



Wishing everyone a Happy Holiday and safe New Year!

VERDICTS: AVOIDING THE RISING TREND IN 2022

by Daniel Santaniello, Esq., and Joseph Donnelly, Esq.

We all know a “Nuclear Verdict” when we see it - a One Billion Dollar verdict on a trucking fatality in a conservative county in North Florida, \$340M in rural Georgia, \$260M trucking fatality in Texas, \$410M verdict in another conservative county in Florida. These are all post-COVID nuclear verdicts. Avoiding one starts with one basic premise – pick and choose your battles. Candidly, the facts in the \$1B verdict were reptilian - the death of an 18-year-old college student who had stopped in interstate traffic due to an accident caused by Defendant 1 and crushed from behind by Defendant 2. Both truckers had distraction and safety issues and in this case, the only represented defendant still took 10% of a nuclear verdict.

The real question clients should be asking is what does the trend-line look like for post-COVID run-of-the-mill claims? The short answer is that the jury is still out. Post-COVID, our firm has had a One Dollar (\$1) verdict in Broward, a few defense and plaintiff verdicts, but nothing extraordinary. However, an experienced defense trial lawyer in Broward took a \$5M verdict last summer on a back surgery where the plaintiff only asked for \$2M. What message was that jury sending when it awarded 2.5 times the ask? [Read more ... page 2.](#)



Daniel Santaniello, Esq.



Joseph Donnelly, Esq.

VERDICTS, SUMMARY JUDGMENTS, APPELLATE RESULTS:

After a 4-day trial in federal court, the jury returned a verdict of \$1.00 on November 10, 2021.



Dorsey Miller, Esq.

Ft. Lauderdale Managing Partner Dorsey Miller, Esq., and Senior Partner Franklin Sato, Esq., obtained a favorable verdict in an excessive force matter styled *Slayden v. Castro, et al.* in the United States District Court for the Southern District of Florida. The Plaintiff, an inmate at the Broward County Main Jail, alleged that he was attacked by two BSO deputies in the early morning hours of August 7, 2018. The Plaintiff claimed that approximately three hours before the incident, one of the deputies covered one of two windows on his cell to conceal the attack from the surveillance cameras. Conversely, the Defendant deputies argued that the Plaintiff’s window was covered because he had exposed himself through that window to female officers working in the Control Booth of Plaintiff’s unit on multiple occasions, including the evening before the alleged incident. [Read more page 4.](#)

Jacksonville Defense Verdict on November 2, 2021. During closing arguments, Plaintiff requested a verdict in excess of \$1.3M.



Todd Springer, Esq.

Jacksonville Managing Partner Todd Springer, Esq., and Junior Partner Deana Dunham, Esq., obtained a defense verdict following a three-day jury trial in matter styled *Joyce Daugherty v. Defendant Retail Store* in Baker County, Florida. Mrs. Daugherty, a 70-year-old preschool teacher, alleged that Defendant breached its duty by negligently allowing a “saturated” mat to remain on the floor of the store’s vestibule, which caused Plaintiff to slip and fall. As a result of the incident, the Plaintiff claimed an injury to her right hip, for which she underwent emergency surgery and expressed continued complaints of pain and limitations. Plaintiff presented medical bills totaling approximately \$150,000.00, although the court had previously granted Defendant’s Motion in Limine to limit the medical bills to what was allowed by Medicare. The parties stipulated to past medical expenses in the amount of the liens, which totaled approximately \$43,000.00. [Read more page 4.](#)

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VERDICTS: AVOIDING THE RISING TREND IN 2022, *CONT.*

by Daniel Santaniello, Esq., and Joseph Donnelly, Esq.

Statistically, “from 2010 to 2018, the size of verdict awards increased at a rate of 51% annually. By comparison, inflation and health costs grew by only 1.7% and 2.9% annually.”¹

So that begs the question – what does the trend look like going into 2022? We believe the key to staying below the trend-line is to employ several strategies from the onset of the case assignment. We discuss a few key strategies here.

Millennial Jurors. Recent studies show that the public perception of large corporations is on the decline.² Further, studies show that the majority of jurors have negative views of corporations.³ Millennials have a strong desire to feel that they are making a difference. The easiest way for them to obtain this feeling is by delivering a high verdict against a corporation they feel puts profits over people. We have to shape our story early to deal with this problem. That means developing a personal responsibility theme, directing the narrative and strategic deposition preparation of our insureds is critical.

Employ a Reverse Reptile Strategy. The Reptile strategy tries to establish a safety rule and argue that violation of the rule endangers the whole community, including the jurors. This is clearly a “golden rule” violation as it puts the jury in the shoes of the plaintiff – hence why it is so effective. As pointed out in *Best Review* (November, 2021), Paul Horgan, head of U.S. National Accounts for Zurich North America, commented big “*verdicts are becoming more common and are being driven, in part, by aggressive and effective plaintiff’s attorneys and jurors’ beliefs that big corporations must be punished for their misdeeds.*”⁴ Defending corporations is not easy in this environment. Corporations are to be treated equally to an injured plaintiff. This theme needs to be explored carefully in jury selection. As for trial, we also develop a theme that humanizes our client. Is it a family-owned business? Does it have an American

Story on how it began? Does it treat its employees well? Does our client employ our fellow citizens? We look for a theme on every case to humanize our corporate client so that the jury will have an easier time doing the nearly impossible, setting sympathy aside and treating us equal to the plaintiff.

Put the Doctors on Trial. Ten years ago, 5% of my back and neck injury cases involved a spinal surgery. Today it is 95%. What has changed? Sure, procedures are less invasive and becoming more available but the real problem I see is that unnecessary and inflated procedures are being routinely done on cases where nobody was even hurt at the scene or the damage photos do not show any real impact. Plaintiff attorneys routinely inflate the specials with Letters of Protection (LOPs). This method allows a medical provider to delay payment until the suit is concluded. Medical providers are then free to charge excessive rates for billing, sometimes 20 to 30 times more than Medicare would reimburse for the same CPT code. This game to inflate the bills wreaks havoc on lower limits policies, making cases too risky to fight. With increasing verdict trend lines, even the single limit million dollar policies may not provide the cushion necessary to defend the case and protect the insured. An effective 30b6 strategy must be employed to combat these overzealous doctors, clinics and surgery centers. Who owns the surgery center, a chiropractor or a lawyer? What is the financial arrangement between the surgeon and the surgery center, is it a nominal flat fee that then up-charged tens of thousands of dollars? How are CPT code charge rates being set and are single code procedures being unbundled to pad the bill? Are the charge rates two times Medicare or 20 or 30 times what Medicare would reimburse for the same procedure? Is the surgeon, clinic or surgery center an in-network provider, or do all their patients come with LOPs? How much do they routinely discount their fees at settlement and how cozy are they with opposing counsel? Medical providers will fight tooth and nail to keep this information from you

because it risks their livelihood once a jury figures out what they are really all about. The jury instruction says to only award the “*reasonable and necessary* medical bills.” We employ a strategy that lets the jury see what is really going on – we put abusive billing and the docs behind it on trial.

Jury Selection Strategy. How does your adversary employ Reptile Strategies in jury selection? You need to know this answer before you try the case. I like to contain Reptile tactics with an aggressive motion in limine strategy that educates the judge on the upcoming tactics long before the show starts. For example, I have painstakingly watched opposing counsel try to build a cause challenge on a conscientious juror who expresses concern with high verdicts. The attempt sort of goes like this – plaintiff’s counsel asks the panel who has a problem with large verdicts. Then they drill down on caps on damages. Florida does not employ caps on damages. Opposing counsel will ask otherwise qualified jurors if they would have a problem awarding a hundred million dollars if the evidence supported it? Who could answer such a question knowing absolutely nothing about the case? These questions are designed with one sole purpose – to get conscientious jurors off the panel without using a valuable peremptory challenge. Frankly, the question is improper. It is confusing and pre-tries the issues. Counsel should not be discussing actual dollar figures without prospective jurors hearing any evidence. The question is designed solely to root out fair-minded people. The appropriate way to address caps is to ask the jury if they can follow the law in awarding damages and not apply an arbitrary cap? Then read them the jury instruction: “*there is no exact standard of measuring pain and suffering - the amount should be fair and just in light of the evidence.*” Follow up with the question, can you follow this law and not apply your own arbitrary cap to damages if the evidence supports a higher award for pain and suffering? Educating the judge on these tactics is critical to maintaining qualified, conscientious jurors.

VERDICTS: AVOIDING THE RISING TREND IN 2022, *CONT.*

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I seldom see any attempt by the defense to employ this counter-attack.

Other Strategies. 1) *Focus Group* your bigger cases. It is worth every cent. I recently did one where we actually let the opposing counsel play himself. The strategy worked and the case settled a week later. 2) *Develop a Big Picture Theme* from the onset. It is critical to think like a juror and develop your theme throughout discovery, and then execute it in trial. 3) *Early Resolution and Intervention* must not be underestimated. Use technology. I try to conduct a 60-minute Zoom Settlement Conference on every new assignment in the first 30 days. You only have 60 minutes to lose – you will either settle the case or learn invaluable information about the plaintiff and their strategy moving forward. Why wait a year or two to gain that type of opportunity? 4) *Have a Liability Strategy.* The benefit of admitting liability is not as strategically valuable as once thought. Remember, millennials want to punish corporations, particularly those that admit they owe it. I think you get more credibility for being reasonable with the “soft sell approach to liability,” rather than saying we owe and going straight to damages. That is just my experience – each case is different. Develop your liability strategy early on.

In the ever-dynamic practice of law, it is the duty of every trial attorney to continuously refine their craft. Times are changing. An effective litigator is an adaptive litigator. Plaintiffs are working hard to continue to proffer the classic “evil corporation” argument and increase verdict trends because a higher tide raises all ships, even those small boats that will never make it out of the harbor. Our litigators fight back with the truth. Our corporate clients have a story to tell, too, and “rest assured our opponents know exactly what we bring to the courtroom – a real battle for the truth.”

¹ Dan Murray, ATRI American Transportation Research Institute. *New Research Documents The Scale of Nuclear Verdicts In The Trucking Industry*. TruckingResearch.org (2020), <https://truckingresearch.org/2020/06/23/new-research-documents-the-scale-of-nuclear-verdicts-in-the-trucking-industry>.

² Felix Salmon, *PUBLIC TRUST IN BIG BUSINESS FALLS INTO THE DEEP END*, AXIOS (2019), <https://www.axios.com/mistrust-us-business-2020-grows-fae6474c-8406-4ae2-999f-9279aa849703.html>; JUST CAPITOL, *A ROADMAP FOR STAKEHOLDER CAPITALISM JUST CAPITAL'S 2019 SURVEY RESULTS*, Just Capital (2019), <https://justcapital.com/unlock.php?p=9106>

³ Merrie Jo Pitera, Nick Polavin. *What Causes “Nuclear Verdicts”? – Part 1*, LITIGATION INSIGHTS (2021), <https://www.litigationinsights.com/nuclear-verdicts-part-1>

⁴ Paul Horgan, *THE FALLOUT OF HIGH-VALUE VERDICTS*, AM BEST RSS NEWS (2021), <https://news.ambest.com/articlecontent.aspx?AltSrc=104&RefNum=313786>

ABOUT THE AUTHORS

Dan Santaniello, Esq., is the Founding and Managing Partner and has more than 30 years of trial litigation experience and over 100 published Florida jury verdicts. He is an expert in Civil Trial and Board Certified by The Florida Bar. Martindale-Hubbell and his peers have also rated him AV® Preeminent™. He is also a member of the American Board of Trial Advocates (ABOTA). Dan is also the co-founder of The Gavel Nationwide Claims Defense Network. His areas of practice include wrongful death, catastrophic losses involving negligent security, A/GL, trucking and transportation, retail and commercial premises liability, chain of distribution products liability, toxic torts and construction defect and injury litigation. Dan also counsels carriers and their insureds on bad faith, time limit and policy limit demands, tender and extra-contractual avoidance practices. Dan is admitted in Florida (1990) and Massachusetts (1991). He is also admitted to the U.S. District Court, Southern; Middle and Northern Districts of Florida including Trial Bar.

Joseph Donnelly, Esq., is an Associate in the Tampa office. He is a member of the bodily injury team and concentrates his practice in general liability, premises liability and auto liability matters. While in law school, Joseph was a law clerk for Luks & Santaniello in the Miami office. As a law clerk, he assisted attorneys in general liability, bodily injury, slip and fall, and toxic tort matters. In this capacity, he assisted with motions to compel, motions for spoliation and drafting third-party complaints. He also served as a Judicial Intern for the Honorable Samantha Ruiz Cohen in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida that provided observation and exposure to judicial proceedings: motion calendars, domestic violence hearings, custody hearings and negotiations. While in law school, Joseph worked in the Business Transactions Clinic and provided legal assistance in forming a limited liability company, a sole proprietorship and filing trademark applications.

Joseph received his Bachelor of Science from Bryant University (2015) in Politics and Law. He obtained his Juris Doctor from Western New England School of Law (2020) where he received a 75% academic scholarship. Joseph was awarded the CALI Excellence for the Future Award in Corporate Social Responsibility. Joseph is admitted in Florida (2020).

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VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

Slayden v. Castro, et al.

Excessive Force | Favorable Verdict



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In retaliation, the Plaintiff attempted to flood his cell with water. After shutting the water off, the officers entered Plaintiff's cell, at which point they were attacked by the Plaintiff. The officers defended themselves by using strikes and O.C. pepper foam and were ultimately able to subdue Plaintiff and handcuff him. He was then escorted to the vestibule area where he was treated for minor injuries. No other force was used and the deputies were not injured.

The Defendants argued that the force used was not excessive and that they were fully justified in their use of reasonable force based upon BSO policy and procedure and applicable provisions of Florida law. Defendants also argued that any alleged injuries sustained by Plaintiff resulted from his use of violence in resisting the aforementioned lawful actions of the Defendants, and/or from several subsequent altercations in which Plaintiff was involved. Based upon Plaintiff's testimony on direct examination, the Defendants were able to introduce evidence that Plaintiff had a prior felony conviction for resisting arrest with violence and that he continued to expose himself even after the alleged incident. Defendants also argued that the Plaintiff sustained no permanent injuries as a result of the alleged incident, nor any sequelae from those alleged injuries. After six and a half hours of deliberation, the jury returned a verdict of \$1.00.

Joyce Daugherty v. Defendant Retail Store

Premises Liability | Defense Verdict

Plaintiff Counsel: Morgan & Morgan, P.A.

(Sarah A. Foster, Esq.)



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Prior to the trial, the court had granted Plaintiff's spoliation motion, based on the inadvertent loss of 48 minutes of CCTV video prior to the fall. This resulted in a jury instruction that Defendant had a duty to maintain additional in-store video, which it did not do; and as a result, the jury should find for Plaintiff unless Defendant rebutted the presumption of negligence by a greater weight of the evidence.

Defendant overcame the presumption of negligence using photographs taken by the store manager approximately 13 minutes after Plaintiff's fall, which showed the condition of the mat to be reasonably dry; and by eliciting testimony from the former store manager about his observations of the area at the time of his inspection. Defendant also used the CCTV video itself, which showed 12 minutes before the fall, and approximately an hour and a half after the fall. Defendant was able to demonstrate that the carpeted mat was not saturated and was reasonably safe.

Plaintiff elicited testimony from the responding paramedic that the floor was wet and the mat was saturated. The paramedic testified that, while she did not specifically recall the incident, review of a report refreshed her recollection, and that she recalled both the floor and mat being extremely saturated. She also testified that she, herself, had slipped as she entered the store. Defendant demonstrated to the jury that her testimony was unreliable as the CCTV video showed the EMT entering the area through a separate door, and never walking over or looking toward the mat in question.

During closing arguments, Plaintiff requested a verdict in excess of \$1.3M. The jury returned a defense verdict within approximately 40 minutes. A proposal for settlement was filed early in this case, which has allowed the client the opportunity to recover most of the defense fees and costs in this matter.

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

Thomas Campaniello v. Guilty Pleasures SF LLC

Commercial Litigation | Defense Verdict

Plaintiff Counsel: Siegfried Rivera

(Lindsey Thurswell Lehr, Esq.)



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Following a 3-day trial in Broward County Circuit Court, the jury returned a defense verdict on December 3, 2021.

Senior Partner Franklin Sato, Esq., and Senior Associate Vanesti Bennett, Esq., obtained a defense verdict in a breach of a commercial lease matter styled *Thomas Campaniello v. Guilty Pleasures SF LLC* in Broward County Circuit Court before the Honorable Keathan Frink.

This case stems from a breach of a commercial lease agreement between Mr. Campaniello, as Landlord, and Guilty Pleasures, as Tenant. Due to the Tenant's failure to make its monthly rent payments and failure to timely exercise its option to renew the lease under the lease terms, the Landlord filed suit against the Tenant. As a result of the lawsuit brought by the Landlord, the Tenant then countersued the Landlord alleging damages for its buildouts of approximately \$200,000.00, future loss of sales and its damaged inventory of approximately \$27,000.00 due to the heat in the building allegedly caused by the non-functioning air conditioning units.

Specifically, the Tenant brought four causes of action against the Landlord. A few weeks prior to the trial, as it relates to the Counterclaim, the Court granted summary judgment in favor of the Landlord on three out of the four counts that the Tenant brought against the Landlord, on the basis that the Tenant was not entitled to damages for its buildouts per the lease terms, there was no entitlement to future loss of sales as being too speculative and no basis for a declarative judgment. The trial, as to the Counterclaim, proceeded on the breach of lease count wherein the Tenant sought recovery for its alleged damaged inventory.

After less than an hour of deliberation, the jury rendered a verdict determining that the Tenant breached, there was no breach by the Landlord and awarded \$0 damages as to the alleged damaged inventory claimed in the Counterclaim. A proposal for settlement was previously served on behalf of the Landlord, as it relates to the Counterclaim, which was rejected by the Tenant. Consequently, the Landlord will move to recover its attorney's fees and cost on that basis and on the lease provisions.

Lucy Munoz v. Universal Property & Casualty Insurance Company

First Party Property | Defense Verdict

Plaintiff Counsel: Tabares Law, P.A. (Jasiel Tabares, Esq.)



Kemar Thomas, Esq.

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On October 1, 2021, Junior Partner Kemar Thomas, Esq., obtained a defense verdict in a first party property matter styled *Lucy Munoz v. Universal Property Casualty Insurance Company* on the basis that the Plaintiff failed to comply with policy conditions. The Plaintiff was seeking to recover \$96,000.00 in damages at trial. The case arises out of an under slab water leak from a drain line occurring on October 24, 2016 at Plaintiff's property. Plaintiff alleges that she saw water coming up from the floor so she immediately contacted a plumber and an emergency mitigation ("EMS") company. On the same day of the alleged loss, the plumber came out and did a repair to the drain line. Before and after, photographs were taken by the plumber and the EMS Company of the property. A few days after the alleged loss, Plaintiff retained an attorney and reported the loss to the carrier.

The carrier assigned a field adjuster to inspect the property and send Plaintiff and her counsel a letter requesting information and documents. A total of sixteen (16) items were requested. The Plaintiff provided five (5) of the sixteen (16) items to the carrier prior to filing suit. Approximately 110 days after the alleged loss occurred, Plaintiff filed suit against the carrier. The carrier did not make a coverage determination prior to the filing of the lawsuit.

At trial, Plaintiff theory was that a loss occurred and the carrier did not make payment after receiving a plumber's invoice, photographs of the damaged property and a sworn proof of loss. Plaintiff also argued that she provided all the requested documents to her attorney prior to the filing of the lawsuit.

Read more page 6.

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

The Defense's theme was "questions, questions, unanswered questions." The theory was that the carrier had 96,000 questions lingering, but the Plaintiff was protected from the start. The Defense raised doubt into how the alleged loss occurred throughout the trial. To refute Plaintiff's claim that she provided documents to her attorney prior to filing suit, defense introduced Plaintiff's responses to Defendant's Request for Production. Defendant specifically requested the documents that weren't provided during the handling of the claims, and Plaintiff's response to Defendant's request was "counsel does not have the documents in his possession and will provide when the Plaintiff provide the documents." Defense pointed out that the responses were provided over two years after Defendant's first request and the attorney is alleging that he still did not have the documents in his possession.

After four (4) hours of deliberation, the jury rendered a defense verdict. The Defendant previously served a proposal for settlement and a Danis offer, which Plaintiff rejected. Accordingly, Defendant has filed a motion to recover its attorney's fees and costs.

Powers v. Sig Sauer, Inc., et al. **Products Liability | Dismissal**



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Tampa Partner Anthony Petrillo, Esq., and Tampa Associate Matthew Moschell, Esq., successfully argued a motion to dismiss our overseas client for lack of personal jurisdiction in a products liability action styled *Powers v. Sig Sauer, Inc., et al.* The case arose when the plaintiff sustained personal injuries after his firearm allegedly misfired. The plaintiff then filed suit against our clients, a large multi-national corporation and its German-based holding company. We immediately moved to dismiss the German-based holding company for lack of personal jurisdiction.

In response to our motion, the plaintiff alleged that the German-based holding company could be sued in Florida state court because it conducted substantial and continuous business within the state. Specifically, the plaintiff cited to several hundreds of pages of our clients' internal corporate filings in an effort to show that the German-based holding company maintained constant and pervasive ties with their US operations. However, through our own investigation efforts and legal research, we were able to refute the plaintiff's jurisdictional claims and agency theory. Following a two-day hearing, the court granted our motion and dismissed our German-based client, finding that it had no personal jurisdiction to hear the plaintiff's claim.

John Doe v. Retail Store **Premises Liability | Final Summary Judgment**



Marc Greenberg, Esq.
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Boca Raton Senior Partner Marc Greenberg, Esq., successfully secured Final Summary Judgment in a slip and fall matter styled *John Doe v. Retail Store*. On March 21, 2017, Plaintiff went to the client's Boynton Beach store to shop. He first went to use the restrooms in the front of the store, and as he exited, Plaintiff slipped and fell on liquid. Plaintiff underwent two shoulder surgeries post fall, and all of his doctors related the surgeries to acute injuries from the subject fall. Plaintiff's past medical bill were more than \$120,000, and Plaintiff's lowest demand to settle was \$150,000.

On September 15, 2021, Palm Beach County Circuit Court Judge Richard Oftedal granted the Defendant's Motion for Final Summary Judgment on the issue of Notice. Plaintiff engaged in discovery over the course of 13 months and was unable to create any genuine issue of material fact that the Defendant had any actual or constructive notice of the liquid where Plaintiff fell. Plaintiff was unable to establish the source and origin of the foreign transitory substance or how long the substance existed on the ground prior to Plaintiff's fall.

Defendant's Motion for Attorney Fees and for Taxation of Costs is presently pending before the Court, in which the Defendant is seeking more than \$30,000 in that regard in furtherance of an expired Proposal for Settlement.

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

Escriche, Vilma v. SDG Dadeland Associates, Inc. and Tip Top Enterprises, Inc. Premises Liability | Summary Judgment



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Fort Lauderdale Senior Partner Allison Janowitz, Esq., and Appellate Partner Daniel Weinger, Esq., obtained a summary judgment in a premises liability matter styled *Escriche, Vilma v. SDG Dadeland Associates, Inc. and Tip Top Enterprises, Inc.* Plaintiff arrived at Dadeland Mall for the purposes of going to work. She parked next to a median and stepped out of her car. Instead of walking around the median, the Plaintiff crossed the median, tripping on a rope used to hold up the tree. The fall resulted in a right olecranon fracture and a radial head fracture, as well as severe ulnar neuropathy of the right elbow. She underwent two surgeries as a result of the fall, including surgery on her ulnar nerve. The total medical bills were an estimated \$151,000 future medicals of approximately \$250,000, and a lost wage claim of \$900,000.

Broward County Circuit Court Judge granted the Defendant's Motion for Summary Judgment on the grounds that the condition was open and obvious and landscaping features, such as this case, are found not to be dangerous conditions.

Robert Fugate v. Defendant Retail Store Premises Liability | Summary Judgment



Jessalea Shettle, Esq.
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Key West Managing Partner Jessalea Shettle, Esq., and Appellate Partner Daniel Weinger, Esq., obtained Summary Judgment in a premise liability case entitled *Robert Fugate v. Defendant Retail Store* in Duval County, Florida. Plaintiff filed suit alleging that the Defendant breached its duty to the Plaintiff by failing to properly maintain the automatic doors at the entrance of the store, and failing to warn the Plaintiff of the resulting dangerous condition. As a result of the incident, the Plaintiff was claiming a lumbar surgery, shoulder/arm injury, and foot injury. At the hearing, Ms. Shettle convinced the Court, using the CCTV footage, and memorandum of relevant case law written by Dan Weinger, that the subject door was in proper working order, was open and obvious, was not an inherently dangerous condition, and that the Plaintiff assumed the risk of utilizing same. The Court ruled, as a matter of law, that the Defendant was not liable for any injuries allegedly suffered by Plaintiff. A proposal for settlement was filed in this case, which has allowed the client the opportunity to recover some of the defense costs in this matter.

Barbara Cardenas v. Defendant Retail Store Premises Liability | Summary Judgment

Plaintiff Counsel: Michelle A. Stone, P.A.
(Michelle Stone, Esq.)

Key West Managing Partner Jessalea M. Shettle, Esq., and Appellate Partner Daniel Weinger, Esq., obtained Summary Judgment in a premise liability case entitled *Barbara Cardenas v. Defendant Retail Store* in Duval County, Florida. Plaintiff filed suit alleging that the Defendant breached its duty to the Plaintiff by negligently allowing a bag of ice to remain on the floor and melt, causing a dangerous condition, and failing to warn the Plaintiff of the resulting dangerous condition. As a result of the incident, the Plaintiff was claiming a myriad of injuries, including two cervical fusion surgeries, and pain management procedures of the cervical and lumbar spine. In addition, the Plaintiff was claiming post concussive headaches. Plaintiff had over \$539,000.00 in claimed medical bills as a result of the fall. *Read more page 8.*

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

At the hearing, Ms. Shettle convinced the Court, using the CCTV footage, and memorandum of relevant case law written by Dan Weinger, that the entirety of Plaintiff's account of the incident was false, and that there was no notice of any dangerous condition to Defendant Store. The Court ruled, as a matter of law, that the Defendant was not liable for any injuries allegedly suffered by Plaintiff. A proposal for settlement was filed early in this case, which has allowed the client the opportunity to recover most of the defense fees and costs in this matter.

Wisner v. Defendant Store **Premises Liability | Summary Judgment**



Deana Dunham, Esq.
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Jacksonville Partner Deanna Dunham, Esq., obtained Summary Judgment in a premise liability case entitled *Suzann Wisner v. Defendant Retail Store* in the U.S. District Court for the Middle District of Florida. Plaintiff filed suit alleging that the Defendant breached its duty to the Plaintiff by negligently allowing a transitory foreign substance to remain on the floor, causing a dangerous condition, and failing to warn the Plaintiff of the resulting dangerous condition. As a result of the incident, the Plaintiff claimed a fracture of her right knee and incurred medical expenses in the amount of approximately \$43,000.

The case involved a cup of yogurt, which was dropped by a customer in the dairy department of Defendant's store. CCTV video clearly showed the customer dropping the yogurt at 10:59:33 a.m., chasing after the container and picking it up, leaving a small amount of light green yogurt on the floor. At 10:59:51, Defendant's maintenance associate entered the area and overheard the customer announce that she had dropped yogurt. The customer was not addressing him directly, but was conveying a general warning to everyone in the area. The maintenance associate began to scan the area for the spilled yogurt just as Plaintiff slipped and fell in the yogurt at 10:59:58. A total of 35 seconds had elapsed between the time the yogurt was dropped and the time of Plaintiff's fall. The court granted Defendant's Motion for Summary Judgment based on lack of notice to the Defendant based on Florida Statute 768.0755, which requires a person who slips and falls in a transitory foreign substance in a business establishment to demonstrate that the business establishment had actual or constructive knowledge of the substance and should have taken action to remedy it.

In opposition to Defendant's Motion for Summary Judgment, Plaintiff argued that Defendant's maintenance associate was on actual notice and failed to clean or guard the spill. In its Order Granting Defendant's Motion for Summary Judgment, the Court reasoned that the video footage showed Defendant's employee lacked actual notice of the spilled yogurt until the customer pointed directly at it at 10:59:57, and prior to that, the customer's general statement that she had dropped yogurt on the floor did not apprise him of the exact location of the spill. Plaintiff fell at 10:59:58. The court ruled that Plaintiff failed to meet her burden to demonstrate a triable issue of fact and could not show that Defendant had sufficient time to remedy the dangerous condition. The Court ruled, as a matter of law, that the Defendant was not liable for any injuries allegedly suffered by Plaintiff. A proposal for settlement was filed early in this case, which has allowed the client the opportunity to recover most of the defense fees and costs in this matter.

Escalona v. Citizens Property Insurance Corporation **First Party Property | Voluntary Dismissal**



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Miami Junior Partner Karma Hall, Esq., obtained a voluntary dismissal in a first-party breach of contract action in matter styled *Escalona v. Citizens Property Insurance Corporation*. The matters was brought by a named insured following denial of a plumbing claim. Defendant filed a motion for summary judgment, arguing that plaintiff lacked evidence of compliance with policy post-loss conditions. Rather than proceed on the merits of the Motion for Final Summary Judgment, the plaintiff voluntarily dismissed the lawsuit for breach of contract.

Read more Verdicts and Summary Judgments page 9.

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

Diana Carrasco Landauer v. Citizens Property Insurance Corporation **First Party Property | Partial Summary Judgment/ Dismissal with Prejudice**

Plaintiff Counsel: Silverberg Brito



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Miami Junior Partner Anthony Perez, Esq., obtained partial summary judgment followed by a dismissal with prejudice in the matter styled *Diana Carrasco Landauer v. Citizens Property Insurance Corporation*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for her claim for damage to her property resulting from a balcony/window leak. Defendant filed its Motion for Summary Judgment, maintaining the position that the interior damage caused by rain was not covered by the policy as there was no evidence that the rain water entered the property through a peril created opening. In response to the motion, despite Plaintiff having testified that the claimed damage was the result of rain water entering her property, Plaintiff attempted to change the cause of loss from a balcony/window leak to a plumbing leak, filing an affidavit signed by a supposed expert in support of this new theory. Mr. Perez then secured partial summary judgment in favor of Defendant, as to any damages claimed by Plaintiff resulting from rain, and sought the deposition of Plaintiff's supposed expert, seeking the basis for the opinion asserted in his affidavit. Just before that deposition, Plaintiff dismissed the case.

Water Dryout, LLC a/a/o James Battaglia v. Citizens Property Insurance Corporation **First Party Property | Dismissal with Prejudice**

Plaintiff Counsel: David Low & Associates

Anthony Perez, Esq., obtained a dismissal with prejudice in the matter styled *Water Dryout, LLC a/a/o James Battaglia v. Citizens Property Insurance Corporation*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for Plaintiff's claim for payment relating to services rendered at the insured property pursuant to an assignment of benefits. Defendant filed its Motion for Summary Judgment, and its Motion for Sanctions Pursuant to Florida Statute §57.105, arguing that Plaintiff lacked standing, as the purported assignment was invalid, and a misrepresentation.

Defendant's motions were based on an affidavit executed by the insured, attesting to the fact that the signature on the purported assignment was not his, that he did not sign any contract with the Plaintiff, and that he did not even hire the Plaintiff to perform any services at his property. Just before the hearing on Defendant's motions, Plaintiff dismissed the case.

General Contractors of Central Florida a/a/o Nelfrad Similien v. Citizens Property Insurance Corporation **First Party Property | Dismissal with Prejudice**

Plaintiff Counsel: PZ Law Firm

Anthony Perez, Esq., obtained a dismissal with prejudice in the matter styled *General Contractors of Central Florida a/a/o Nelfrad Similien v. Citizens Property Insurance Corporation*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for Plaintiff's claim for payment relating to services rendered at the insured property pursuant to an assignment of benefits. Following the deposition of the insured, during which Mr. Perez secured favorable testimony in support of Defendant's position that the damage at issue was the result of constant or repeated seepage or leakage of water, Plaintiff dismissed the case.

National Water Restoration a/a/o Elizabeth Phillip and Andre Vulcain v. Citizens Property Insurance Corporation **First Party Property | Dismissal with Prejudice**

Plaintiff Counsel: Militzok & Levy

Anthony Perez, Esq., obtained a dismissal with prejudice in the matter styled *National Water Restoration a/a/o Elizabeth Phillip and Andre Vulcain v. Citizens Property Insurance Corporation*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for Plaintiff's claim for payment relating to services rendered at the insured property pursuant to an assignment of benefits. Following the deposition of the insured, during which Mr. Perez secured favorable testimony in support of Defendant's position that the damage at issue was the result of faulty, inadequate or defective workmanship and repair, Plaintiff dismissed the case.

Read more Verdicts and Summary Judgments page 10.

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

911 Restoration, Inc. a/a/o Cutler Venture, LLC v. Citizens Property Insurance Company
First Party Property | Dismissal

Plaintiff Counsel: Mineo Salcedo Law Firm



Anthony Perez, Esq.
Junior Partner (Miami)
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Miami Junior Partner Anthony Perez, Esq., obtained a dismissal in the matter styled *911 Restoration, Inc. a/a/o Cutler Venture, LLC v. Citizens Property Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for Plaintiff's claim for payment relating to services rendered at the insured property pursuant to an assignment of benefits. Defendant served Plaintiff with its Motion for Sanctions Pursuant to Florida Statute §57.105, arguing that the loss, an alleged plumbing leak, was not a covered cause of loss specifically enumerated in the named perils insurance policy, and thus Plaintiff's claim was frivolous in nature. Upon receipt of the motion, Plaintiff dismissed the case.

Emergency Remediation Services, LLC a/a/o Luis Mesa v. Citizens Property Insurance Corporation
First Party Property | Dismissal with Prejudice

Plaintiff Counsel: Trujillo Vargas Gonzalez Hevia

Anthony Perez, Esq., obtained a dismissal with prejudice in the matter styled *Emergency Remediation Services, LLC a/a/o Luis Mesa v. Citizens Property Insurance Corporation*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for Plaintiff's claim for payment relating to services rendered at the insured property pursuant to an assignment of benefits. Defendant filed its Motion for Summary Judgment, presenting the argument that Plaintiff failed to provide notice of its purported assignment prior to filing suit, that Defendant's contractual obligations are not triggered until the moment notice of the assignment is provided, and that it could not be said that Defendant had denied a valid claim which could have given rise to a breach of contract action. On the eve of the hearing on Defendant's motion, Plaintiff dismissed the case.

William Guy v. Tower Hill Select Insurance Company
First Party Property | Dismissal with Prejudice

Plaintiff Counsel: Morgan & Morgan

Anthony Perez, Esq., obtained a dismissal with prejudice in the matter styled *William Guy v. Tower Hill Select Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for his claim for damage to his property resulting from Hurricane Irma. Defendant served Plaintiff with its Motion for Sanctions Pursuant to Florida Statute §57.105, arguing that the loss was expressly excluded by a policy endorsement, and thus Plaintiff's claim was frivolous in nature. Upon receipt of the motion, Plaintiff dismissed the case.

So. Fla. Water Restoration, Inc. a/a/o Francisco Paris v. Citizens Property Insurance Corporation
First Party Property | Dismissal with Prejudice

Plaintiff Counsel: Silverberg Brito

Anthony Perez, Esq., obtained a dismissal with prejudice in the matter styled *So. Fla. Water Restoration, Inc. a/a/o Francisco Paris v. Citizens Property Insurance Corporation*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for Plaintiff's claim for payment relating to services rendered at the insured property pursuant to an assignment of benefits. Defendant filed its Motion for Summary Judgment, making the argument that the insured had not complied with the post-loss duties imposed by the policy, by failing to submit to an examination under oath, and as an assignee standing in the shoes of the assignor, Plaintiff was not entitled to the recovery of any benefits under the insurance policy. Following receipt of the motion, Plaintiff dismissed the case.

Bernard Etienne v. Citizens Property Insurance Company

First Party Property | Dismissal with Prejudice

Plaintiff Counsel: Insurance Litigation Group

Anthony Perez, Esq., obtained a dismissal with prejudice in the matter styled *Bernard Etienne v. Citizens Property Insurance Company*. Plaintiff filed suit alleging that Defendant breached the insurance contract by not paying the full amount of damages sustained to his property from Hurricane Irma. Defendant filed its Motion for Summary Judgment, maintaining the position that Plaintiff failed to comply with the insurance policy's appraisal provision. On the eve of the hearing on Defendant's motion, Plaintiff dismissed the case.

VERDICTS AND SUMMARY JUDGMENTS, *CONT.*

The Restoration Team a/a/o Yania Padilla v. Citizens Property Insurance Corporation

First Party Property | Dismissal with Prejudice

Plaintiff Counsel: Strems Law Firm



Anthony Perez, Esq.

Junior Partner (Miami)

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Miami Junior Partner Anthony Perez, Esq., obtained a dismissal with prejudice in the matter styled *The Restoration Team a/a/o Yania Padilla v. Citizens Property Insurance Corporation*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for Plaintiff's claim for payment relating to services rendered at the insured property pursuant to an assignment of benefits. Defendant filed its Motion for Summary Judgment, making the argument that the services rendered by Plaintiff, which were performed 17 months after the date of loss, did not constitute necessary emergency measures, and were therefore not covered under the insurance policy. Following receipt of the motion, and just before the deposition of its corporate representative, Plaintiff dismissed the case.

Besner Sanon v Citizens Property Insurance Corporation

First Party Property | Dismissal

Plaintiff Counsel: Litigation & Recovery Law Center

Anthony Perez, Esq., obtained a dismissal in the matter styled *Besner Sanon v. Citizens Property Insurance Corporation*. Plaintiff filed suit alleging that Defendant breached the insurance contract by denying coverage for his claim for damage to his property resulting from a plumbing leak in the kitchen. Defendant maintained its position that the loss was excluded from coverage pursuant to the insurance policy's provision pertaining to damage caused by constant or repeated seepage or leakage of water, and the applicable anti-concurrent cause provision. On the eve of trial, Plaintiff dismissed the case.

Cardullo v. South Florida Materials **Premises Liability | Summary Judgment**



Lauren Smith, Esq.

Managing Partner (Stuart)

LSmith@insurancedefense.net

Stuart Managing Partner Lauren Smith, Esq., was granted summary judgment in a premises liability matter styled *Cardullo v. South Florida Materials*. The case arose from a slip-and-fall at a fuel terminal in Port Everglades. Plaintiff claimed over \$350,000.00 in damages.

Citizens v. Casanas Appeal

Appeals & Litigation Support | Reversal of Several Portions of Fee Judgment

Lauren Smith, Esq., obtained reversal of several portions of a \$150,000.00 fee judgment entered against Citizens in matter styled *Citizens v. Casanas Appeal*. This included a multiplier, resulting in a reduction of nearly \$100,000.00.

All Insurance Restoration a/a/o Cediél v. Citizens

Appeals & Litigation Support | Final Summary Judgment Affirmed

Lauren Smith, Esq., successfully obtained affirmance of a final summary judgment entered in Citizens' favor on the issue of the \$3,000.00 emergency water mitigation cap in matter styled *All Insurance Restoration a/a/o Cediél v. Citizens*. The Third DCA wrote an in-depth opinion agreeing with Citizens' arguments, which will help defend against these claims in the future.

NEWS ABOUT THE FIRM: ATTORNEY TRAINING & DEVELOPMENT



Janine Menendez-Aponte, Esq.

Attorney Training Program. Strategic Mentoring & Training Director, Janine Menendez-Aponte, Esq., oversees a formal in-house CLE training program for the firm's attorneys on the fundamental principles of practice. The training curricula includes topics on discovery, expert depositions, time limit demands and damages defense strategies. Trial Training encompasses an in-house mock trial program to assist attorneys in evaluating risk, damages and trial strategies on cases that have a high probability of large exposure or trial.

Attorney Mentoring Program. The firm's Attorney Mentoring Program pairs senior attorneys with our 0-3 year associates and helps new attorneys integrate into the firm by providing advice, guidance and exposure to a range of litigation proceedings and the resources to succeed. The program, in conjunction with the firm's open-door policy and regular in-house training opportunities, provides associates with the teaching and guidance necessary to develop the overall skills that lead to a successful and meaningful legal career at Luks & Santaniello.

On December 22 2021, our attorneys will participate in the first annual Mentor Mingle, Holiday Jingle event. The event launches our formal Mentoring Program. Through the program, our associates create professional development plans to map and track goal setting during the early years of practice. The formal mentors and the program's director, Janine Menendez-Aponte, Esq., will guide the associates along their individualized practice paths that have been set out as a roadmap to drive the direction of their legal careers.

Visit our [website](#) for more information about our Attorney Training & Development.

Diversity & Inclusion

Luks & Santaniello completed the ABA's 2021 Model Diversity Survey on July 27, 2021. The firm's responses to the survey are available to its ABA Resolution signatories and are available upon request to the ABA.

The firm's **Diversity & Equity Committee** headed by Janine Menendez-Aponte, Esq., reports to the highest governing body of the firm. Janine and the committee are developing diversity and inclusion policies and strategies to provide resources for personnel to succeed at the law firm.

The following programs provide resources to our team.



Strategic Training Program



In-House Mock Trial Program



Mentoring Program



The Compliance Program



CLE Training Program



Relationship Partners

We invite you to explore our guidebook for additional information:

[Working at Luks & Santaniello, LLC. — Changing the Way Law Firms Litigate](#)



LUKS, SANTANIELLO
PETRILLO, COHEN & PETERFRIEND
— OUR VERDICTS TELL THE STORY —

For more news about the firm, visit:



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on the latest firm updates!

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THE GAVEL GRUB CLUB SCHEDULE

Upcoming webinars powered by Luks & Santaniello



03 FEB		Nuclear Verdicts <i>Dan Santaniello (FL), Scott Haworth (NY), Dave Frankenberger (CA), Mark Franco (ME), John Messersmith (VA)</i>
17 FEB		Life Care Plans <i>Dan Cray (IL), John Bringardner (FL), Ted McDonald (KS), Craig Pelini (OH)</i>
24 MAR		Alternative Dispute Resolution & Strategies <i>Gene Zipperle (KY), Valerie Edwards (FL), Heidi Goebel (UT), Derrick DeWitt (OK)</i>
21 APR		Principled Negotiating Strategies <i>David Dunbar (MI), Tabitha Jackson (FL), Todd Goodman (DE), Daniel Finerty (WI), Phil Gulisano (NY)</i>
19 MAY		Reptile Theory <i>Amy Hotard (LA), Bill Peterfriend (FL), Wade Quinn (TX), Richard Underwood (TN)</i>
16 JUN		Additional Insureds, Contribution & Indemnity <i>Brian Sanders (CA), Hayley Newman (FL), Rod Pettery (NC), Barry Gerstman (NY), Clark Monroe (MI), Brandon Jones (SC)</i>
21 JUL		Plaintiffs, Policies & Protecting Your Premises <i>Ashley Brown (KY), Jessalea Shettle (FL), Amanda Matthews (GA), Stacey Sever (MN)</i>
18 AUG		Protecting Privilege in Pre-Suit Investigation <i>Scott Haworth (NY), Luis Menendez-Aponte (FL), Kyle Roehler (MO), John Balitis (AZ), John Healy (WI)</i>
15 SEPT		Contribution, Indemnity & Equitable Indemnity <i>John Messersmith (VA), Dan Santaniello (FL), Joseph Fowler (PA), Steve Olson (NE), Kevin Griffiths (ID)</i>

This Legal Update is for informational purposes only and does not constitute legal advice. Reviewing this information does not create an attorney-client relationship. Sending an e-mail to Luks, Santaniello et al does not establish an attorney-client relationship unless the firm has in fact acknowledged and agreed to the same.

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