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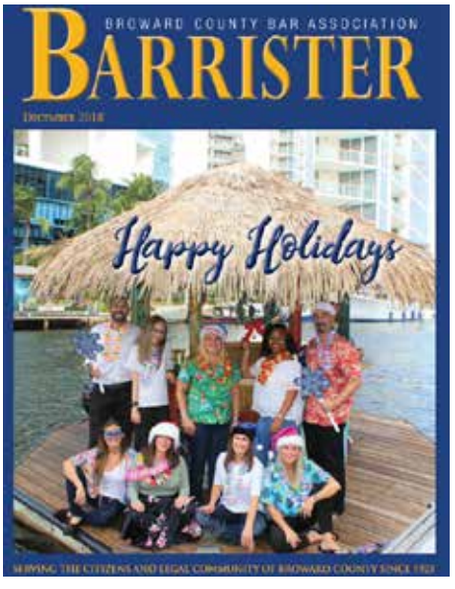
ON THE COVER
The Broward County Bar Association and the BCBA Publicity Committee wishes everyone a wonderful holiday season. The committee members meet monthly and work collaboratively to provide up to date legal content to our readers. If you are interested in joining the Publicity Committee, please let us know by emailing membership@browardbar.org. Pictured (back row left to right): Joshua H. Lida, Amber L. Ruocco, Edwina V. Kessler, Karen Williams North & Braulio N. Rosa. (front Row left to right): Amanda R. Marks, Lisa Ferreri, Deborah Ward & Jeni L. Meunier. Thank you to Fort Lauderdale Tiki for providing us with the boat!

inside this issue



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letter from the president

Edwina V. Kessler

It is hard to believe that 2018 has almost come to an end. This time of year is always a good time for reflection and resolution both professionally and personally. This past year at the BCBA, was a busy productive year. The BCBA's goal as always is to try and find new ways to add value and benefits for our members.

The BCBA continued with our strong programming that we have held in the past. One of Past President Tom Oates' goals was to ensure that the BCBA had the capability to record and make available online CLE programming that is hosted at our Conference Center to enhance member services. I am happy to report that most of the CLE's that took place at the BCBA Conference Center in the past year were recorded. These videos can be purchased & viewed through the "Be Connected" link on the BCBA's website or by visiting cle.browardbar.org.

The BCBA and the 17th Judicial Circuit hosted numerous events in 2018. Along with individual investitures of new Judges throughout the year, in January, the first Judicial Procession & State of the Circuit event recognized newly Invested Judges and the Friends of the Bar Awardees. The event was a success and we will be hosting the second annual Judicial Procession and State of the Circuit in January 2019. In February, for Black history month we cohosted A Celebration of Black Legal Community, Broward's Legal Firsts. A new pilot program, the Professionalism and Civility Magistrate Program, the purpose of which is to promote the appropriate level of professionalism and civility among the lawyers practicing in our Circuit was launched in June.

In October, the BCBA along with several other VBA's hosted our first South Florida Legal Mentoring Picnic. Vice Mayor Brogan attended and proclaimed October 27th as "Love Your Broward Lawyer Day." Aron Gibson and his committee did an outstanding job organizing the event. There was an excess of 30 mentors and mentees matched. Thank you to all of our sponsors and FIU Law, NSU Shepard Broad College of Law, University of Miami School of Law and St Thomas School of Law for your support and participation.

In preparing for my presidency, I attended several leadership conferences one of which was in Chicago. It became clear to me at then that the BCBA needed to step it up a notch and really look at where the bar is going. In August we held our first strategic planning session, it was a very productive weekend and I am happy to say that one of the many ideas will begin this month. On **December 14th** the first monthly Judicial Jaunt Series an Up-close Conversation will take place with The Honorable William W. Haury, Jr. at the BCBA Conference Center. The Series will allow members to gain insight into the operations of the Judge's courtroom. This will be a monthly series with the first six months already scheduled: **January 11th** with The Honorable Martin J. Bidwill; **February 15th** with The Honorable John B. Bowman; March 15th with The Honorable Sandra Perlman; **April 18th** with The Honorable David A. Haimes and **May 10th** with The Honorable Keathan B. Frink. Thank you to all the judges for taking the time to participate in this series.

In the last year and half the Florida Bar has been stressing the importance for attorneys to take time and spend it with family and to take care of themselves physically as well as emotionally. As I was sitting on a beach in the islands this summer in my place that allows me to completely relax, I remembered how important it is to take time for yourself and how easy it to go right back into our busy lives. I hope during this holiday season everyone will be able to spend time with friends and family.

The BCBA staff and section chairs are already busy planning for 2019 events including the Bench and Bar Conference. We are always looking for members to become active in our sections perhaps your 2019 resolution can be to become involved!

On November 23rd, our Events & CLE Manager, Lauren Riegler married Nicholas Capote! Many of you may know Nick as he attends and assists Lauren at many of our events. Congratulations and best wishes to the happy couple.

Happy Holidays and may 2019 be a healthy, happy and prosperous year for everyone.

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letter from the young lawyers' president

Brent M. Reitman

Looking back at this wonderful November, I trust and hope that everyone had a meaningful time with family and friends as well as an opportunity to think about the things that they are thankful for as another year comes to a close.

I want to thank all of those in attendance at the 31st Annual Young Lawyer's Golf Tournament to support Experience Camps. It is one of our largest events and requires a tremendous amount of time and effort from our Board and volunteers. So, as an initial matter, I want to extend a huge thank you to our entire Board of Directors along with our committee member, Jacqueline Revis, who arrived to Jacaranda before 6:00am on the day of the tournament to set up for this incredible event. Our golf chairs, Brooke Latta, Josh Levine, and Maria S. Fischer all did an amazing job in making the constellations align for this tournament which seems to grow every single year!

We had more participants sign up this year than the course could accommodate. We had fantastic hole sponsors which even featured digital golf swing analytics! Even the team who turned in a score card that was 5 strokes higher than the course's maximum score had a great time. In the end the only "loser" of the day was the actual golf course which was left full of bumps, bruises, and a considerable amount of divots.

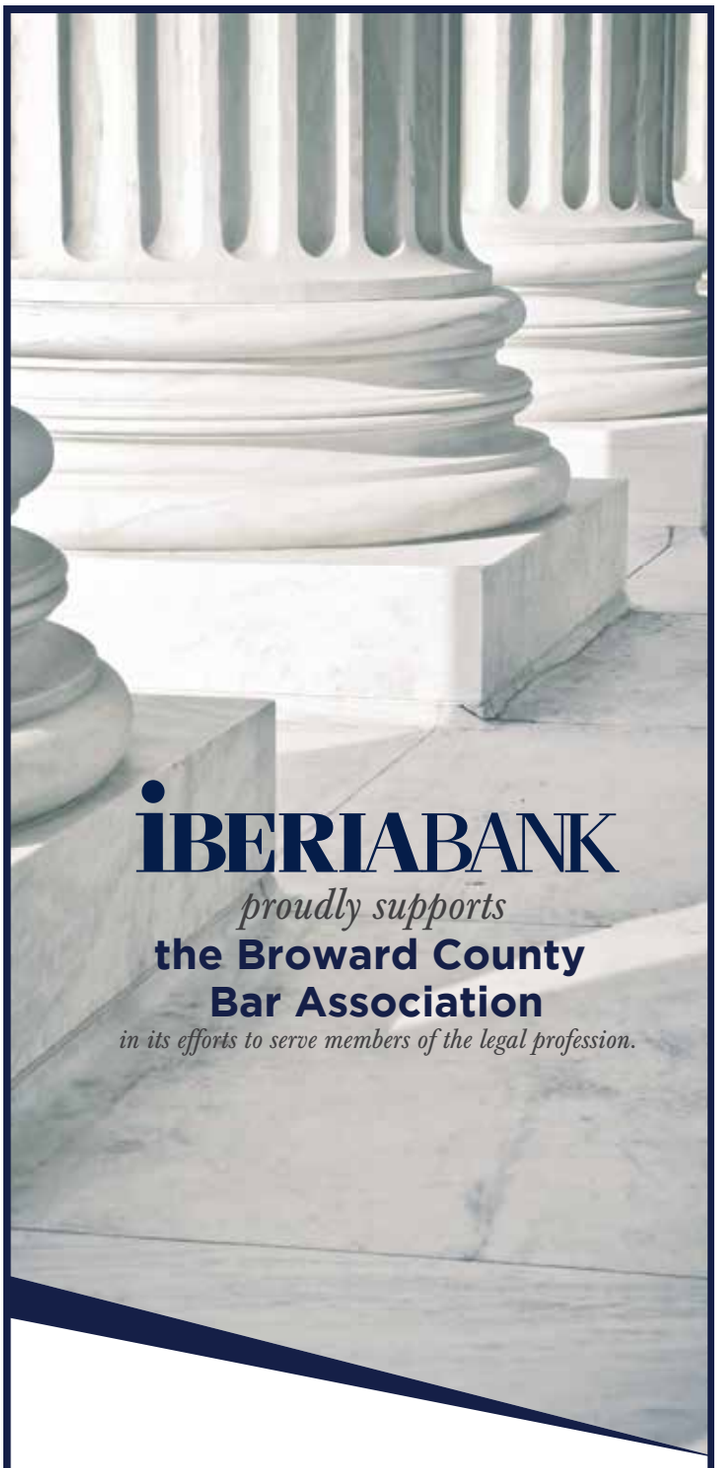
This year, we exceeded all previous records in attendance and charitable donations thanks to the tremendous amount of support from the entire Broward legal community. For that, we are very thankful.

However, it was also a somber event for me in that it was the first time that the legendary Walter G. "Skip" Campbell, was not in attendance. Tragically, we lost Skip at the end of October. This year's tournament was held just two-days before what would have been Skip's 70th birthday.

Before I was even a lawyer and was clerking for Skip Campbell, I remember him playing in the Young Lawyer's Golf Tournament every year. He was a tremendous supporter of the Young Lawyer's Section and a former president of the section as well. Skip was even credited with founding the Young Lawyer's Section Golf Tournament. Skip was so tremendously accomplished that my monthly allotment of five-hundred words could never adequately pay tribute to his political achievements, his philanthropy, and his activism in the community, his public service, or his impact and success in law.

I would need a novel for that.

One would be hard pressed to find a person in our Broward Community who was not, in some way, positively impacted by Skip Campbell. So, in his honor, the Young Lawyer's Section has decided to rename our golf tournament so that his memory will endure with the tournament he created. Each year, the Young Lawyer's Golf tournament will be known as the "Skip Campbell Memorial Tournament" presented by the Young Lawyer's Section. We thank Skip for the lasting impact he has made on our tournament, our organization, our community, and our State.



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Florida's Ever-Expanding Statute of Repose Period for Construction Defect Claims

by Andrew D. Wyman

Until recently, a developer, general contractor or subcontractor could reliably calendar 10 years from completion of their work on a project to know that any construction defect lawsuit filed thereafter would be time barred under the 10-year statute of repose period contained within Florida Statute §95.11(3)(c). However, due to the recent Fourth DCA decision in *Gindel v. Centex Homes* and legislative changes made this year to Fla. Stat. §95.11(3)(c), this is no longer the case.

The Statute of Limitations, as it pertains to latent construction defect claims, contains the following statute of repose language:

In any event, the action must be commenced within 10 years after the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion of the contract or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest.

In *Gindel*, the trial court entered summary judgment in favor of Centex and its subcontractor, Reliable Roofing and Gutters, Inc., based upon the above-referenced statute of repose language. The trial court had determined that, because the Plaintiff homeowners had taken possession of their townhomes on March 31, 2004, but had not filed their construction defect lawsuit until May 2, 2014, their claims were time-barred. In reversing the trial court, the Fourth DCA held that by providing the requisite Chapter 558 pre-suit notice of defect to Centex on February 6, 2014, (53 days before the 10-year mark) Plaintiffs had in fact timely "commenced an action" within the ten-year statute of repose period.

Moreover, based on fresh legislative changes to the statute of repose, builders who are the targets of actions for construction defects commenced after July 1, 2018, now have the ability to bring counterclaims, cross-claims and third-party claims "up to 1 year after the pleading to which such claims relate is served" (emphasis added). Here is the new language just added to Fla. Stat. §95.11(3)(c):

However, counterclaims, cross-claims, and third-party claims that arise out of the conduct, transaction, or occurrence set out or attempted to be set out in a pleading may be commenced up to 1 year after the pleading to which such claims relate is served, even if such claims would otherwise be time barred.

So, when you take the *Gindel* ruling and couple it with the new legislative language, conceivably, a subcontractor working on Association property where the developer's work is completed on December 1, 2018, can be forced to defend a construction defect lawsuit filed against it as far into the future as July 27, 2030.

Say an association delivers a Chapter 558 construction defect notice to the builder on Nov. 30, 2028, (the last day prior to the expiration of the 10-year statute of repose). According to *Gindel*, that is the timely commencement of a construction defect "action" against the developer. Then, say this pre-suit process involving an Association under Fla. Stat. §558.004 lasts 120 days. By the time suit is filed, it is now March 30, 2029.

However, lawsuits are rarely served the day they are filed. In fact, under Fla. R. Civ. P. 1.070(j), a plaintiff has 120 days from filing to serve a lawsuit on a defendant (subject to extension on proper motion and for good cause shown). That means the association may not serve its construction defect complaint on the builder until the 120th day after having filed it, i.e. July 28, 2029. The builder then has one full year from being served with that pleading to file its third-party claim against the subcontractor whose work was allegedly defective, until July 27, 2030. Thus, a subcontractor could legitimately be sued a full 11 years, 240 days after the completion of the contractor's work.

While those builders in direct privity with the owner can still reliably calendar 10 years from the latest of the various statute of repose trigger dates to not have to worry about latent defect claims (absent receipt of a Chapter 558 presuit notice within that time), those not in privity, such as subcontractors, potentially remain susceptible to construction defect claims up to 11 years and 240 days after completion of the contractor's work, and even longer from the conclusion of its own work depending upon when during that project the subcontractor concluded its work..

Although this new statutory language does not extend the claim deadline under the statute of repose for direct actions by the property owner, it will extend potential counterclaims, cross-claims and third-party claims on those projects where construction defect "actions" were timely commenced by a Chapter 558 presuit notice within the ten-year statute of repose. It is good to be aware of these developments when counseling clients on construction defect claims. B

Andrew D. Wyman, Esq. is the founder of Wyman Legal Solutions in Delray Beach, Florida, and holds a Martindale-Hubbell rating of "AV-Preeminent" for legal ability and ethical standards. An avid golfer, Andy resides in Boca Raton, Florida with his wife and two children. You can learn more about Andy at www.wymanlegalsolutions.com. Email Andy at andy@WymanLegalSolutions.com with any thoughts you would like to share concerning this article.

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THE JOYS AND DANGERS OF "CEASE-AND-DESIST" LETTERS

By Michael I. Santucci

By Michael I. Santucci, Chairman, Intellectual Property Section, BCBA

Business attorneys are often confronted with intellectual property issues for the first time when their clients are served with a "cease-and-desist" type demand or letter. Although such letters are merely demands, and do not compel conduct like an injunction, they can have legal effect. They also can be useful in attempting to resolve disputes without litigation. They do however have pitfalls. The failure to advise a client about such pitfalls can lead to embarrassment and a letter to a professional liability insurance carrier.

What it is; What it is not

Lay business owners often use the term "cease-and-desist" and injunction interchangeably. Obviously, one requires a case to be filed and one is often served prior to litigation. A "cease-and-desist" letter is sometimes accompanied by a request for an accounting or by an offer or demand to pay a license fee or settlement amount. These are merely requests/demands. An injunction however is enforceable via the contempt powers of a court.

Legal Effects

In many jurisdictions, the service and receipt of such correspondence can have legal effects which vary from jurisdiction to jurisdiction. In trademark law, receipt of such a demand can be considered actual notice of the trademark owner's rights. Establishment of common law rights to a trademark in a geographic territory requires use in good faith in some jurisdictions, including Florida. Receipt of a demand or notice letter from a trademark owner could be used to negate a finding of geographic expansion in good faith. In some jurisdictions, continued use of an infringing trademark, or a protected work in a copyright case, can be evidence of willful infringement and can result in heightened remedies.

In patent law, a properly-crafted notice letter can serve as formal notice of an alleged infringement which triggers the commencement of the period over which patent damages can be recoverable. Federal Circuit decisions teach that proper provision of actual notice requires: 1) a charge of infringement; 2) of specific patents; 3) against a specific accused device or activity; 4) by the patentee. See Amsted Indus. Inc. v. Buckeye Steel Castings Co., 24 F.3d 178, 187 (Fed. Cir. 1994).

Risks

There is a risk that a recipient of a demand letter or "cease-and-desist" type letter will file a preemptive lawsuit for a declaratory judgment. The lawsuit could also include a claim to invalidate or cancel any patent, trademark or copyright registration asserted in the demand. The stronger and more accusatory the letter is, the stronger the right to file such an action. See the "actual controversy" standard stemming from 28 U.S.C. § 2201. Basically, such an action is filed by an accused party, who seeks an exculpatory declaration. The claims of the party that sent the demand letter would then be required to be asserted as counterclaims, thereby making it a "defendant," instead of a plaintiff. This also forces the IP owner to litigate prematurely. Sometimes they are filed in a jurisdiction which is inconvenient to the owner. Filing a lawsuit prior to any demand letter is sometimes an option to avoid such a preemptive strike.

Some demands can even run afoul of anti-troll statutes (such as Florida's), some of which are heavy-handed and over-compensatory.

Conclusion

Advise of the risks of cease-and-desist letters. Advise your clients of their options to counter a cease-and-desist type demand with a declaratory judgment, cancellation or invalidity action. Consider the legal effects of such notices on damages and profits and findings of intent. Contact a litigator if you are a non-litigating IP attorney. B

Michael I. Santucci is the Chairman of the Intellectual Property Division of BCBA practicing all forms of IP, entertainment, immigration and litigation with Santucci Priore, P.L. in Ft. Lauderdale. He can be contacted at www.500law.com or mis@500law.com

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A New Tradition is Born: The South Florida Legal Mentoring Picnic

by Aron Gibson

Do you remember being a law school student - the confusion, the stress and the uncertainty of what awaited you on the other side of the bar exam? For some of us, it was years ago. For others, it was decades ago. Either way, many of us remember experiencing the fear of failure and the uncertainty of our future in the legal profession. As legal professionals, we have a duty to contribute to the success of future attorneys, and in turn our profession. One of the simplest ways to do that is to mentor law students.

When a law student is mentored by a practicing lawyer or judge, the experience can make the difference between setting that new law student on the path to a successful career, or a career marked by struggle. Having access to a mentor can provide knowledge, insight, comfort, and a sense of camaraderie to the law student that they otherwise might not have, which can make all the difference. Mentors provide real-world guidance that law students generally do not receive in law school.

Throughout each calendar year, there are several great mentoring events in South Florida hosted by various law firms, voluntary bar associations, and not-for-profit organizations. However, there has not been a large-scale mentoring event that was easily accessible to the Broward community.

Of course, we cannot discuss South Florida networking events without mentioning the annual Kozyak Minority Mentoring Foundation Picnic; one of the largest legal networking events in South Florida, held annually since 2004. That event was always held in Miami-Dade County, and the organization announced that the annual picnic would no longer be held past 2018, much to the dismay of many loyal fans. As a result of that, a large void was created in the South Florida legal mentoring landscape.

To fill that void, several of Broward's voluntary bar associations discussed creating a new mentoring picnic, centrally located in Broward, in order to be accessible to Miami-Dade County and Palm Beach County attorneys, judges, and law students. The core planning committee consisted of myself, Tabitha Blackmon, Madeleine Mannello, Lauren Riegler, Braulio Rosa, and Christopher Saunders. In just three months, we planned the mentoring picnic and hosted it on October 27, 2018.

The picnic was a huge success. There were games, music, lots of food, and networking. Most important of all, there was pairing up of mentors and mentees. By the end of the picnic, we matched over thirty pairs of mentors and mentees. Also, Broward County Vice Mayor Mark D. Bogen attended the picnic and read an official county proclamation declaring October 27, 2018 "Love Your Broward Lawyer Day".

If you missed the picnic and would like to mentor a law student, please email Lauren Riegler (lauren@browardbar.org) detailing the areas of law you practice, and we will be more than happy to match you up with a mentee.

We hope to see you at the next picnic on February 1, 2020! B

Aron J. Gibson is an attorney at Hyram Montero, P.A. where he focuses his practice in the areas of personal injury and criminal defense. Prior to joining Hyram Montero, P.A., he served as an Assistant State Attorney for the 17th Judicial Circuit. He is the committee chairperson of the Broward County Bar Association's Voluntary Bar Association Committee and president-elect of the Broward County Hispanic Bar Association. He can be reached at agibson@monterolaw.com or by calling 954.767.6500.

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A Tale of Two Injuries: A brief look at the impact of the statute of limitations in Florida's workers' compensation statute and some recent judicial decisions.

by Michael Riedhammer

Florida's workers' compensation scheme is made up of a rather complex set of laws for a system that exists simply to "assure the quick and efficient delivery" of benefits to injured workers.[1] The statute of limitations is one of the more confusing parts of the practice as multiple exceptions have arisen through the case law. Two relatively recent decisions from the First DCA illustrate how the exceptions can create very different outcomes for injured workers in seemingly similar scenarios. A workers' compensation practitioner needs to be familiar with the subtle differences in order to advise a client, on either side of the issue, how best to proceed.

The following hypothetical is illustrative of the conflicting results when it comes to how the statute of limitations has been applied to different scenarios:

Mr. Darnay and Mr. Carton were working for Manette Corp. when they were involved in a major motor vehicle accident in 2006. The truck they were traveling in flipped over multiple times and both employees were seriously injured.

Mr. Darnay sustained an injury to his left knee as it struck various parts of the truck's interior. He received medical treatment and lost wages benefits from Manette Corp.'s workers' compensation insurance carrier. His treatment plan peaked in 2007 with a left total knee replacement. He received, essentially, a prosthetic knee. Physical therapy worked well over the following months and in 2008 Mr. Darnay was declared to have reached maximum medical improvement. He returned to work and, since he was not having any difficulty, he did not seek further medical care and treatment.

Mr. Carton injured his low back as his torso twisted and stretched with the rotating vehicle. He also received medical treatment and lost wages benefits from the insurance carrier. His medical treatment led to a surgical fusion at the L4-5 level of his lumbar spine in 2007. He had rods and screws implanted to aid with the fusion. By 2008, he, too, reached maximum medical improvement and returned to work. Because he was pain free and functional, he stopped actively seeing his authorized doctor.

In 2018, ten years after returning to work, both workers' injuries began to flare up. Neither of them had received any medical care or indemnity benefits for several years.[2]

As expected by his doctor, Mr. Darnay's prosthetic knee was beginning to wear out and he needed it to be replaced. He sought benefits from Manette Corp.'s workers' compensation carrier and, in keeping with the holding in Gore v. Lee County School Board,[3] he was provided with another total knee replacement and was paid for the time he missed from work. He recovered and was eventually able to return to gainful employment with minimal personal financial impact. Because the knee replacement was a prosthetic device that qualified as a medical apparatus, his continued use of it (as if he could help it!) qualified as the continued provision of medical benefits which prevented the statute of limitations from running.

Contrast this with the situation of Mr. Carton who had a much different outcome. As expected by his surgeon, the levels of his spine above and below the surgery at L4-5 were compromised over the years by the stress from the fusion and ultimately required further surgical intervention. However, well aware of the holding in Ring Power Corporation v. Murphy,[4] Manette Corp.'s workers' compensation carrier denied Mr. Carton's request for further medical care. Once the fusion took hold in Mr. Carton's spine, the rods and screws that were placed in his body ceased to perform any function and were no longer a medical apparatus that he continued to use. Thus, once a year passed without Mr. Carton receiving medical care, so too did the statute of limitations. Mr. Carton was left to seek care from his private health insurance company where he had to contend with deductibles and co-payments. Without the appropriate coverage in place, he did not receive any compensation for the time he missed from work. He did eventually recover and return to work, though his personal financial situation did not fare as well.

Consequently, we have one accident, two injured workers with significant injuries and major medical treatment, but two very different results in their long term medical treatment and the associated expenses. The statute of limitations and the case law interpreting it are seemingly never fully settled. Subtle language in the statute resulted in two very different outcomes for Mr. Darnay and Mr. Carton and, indeed, for the exposure to Manette Corp. and its insurance carrier. Knowing the differences in how the law is applied will allow an attorney for either an injured worker or the employer and insurance carrier to correctly advise their clients on how best to proceed. B

[1] Section 440.015, Florida Statutes.
[2] Section 440.19, Florida Statutes, contains the statute of limitations language.
[3] 43 So.3d 846 (Fla. 1st DCA 2010).
[4] 238 So.3d 906 (Fla. 1st DCA 2018).

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Driving While License Suspended in Florida - A practical guide

by Justin Weisberg

Driving while your license is suspended is one of the more common offenses in Florida. Ironically, one of the collateral consequences of driving on a suspended license multiple times is that they will suspend your driver's license. Even though the elements are simple, the pitfalls of handling the cases incorrectly aren't obvious until after the case has been resolved.

The main statute for driving while license suspended in Florida is section 322.34, Florida Statutes. This statute provides three main types of driving while license suspended (herein after referred to as DWLS) are DWLS without Knowledge, DWLS with knowledge, and Driving as a habitual traffic offender.

DWLS without knowledge is a non-criminal traffic infraction, but it's a moving violation. It's only required that the officer have a valid reason to stop the client and the driver's license is suspended. The driver's intent or knowledge of the suspension is irrelevant. This version of the offense can add three points to a driver's license and can contribute to a 5-year habitual traffic suspension.

DWLS with knowledge is a criminal offense ranging from a second-degree misdemeanor to a felony depending on whether there are prior offenses, death, or serious bodily injury involved. In order to determine knowledge, the stopping officer will have to make four findings of fact. First, the officer will determine if the license is suspended or revoked. Second, whether the person's license remained suspended after a previous suspension. Third, the type of suspension the driver has, and lastly whether the driver is a registered owner or co-owner of the vehicle.

If all of the elements of the criteria above are met the officer is supposed to impound or immobilize the vehicle. Practically, unless the officer is arresting the defendant, they will usually cite the offender and direct them to drive home or allow someone else to pick up the vehicle.

If a driver gets three convictions for any of the following:

- DWLS (with or without knowledge)
- Driving a commercial vehicle while suspended
- D.U.I. or Leaving the scene with injury or death
- Voluntary or involuntary manslaughter
- A felony where a motor vehicle is used
- 15 convictions for moving violations and each of the conviction dates are within 5 years from the first to the third offense

the client will become a habitual traffic offender with a 5-year suspension. Driving on that suspension is a third-degree felony carrying among other items a potential 5-year prison term. Fla Stat § 322.264.

Once the driver is already a habitual traffic offender, he can only be charged with a misdemeanor driving while license suspended. Perryman v. State, 744 So. 2d 1031 (Fla. 4th DCA 1997).

There are several ways to minimize the impact of these cases on a client's license and criminal record. The first is statutory, section 322.34(11), Florida Statutes. It's commonly known as a clerks withhold. If you can get a valid license for most reasons(outlined in subsection 10) you can pay a fee to the clerk and get no conviction on your case (but if it's a criminal case you'll still have a criminal record).

In Dade, Broward or Palm Beach Counties, if driving on a suspended is a misdemeanor and not as a result of the defendant being at fault in an accident, the state attorney will frequently dismiss the charges if the defendant obtains a valid driver's license. If the driver has complied with getting a valid driver's license, but was at fault in an accident, sometimes a charge may change to section 322.34(1), Florida Statutes, driving on a suspended license without knowledge (but make sure it's a withhold of adjudication), or the charge may change to No Valid Driver's License pursuant to section 322.03(1), Florida Statutes. Either of these will avoid the client becoming a habitual traffic offender. If the client is not a U.S. citizen or has no legal status in the United States, getting a valid driver's license in Florida is not possible. B

Justin B. Weisberg, Esq. has been practicing for 21 years. His practice focuses on Traffic Defense, Criminal Defense and Personal Injury Law. He can be reached at 954-463-4096 or broward-law@aol.com

Case Law Update

by Debra P. Klauber

Florida Supreme Court puts end to debate over standard for expert testimony, and continues to follow Frye.
The Florida Supreme Court determined that the Florida Legislature overstepped its bounds in enacting a statute adopting the federal Daubert standard regarding the admissibility of expert testimony. In its decision, the Court reiterated its preference for the Frye standard which only allows challenges to expert testimony that is based upon new or novel scientific techniques. DeLisle v. Crane Co., SC16-2182, 43 Fla. L. Weekly S459 (Fla. Oct. 15, 2018).

Identical Proposals for Settlement made to two different defendants were not ambiguous and were enforceable.
In this case, the plaintiff served virtually identical proposals for settlement on two different defendants. Although the body of the proposals did not indicate that both defendants would be dismissed if one of the proposals was accepted, the notices of dismissal that were attached made it clear. Although the trial court and the appellate court found the proposals for settlement to be ambiguous, the Florida Supreme Court disagreed with the "nitpicking" of the proposals and upheld them as unambiguous and enforceable. Allen v. Nunez, SC16-1164, 43 Fla. L. Weekly S421 (Fla. Oct. 4, 2018).

Joint proposal which requires more than one defendant to accept it found invalid.
The Third District Court of Appeal reaffirmed the concept that proposals for settlement must be structured such that each offeree can independently evaluate and settle his or her respective claim. Where a proposal was made to two separate defendants, even where it apportioned certain amounts to each, it was invalid where it did not allow one of them to settle the claim on his, her, or its own, irrespective of what the other defendant chose to do. Atlantic Civil, Inc. v. Swift, 3D25-1594, 43 Fla. L. Weekly D2253 (Fla. 3d DCA Oct. 3, 2018).

A claim for third-party spoliation of evidence does not accrue until the underlying tort case is resolved. As such, the spoliation claim cannot be litigated and tried along with the tort claim.
The Third District joined its sister courts in holding that a third-party spoliation claim, which is made by a plaintiff against someone other than the tortfeasor, should be abated or dismissed until the underlying tort claim is resolved. The rationale for this holding is that the damages suffered by the plaintiff, due to the inability to use the evidence, cannot be determined until the tort claim is decided. Amerisure Ins. Co. v. Rodriguez, 3D18-1524 and 3D18-1058, 43 Fla. L. Weekly D2225 (Fla. 3d DCA Sept. 26, 2018).

Court upholds dismissal of case arising out of allegedly false and malicious Facebook posts against California defendants, based on a lack of personal jurisdiction.
A Florida plaintiff, who alleged that she had been the subject of defamatory statements posted on Facebook attempted to sue two California defendants in Florida court. The court did recognize that the posting of allegedly defamatory electronic statements which are accessed in Florida can constitute a tortious act in Florida that is sufficient to satisfy the long-arm statute. However, because the defendants did not have sufficient minimum contacts with the state to satisfy due process requirements, the appellate court affirmed the decision to dismiss the case for a lack of personal jurisdiction. Estes v. Rodin, 3D17-1201, 43 Fla. L. Weekly D2313 (Fla. 3d DCA Oct. 10, 2018).

Trial court erred in dismissing complaint that was filed by co-personal representatives who had not yet been appointed. Once properly designated, the personal representative could be properly substituted and the claim related back.
The filing of a case by someone who is purported to be, but has not yet been appointed a personal representative, in an effort to file suit within the statute of limitations, is not a nullity; rather, once the individual is properly named as a personal representative, his or her status as such, and the capacity to sue, relate back to the date of the original filing of the complaint. Levy v. Ben-Shmuel, 3D17-2355, 43 Fla. L. Weekly D2229 (Fla. 3d DCA Sept. 26, 2018). B

Debra P. Klauber, Esq., a partner with Haliczer Pettis & Schwamm, oversees the firm's trial support and appellate practice and provides guidance to litigators throughout Florida. Debbie can be reached at 954-523-9922 or dklauber@hpslegal.com.

New Year, No Resolutions

by Jeni Meunier

It's that time of the year again. What started four thousand years ago by Babylonians when they would make promises to their gods at the start of each sun cycle, continues today when we make promises to ourselves to improve our lives in the coming year. Even if we don't verbalize it out loud, most of us tell ourselves something we will endeavor to do.

Studies show that as we age, we are less and less likely to make major life changes, and if we do, we are less inclined to maintain them. According to U.S. News, approximately eighty percent of resolutions fail by the second week of February. Experts agree that the more effort required to achieve your resolution, the more the odds favor failure. So instead of a resolution, we are going to talk about a lifestyle addition, not change. In this month's column, I'm going to suggest something that almost anyone can do, and the effort it involves depends on the individual. You can take it easy, or you can go hard; either way you'll benefit. I'm talking about Yoga. Erase your preconceived notions and let me present my case.

Research shows that if we are learning something new, we are more likely to continue it. Yoga is an individual practice that you will constantly work at to improve. And, as you improve, the benefits become greater. In addition to the physical improvements of our body, it's the mental side that most yoga practitioners enjoy. The legal profession consists of a lot of sitting and mental stress. Neither is good for our bodies, and yoga can help counteract the negative aspects of both.

Watching someone do yoga, you wouldn't think the advantages of practicing yoga would yield the same results of strenuous exercise. Physically, well documented benefits of yoga include increased muscle strength and tone, weight reduction, cardio and circulatory health, increased flexibility, and more energy and vitality. I would argue anyone reading this could use more of the aforementioned. Because it is an individual practice, the amount of physical effort one puts in it is up to each practitioner. In any yoga class, you'll see body shapes of all sizes and different levels of fitness. The hardest part of getting started is walking into your first class. The apprehension will tug at your nerves as you'll think the other members will be watching you. They won't. They will be in their own thoughts, as you will be within ten minutes. Guided by an instructor, you will simultaneously practice your mental yoga and you will feel all your fears leave with your sweat.

It is the mental benefit that will help with the stress our profession brings. It all starts with mindfulness. While doing yoga, you'll be present in the moment. And it is that presence that will bring the clarity that we often lack in our daily duties. Upcoming cases, pending meetings, office politics, employee issues, anything we can consider a stressor vanishes when we work on our mindfulness while doing yoga. When new to yoga, you will be focusing on the poses and stretches and all thoughts will be about maintaining or doing better than you did previously. As the physical efforts become easier, your mental practice will get deeper. Mindfulness is as much a practice as the physical aspects are, and as you enjoy your improvements of each, you will strive for more.

Whenever I recommend a new Netflix show to a friend, I ask that they give it at least two episodes to see if they like it. With yoga, I ask that you give it two classes. Yoga has been practiced for twice as long as the Babylonians were breaking promises to their gods. Two hours won't kill you. It might just help you. B

Jeni Meunier is a Director at Trustpoint.One. Trustpoint.One provides end-to-end eDiscovery capabilities, in forensic consulting, processing, hosting, review/staffing, production and court reporting and translation services. Jeni can be contacted at Jeni.Meunier@Trustpoint.One

December Calendar

5 ADR CLE: Cross Cultural Mediation
Sponsored by: Upchurch Watson White & Max
Time: 5:00 p.m. – 8:30 p.m.
Venue: BCBA Conference Center
Cost: $30 BCBA Member; $45 Non-member

12 Young Lawyers' Law-LaPalooza
Time: 8:30 a.m. – 5:30 p.m.
Venue: Broward County Courthouse
Cost: $75 BCBA Member; $100 Non-Member

12 Construction CLE: Construction Project Phases
Sponsored by: Paul J. Del Vecchio Construction Consultants Inc.
Time: 12:00 p.m. – 1:30 p.m.
Venue: BCBA Conference Center
Cost: Free Construction Section Member; $15 BCBA Member; $30 Non - Member

12 YLS Holiday Luncheon
Time: 12:00 p.m. – 1:30 p.m.
Venue: Timpano Las Olas
Cost: $25 BCBA Member; $30 Non-member

14 Judicial Jaunt Series: Judge Haury
Sponsored by: Rissman, Barrett, Hurt, Donahue, McLain & Mangan, P.A.
Time: 12:00 p.m. – 1:30 p.m.
Venue: BCBA Conference Center
Cost: $20 BCBA Member; $30 Non-member

January Calendar

5 Guardianship Class - 8 Hour Adult
Time: 9:00 a.m. – 5:00 p.m.
Venue: BCBA Conference Center
Cost: $180; No Walk-ins accepted

11 YLS Breakfast with the Broward County Judiciary
Time: 7:45 a.m. – 8:45 a.m.
Venue: Broward County Courthouse - Law Library
Cost: $10 YLS Member; $15 Non-Member

11 Judicial Jaunt Series: Judge Bidwill
Sponsored by: Rissman, Barrett, Hurt, Donahue, McLain & Mangan, P.A.
Time: 12:00 p.m. – 1:30 p.m.
Venue: BCBA Conference Center
Cost: $20 BCBA Member; $30 Non-Member

12 Guardianship Class-4 hr Minor
Time: 9:00 a.m. – 1:00 p.m.
Venue: BCBA Conference Center
Cost: $100; No Walk-ins accepted

16 Solo/Small Networking Dinner
Time: 6:00 p.m. – 8:00 p.m.
Venue: Dave & Buster's Hollywood
Cost: $40 BCBA Member; $55 Non-Member *$5 price increase on 1/09/2019

25 2019 Judicial Procession and State of the Circuit
Sponsorships Available!
Time: 1:00 p.m.
Venue: Broward County Courthouse – Jury Assembly Room

Save the Date!

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2019 Workers' Compensation Conference

March 8, 2019
International Women's Day: A Celebration of Women in the Legal Community "Broward's Women Pioneers"

April 5, 2019
2019 Raising the Bar

May 3, 2019
2019 Law Day Luncheon

June 22, 2019
2019 Annual Installation Gala Dinner

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