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SPRING 2023

NEWSLETTER

Vernis & Bowling is pleased to announce the opening of our newest office in Charleston, SC!

494 Savannah Highway
Suite A, Charleston, SC 29407
843-242-7509

GET TO KNOW

Thomas Pritchard

MANAGING ATTORNEY

Favorite Place: When you live in Charleston, it is hard to have another favorite, but sticking strictly with the U.S., I would rate Nantucket as a close second.

Sports Team: The South Carolina Gamecocks, we all have crosses to bear.

Favorite Animal: We have had a lot of great dogs. The current spoiled child is an 83 pound Yellow Lab, Ziggy (AKC name Salkehatchie Farms Spider from Mars).

Hobbies: Hunting, fishing and pretty much any outdoor activity.

Favorite Restaurant: There are far too many great ones to choose from in Charleston. Really, you should all come try them sometime.

If I Wasn't a Lawyer: I would be a farmer. There is something cathartic about being on a tractor.

John "JD" McKee

ATTORNEY

Favorite Place: Keystone, Colorado during the Spring months and Hollywood, FL whenever my wife and I can get down there.

Sports Teams: TCU Horned Frogs, Kansas Jayhawks and the World Champion Kansas City Chiefs

Hobbies: Fishing, hiking, golf, tennis and pickleball.

Favorite Restaurant: Living in Charleston makes this question virtually impossible as there is such a wide variety of great food options but if I had to choose, you cannot go wrong with seafood here in the Lowcountry.

If I Wasn't a Lawyer: I would probably be working in the sports industry in some form or fashion.

What is something most people don't know about you? I am actually a fairly impressive singer when I take it seriously.

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THIS NEWSLETTER ISSUE INCLUDES:

Verdicts And Dispositions 2-16
Client Feedback 17
Community Engagement 18
Stay Up-To-Date 19

VERDICTS & DISPOSITIONS

Tommie DePrima and Tom Paradise (Hollywood, FL) (Appellate) previously obtained a Summary Judgment ruling in favor of the Defendant in a case involving the alleged sexual abuse of a minor female student by her school coach over a two-year period. The student brought a lawsuit alleging negligent hiring, negligent retention, negligent supervision and negligent infliction of emotional distress. The student's mother made a corresponding claim for loss of filial consortium. Upon deposing the Plaintiff, defense counsel confirmed that the alleged abuse had ended more than four years prior to the Plaintiff bringing the lawsuit. As such, defense counsel argued that because the Plaintiff had brought the lawsuit when the four-year statute of limitation had expired, Summary Judgment was proper as to all claims related to the alleged abuse. In response thereto, the Plaintiffs argued that while the sexual contact had ended over four years before the Complaint was filed, under the continuing torts doctrine the 'improper relationship' (which was not limited to the sexual contact) continued beyond the final sexual encounter. Plaintiffs also attempted to argue that based upon their negligent retention claim, and the fact that the coach was not terminated until a year after the relationship had been known, that the statute of limitations had not run out at the time of the filing of the lawsuit. Prior to the Court's ruling on the Defendant's Motion for Summary Judgment, Plaintiffs demanded $1,000,000 to settle the instant claim. The Court thereafter granted the Defendant's Motion for Final Summary Judgment as to all claims.

Appellate Update: The Plaintiffs subsequently filed an appeal before the Florida Fourth District Court of Appeal and argued that the continuing torts doctrine should apply. The Plaintiffs also attempted to argue that the judge who presided over the Summary Judgment motion should have recused himself due to potential conflicts and/or bias that the judge may have had with Plaintiff's counsel. The appellate court affirmed the lower court's ruling on all issues. Plaintiff's petition to the Florida Supreme Court to take jurisdiction of this case was also denied. The Defendant is currently seeking all its attorney's fees and costs incurred in the case given the Plaintiff's denial of a previously filed proposal for settlement.

William G. Hyland Jr. (Deland, FL) (Appellate) previously brought a successful Motion for Summary Judgment in this matter, which involved a slip and fall accident that occurred on January 15, 2015, at the convenience store owned by the Defendant, Wawa, Inc. Plaintiff alleged that "she tripped and/or slipped on a transitory foreign substance or surface of Wawa's parking lot and fell." We moved for Final Summary Judgment arguing that this case presented no dispute of material facts. The rainwater which caused Plaintiff to slip and fall was not an unreasonably dangerous condition which Wawa should have or could have removed or cleaned up. The rainwater was an open and obvious condition, which was just as apparent to the plaintiff as it was to the Defendant. The rainwater did not present an unreasonable hazard to the plaintiff or other invitees shopping at Defendants' premises. The trial court held that Wawa was entitled to Summary Judgment and entered an order as such, they granted Final Summary Judgment for Wawa, and the Plaintiff appealed.

Appellate Update: The Fifth Circuit Court of Appeal upheld the Defendant's Motion for Summary Judgment Order, per curiam on 2/1/2022.

Kimberly Sheridan (Atlanta, GA) (Premises Liability) recently obtained a Motion for Summary Judgment for Bonefish Grill. The Plaintiff filed suit on a premises liability theory, claiming he sustained back, shoulder, elbow and head injuries following a fall on his way to the bathroom at Bonefish Grill. We deposed the Plaintiff and filed a Motion for Summary Judgment based on his testimony. Specifically, he testified he noticed the restaurant floors were shiny and slick on his way into the restaurant and when he got up from his booth to go to the bathroom, he noticed again they were shiny and slick. We argued in our motion that if a hazardous condition existed, Plaintiff had equal knowledge of it and was thus, precluded from recovery under Georgia law. We further argued that if there was any hazard, Plaintiff assumed the risk when he continued to walk on the floor. Under Georgia law, a plaintiff who voluntarily exposes himself to the risk has failed to exercise ordinary care for his safety and cannot recover. The judge agreed and granted Bonefish Grill Summary Judgement on all counts in the Complaint.

Jennifer Whitworth (Birmingham, AL) (Auto Liability) obtained a Defense Verdict in a bench trial on February 8, 2022 in the District Court of Jefferson County, Alabama in a clear liability auto accident case against an Allstate insured. The Plaintiff claimed neck, back, shoulder and arm injuries. Although the Plaintiff had health insurance, she did not utilize it, instead choosing to receive LOP physiotherapy treatment from a provider recommended by her lawyer. During the first visit, the NP diagnosed Plaintiff with cervical ligamentous instability and suspicion of fracture and/or cervical disc derangement. Despite that diagnosis, the provider failed to conduct diagnostic imaging and did not refer the plaintiff to a specialist. Instead, the Plaintiff underwent numerous chiropractic adjustments and traction to her cervical spine. The provider charged $10,000 for this treatment.

The defense retained an orthopedic surgeon who testified at trial that the plaintiff's treatment was unnecessary, unreasonable and dangerous. He testified that with the NP's diagnosis, a cervical collar should have immediately been placed on the plaintiff and she should have been referred to a spine surgeon. The doctor further testified that traction could have paralyzed the plaintiff, assuming she actually had a fractured spine. Despite the Defendant conceding negligence at trial, the Court entered a judgment for the Defendant, implicitly finding that the Plaintiff didn't prove that she was injured in the accident.

Maloree McDonough (Birmingham, AL) (Auto Liability) obtained a Defense Verdict in the Circuit Court of Tuscaloosa County, Alabama in an auto accident case against an Allstate insured in which liability was disputed. The two Plaintiffs, a mother and a daughter, pulled out onto a 6-lane road from a private drive and were struck by the defendant. Plaintiffs claimed that although they pulled out onto the roadway, they saw the defendant coming in the inside lane at a high rate of speed, so they stopped before crossing into the defendant's lane of travel. Plaintiffs argued that the defendant was speeding and was negligent for leaving his lane of travel and colliding with their vehicle.

The mother's medical bills were $18,000 and she claimed exacerbation of pre-existing neck and shoulder conditions, wage losses and the total loss of her vehicle ($10,000). The daughter claimed injuries to her arm and $2,000 in medicals.

Defendant was successful in getting contributory negligence and sudden emergency charges to the jury. The judge also gave the jury a charge on subsequent negligence so they could consider whether, regardless of plaintiff's negligence, defendant still had the "last clear chance" to avoid the accident. The jury deliberated for approximately an hour before returning a verdict in favor of the defendant on both the mother and daughter's claims.

G. Jeffrey Vernis (Palm Beach) and Isam Alsafeer (Melbourne) (Premises Liability) obtained a Defense Verdict against one the nation's largest personal injury firms in the matter of *Wolff v. Neighborhood Restaurant Partners, LLC.* (Applebee's) before a jury in Brevard County (Titusville) .

The Plaintiff was walking through the restaurant returning from the restroom when he fell over a set of stairs sustaining a femur fracture. The Plaintiff alleged that the stairs were dark and negligently maintained. They presented evidence that the light bulb above the stairs was burned out and the yellow safety tape on the stair treads had worn out such that it was no longer visible. No eyewitness employees were able to be found to testify. Several of the current employees, testified that the lightbulbs would frequently go out and the yellow step tread tape had been on those step tread for many years, but they frequently get worn out and need to be replaced. They admitted that the condition was a foreseeable, known dangerous condition and was especially dangerous when combined together. The Plaintiff retained a building code expert who opined that the stairs and the conditions violated the applicable building and life safety codes, however due to the success of our deposition and discovery, the Plaintiff withdrew the expert prior to him testifying at trial. After the fall, the Plaintiff was transported to Palm Bay Hospital and underwent

The Plaintiff was walking through the restaurant returning from the restroom when he fell over a set of stairs sustaining a femur fracture.

an open reduction internal fixation of the femur utilizing an intramedullary/intertrochanteric nail and 2 screws. The Plaintiff went to a rehabilitation facility for about a month and had therapy for 8 months. He continued to experience pain, limitation of motion, gait imbalance, now walks with a cane and limitations in his activities. The medical expenses were more than $100,000, however we were able to limit the evidence to only the amount of the Medicare lien, which was $31,275. Our defense focused on the liability for the fall while also attacking the credibility of the Plaintiff about his post-accident recovery. We presented evidence that the stairs were in an area that had sufficient natural lighting to make the stairs visible. The Plaintiff refused to negotiate pre-trial and requested that the jury award $2,000,000. After four days of trial, the case went to the jury who deliberated about one hour, including lunch, and returned a finding of no liability. We had filed a proposal for settlement, and we are in the process of filing our Motion to tax attorney's fees and costs.

Steven Sundook and Taylor Ligman (Ft. Myers, FL) (Premises Liability/Slip and Fall) obtained a Defense Verdict following a three-day jury trial in Sarasota, Florida. Plaintiff, a 66-year-old woman, fell in the lobby of a North Venice, Florida Regions Bank on October 11, 2018. Ms. Wells claimed she tripped over a "transition strip" between a carpeted area and tile area. Applicable codes require any change in elevations be no greater the ¼ inch. An expert hired by Ms. Wells' lawyers opined that the transition strip measured slightly above ¼ inch and was the cause of her fall.

Plaintiff had a long history of knee problems dating back to at least 2009. She had previously had surgery to repair meniscal tears in both knees and had required total knee replacement of both knees since 2017.

By July 2018 her left knee pain was so bad, it was affecting her ability to do activities of daily life (ADLs). She continued to have her left knee injected. 11 weeks before she fell in the bank she had another injection in her left knee. She reported the pain was so bad it made it difficult for her to walk.

Plaintiff claimed she was in no pain or discomfort at the time of the fall. She made a deposit for her ailing mother on that day. Surveillance video showed her walking into the bank and walking across tile to carpet and back to tile to the teller window. After she made her deposit, she walked from tile to carpet and then fell in the area of transition back to tile. Unfortunately, the frame rate of the surveillance video was such that the video showed her before and after she fell but did not show her beginning to fall or show what caused her to fall.

The Defense expert measured several areas of the transition strip between the tile and carpet and found them all to be less than ¼ inch meeting the applicable code requirements. In Plaintiff's rebuttal case, Plaintiff's expert testified that the Defense expert's use of a "profile gauge" was subjective and dependent upon how much force was used to push down on the gauge. The defense expert testified that the Plaintiff's expert use of a measuring tape held at an angle and photographed form above produced "parallax error", and that photos of Plaintiff's expert showed him compressing the carpet to achieve his measurement of slightly over ¼ inch.

After 1½ hours, the jury returned a verdict of no negligence on the part of the bank causing Plaintiff's fall.

Plaintiff testified that the gash in her knee was very painful, required staples to close without the use of anesthesia and became infected. She was required to wear a full leg brace for over two months.

Plaintiff blackboarded approximately $20,000.00 in medical bills and asked for $150,000.00 in closing arguments. After 1½ hours, the jury returned a verdict of no negligence on the part of the bank causing Plaintiff's fall. We are moving for a judgment against the Plaintiff for attorney fees pursuant to a proposal for settlement for $1,500.00 made in 2019.

Kenneth Amos and Miles Hickman (St. Petersburg, FL) (Automobile Liability) obtained a verdict favorable for the Defense in Sarasota County Circuit Court on Wednesday, March 9, 2022. Attorney Jaret Helinger was also fundamental in the preparation and presentation of the evidence at trial.

The lawsuit involved an incident on I-75 in Venice, Florida, whereas the Plaintiff testified that he was following the Defendant's vehicle when three large pieces of plywood came out of the Defendant's truck bed and struck the Plaintiff's vehicle. Prior to the start of the trial, the Defense admitted liability and as such, the trial focused on injury causation and damages.

The crux of the Plaintiff's claim for injuries was an injury to his right ulnar nerve, which is located at the elbow and signals into the right two digits of the hand. At trial, the Plaintiff also claimed injuries to his back and neck as a result of the incident.

Following the subject incident, the Plaintiff underwent a reversion decompression and submuscular transportation surgery as it related to his right ulnar nerve. The surgery left significant scarring to the Plaintiff's right arm. At trial, the Plaintiff testified that as a result of the accident, he was no longer able to play golf or help his wife with the chores around the house. The Plaintiff's total medical bills that were presented to the jury was $38,151.22 with $10,000.00 in Personal Injury Protection deductions that were also presented to the jury.

The Defense's theme revolved around the inconsistencies in the Plaintiff's mechanism of injury, i.e. how the Plaintiff injured his ulnar nerve. These inconsistencies were shown by prior testimony, patient intake forms and the Plaintiff's medical records. It was shown to the jury that throughout the course of litigation, Plaintiff's narrative of how he injured his elbow within the vehicle changed over time.

On cross examination, the defense questioned the Plaintiff and his treating physicians as it related to the inconsistencies in each of the medical records. The description of how the Plaintiff injured his ulnar nerve was wholly different in the treating physicians' testimony to the Plaintiff's testimony himself. The Plaintiff was shown each of the inconsistencies in the medical records and in his patient intake form, of which he denied ever executing the intake form and he testified that each of his five treating physicians must have incorrectly dictated his version of the mechanism of injury. The Plaintiff was also asked to recreate for the jury how he injured his elbow, such to clear up the inconsistencies. The Plaintiff refused.

Additionally, the cross examination of the Plaintiff showed the jury through the medical records and prior testimony, that the Plaintiff continued to golf consistently following the accident.

On closing argument, the Plaintiff's counsel asked for a total of $534,151.00 in total damages. The Defense then explained on closing that the jury could not find in favor of the Plaintiff's claim, as the Plaintiff had not met his burden of proving that the accident caused the injury to the ulnar nerve. The defense asked for a zero-dollar verdict in light of the inconsistencies.

The jury deliberated for over three hours and issued a verdict of $90,151.22. The attorneys then determined post-verdict set offs to include $10,991.30. The final award was $79,163.92. While the jury did not find a zero-dollar verdict, the low damages award was a favorable verdict for the Defense.

Kory Watson and Lori Conklin (St. Petersburg, FL) (Insurance Coverage) in their representation of Auto-Owners Insurance Company, obtained an Order from the Honorable Keith Meyer denying Plaintiff Granada Insurance Company's Motion for Final Summary Judgment. The Order denying Plaintiff's Motion came after extensive briefing and two hearings on the Motion.

Granada Insurance Company brought an action against Afterhours Automotive Group, Anthony Cockroft and Robert G. Gibbons for declaratory relief. Gibbons presented a demand for his injuries to Granada after he was allegedly injured as a result of a motor vehicle accident involving Cockroft. At the time of the accident Granada had a contract of commercial auto insurance with Afterhours, employer of Cockroft.

At the time of the accident, Gibbons was operating a motor vehicle owned by his employer Acree Air Conditioning, Inc. Consequently, Auto-Owners' interest in the outcome of the Declaratory Action is pursuant to its capacity as the underinsured motorist carrier for Robert Gibbons.

Granada argued that Florida law is clear that an insurance broker is an agent of the insured. Auto-Owners successfully distinguished the facts of those cases from the facts in the underlying matter. In particular, Granada placed heavy reliance on the Florida Supreme Court decision of Almerico v. RLI Ins. Co., 716 So. 2d 774 (1998), for authority that where the written application expressly states an agent has no authority to bind there can be no apparent authority because the applicant is put on notice of the express limitation on

the agent's authority. **Additionally, Granada submitted three (3) trial court orders granting Summary Judgment in Granada's favor on the grounds that the driver at issue was not an approved driver under the policy and therefore Granada had no duty to provide coverage.**

Auto-Owners made clear the issue to the Court was not an ambiguity with regard to the "approved driver" provision in the policy, nor in the Request to Bind and Application for Insurance submitted by Rothschild on behalf of Afterhours to Granada. The narrow issue was rather whether **a reasonable jury could find that Rothschild was an agent of Granada for the purpose of adding a driver to the commercial automobile policy at issue of which Cockroft's employer, Afterhours, was a named insured.**

Ultimately, the Court found that (1) a reasonable finder of fact could conclude that Rothschild was an apparent agent of Granada for the purpose of servicing the policy to add an approved driver and/or (2) a reasonable fact finder could determine that Rothschild was a statutory agent of Granada based on Fla. § 626.342(2).

Carl Bober and Evan Zuckerman (Hollywood, FL) (Property) obtained a Defense Verdict following a jury trial in Fort Lauderdale in the case of ***Julio Camacho & Yoendry Echevarria v. Citizens Property Insurance Corporation.*** The case concerned a first party property insurance residential claim related to Hurricane Irma. Plaintiffs claimed that two separate roof systems at their home were severely damaged due to wind from the hurricane and that they required full replacement. Plaintiffs also claimed interior damage to their home due to resulting water leaks which began immediately after the date of the storm.

Citizens denied the claim because their field adjuster did not find that the damage to the roofs was due to wind and that the interior damages were not covered unless wind first damaged the roofs and created an opening through which rain entered. At trial, one of the Plaintiffs testified that they had never had any roof leaks before the hurricane. Opposing counsel introduced a four-point inspection report done five years earlier which indicated the roofs were in excellent condition and had no leaks. Plaintiff's public adjuster testified that he had been in the Plaintiffs' home just two weeks before the hurricane on an unrelated claim and saw no ceiling stains. Plaintiffs' expert engineer Al Brizuela inspected the Plaintiff's property and determined that the cause of the leaks was solely due to the hurricane. Brizuela testified that the roofs were so damaged that they needed to be replaced.

For the defense, Citizens' expert engineer Brandon Mintz testified that the Plaintiffs' damages were solely due to wear and tear to the roofs, and not due to Hurricane Irma, using aerial photography over a ten-year period prior to the storm showing the progression of deterioration. The jury found in favor of Citizens, but did not reach the question of whether it had proven its affirmative defense of wear and tear; instead, the jury found that Plaintiffs' did not sustain any physical loss to their home during the policy period from the hurricane. Our motion to seek the recovery of Citizen's taxable costs is pending.

Loretta Guevara (Hollywood, FL) (Property) obtained Summary Judgment in favor of Citizens Property Insurance Corporation in the case of ***Gran Fortuna Corp v. Citizens Property Insurance Corporation***. The case concerned a first party property insurance residential claim related to Hurricane Irma. Plaintiff claimed that the roof system of his property was severely damaged due to wind from the hurricane and that it required full replacement. Plaintiff also claimed interior damage to the property due to resulting water leaks which had begun immediately after the date of the storm. Plaintiff did not report the claim to Citizens until June 19, 2020, approximately thirty-three (33) months after Hurricane Irma made landfall in South Florida. Citizens issued a reservation of rights letter due to the substantial delay in reporting the claim and subsequently, made a request for documentation. Plaintiff failed to provide the requested documentation and thereafter, Citizens requested the documents on two more occasions. Plaintiff failed to respond to any of Citizens' requests for documentation. Ultimately, Citizens denied the claim because its field adjuster could not determine the cause of the loss due to the passage of time. Citizens based its Motion for Final Summary on three premises: (1) the loss was not "promptly" reported as a matter of law; (2) the delay prejudiced Citizens' ability to adjust the claim; and (3) the Plaintiff failed to provide the requested "records and documents" thus failing to comply with his post-loss obligations under the policy. In opposition to Citizens' Motion for Final Summary Judgment, Plaintiff filed his own affidavit and the affidavit of his expert engineer, Grant Renne. In the Plaintiff's affidavit, Plaintiff admitted that he noticed stains to the ceiling

of the master room of the property shortly after the hurricane but simply painted over it and that in 2019, he noticed additional staining on the ceiling in another part of the property. In 2020, Plaintiff admitted that the stains worsened and he noticed stains in multiple areas of the property which was when he decided to retain an attorney and report the claim to Citizens. Judge Robert W. Lee found two independent grounds to grant Citizens' motion. First, he found that the insured had completely failed to comply with his post-loss obligation to provide the requested records and documents. Second, he found that the delay in reporting the claim was unreasonable as a matter of law, and that Citizens was prejudiced by the insured's failure to promptly provide notice of the claim.

Greg Lewis (Charlotte, NC) (Auto liability) obtained a Defense Verdict in favor of Underinsured motorist carrier Allstate Insurance Company in the case of *Lester Petchenik vs. Jordy Ceron-Michua & Sabrina Cagle* in Henderson County, Hendersonville, NC. Plaintiff was a passenger in a vehicle operated by his wife when it was rear-ended first by underinsured motorist Ceron-Michua, and almost immediately afterwards, co-Defendant Cagle rear-ended Ceron-Michua, whose vehicle impacted Plaintiff's vehicle again. Plaintiff's post-MVA medical history is significant for a lack of medical documentation referencing the MVA or cervical complaints for approximately 90 days, despite his testimony that his neck hurt immediately following the two impacts, that he delayed treatment due to traveling to California to see his son the day following the MVA, and an alleged (undocumented) visit to his VA PCP in the interim, wherein he alleges she referred him to an orthopedist "but the VA didn't produce the record of that visit because that's how the VA is." The first mention of the MVA in a medical record was 7 months post-accident.

Plaintiff was a passenger in a vehicle operated by his wife when it was rear-ended first by underinsured motorist

Despite no significant conservative treatment, at that time a neurosurgeon discussed and Plaintiff elected to proceed with a C-4 ~ C-6 discectomy with allograft arthrodesis and C-6 bilateral foraminotomies. Later that month, he had an additional procedure for complications from the arthroscopy (throat hematoma causing difficulty swallowing). Plaintiff complained of chronic neck pain and radiculopathy following arthroscopy. Plaintiff's past medical history was significant for two purple heart Vietnam "war wounds" with a recent amputation of his left foot, Agent Orange exposure, multiple lumbar surgeries for DDD, and a prior cervical fusion at C6-7 in 1998. He had multiple falls in the years leading up to the MVA, and most significantly reported cervical radiculopathy with bilateral numbness in the middle 3 digits when turning his head to the right. At the time of the MVA, he was on 90 mg of morphine daily due to intractable pain from his back and other unrelated conditions.

Special damages: boardable medical expenses of $25,000.00, and no wage loss (retired). General damages: permanent injury to the cervical spine with "life altering" symptomatology despite arthroscopy, and minimal scarring from arthroscopy. Negotiation history: Pre-suit tender of $30,000.00 by the underinsured motorist's liability carrier. At mediation, the lowest demand was $25,000.00. The co-Defendant offered $3,000.00, and UIM offered $1,000.00. The jury entered a Defense Verdict following a 3-day trial and 2 hours of deliberation, finding Plaintiff was not injured by the negligence of either motorist. Costs were taxed to Plaintiff.

Loretta Guevara (Hollywood, FL) (Property) obtained Summary Judgment in favor of Citizens Property Insurance Corporation in the case of ***Barrios, Luis & Bernal, Diana v. Citizens Property Insurance Corporation***. The case concerned a first party property insurance residential claim related to a plumbing leak. Plaintiffs claimed that their kitchen cabinets had sustained water damage as a result of a garbage disposal leak. Plaintiffs did not report the claim to Citizens until April 28, 2020, approximately thirty-three (33) months after the loss allegedly occurred. Citizens issued a reservation of rights letter due to the substantial delay in reporting the claim and subsequently, made a request for documentation corroborating the reported date of loss and cause of loss. The only document

provided by the Plaintiffs to corroborate the loss was a receipt stating that a new garbage disposal had been installed on the reported date of loss. Ultimately, Citizens denied the claim because its field adjuster could not determine the cause of the loss due to the passage of time. At the hearing, the Plaintiffs argued that (1) they had not breached any of their post-loss obligations under the policy, (2) their loss was not untimely since the Plaintiffs reported the claim as soon as they became aware that they could make a claim, and (3) even if the Court found their notice to be untimely, Citizens did not suffer any prejudice as a result of the late notice. Alternatively, they argued that whether the notice was prompt and whether Citizens had been prejudiced were questions of facts for the jury to decide. In support of their Motion, they attached the affidavit of their expert witness who alleged that he could definitively determine that the damages to the Plaintiffs' cabinets were caused by a garbage disposal leak and that the time gap between the date of the loss and the time of his inspection did not prejudice his ability to perform his inspection and reach his conclusions. Judge Haimes in Broward County found that Plaintiffs' notice of this claim to Citizens was neither prompt nor timely as a matter of law and that Citizens had been prejudiced as a matter of law. The Plaintiffs failed to retain the damaged property and disposed of it prior to Citizens' inspection of the subject property and the Plaintiffs did not provide any photographs or documentation whatsoever depicting the condition of the failed garbage disposal or the condition of the subject property during the month of July 2017 when the loss allegedly occurred. The Court further found that the Plaintiffs did not rebut the presumption of prejudice. The Plaintiffs' own professional engineer admitted in his report that the failed garbage disposal had been disposed of prior to his inspection of the property in 2020 and therefore, the Court found that not even he was able to provide an opinion as to causation.

G. Jeffrey Vernis (N. Palm Beach, FL/Melbourne, FL) and Isam Alsafeer (Melbourne, FL) (Auto Liability) settled the matter of ***Lovett v. Heughins*** just days before trial for an amount less than the Defendant offered at mediation. This case stems from a motor vehicle-bus accident that happened on November 8, 2019 in Palm Bay, Florida. The Plaintiff was an occupant in a public transportation bus that was struck by a vehicle driven by Ms. Heughins. The Plaintiff claimed that he looked out the front of the bus window and saw the Defendant's car heading at them head-on. Instantly, the bus collided with the car, running over and crushing the car, forcing the bus onto two wheels. After teetering on two wheels, the bus came slamming down, projecting the Plaintiff from his seat onto the floor. Unfortunately for the Plaintiff, none of this was true. This was a rather minimal sideswipe accident where there was minimal damage to the bus, and all was captured on the buses cameras.

As a result of the accident, the Plaintiff claimed severe injuries to his neck and low back, underwent multiple injections and back surgery at L4-5 and L5-S1. He incurred over $150,000.00 in past medical expenses and had a life care plan that totaled $1,061,383.00in future medical care needs. The Plaintiff's counsel, a very large national Plaintiff's firm, demanded $1,250,000.00 in their time limit demand and re-asserted that demand again at mediation. At mediation, the Defendant made a final offer of $50,000.00. After mediation, we continued to press the Plaintiff's counsel on discovery and were able to get the Judge to severely limit Plaintiff's treating doctor's testimony and was in the process of seeking the same regarding the Plaintiff's life care planner. After the final pre-trial conference with the Judge and knowing the matter was proceeding to trial within a week, the Plaintiff's counsel inquired if the amount offered at mediation was "still available". After additional negotiations and with the great support from our claims professionals team, we were able to settle this matter for $38,500.00 just a few days before trial was to begin.

Timothy S. Kazee and Anthony Aguanno (Deland, FL) (Auto Liability) obtained a favorable verdict of $31,555.37. The Plaintiff was injured in a hit and run accident caused by the insured. Liability was admitted, and the Defendant did not attend trial. The Plaintiff underwent cervical fusion and spinal cord stimulator procedures, with consistent treatment spanning four years and medical bills approximating $240,000.00. Futures were projected between $990,000.00 and $1,500,000.00. After Daubert motions (Sean Mahan, MD radiology), immediately before trial, the Plaintiff dropped her claim for TBI and anxiety, causing a major shift in Defense strategy. At closing, Plaintiff asked for **$7,234,548.00**. The Defense asked for **$34,184.04** for services through two neurosurgical consultations and a finding of no permanency. The jury recalculated the expenses to delete additional medical costs, returning a total verdict of $31,555.37. The Defense has multiple applicable proposals for settlement.

Steven Sundook (Ft. Myers, FL) (Premises Liability) obtained a Defense Verdict in the case of *Gino Perri v Ron A. Beecroft* in Lee County Circuit Court.

Gino Perri, a 51 year old retired postmaster from northern New Jersey, rode his bicycle onto the premises of JetBlue Park, also known as Fenway South, on December 22, 2017. He and his wife rode their bikes onto freshly poured wet cement squares on a walkway just outside the spring training baseball stadium. He claimed that he rode across the wet cement and abruptly stopped when his bike hit the lip of a dry square on the opposite side of the wet one he had just ridden across. He claimed this caused his neck to "jerk" forward. He testified that he had ridden his bicycle in that area without incident 200 times in the previous couple of years, since he first moved to Florida from NJ, after retiring from his job.

He retired early due to injuries from on-the-job workers' compensation accidents, including slipping on ice, lifting heavy postal trays and an "electrocution" incident in which electricity went from his right hand up his right arm into his chest. He underwent two prior significant lumbar surgeries and had complained of symptoms consistent with carpel tunnel syndrome and/or cervical radiculopathy. He was determined to be permanently and totally disabled prior to moving to Florida. He was actively treating with a pain management doctor at the time of the incident. He was taking narcotic pain medication, but claims he tolerated them well with no side effects.

Plaintiff's pain management doctor referred him to a neurosurgeon, who concluded he had a cervical radiculopathy and proceeded to perform an anterior cervical discectomy, which relieved some symptoms. After continuous complaints of right hand tingling, pain and numbness, as well as problems gripping and other functional problems with his right hand, a second open posterior multilevel cervical fusion was performed.

Plaintiff claimed he had trouble sleeping, could no longer bike ride, bowl or be intimate with his wife.

Our client, Ronald A Beecroft, is a small family-owned contractor. At the time of the incident, the company had had been told by Lee County Parks and Rec that the Park would be closed on the date of the concrete walkway repair. We argued that that the workers on the date of incident had no reason to anticipate the plaintiff's presence in the area they were working. They did not barricade the area of fresh cement because they were told the park was closed to the public that day.

Plaintiff argued that the area should have been barricaded and that the Plaintiff had no way of knowing the park was closed. The gates to the park were open. There were no cones, barricades, or other indication to him that the park was closed that day. Lee County had been a party defendant but was dropped weeks before trial.

The Plaintiff's status on the land was a major legal issue. We were able to have the court give instructions that Plaintiff was an uninvited licensee. We had a biomechanical expert to testify about the minimal forces involved in the incident, a CME doctor who testified the surgeries were not related to the bike incident and a Lee County Parks and Rep director, who testified the park was closed and our client was told no members of the public would be present that day.

Plaintiff's treating doctor admitted in video trial testimony he had not reviewed prior records and attributed cause of surgery to the bike incident only because Plaintiff told him so. He said if there was evidence of similar symptoms prior to the bike incident, that would affect his opinion on causation.

We obtained Plaintiff's Department of Labor workers' compensation file fairly close to the trial date. It showed complaints similar to the ones made following the bike incident. There was a Department of Labor IME Plaintiff used to apply to continue his permanent total disability workers' compensation claim. In the IME report, Plaintiff claimed he was unable to bike or bowl 8 months prior to our bike incident. There were handwritten forms filled out by the plaintiff himself regarding his pain and restrictions 8 months prior to our incident. Plaintiff also claimed he heard a news report that the Red Sox box office would be open, that he checked the schedule on his phone and was excited his beloved NY Mets were on the upcoming 2018 spring training schedule. We checked the 2018 spring schedule, and the Mets were not on the Red Sox Jet Blue spring schedule. Plaintiff did not look good in cross examination.

Citizens determined that the reasonable cost for the necessary services was $1,418.88, which it paid to the Plaintiff.

Plaintiff's credibility was a big issue for the Defense. Plaintiff asked for over $900,000.00 in his closing argument. After 55 minutes the jury reached a verdict for the Defense. We are moving for attorney fees pursuant to a $2,500.00 PFS served in July 2020.

John Daly and Michael Ferral (Miami, FL) (First-Party Property) obtained a Defense Verdict following a jury trial in Miami, FL in the case of *National Water Restoration a/a/o Marie St. Fort v. Citizens Property Insurance Corporation*. The Plaintiff in the case, National Water Restoration, performed water dryout services for a homeowner insured by Citizens Property Insurance Corporation in 2016. National Water Restoration charged Citizens $4,572.26 for its services. A dispute arose whether the services performed by National Water Restoration were reasonably priced and whether those services were necessary to protect the homeowner's property from additional damage. After its investigation, Citizens determined that the reasonable cost for the necessary services was $1,418.88, which it paid to the Plaintiff. The Plaintiff then sued over the difference between its invoice and the amount Citizens paid. For the defense, Citizens' industry expert, Raul Paredes, testified that Citizens had overvalued and overpaid on the claim. Ultimately, the jury found in favor of Citizens, finding that $1,418.88 was the reasonable cost for the services it performed. Our motion to seek the recovery of Citizens' taxable costs is pending.

The jury found in favor of Citizens on Plaintiff's roof claim, finding that she did not prove that she sustained a physical loss during the policy period at all.

Matthew Bernstein (Deland, FL) (Premises Liability) obtained a Summary Judgment in the case of ***Anderson v. Wells Fargo Bank, N.A.*** The Plaintiff alleged he slipped and fell on a foreign transitory substance inside a Wells Fargo bank. Security camera footage of the fall showed what appeared to be a pen cap on the floor where plaintiff fell but the court entered Summary Judgment in favor of Wells Fargo after the Plaintiff failed to present sufficient evidence that Wells Fargo knew or should have known the item was on the floor long enough to put Wells Fargo on notice of the condition. There is an expired proposal for settlement which we will be looking to enforce.

Carl Bober and Ashley Arias (Hollywood, FL) (Property) obtained a Defense Verdict on behalf of their client, Citizens Property Insurance Corporation, in a first party property breach of contract action brought by Plaintiff against her homeowners insurance carrier in a jury trial that took place in Fort Lauderdale, Florida.

An elderly widowed Plaintiff brought a breach of contract suit regarding a residential property insurance claim to her home related to a Hurricane Irma loss, which Citizens had denied due to policy exclusions for damages caused by wear and tear, rain, and for pre-existing damages. The Plaintiff sought payment for the replacement of her roof, which she had personally already paid for by the time of trial following the denial of her claim by Citizens, as well as for interior damages to her ceilings and walls in several rooms of the property. Plaintiff claimed that the damages were all due to Hurricane Irma. For the defense, Citizen's field adjuster and expert engineer testified that the damages were not due to wind from the hurricane, but instead were due to excluded causes under the policy. Our expert also used aerial photography to prove there was no material change in the condition of the roof from before and after the hurricane, as well as pre-hurricane photographs which showed its prior long term deterioration.

The jury found in favor of Citizens on Plaintiff's roof claim, finding that she did not prove that she sustained a physical loss during the policy period at all. The trial judge also directed a verdict in Citizens' favor on the Plaintiff's interior damage claims. Defendant's motion seeking the recovery of Citizen's attorney's fees and costs is pending.

Plaintiff's Demand at Trial: $41,494.64 plus claimed attorney's fees and costs in excess of $100K+.

Cody McCollum (Atlanta, GA) (Auto Liability) obtained a Summary Judgment in the case of *Tyrone Wilburn v. A & A Auto Sales & Rental et al*. Plaintiff allegedly injured his neck, shoulder, and back after being struck in a hit and run automobile accident. At the scene, Plaintiff was able to make out the license plate number of the striking vehicle. Plaintiff filed suit against a fictitious "John Doe" and served his uninsured motorist carrier, Auto Club Group. After several years of litigation, the name of the individual who had rented the vehicle was discovered. After the statute of limitations had run, Auto Club Group moved for Summary Judgment, as Georgia law makes clear that an entry of judgment against a known driver a condition precedent to the entry of judgment against an uninsured motorist carrier. Because the individual who was at-fault for the accident was known, yet not a party defendant, it was impossible to recover against plaintiff's own uninsured motorist policy with Auto Club Group, which had written a six-figure policy, thus faced substantial exposure. Cody and the claims professional partnered to plan and execute on a successful defense strategy.

Carl Bober and Paulette Fouts (Hollywood, FL) (Property) obtained a Defense Verdict on behalf of their client, Citizens Property Insurance Corporation, in a first party property breach of contract action brought by Plaintiff against her homeowners insurance carrier in the case *Johanna Aguirre Caceres v. Citizens Property Insurance Corporation*.

Plaintiff brought a breach of contract suit regarding a residential property insurance claim to her home related to a plumbing water leak, which Citizens had denied based upon the lack of direct physical loss to the property. The Plaintiff sought payment for interior damages including the replacement of her entire kitchen, and all of the flooring throughout her home. Plaintiff claimed that the loss was due to a sudden leak from under her kitchen sink which occurred while she was at work damaging the kitchen cabinets and flooring. Plaintiff's public adjuster testified that the leak caused the damage and testified regarding the need for and cost of replacement. For the defense, Citizen's field adjuster and expert engineer testified that the Plaintiff's property was not damaged due to the leak, that the claimed damage was due entirely to a subsequent unrelated event, and that the reported loss could not have occurred in the manner claimed by the Plaintiff and her public adjuster. The jury found in favor of Citizens on Plaintiff's claim, finding that she did not prove that she sustained a physical loss during the policy period. Defendant's motion seeking the recovery of Citizen's attorney's fees and costs is pending.

Plaintiff's demand at trial was $31,873.28 plus interest and claimed attorney's fees and costs in excess of $80,000.00.

Carl Bober and Ashley Arias (Hollywood, FL) (Premises Liability) obtained Summary Judgment in favor of our client in the negligence case of ***Silvia Tercero v. Sobarzo Enterprises, Inc. dba Sedano's Supermarket #14***. The 54-year old Plaintiff allegedly slipped and fell on some grapes and water at our client's grocery store, and claimed to have sustained herniated discs and knee derangement, with surgical recommendations. Plaintiff argued that a former employee in the produce section observed the creation of the spill and relied upon the store surveillance video from the date of the incident, which appeared to show the employee facing in the direction of the spill at the time it occurred, to argue that the defendant had actual and/or constructive notice of the condition. In our defense, we obtained a post-suit recreation photograph from the area where the employee was seen standing in the video at the time of the spill which affirmatively showed that the employee could not have been able to see the area of the spill as claimed by opposing counsel, and also argued that the interval of time between the creation of the spill and the Plaintiff's accident was otherwise insufficient as a matter of law. Utilizing the new federal summary judgment standard, the Court found that no reasonable jury could find that Sedano's had actual or constructive notice of the alleged dangerous condition, and that there was no evidence of negligence on its part. Our Motion for Entitlement to Attorney's Fees and Costs is pending.

Nicole Hillery (Charlotte, NC) (Workers' Compensation) In *Jones v. Trailhead Auto Group*, Plaintiff alleged that a co-worker/vendor attacked him during the work day and broke his leg during the altercation. He further claimed he is still unable to find suitable employment as a result of this 2018 injury. Vernis & Bowling defended the claim, arguing not only did Plaintiff start the altercation, but that he was also legally intoxicated and off the clock at

the time of the incident. The North Carolina Industrial Commission found Vernis & Bowling's credibility and intoxication defenses compelling and denied Plaintiff's claim in its entirety.

Miles Hickman (St. Petersburg) (Automobile liability) obtained a complete Defense Verdict in Pinellas County Circuit Court. This successful verdict was made possible by the hard work of all members of Miles' legal team.

The trial involved two different versions of the same motor vehicle accident. The subject accident occurred at a fork in the road coming from Ulmerton Road down to St. Petersburg. The fork went right to the I-275 South on ramp, and left onto MLK Jr. Street headed south. The impact between the two vehicles occurred on the on-ramp onto I-275 South.

The Plaintiff's version of the accident was that the Defendant failed to make his turn onto MLK Jr. Street, and instead took the I-275 South exit. Plaintiff then argued the Defendant stopped on I-275 South near the fork and began reversing backwards in order to take the MLK Jr. Street exit, thus impacting the front of her vehicle. The Defendant's version of the accident was that the Plaintiff failed to slow down around the curves of the on-ramp and then impacted the Defendant's vehicle from the rear.

At trial, the defense focused on the theme of common sense; that anyone with common sense does not go backwards on an interstate on-ramp. The defense also leaned heavily on the Plaintiff's failure to provide enough evidence to meet her burden of proof.

The Plaintiff's theory of the case focused on evidence that the Defendant was following his GPS, and the Plaintiff showed the jury that the fastest route (in general) to the Defendant's destination was to take the turn onto MLK Jr. Street. The defense rebutted the GPS evidence by showing that the Plaintiff failed to provide any details as to whether MLK Jr. Street was the fastest route on the day in question, considering that roadway conditions on any given day dictate the route given by the GPS. It was also noted to the jury that common sense dictates that the GPS would have re-routed itself if the Defendant missed his turn.

On cross examination, the defense impeached the Plaintiff on multiple inconsistencies in her testimony and explained to the jury on closing that the Plaintiff's testimony lacked credibility and thus, her entire version of the accident was not credible.

Ultimately, the Jury found that the Plaintiff failed to meet her burden of proof and returned a verdict of no negligence on behalf of the Defendant.

Cody McCollum (Atlanta) (Automobile Liability) obtained a complete Defense Verdict in plaintiff-friendly Dekalb County, GA. This was a disputed liability accident involving a motor vehicle operated by Plaintiff Robain, and motorcycle operated by Defendant Espinal-Walker. The accident occurred on I-20 near the Six Flags exit. Plaintiff alleged he was maintaining his lane of travel, when unexpectedly, the Defendant ran into the back of his vehicle, causing injuries to his neck and back which required hospitalization and physical therapy treatment. The Defendant alleged Plaintiff failed to maintain his lane, and swerved into her lane of travel, causing the impact. The reporting officer found the Defendant to be at-fault for the accident and gave her a citation.

Prior to trial, the Defense was successful in moving to exclude 1) the citation, because the Defendant did not plead guilty and it was adjudicated on the merits, and 2) the conclusions of the reporting officer, because they were based on inadmissible hearsay. Ultimately, the Jury felt the Plaintiff did not meet his burden of proof and returned a verdict of no negligence after only an hour of deliberation.

Carl Bober and Tamar Hoo-Pagan (Hollywood, FL) (Property) obtained a Defense Verdict on behalf of their client, Citizens Property Insurance Corporation, in a first party property breach of contract action brought by Plaintiff against her homeowners insurance carrier in a jury trial that took place in Fort Lauderdale, Florida, between November 29th through December 2nd, 2022.

Plaintiff brought a breach of contract suit regarding a residential property insurance claim to her home related to a reported windstorm loss, which Citizens had denied due to damages caused by wear and tear and for a policy exclusion for no peril opening

allowing rain to cause interior damages . The Plaintiff initially sought payment for the replacement of her roof, which she had personally already paid for by the time of trial following the denial of her claim, as well as for interior damages to her ceilings, floors and walls at the property. Plaintiff claimed that the damages were all due to the windstorm. Plaintiff's expert testified at trial that the wind and/or hail damaged the Plaintiff's roof and that it needed to be replaced as a result. However, at trial, Plaintiff for the first time withdrew the interior damage portion of her claim and instead asked the jury in closing argument only for the reimbursement of her actual expenses to replace her roof. For the defense, Citizen's field adjuster testified that the older roof exhibited evidence of wear, tear and deterioration, as well as that he found no opening in the roof apart from pre-existing holes in a chimney vent stack, and so recommended denial of the claim. The jury found in favor of Citizens finding that Plaintiff failed to meet her burden to show that wind damaged her property. Defendant's motion seeking the recovery of Citizen's attorney's fees and costs is pending.

Childress admitted that he had lied multiple times during his deposition, including when he testified that he ran the red light because the sun was in his eyes....

Plaintiff's demand at trial was $86,109.91, reduced to $26,000, plus claimed attorney's fees and costs in excess of $100K+.

Vernis & Bowling of Atlanta liability team (Atlanta, GA) (Commercial Auto) obtained a Defense Verdict on behalf of the Defendant towing company after a 3-day jury trial in a personal injury case in Glynn County. The Plaintiff claimed that the defendant tow operator had improperly connected the Plaintiff's vehicle to the tow truck, causing the Plaintiff's vehicle to suddenly shift to one side when the Plaintiff leaned into his vehicle to retrieve his personal belongings. The Plaintiff claimed that when his vehicle suddenly dropped, it hit the top of his head, causing a permanent traumatic brain injury (TBI) and a neck injury which required surgery. The Plaintiff was claiming over $265,000 in medical bills. Liability was disputed. Before trial, we successfully convinced the Judge to exclude the defendant tow operator's criminal record, which was extensive. Unfortunately, the Judge also refused to allow evidence of the Plaintiff's serious and extensive criminal record, despite case law demonstrating its admissibility. During *voir dire*, we also successfully rehabilitated more than 7 defense-friendly potential jurors and convinced the Judge to deny all 7 of the Plaintiff's motions to strike those jurors for cause. At trial, Plaintiff called a towing expert who testified that the Defendant failed to safely perform this tow operation. However, on cross, we were able to get the Plaintiff's tow expert to admit that he had not seen any evidence of negligence. Plaintiff also called his operating spine surgeon to testify in-person that the Plaintiff's spine surgery was necessary for the injuries caused by the incident. The surgeon also testified that the Plaintiff's neck injuries were permanent and would require a minimum of one future neck surgery, and possibly two. On cross examination, we were able to get the surgeon to admit that he had no personal knowledge of the incident, so his causation opinion necessarily relied on the assumption that the Plaintiff had been completely honest and forthright when reporting the facts of the incident, his symptoms, and his medical history in the exam room. In closing arguments, the Plaintiff asked for a total verdict of just under $3 million. After the close of the Plaintiff's case-in-chief and again after the close of evidence, both parties moved for directed verdict on the issues of liability and proximate causation. Each time, however, the Judge denied all motions from both sides. During the charge conference, we objected to numerous of the Plaintiff's proposed jury instructions, and the Judge sustained all of our charge objections except one. After deliberating for less than an hour, the jury returned a Defense Verdict.

Michelle Hendrix and Gregory Harris (Mobile, AL) recently tried the case of *Mitchell v. Childress and Walley Electric Company* in the Circuit Court of Mobile County, Alabama. Childress was driving a Walley Electric Company vehicle for a personal mission when he ran a red light at 50 mph (five mph over the posted speed limit of 45 mph). Childress

admitted to the investigating officer that he ran the red light. During discovery, Childress vehemently denied texting at the time of the accident, even when he was confronted with his phone records that clearly showed him texting in the moments leading up to the accident. Childress also testified untruthfully about the purpose of his mission at the time of the accident – he admitted to a personal mission, but the Plaintiff's attorney was able to easily prove that he was not truthful when he testified that he was delivering clean pants to his son at school because his son had an accident. School had been out for the summer for approximately two weeks before this accident. Plaintiff filed a complaint against Childress and Walley Electric for Negligence and Wantonness alleging that Walley Electric was vicariously liable because the accident occurred while Childress was in the course and scope of employment.

At trial, Childress admitted that he had lied multiple times during his deposition, including when he testified that he ran the red light because the sun was in his eyes (he was heading West at 8:13 a.m.) and that he was on his way back from his son's school. At trial, Childress admitted to texting when he ran the red light and that he was on his way back to the job site after delivering money to a friend. He told the jury that he lied during his deposition because his boss, Mr. Walley, was present during his deposition, and he did not want to lose his job, as he was the sole provider for his ten-year-old son. Plaintiff's counsel tried extremely hard to convince the jury that he was lying about delivering the money because he was trying to protect Walley Electric from a finding of liability, but the jury did not agree.

At trial, Childress admitted to texting when he ran the red light and that he was on his way back to the job site after delivering money to a friend.

Before trial, the Plaintiff refused to accept anything less than $1,000,000 to settle the case. The Plaintiff alleged a three month aggravation of a prior low back injury and new injuries to his neck that included a herniated disc and cervical dystonia resulting in severe migraine headaches. The Plaintiff's headaches are being treated with botulinum toxin injections that he can only receive once every three months. He testified that these injections provide him with relief for approximately three to four weeks, and then he suffers from excruciating migraine headaches for the next two months until he can get his next round of injections. The headaches are so severe that he has to go to a dark room and spend hours at a time in a recliner or in bed. The Plaintiff is 51 years of age and he has a life expectancy of 30.34 years.

At trial, the Plaintiff asked the jury to award approximately $40,000 in past medical expenses, $337,000 in future medical expenses, $110,000 in past pain and suffering, $110,000 in past mental anguish, $1,011,000 in future pain and suffering, $1,011,000 in future mental anguish, and an unknown amount of punitive damages for wantonness for texting and driving. They asked for more than $2,600,000 plus punitive damages.

After deliberating less than three hours, the jury found negligence by Childress only (they determined he was not in the course and scope of his employment with Walley Electric) and no wantonness by either Defendant. They awarded $325,000 in compensatory damages and nothing for punitive damages because there was not a finding of wantonness. This verdict was below the Defendants' last offer before trial.

Tim Kazee and Matthew Bernstein (Deland, FL) (Appeal) The Plaintiff parked in the drive thru lane of our client, Wells Fargo bank. Plaintiff then walked across the street to a bar. Upon returning to his vehicle, he was shot in the head. Plaintiff survived and filed a premises liability lawsuit in federal court against the bank and the alleged owner of the premises, Lilac-Group Sanford, for negligent security. Ownership and control of the bank parking lot was disputed. First responders found a firearm in Plaintiff's sweater and drugs near his person. Plaintiff testified he could not remember anything about the night of the incident due to his injuries. On behalf of Wells Fargo, we moved for Summary Judgment on the bases that (1) Plaintiff (a convicted felon) was engaged in the commission of a felony at the time of the incident by possessing a loaded firearm and drugs at the time of the incident; and (2) Plaintiff was an uninvited licensee and the defendants did not breach any such duty owed to him. Plaintiff argued there was no forensic proof the gun or drugs were his (such as fingerprints or DNA) and that he was a public invitee of the premises, for which Wells Fargo owed him a greater duty than that of an uninvited licensee. The district

court agreed with Wells Fargo's arguments and entered Summary Judgment in Wells Fargo's favor. Plaintiff appealed to the 11th Circuit Court of Appeals. Vernis & Bowling of Central Florida handled the appeal and the appellate court affirmed the federal trial court's Summary Judgment in favor of Wells Fargo.

Kory Watson and Lori Conklin (St. Petersburg, FL) (Vicarious Liability/Automobile Negligence) obtained Final Summary Judgment for Defendant Crestline Hotels & Resorts, LLC, d/b/a Hilton Singer Island Ocean Front/Palm Beaches against Plaintiff Alicia McKee, individually, and as Personal Representative for the Estate of Paul James McKee in the Fifteenth Judicial Circuit in Palm Beach County Florida before Judge Jamie Goodman.

The cause of action arose from a motor vehicle versus pedestrian accident that occurred on December 3, 2017 when a vehicle operated by a banquet manager of Crestline struck two pedestrians, Alicia McKee and Paul McKee. The collision resulted in the death of Paul McKee and serious injury to Alicia McKee. Plaintiffs filed suit against Crestline and banquet manger Anthony Horsford. Plaintiffs alleged Horsford was within the course and scope of his employment with Crestline at the time of the collision. It was undisputed that Horsford was employed as a banquet manager by Crestline on the date of the accident. It was also undisputed that at the time of the collision, Horsford was operating his own personal vehicle on his way home from his place of employment with Crestline.

Under Florida law, an employer is vicariously liable for tort purposes only if: *"(1)* the conduct is the kind the employee is hired to perform *(2)* the conduct occurs substantially within the time and space when it is authorized or required by the work to be performed, and *(3)* the conduct is activated at least in part by a purpose to serve the master." Discovery revealed a call from Horsford's phone to Crestline close in time to the occurrence of the collision. Plaintiffs alleged that Horsford was using, or attempting to use, his phone for business purposes at the time of the collision thereby placing him in the course and scope of employment. Plaintiffs attempted to establish that Horsford, a salaried banquet manager, was in the course and scope of employment when he placed the call because (1) communicating off the work site was common for Horsford, (2) as a salaried employee in the food and beverage line of work, he was essentially always within the time and space limits authorized by Crestline, and (3) the call was made in furtherance of Crestline's business interest.

Ultimately, the Court agreed with Defendant's argument and held there was no summary judgment evidence to support that at the time of the collision Crestline retained any control over Horsford's behavior. The Court specifically stated in its Order Granting Summary Judgment "Florida law does not hold an employer vicariously liable for the negligence of its employee in using a personal cellular phone to contact his employer while driving his personal vehicle from work to his home."

William Kratochvil and Joseph Bootka (Fort Myers, Florida) (Governmental Law) obtained Final Summary Judgment for Defendant Florida Department of Children and Families, an agency of the State of Florida, against Plaintiff Kacey Chiddister, as father and natural guardian of C.H., a minor, in the Twentieth Judicial Circuit in Lee County Florida before Judge Joseph C. Fuller.

The district court agreed with Wells Fargo's arguments and entered Summary Judgment in Wells Fargo's favor.

The cause of action arose from an incident that occurred over one year and one month after C.H. was born, when C.H. ingested his mother's, A.H., legal prescription of methadone. C.H. ingesting the methadone resulted in C.H. overdosing and being placed in a medically induced coma. After awaking from the medically induced coma C.H. had difficulties seeing, breathing, and with mobility. Additionally, C.H. suffered severe cognitive injuries. Plaintiff then filed a suit against the Florida Department of Children and Families. Plaintiff alleged that the Florida Department of Children and Families had a non-delegable duty to prevent C.H. from suffering any injuries because the Florida Department of Children and Families were conducting home visits

due to A.H. being in the middle of the adoption process of a minor who was in the dependency system. Plaintiff furthered alleged that the Florida Department of Children and Families put C.H. in a foreseeable zone of risk because the Florida Department of Children and Families did not remove C.H. from A.H.'s care when C.H. was born addicted to methadone and opiates. Additionally, Plaintiff alleged that the Florida Department of Children and Families put C.H. in a foreseeable zone of risk because A.H. was diagnosed with bipolar disorder and anxiety disorder; had a criminal history, including charges for fraud and using a false identification; had a substance abuse history including but not limited to, cocaine, pain pills, Xanax, and heroin; and was currently receiving methadone treatment from Operation PAR, Inc.

Pursuant to Florida Statute § 39.302(1) "[t]he department [of Children and Families] shall conduct a child protective investigation of each report of institutional child abuse, abandonment, or neglect. Discovery revealed that the Florida Department of Children and Families thoroughly investigated every abuse report received regarding C.H. and the other minor child A.H. was adopting. After the investigations there was never any findings of abuse or findings that A.H. was abusing illicit drugs or her legal prescription of methadone.

After nonbinding arbitration Plaintiff was awarded $25,000,000.00 in damages. Shortly thereafter, Vernis & Bowling filed a trial de novo order and set a hearing for their Motion for Summary Judgment.

At the hearing, defense counsel argued and Judge Joseph C. Fuller agreed that the Florida Department of Children and Families does not have the same duty of care towards biological children who are not in the dependency system as they do towards foster children; that the Florida Department of Children and Families only duty was to investigate abuse allegations; that the Florida Department of Children and Families did not have a duty of care towards C.H. because the Florida Department of Children and Families did not put C.H. in a foreseeable zone of risk; that there was no proximate cause between the Florida Department of Children and Families actions and C.H.'s injuries; and that the Florida Department of Children and Families did not have probable cause to remove C.H. from his biological mother, A.H., until C.H. overdosed on his mother's legal prescription of methadone.

Carl Bober and Paulette Fouts (Hollywood, FL) (Property) obtained a Defense Verdict on behalf of their client, Citizens Property Insurance Corporation, in a first party property breach of contract action brought by Plaintiff against her homeowners insurance carrier in a jury trial that took place in Fort Lauderdale, Florida.

Plaintiff brought a breach of contract suit regarding a residential property insurance claim to her home related to a reported water supply line leak to her refrigerator, which Citizens had denied due to their investigation revealing no direct physical loss as a result of the reported claim, as well as for unrelated damages that were excluded under a policy exclusion for constant or repeated leakage. The Plaintiff sought payment for the replacement of her kitchen including cabinetry, floors and walls at the property, as well as continuous flooring throughout much of her home. Plaintiff's expert Peter Lemus testified at trial that the one-time reported leak from the pressurized supply line was the cause of the claimed damages and about the scope of the repairs needed as a result. For the defense, Citizen's field adjuster testified that his inspection revealed no evidence of a direct physical loss, and that he recommended an expert be retained to further evaluate the claim. Expert engineer Dan Connery testified that he found no evidence the flooding event claimed by Plaintiff had occurred as reported by the Plaintiff. The jury found in favor of Citizens finding that Plaintiff failed to meet her burden to show that her property sustained a direct physical loss on the reported date of the incident. Defendant's motion seeking the recovery of Citizen's attorney's fees and costs is pending.

C.H. overdosed on his mother's legal prescription of methadone.

The Plaintiff's last demand at trial was $45,382.33, plus claimed attorney's fees and costs in excess of $100K+.

CLIENT FEEDBACK

"Robin said that this file represents the first opportunity for her to work with Brandt, and he has been fantastic. She said that Brandt is thorough, timely, and responsive. He quickly reviewed the file, addressed the time sensitive issues, and recommended a plan of action. She also added that Brandt has a delightful sense of humor, which makes working with him even more enjoyable."

Regarding Brandt Carlson, St. Petersburg

"We really like Tony and he is doing an outstanding job! Sometimes we don't have time to be cheerleaders and send job well done, just wanted to call out recognition and his outstanding efforts so far."

Regarding Antonio Caula, Jacksonville

"I have very much enjoyed working with Ken and his team. They have been great very responsive and informative. I just recommended a peer to use them on a file."

Regarding Ken Amos and team, St. Petersburg

"We recently had Josef Fiala, Esq. represent an HOA we manage in Saint Lucie County. The litigation seemed to be very difficult for months on end. Joe went far above the Board's expectation by visiting the development, interviewing the Board as well as myself the property manager in order to get an understanding of the issue at hand. The day of arbitration the Board, as well as our company, felt we were far better prepared regardless of the outcome. We appreciate the service rendered by Josef Fiala, Esq. as well as your firm!"

Regarding Joe Fiala, Palm Beach

"Terry Lavy did an Excellent Job on these cases with over $275k in demands; one with another DC firm that was about to pay out, just before I spoke with Terry and had them consolidated for his handling. He got them both Dismissed for $0.00 with Prejudice."

Regarding Terry Lavy, Ft. Myers

"Attorney Kimberly Sheridan and attorney Michael Becker have been very helpful and timely on all their responses to our requests. We couldn't be happier with their service, and we appreciate everything they have done for us. We look forward to working with them and the firm in the future."

Regarding Kimberly Sheridan and Michael Becker, Atlanta

"Michael Ferral and team did a great job with a tough scope and pricing AOB case. It was tried to a jury and they returned a zero dollar verdict. That is very difficult to do, especially in that jurisdiction Further, they litigated the case quickly and at reasonable cost. The fact they achieved this in budget and in a relatively short amount of time deserved some acknowledgment"

Regarding Mike Ferral and team, Miami

"I wanted to take the time and express my appreciation for Isam's willingness to help. Plaintiff attorney recently filed a default on one of my claims after initially suggesting he would dismiss it. Isam was the first to come to my mind. I e-mailed him and he called me that same morning to make sure I was okay. The call meant so much to me. He then forwarded a dismissal to me a few short days later! Isam is an absolute asset to your firm!"

Regarding Isam Alsafeer, Melbourne

COMMUNITY ENGAGEMENT

The Atlanta office collected toys for the Giving Grace organization.

This holiday season, the Atlanta office gave back to the community by teaming up with Giving Grace to help two families this Christmas. Giving Grace is a charity organization that serves community members with acute needs that threaten them with displacement and the loss of meaningful connections. Giving Grace's goal, "… is to ensure [families] can maintain a healthy, secure presence in the community to give them the best chance of success moving forward. Our efforts are geared toward single-parent families, persons experiencing homelessness, and the extremely poor." To do our part, the Atlanta office adopted 2 families, donating items off wish lists provided by both families. We'd like to thank Giving Grace for their charitable efforts in supporting our communities and every Atlanta team member that donated gifts.

UPCOMING EVENTS

Vernis & Bowling and Diversify One will be co-hosting a Diverse Supplier Networking Breakfast at the National RIMS conference.

For more information, please contact Tammy Bouker at tbouker@national-law.com.

Matt Bernstein, Esq. (Deland, FL) will be a panel speaker at the Employment Execusummit, which will be held in Naples, FL in April.

Vernis & Bowling is a proud sponsor of the following industry events:

Asian Pacific American Bar Association of South Florida Board Installation Dinner

CLM Atlanta and Tampa Chapter Networking Events

CLM Annual Conference

CLM Workers' Compensation, Casualty & Risk Management Conference

Claims Xchange Education on Location: Chicago

Claims Xchange Annual Conference

Marsh Southeast Claims Summit

Blue Goose Texas Pond New Year's Charity Event

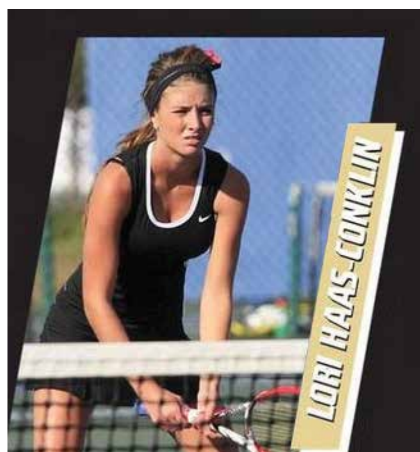
STAY UP-TO-DATE WITH ALL THINGS VERNIS & BOWLING

Vernis & Bowling is proud to announce their membership in the Asian American Insurance Network (AAIN). The Asian American Insurance Network (AAIN) is a national 501(c)(6) non-profit organization dedicated to the professional development and growth of Asian-Pacific Islander (API) professionals in the insurance industry through mentorship, networking, continuing education, and social awareness. The firm is proud to support this and other diverse organizations.

The National Black Lawyers is pleased to announce that Lindsay Tropnas of Vernis & Bowling in Miami has been selected for inclusion into its Top 40 Under 40 Black Lawyers in the state of Florida.

This honor is given to only the top 40 under 40 African American lawyers in each state or region with reputations for providing excellent legal representation in their respective practice areas. Membership into The National Black Lawyers is by invitation only and is based on current member referrals and independent research. We are proud to recognize the contributions of Lindsay Tropnas to the legal profession and welcome them into our African American legal brain trust™.

Vernis & Bowling is proud to announce that we are once again a **Top Performer in the Gallagher Bassett Legal Score Program**. We have been certified Gold for GL/Auto and Workers' Compensation for 2022.



Vernis & Bowling is proud to announce that Lori Conklin, Esq. from the firm's St. Petersburg, FL office has been selected to the Purdue University Northwest Athletic Hall of Fame.

Haas left her mark on the women's tennis program at Purdue Northwest. In 2015, she finished season with a school-record 11 wins, compiling an 11-3 overall mark at No. 1 singles, including a 6-2 mark in conference matches, earned the first All-Chicagoland Collegiate Athletic Conference honor in program history after being named to the first team, named school's second first-team CoSIDA Academic All-American, earned CoSIDA Academic All-District honors, she is the current Purdue Northwest women's tennis career leader in wins, earned NAIA Daktronics Scholar-Athlete, and an All-Academic CCAC. In 2016, she was named CoSIDA Academic All-American of the Year, the first time in Purdue Calumet history, and earned CoSIDA Academic All-District.

OFFICE LOCATIONS

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