESQ. ON HIS PROMOTION TO WORKERS' COMPENSATION DEPARTMENT HEAD OF THE FIRM'S BROWARD/ HOLLYWOOD, FL OFFICE.

CONGRATULATIONS
Will Ramhofer, Esq.
Vernis & Bowling of Boward, PA

Will Ramhofer is a native Floridian. Mr. Ramhofer obtained his undergraduate degree in Business and Finance at Flagler College in St. Augustine, Florida. In 2013, he graduated from the Florida International College of Law, *magna cum laude*. While in law school, Mr. Ramhofer worked as a law clerk in both transactional and litigation settings, gaining valuable legal experience while working on issues involving personal injury, family law, real property foreclosure, bankruptcy, employment, tax, and business organization. During his studies at FIU, Mr. Ramhofer obtained numerous Book Awards and was an active member of the prestigious FIU Board of Advocates, Moot Court Team.

Mr. Ramhofer currently devotes 100% of his practice to managing and defending cases through all stages of the workers' compensation process, from the initial determination of the compensability through settlement. His clients include various employers, insurance carriers and servicing agents, municipalities and other self-insureds. He has litigated the full range of Florida workers' compensation matters before the Judges of Compensation Claims, including issues of permanent total disability, attendant care, fraud, modification, medical causation, and Florida's heart and lung presumption.

Mr. Ramhofer offers his business and legal background to assist Vernis and Bowing's clients in the efficient and effective resolution of legal matters. He has lectured on complex workers' compensation issues as well as updates in Florida workers' compensation jurisprudence and issues pending before the Florida Appellate Courts. Mr. Ramhofer is licensed to practice in all Florida State courts. Will's outside interests include fishing, surfing, tennis, and golf. Will can be reached at **WRamhofer@Florida-Law.com.** ❖

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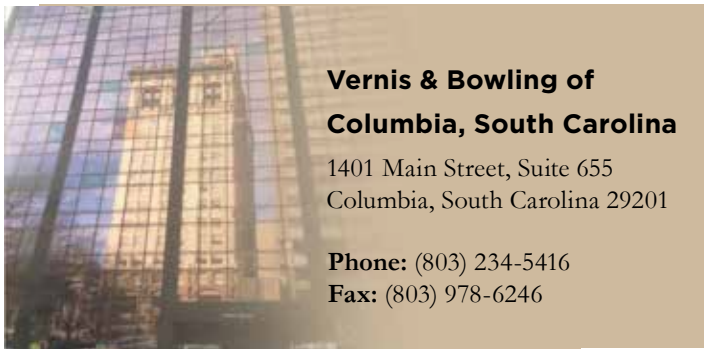
CONGRATULATIONS
Drayton Hastie III, Attorney
Vernis & Bowling of Columbia, LLC

Drayton Hastie is a twelfth generation native of Charleston, South Carolina, where he presently serves as a trustee of the Magnolia Plantation Foundation, the non-profit arm of Magnolia Plantation and Gardens, which was established in 1676 and is both a popular Charleston tourist attraction and the ancestral home to the Drayton family. He graduated from the University of South Carolina School of Law in 1998, where his academic accomplishments made him a repeated member of the Dean's List and a member of the Order of Wig and Robe. He was appointed to the Jessup International Moot Court Team, and he served three years on the South Carolina Environmental Law Journal, serving as a research editor for his final year.

Mr. Hastie's litigation experience includes defending matters involving automobile liability, general liability, commercial vehicle liability, condo and HOA litigation, nursing and care home liability, liquor liability, negligent security, product liability, property claims, wrongful death, premises liability, common carrier liability, construction and construction defects, professional liability/E&O, UM claims, DJ actions and coverage issues.

Mr. Hastie and his wife are the proud parents of five children ranging in age from college to elementary school. Mr. Hastie also enjoys kayaking with his older children in Columbia's three adjacent rivers, as well as hiking and backpacking. Drayton can be reached at **DHastie@NCarolina-Law.com.** ❖



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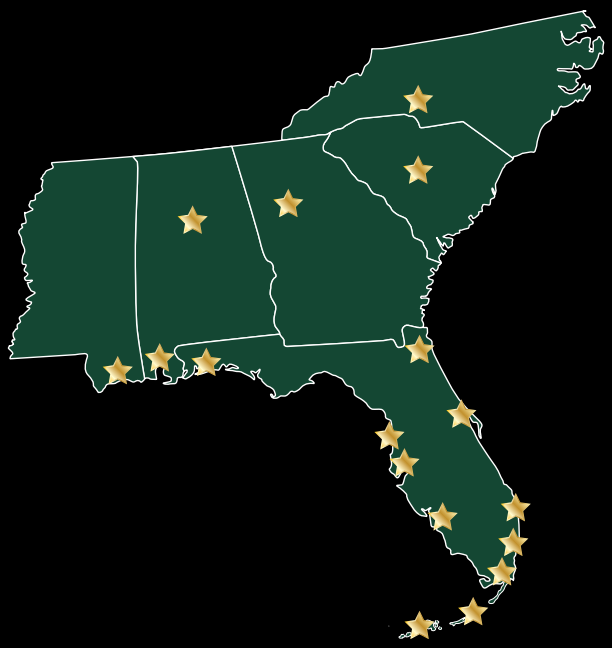

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