



LUKS, SANTANIELLO PETRILLO & JONES

Our verdicts tell the story.

LEGAL UPDATE

VOLUME 15, ISSUE 3

JULY — SEPTEMBER, 2016

Liability

Risks that May Incur When the Medicare Lien is Not Paid Directly: Developments Under The Medicare Secondary Payer Act by Matthew Krause, Junior Partner and Reinaldo Alvarez, WC Managing Partner



Matthew Krause, Esq.

Most of us are aware that not reimbursing Medicare for conditional payments can lead to double damages. However, what you may not know is that almost forty-one percent of all Florida Medicare beneficiaries receive their Medicare through a Medicare Advantage Plan. A Medicare Advantage Plan is “a type of Medicare health plan offered by a private company that contracts with Medicare to provide Part A and Part B benefits,” according to Medicare.gov. However, CMS does not provide information on conditional payments made by the Medicare Advantage Plan. Therefore, it is incumbent upon the settling party to determine whether the injured party is an enrollee in a Medicare Advantage Plan, and if conditional payments were made by the Plan. If conditional payments made by a Medicare Advantage Plan are not reimbursed, the Plan will have the right to seek reimbursement of double the amount of the conditional payments. Two recent lawsuits have shed some light on the ability of the Medicare Advantage Plans to recover conditional payment. In the case styled Humana Medical Plan, Inc. v. Western Heritage Insurance Company, 94 F.3d 1285 (S.D. Florida 2015), plaintiff was injured in a slip and fall at the property of an insured condominium association. The plaintiff who was Medicare eligible was enrolled in Humana Gold Plus Medicare Advantage Plan, an MAO. Health care providers billed charges of \$74,000 relating to plaintiff’s injuries and Humana discharged the medical charges for \$19,000. After suit was filed, the liability insurer of the

Read More . . . P. 2

Verdicts, Summary Judgments, Appellate Results

Defense Verdict: Auto Accident

Managing Partner Dan Santaniello and Miami Partner Luis Menendez-Aponte received a defense verdict in an MVA tender rejection case tried where Plaintiffs asked the Jury for \$42 million at trial. The case was featured in an article in the Daily Business Review on June 16, 2016, “Miami Driver Avoids Liability in Crash With Drunken Driver” by Celia Ampel. The case styled Clairmeda Simeon as guardian of Vilbrun Simeon and Kedlen Joachim v. Michelett Auguste and Lanea Everett was venued in Miami-Dade County. After eight days of trial and nearly 7 hours of deliberation, the jury entered a Defense verdict for Defendant Michelett Auguste finding that he was not negligent in the operation of his motor vehicle. The jury did find the unrepresented co-defendant was 100% at fault for the accident and awarded \$11,101,807.00 against her. That sum appears uncollectable.

Read More . . . P. 12

INSIDE LEGAL UPDATE

- Defense Verdicts, Summary Judgments, Appellate Results PP. 1,12-14
- Risks that May Incur When Medicare Lien is Not Paid Directly . . PP. 1- 2
- Florida Supreme Court Clarifies Design Defect Defense PP. 3-5
- Construction Law Chapter 558 Florida Statutes PP. 6-8
- Closing Protection Letter. . . PP. 10-11
- Firm News P. 15
- Directory P. 16

OFFICE LOCATIONS

MIAMI

T: 305.377.8900
F: 305.377.8901

FORT LAUDERDALE

T: 954.761.9900
F: 954.761.9940

BOCA RATON

T: 561.893.9088
F: 561.893.9048

FORT MYERS

T: 239.561.2828
F: 239.561.2841

ORLANDO

T: 407.540.9170
F: 407.540.9171

TAMPA

T: 813.226.0081
F: 813.226.0082

JACKSONVILLE

T: 904.791.9191
F: 904.791.9196

TALLAHASSEE

T: 850.385.9901
F: 850.727.0233

WWW.LS-LAW.COM

Edited by:

Maria Donnelly, CR
Daniel J. Santaniello, Esq.

Risks that May Incur When the Medicare Lien is Not Paid Directly cont.



Rey Alvarez, Esq.

condominium association entered into a settlement agreement with the injured party to resolve all issues for the total amount of \$115,000. The injured party attested she had no outstanding medical liens and letters from CMS confirmed no record of processing Medicare claims on behalf of the injured party. However, after settlement but before payment of the settlement proceeds, the property insurer learned of Humana's lien rights as the Medicare plan of the plaintiff and attempted to include Humana as a payee on the settlement draft. The trial court refused to amend the settlement to include Humana as a payee and required the insurer to tender full payment to the injured party.

Given conditional payments made by Humana were not reimbursed through the settlement, or otherwise paid by the liability insurer, suit was eventually brought by Humana against the liability insurer. The Southern District Court of Florida weighed arguments made by the liability insurer, that despite its efforts to determine whether there was a Medicare lien, it did not learn of the MAO's conditional payments until after settlement had been made, but prior to tender of payment, and therefore should not be subject to the Act's double damages provision. The district court determined that regardless of the liability insurer's efforts to include the Medicare plan in the settlement, the liability insurer violated the Medicare Secondary Payer Act and the MAO

was entitled to reimbursement of double the amount of charges it paid.

In the case of *In re: Avandia Marketing Sales Practices and Products Liability Litigation*, 685 F.3d 353 (3rd Cir. 2012), a Medicare advantage plan brought an action against a drug manufacturer under the Medicare Secondary Payer Act seeking reimbursement for expenses the company incurred treating its insured's injuries resulting from the manufacturer's drugs. The appellate court concluded that a plain reading of 42 U.S.C. §1395y(b)(3)(A) "is broad and unambiguous, placing no limitations upon which private (i.e., non-governmental) actors can bring suit for double damages when a primary plan fails to appropriately reimburse any secondary payer." Further, the Court found that in the event the statute's text was ambiguous, 42 C.F.R. §422.108 would provide the Medicare Advantage Organization the same rights to recover from a primary plan, entity, or individual that the United States exercises under the Medicare Secondary Payer regulations.

As a result, the *Avandia* court determined that the MAO would have a right to seek double the amount of payments it was not reimbursed from the drug manufacturer which had caused injuries to its insured. *Avandia* was, in part, used by the court in *Humana v. Western Heritage* to determine the applicability of the private cause of action provision in the Medicare Secondary Payer Act - 42 U.S.C. §1395y(b)(3)(A) - which as set forth above, resulted in the liability insurance company being obligated to pay two times the amount of reimbursements it should have paid

to the MAO.

It is imperative that specific detailed information be gathered during discovery prior to resolving or settling any injury case in which the claimant is Medicare eligible. All efforts on how the injured party gets Medicare need to be exhausted. Information including identity of the Medicare Advantage Plan is needed, the phone number, the account number, the existence of any prior Medicare Advantage Plans, etc. Gathering the information will help assist in getting an accurate conditional payment amount.

Unfortunately, there is no system in place like original Medicare. There are several hundred different insurance companies that offer Medicare Advantage Plans. It would appear that each one would follow the statutory guidelines but that each one would handle the unveiling of that information differently. Early intervention is always best when it comes to dealing with Medicare and all of its nuances.

Once Medicare or the MAO issues its final lien letter, there are 60 days to pay off the lien or be subject to pay double the lien. It doesn't matter what deal you have with opposing counsel or plaintiff, if the lien isn't paid in 60 days, the insurer may be subject to double the lien. For questions about conditional payments, please contact Matt Krause, Esq. (T: 954.761.9900) in the Fort Lauderdale office or Rey Alvarez, Esq. (T: 305.377.8900) in the Miami office.

Florida Supreme Court Clarifies the Design Defect Defense in Products Liability Cases

by Erik Vieira, Esq.



Erik Vieira, Esq.

On October 29, 2015, the Florida Supreme Court released its opinion in the case of William Aubin v. Union Carbide Corporation, 177 So. 3d 489. This seminal opinion settled two important areas of Florida products liability law. First, the Florida Supreme Court rejected the design defect analysis of the Restatement (Third) of Torts, which promotes the use of the risk utility test for a design defect claim. The Florida Supreme Court affirmed its prior adoption of the Restatement (Second) of Torts, which applies the consumer expectations test. Second, the Florida Supreme Court affirmed the application of the learned intermediary doctrine as a defense to a negligent failure to warn claim, but recognized that the applicability of this defense is a highly factual determination for the jury.

As a result of this seminal opinion, the establishment of a products liability defense in Florida will continue to require a highly developed factual understanding of the product at issue, and the information shared with intermediary manufacturers, sellers, or distributors.

Factual and Procedural History in the William Aubin Matter

On May 19, 2010, a Miami-Dade County jury awarded Mr. Aubin \$14,191,000.00 in economic and non-economic damages for the peritoneal mesothelioma he developed following exposure to asbestos. Union Carbide

was the sole defendant at trial and the jury found that Union Carbide negligently failed to warn the Plaintiff and that it placed a defective product on the market that caused Plaintiff's injury. The jury attributed 46.25% of the fault to Union Carbide and apportioned the remaining 53.75% to several other entities listed on the verdict form. Accordingly, judgment was entered against Union Carbide in the amount of \$6,624,150.00.

Union Carbide appealed the jury's verdict on three grounds. First, Union Carbide contested the trial court's application of the consumer expectations test of the Restatement (Second) of Torts (hereinafter referred to as the "Second Restatement") as to Plaintiff's design defect claim. Second, Union Carbide believed that Plaintiff failed to prove that Union Carbide's product, a highly refined raw asbestos fiber, caused his peritoneal mesothelioma. Third, Union Carbide contested the trial court's jury instruction addressing the learned intermediary doctrine as to Plaintiff's negligence failure to warn claim.

On August 22, 2012, Florida's Third District Court of Appeal agreed with Union Carbide on all three (3) points and remanded for a new trial. Union Carbide v. Aubin, 97 So. 3d 886 (Fla. 3d DCA 2012). In summary, the Third District Court of Appeal faulted the trial court for not following the prior precedent of the Third District in Kohler Co. v. Marcotte, 907 So. 2d 596 (Fla. 3d DCA 2005) and Agrofollajes, S.A. v. E.I. Du Pont De Nemours & Co., 48 So. 3d 976 (Fla. 3d DCA 2010) in which the Third District explicitly rejected the consumer expectations test of

the Second Restatement in favor of the risk utility test of the Restatement (Third) of Torts (hereinafter referred to as the "Third Restatement"). Union Carbide, 97 So. 3d at 893-94. The Third District then applied the risk utility test and found that Plaintiff failed to prove that Union Carbide's Calidria asbestos caused his peritoneal mesothelioma. Id. at 895-97. In applying the Third Restatement, the court found insufficient evidence that Calidria, as opposed to raw, unrefined asbestos fibers, caused peritoneal mesothelioma. Finally, the Third District found that jury instruction on Plaintiff's negligent failure to warn was improper because it did not make any mention that Union Carbide could discharge its duty to warn through learned intermediaries. Id. at 901-02.

The Florida Supreme Court heard the matter based upon its conflict jurisdiction. First, the Third District's opinion conflicted with the Florida Supreme Court's opinion in West v. Caterpillar Tractor Co., 336 So. 2d 80 (Fla. 1976), which adopted the Second Restatement. Second, the Third District's opinion conflicted with the Fourth District's opinion in McConnell v. Union Carbide Corp., 937 So. 2d 148 (Fla. 4th DCA 2006) which precluded the use of the learned intermediary defense.

The Florida Supreme Court Affirmed its Adoption of the Consumer Expectation Test

The Florida Supreme Court conducted an in-depth analysis of the principles of law enunciated in the Second and Third Restatements pertaining to

Read More . . . P. 4

Florida Supreme Court Clarifies the Design Defect Defense in Products Liability Cases cont.

design defects. It re-affirmed its holding in West that the consumer expectations test “best vindicates the purposes underlying the doctrine of strict liability.” Aubin, 177 So. 3d at 494. The Court found that the consumer expectations test “recognizes that a manufacturer plays a central role in establishing the consumers’ expectations for a particular product, which in turn motivates consumers to purchase the product.” Id. at 503. As a result, a manufacturer, after “induc[ing] and promot[ing]” the use of its product “undertakes a certain and special responsibility toward the consuming public who may be injured by it.” Id. at 510. Strict liability theory is founded on these principles and holds the manufacturer accountable for a product that fails to perform as intended. Id.

On the other hand, the Court criticized the risk utility test because the requirement of proof of a reasonable alternative design injected an element of foreseeability in the design process, and as such, “reintroduces principles of negligence into strict liability.” Aubin, 177 So. 3d at 505. Moreover, the risk utility test “focuses on the conduct of the manufacturer” and not on the “design of the product.” Id. at 506. Finally, the risk utility test could “insulate a manufacturer from all liability for unreasonably dangerous products solely because a reasonable alternative design for that type of product may be unavailable.” Id. Ultimately, the Court believes that the risk utility test reduces the responsibility of a manufacturer toward the consuming public. Id. at 510.

After applying the consumer expectation test, the supreme court found that Plaintiff presented sufficient evidence for the jury to consider whether Union Carbide’s Calidria caused his peritoneal mesothelioma. Aubin, 177 So. 3d at 513.

The Florida Supreme Court Affirmed and Clarified the Use and Scope of the Learned Intermediary Defense

Also significant for defendants in products liability cases, the Florida Supreme Court affirmed the use of the learned intermediary doctrine in defense of a failure to warn claim. Aubin, 177 So. 3d at 514. The crux of this defense is “whether the manufacturer was reasonable in relying on the intermediary to fully warn the end user and whether the manufacturer fully warned the intermediary of the dangers in its product.” Id. at 515.

Numerous factors must be weighed in this determination. First, the “intermediary must be learned; that is, one who has knowledge of the danger and whose position vis-à-vis the manufacturer and consumer, confers a duty to convey the requisite warnings to the consumer.” Id. at 514. Second, the jury is to consider “the gravity of the risks posed by the product, the likelihood that the intermediary will convey the information to the ultimate user, and the feasibility and effectiveness of giving a warning directly to the user.” Id. at 515. This list is non-exclusive. Id. Importantly, this defense may not be available “if the manufacturer knows that the necessary warnings would render the product less valuable and provide an incentive to the intermediary to withhold the necessary information from the consumer.” Id.

However, the supreme court determined that the jury instructions, as a whole, and in light of the jury’s decision to apportion fault to several intermediaries, were not erroneous. Aubin, 177 So. 3d at 518-19. The particular instruction crafted by Plaintiff and given by the trial court to which Union Carbide objected stated as follows:

An asbestos manufacturer, such as Union Carbide Corporation, has a duty to warn end users of an unreasonable danger in the contemplated use of its products.

Id. at 518. Union Carbide requested the following instruction:

In considering what constitutes reasonable care in connection with William Aubin’s failure to warn claim, your consideration may include, but is not limited to, the following factors:

- the warnings Union Carbide provided to its customers who used Union Carbide’s asbestos in making joint compound or ceiling sprays,
- whether Union Carbide asbestos customers were aware of the dangers involving asbestos,
- whether Union Carbide had access to joint compound and ceiling spray end customers, and
- whether Union Carbide had the ability to require customers to give specific warnings to users of the products incorporating Union Carbide’s asbestos.

Id. Not only did the Court find the trial court’s instructions, as whole, proper, but it faulted Union Carbide’s alternative instruction for failing to “provide an accurate statement of the law as to [the learned intermediary] defense.” Id. The Court found that the second factor erroneously placed the focus on the knowledge of the intermediary as opposed to the knowledge of the end user. Id.

Florida Supreme Court Clarifies the Design Defect Defense in Products Liability Cases cont.

The third factor “is misleading, as neither the case law nor the Second Restatement have recognized that manufacturers must have direct access to the end user.” Id. at 518-19.

Under the Florida Supreme Court’s newest precedent, the defense of products liability asbestos claims remains highly factual and geared toward a jury trial. Accordingly, it is essential that defense counsel develop an intimate and thorough knowledge of every aspect of their client’s product, including the development, production, sale and distribution of the product. Knowledge of the development and production of a particular product is essential in presenting a defense that a particular product satisfies the consumer expectation test. Likewise knowledge of the sale and distribution of a product is essential in developing and presenting the learned intermediary defense

For further information about environmental and toxic torts or assistance with product liability matters, please contact Erik Vieira, Esq. (T: 305.377.8900) in the Miami office.

Endnotes

1. The crux of the risk utility test is proof of a reasonable alternative design for the allegedly defective product.
2. The crux of the consumer expectation test is proof that the product failed to perform as safely as an ordinary consumer would expect it to perform in a manner consistent with the intended use

or a use that is reasonably foreseeable for that product.

3. The jury apportioned fault to Georgia Pacific, Kaiser Gypsum, Premix Marbletite, and U.S. Gypsum Co. The jury did not apportion fault to Mr. Aubin, Johns-Manville, Philip Carey Corp., or Thompson Hayward Chemical Co.
4. The Third District acknowledged that the Florida Supreme Court previously adopted the Second Restatement in West v. Caterpillar Tractor Co., 336 So. 2d 80 (Fla. 1976); however, it maintained that Kohler and Agrofolajes, which were issued subsequently to West had not been overturned by the Florida Supreme Court, and thus, were binding precedent in the Third District.
5. The Court further found that there was sufficient evidence that exposure to Calidria could cause asbestosis. Union Carbide, 97 So. 3d at 897-98.
6. The Court recognized that the parties to a defective design case may present evidence that “a reasonable alternative design existed and argue whether the benefit of the product’s design outweighed any risks of injury or death caused by the design.” Aubin, 177 So. 3d at 512.

About Erik Viera

T: 305.377.8900

E: EVieira@insurancedefense.net

Erik Vieira is a Senior Associate in the Miami office. Erik handles complex and high exposure matters in the area of products liability, toxic torts, and professional liability. His practice also includes personal injury, premises liability, bad faith and insurance coverage at both the state and federal level. Prior to joining Luks, Santaniello, Erik worked for a boutique products liability defense firm focusing on asbestos de-

fense, and also as in-house counsel for a major automobile insurer. Erik earned his Bachelor of Arts degree, *summa cum laude*, from St. John Vianney College Seminary and his Juris Doctorate, *cum laude*, from the Catholic University of America, Columbus School of Law.

About Matthew Krause

T: 954.761.9900

E: MKrause@insurancedefense.net

Matthew Krause, Junior Partner has been practicing over 20 years in the areas of Collection and Creditor’s Rights, Commercial Litigation and Civil Litigation. He has handled many matters involving Bankruptcy, Commercial Foreclosure, Claw Back Suits, Preferential Transfers, the Fair Credit Reporting Act and Fair Debt Collection Practices Act. His practice areas also include matters involving Lender’s Liability, Commercial Landlord and Tenant and Judgment Enforcement.

Matthew has substantial experiences with Creditor’s Bankruptcy matters involving stay relief litigation, preference actions and valuation disputes. He has handled large caseloads in commercial litigation and commercial collections involving personal property leases and secured transactions representing multinational corporations and banks. He has also handled collection matters for large multinational finance companies involving automobile financing and secured transactions.

Chapter 558 Florida Statutes Guidelines and Key Changes to the Statute for Carriers and Construction Lawyers by Joseph Kopacz, Junior Partner



Joseph Kopacz, Esq.

In October 2015, several key changes were made to Florida Statutes 558 which is the controlling law regarding construction defects in the state of Florida. The question remains on how Courts will interpret these new changes to Florida Statutes 558. Originally enacted in 2003, several key provisions and changes in October 2015 will be highlighted and discussed. The overarching purpose of Florida Statutes 558 is it provides an opportunity to resolve claims through confidential settlement negotiations (558.001) without the need for lengthy and costly litigation.

What is a Construction Defect under 558?

Construction defects include deficiencies in design, materials, construction, observation of construction, surveying, planning, repair alteration, supervision, remodeling, and building code violations giving rise to a cause of action under Sec. 553.84.FS. Potential recipients of notice are contractors which include those legally engaged in the business of designing, developing, constructing, manufacturing, repairing or remodeling dwellings and any attachments.

The statutory definition of contractor includes developers, subcontractors, suppliers, design professionals, engineers or surveyors. A contractor, subcontractor, supplier, design professional or surety is not a claimant under the statute and therefore, 558 does not apply to them as claimants.

Who is a Claimant and Who are Potential Receiving Contractors under 558?

A claimant includes property owner, subsequent purchaser, and the Association. A receiving contractor can include Contractor, Subcontractor, Supplier, and Design Professionals.

When Does 558 Apply?

Florida Statute 558 only applies if substantial completion of the building or improvements are in progress to any claim for construction defects arising from improvements made after October 1, 2009, unless the parties have agreed in writing to opt out. It applies to all residential and commercial projects excluding public transportation projects. Such commercial projects include residential construction, condominium units, defects in common areas and improvements that are owned or maintained by an association, mobile homes or manufactured homes, duplexes, modular homes, single family homes, remodeling and fixtures and commercial or non-residential properties. 558, however, is not applicable to emergency repairs to protect the health, safety or welfare of the claimant or others.

558 does not apply to emergency repairs performed to protect the health, safety and welfare of the claimant or others. It also does not apply to the right to specific performance under a construction contract. Furthermore, 558 does bar any causes of action, defenses, and it does not create any new rights or theories. This is one of the major problems with 558 as there are no consequences for failing to comply other than litigation.

What are the Key 558 Notice Requirements under new statute?

The notice of the claim must specifically reference Chapter 558, Florida Statutes. Before the recent amendment, all that was required was "reasonable notice" of the defect. This lack of clarity in the notice left contractors and other parties receiving the notice to guess exactly where these alleged defects were located. Importantly, under the amendment, the Notice must be based on visual inspection with reasonable detail including the location of each defect to sufficiently be able to locate it without undue burden.

558 requires that the claimant serve written notice of the claim on the contractor and serve a notice of claim upon those parties responsible for the defects through certified mail with a United States Postal Service record of delivery, attempt delivery to the last known address of the addressee, hand deliver or deliver by courier with written evidence of delivery. (558.004(10) and 558.002(9)). A contractor may serve its downstream subcontractors involved in the project – but is not required to do so under 558. (558.004(3)).

A Claimant's service of notice tolls applicable statutes of limitation until the later of: 90 or 120 days from service; or 30 days after end of repair or payment period; or by stipulation of the parties. However, 558 Notice does not toll the 10 year statute of repose. See [DOT v. Echeverri](#), 736 So. 2d 791

Read More . . . P. 7

Chapter 558 Florida Statutes Guidelines and Key Changes to the Statute for Carriers and Construction Lawyers cont.

(Fla. 3d DCA 1999) holding that the construction claim statute of repose did apply to claims for indemnity and contribution.

If the notice of the claim involves an association representing 20 parcels or fewer, 558 provides for 30 days to inspect for construction defects. If the notice of claim involves an association representing more than 20 parcels, 558 provides for 50 days to inspect. This also includes reasonable inspection of the dwelling of each unit subject to the claim for defects. A claimant is not required to perform destructive or other testing before providing a notice of claim. A visual inspection is sufficient. However, destructive testing of the premises is allowed via written request and mutual agreement. The written request should also identify who will perform the test, a list of testing locations and methods, the anticipated damages to the test site and surrounding areas, the anticipated time needed to perform testing, who will be responsible for repairing the tested areas and who will assume the financial responsibility to cover the cost of testing and repairs.

Multiple defects may be included in one notice and claimant may only pursue those construction defects included in the notice as well as any construction defects reasonably associated to or caused by the construction defects noticed. The notice should be amended to identify additional or new construction defects as they become known to the claimant.

What documents are available pre-suit after receiving 558 Notice?

558 permits the claimant and recipient be able to obtain certain records. To obtain the records, the written request must include a specific reference to Sec. 558.004(15), F.S., otherwise the request for the records is unenforceable. Upon written request, claimants must produce maintenance records and other documents related to the discovery, investigation, causation and extent of the alleged defects identified in the notice of the claim. These documents can be valuable to enable recipient of notice of claim to formulate potential defenses such as claimants' lack of maintenance, failure to mitigate damages, abuse, misuse, environmental causes, casualty losses, normal wear and tear, or acts of third parties. Broad categories of documents must be produced by both claimants and recipients. A failure to comply with pre-suit discovery can leave contractors exposed to court sanctions.

558 does not require production of design plans and specifications. On public projects, contractors can obtain design plans, specifications and other documents by using Florida's public records laws or Sunshine Laws.

Is Destructive Testing permitted upon receipt of 558 Notice?

Yes, but the destructive testing shall not render property uninhabitable. The written request for destruction testing must describe the proposed testing and identify: (1) who will perform test; (2) list of testing locations and methods; (3) anticipated damage to test site; (4) anticipated time needed for performing testing; (5) who will be responsible for repairing tested areas;

and (6) who will assume financial responsibility to cover the cost of testing and repairs. (558.004(2)(b)).

What Response is required under 558 Notice?

Parties receiving the 558 Notice must issue a written response to the notice of claim within 45 days for an association presenting 20 parcels or fewer, and 75 days for a claim involving an association representing more than 20 parcels. Upon receipt of the Notice and after inspection, the party receiving the Notice must include an offer or statement from 558.004(5) with one of the five options provided below:

- (a) A written offer to remedy the alleged construction defect at no cost to the claimant, a detailed description of the proposed repairs necessary to remedy the defect, and a timetable for the completion of such repairs;
- (b) A written offer to compromise and settle the claim by monetary payment that will not obligate the person's insurer, and a timetable for making payment;
- (c) A written offer to compromise and settle the claim by a combination of repairs and monetary payment that will not obligate the person's insurer;
- (d) A written statement that the person disputes the claim and will not remedy the defect or compromise and settle the claim; or
- (e) A written statement that a monetary payment, including insurance proceeds, if any, will be determined by the person's insurer within 30 days after notification to the insurer. A written

Read More . . . P. 8

Chapter 558 Florida Statutes Guidelines and Key Changes to the Statute for Carriers and Construction Lawyers cont.

statement under this paragraph may also include an offer under paragraph (c).

Figure 1

Key Deadlines Under 558 Statute

Is a Notice of Claim considered a claim under a General Liability Policy?

No. Recent court decisions have determined the Notice of Claim does not constitute a claim for insurance purposes unless the terms of the policy provide such coverage. See Altman Contractors, Inc. v. Crum & Forster Specialty Insurance Company, 124 F. Supp.3d 1272 (S.D. June 4, 2015). The issue decided in Altman was whether the carrier had a duty to indemnify under Chapter 558 as the case was not “in suit” and the notice did not constitute a claim. (See Figure 1: Key Deadlines Under 559 Statute).

Closing

All parties should take advantage of the Chapter 558, Florida Statutes, provisions for pre-suit discovery to determine whether early resolution is both beneficial to the contractor and claimant avoiding protracted litigation. 558 can be challenging and requires an understanding of how it will impact or halt pending litigation saving both time and money. It is highly recommended to retain counsel early in the process to fully protect the insured’s interest both before and after.

For questions about Florida’s CD Statute or assistance with your construction defect claims, please contact Joseph Kopacz, Junior Partner in the Tampa office at T: 813.226.0081.

Residential or less than 20	Association of 20 or more units	
15	15	Days after discovery that Claimant should attempt to notify Contractor.
60	120	Days after a notice is sent before which a suit can be filed.
10	30	Days to notify downstream subcontractor. Downstream notice is not required.
15	30	Days to respond to downstream notice. If served, Subcontractor must serve response to receiving contractor w/in 15/30 days of receipt of downstream notice.
30	50	Days to request inspection after receipt of notice
30	30	Days after request documents - document exchange mandatory after 30 day requests and request must cite 558.004(15) and offer to pay for copies of: (design plans, specs, as-builts, photos/videos, expert reports, sub K, PO, maintenance records, and other docs related to investigation)
45	75	Days receiving contractor must serve response to 558 Notice of Claim.
45	45	Days claimant has to accept or reject offer. If claim is disputed and there is no offer to compromise they can sue.

About Joseph Kopacz

T: 813.226.0081

E: JKopacz@insurancedefense.net

Joseph Kopacz, Junior Partner is AV® Preeminent™ Rated by Martindale-Hubbell and his peers. He concentrates his practice in the areas of general liability, automobile liability, premises liability, product liability, wrongful death, construction defects, complex insurance coverage disputes and appellate matters.

Joseph has an M.B.A. from the University of West Florida in addition to a Juris Doctorate from the University of Toledo College of Law. Prior to joining the firm, Joseph worked for various law practices in the area of Insurance Defense. He also worked for Jury Verdict Research where he evaluated and assessed cost drivers associated with personal injury matters, medical malpractice and employment discrimination cases. Joseph is admitted in Florida (2007) and to the United States District Court, Southern, Middle and Northern Districts of Florida.

About Rey Alvarez

T: 305.377.8900

E: RAlvarez@insurancedefense.net

Rey Alvarez is the Managing Partner for the Workers' Compensation and Medicare Compliance Division. He also serves as WC Committee Chair for the Florida Defense Lawyers Association. Martindale-Hubbell and his peers have rated him AV® Preeminent. He has more than a decade of experience in preparing Medical Cost Projections, Medicare Set-Asides and Conditional Payment Lien negotiations with CMS.

Rey is a member of the Florida Defense Lawyer's Association (FDLA) and Claims & Litigation Management Alliance (CLM). Rey co-authored with Seth Masson, Esq. of Luks, Santaniello an article on "How Big Is the Gig? The Sharing Economy's Impact on Workers' Compensation" that appears in the February—March 2016 issue of the Claims and Litigation Management Alliance's Workers' Compensation magazine. Rey is a monthly columnist for the publication. Rey also co-authored with Shana Nogues, Esq. of Luks, Santaniello an article on "Understanding The Application of Florida's Workers' Compensation Immunities" that was published in The Florida Defense Lawyers' Association publication of Trial Advocate Quarterly (Spring 2015). He also co-authored with Managing Partner Daniel Santaniello a White Paper on Medicare Reporting that was published in the Trial Advocate Quarterly (i.e., Volume 30, Number 4, Fall 2011) and authored an article on "Reducing the Cost of Funding a

Medicare Set-Aside" that was published in the Florida Bar Workers' Compensation Section 'News & 440 Report' (Summer 2011).

Rey has a Bachelor of Arts degree from Barry University and earned his Juris Doctorate from the University of Miami. He is admitted in Florida (2003).

A Closing Protection Letter (CPL) What You Need to Know . . . But Were Afraid to Ask

by Aaron Wong, Senior Partner



Aaron Wong, Esq.

A closing protection letter (“CPL”) is a form of professional liability insurance offered by a title insurance underwriter to a homebuyer (mortgagor) and the homebuyer’s lending bank (mortgagee). If you purchased a home in Florida since 1986, and financed that purchase with a mortgage, you are covered by a CPL (although you may not even know it, which, as we’ll see, is not necessarily a bad thing).

The CPL itself is a 1-2 page indemnity contract whose language is promulgated and regulated by the State of Florida. See Fla. Admin. Code 690-186.010. Thus, unlike an insurance policy, the title insurer does not draft the CPL, and cannot alter or amend the CPL’s language.

What Does it Cover?

A CPL protects a homebuyer and the lending bank from a real estate closing agent’s failure to follow the lender’s written closing instructions to the agent (specified in the CPL), and any fraud or dishonesty by the closing agent in handling the lender’s funds or documents in the closing transaction. For example, if the closing agent receives funds in trust from the lending bank and, instead of using those funds as directed by the bank (to pay off a lien on the property, for example), instead uses them to purchase a yacht for himself/herself, such an act would be covered by the CPL. While most real estate closing agents in Florida are attorneys

and members of The Florida Bar, even attorneys are not immune from the temptations that come from holding millions of dollars in trust from a lending bank. This is where the CPL comes in.

How Does it Work?

Coverage under a CPL is typically triggered after a lending bank learns that its closing instructions were not followed by the closing agent, or that the closing agent has misappropriated the lender’s funds held in trust and used them for an improper purpose. Pursuant to traditional principles of indemnity and the terms of the CPL itself, the lender must also have suffered an “actual loss.” This is typically manifested where the lender’s funds to be held in trust by the closing agent have been misapplied or misappropriated (also known as a defalcation), and the lender and/or homebuyer are left with inadequate security in the real property. If the real property at issue is worth more than what the lender is claiming, or is more than sufficient to cover the lender’s mortgage on the real property, then “actual loss” may be found lacking.

To support a claim for coverage under a CPL, the homebuyer and/or lending bank will need to provide copies of any documents supporting the claim (typically, the lender’s complete loan and closing files), as well as some form of sworn proof of an actual loss. This can usually be accomplished *via* an examination under oath (“EUO”) of the claimant. The EUO is effectively a deposition, without the formal rules and requirements governing same. It is usually the title insurance underwriter’s

first opportunity to learn the facts of the claim directly from the claimant.

Are There Any Limitations or Defenses to Coverage?

Like an insurance policy, a CPL has limitations and defenses to coverage. The most critical limitation is the limit of liability. Coverage under a CPL is, by its terms, “coextensive” with the title insurance policy issued in conjunction with the CPL after the real estate closing transaction, and carries the same dollar limit of liability as the policy. Thus, if the title insurance policy issued by the underwriter to the homebuyer/lender had a \$1,000,000 limit of liability, then the underwriter’s limit of liability under the CPL is \$1,000,000 as well. This limit of liability is typically the amount of the lending bank’s mortgage on the real property, which is equivalent to the amount the bank loaned to the homebuyer so the property could be purchased or refinanced.

The other critical component of the CPL is the notice provision. Every CPL issued in Florida contains the following language:

The (insert title insurer) shall not be liable hereunder unless notice of loss in writing is received by the (insert title insurer) within ninety (90) days from the date of discovery of such loss.

Thus, if the homebuyer/lender fails to give the title insurance underwriter notice of their loss with 90 days of discovering said loss, there is no liability under the CPL.

Read More . . . P. 10

A Closing Protection Letter (CPL) What You Need to Know . . . But Were Afraid to Ask cont.

This is very different from a traditional liability insurance policy, which typically requires the giving of “reasonable” notice, without any kind of fixed deadline.

What's the Law in Florida?

It's no secret that Florida was a hotbed for mortgage fraud during the real estate boom of 2006-2008. The vast majority of that fraud was, unfortunately, committed by mortgage brokers with the help of real estate closing agents. This led to a dramatic rise in the number of CPL claims made against the title insurance industry in the years following the boom and crash of the real estate market. As the number of CPL claims rose, so too did the number of CPL lawsuits, especially here in Florida, and new law began to take shape, particularly with respect to the issue of timely notice.

In September 2014, the court in FDIC, as Receiver for Washington Mutual Bank v. Attorneys' Title Ins. Fund, Inc., 2014 WL 4384270 *5-6 (S.D. Fla. Sept. 3, 2014) held on summary judgment that the CPL's notice provision is a “bright line” rule, meaning that if a claimant gives written notice of loss on the 91st day after discovering the loss (*i.e.* just one day late), the claimant cannot recover under the CPL. This “bright line” was later enforced by a Florida state court in February 2015 in the case of Sabadell United Bank v. Attorneys' Title Ins. Fund, Inc., Miami-Dade Circuit Court Case No. 12-19971 CA (10), where The Honorable Peter Lopez upheld the title insurance underwriter's denial of the Bank's CPL claim on summary judgment, finding that the Bank failed to give timely notice of its

claim, thereby relieving the title insurer of any liability under the CPL.

What's Next

There has been talk in Florida's legislature of modifying the CPL's statutory language, particularly with respect to the notice provision. One suggestion is to terminate the title underwriter's liability unless written notice of the claim is received within two years from the date the lender transmits the loan funds to the closing agent. It remains to be seen whether this new language, if adopted, will hurt or help either the title insurance or mortgage lending industry. One thing, however, is for certain: CPL litigation in Florida does not appear to be going away any time soon.

Aaron is a 1995 graduate of Boston University School of Law and a 1992 graduate of Tufts University. While attending Law School he served as staff editor for the American Journal of Law & Medicine. Aaron is admitted in Florida (1996) and to the U.S. District Court, Southern and Middle Districts of Florida, including the Eleventh Circuit Court of Appeals. He is bilingual and fluent in Spanish

About Aaron Wong

T: 954.761.9900

E: AWong@insurancedefense.net

Aaron Wong is a Senior Partner in the Ft. Lauderdale office. Aaron has 20 years of experience in both State and Federal Courts. Martindale-Hubbell and his peers have also rated him AV® Preeminent™. He handles complex commercial litigation and has been handling CPL claims litigation in both State and Federal courts for over 12 years. His practice focuses on real property and title insurance claims litigation, particularly first-party title and CPL claims. He also concentrates his practices in Auto Liability and Bad Faith, Coverage Opinions and Appellate matters.

Verdicts and Summary Judgments cont.

Defendant Auguste was broadsided by an unrepresented co-defendant, Lanea Everett, at the intersection of NW 6th Avenue and 79th Street. Both the Plaintiffs were in the back seat of Defendant's Auguste's vehicle and severely injured in the accident. Both Plaintiffs sued both drivers. The issue in the case was who had the green light.

Plaintiff Simeon is in a persistent vegetative state and Plaintiff Joachim has a permanent seizure disorder. Defendant, Michelelette Auguste, was the only party represented who had insurance coverage. Policy limits were tendered but rejected and the case went to trial. Co-defendant, Lanea Everett, was not represented at trial and had no coverage.

Plaintiffs' presented the testimony of engineer Adriana Gomez, PE in an effort to put the blame on defendant, Michelett Auguste. She testified that Mr. Auguste ran the red light and was negligent in the operation of his vehicle which contributed to causing the accident. The Plaintiffs also presented the testimony of life care planner Lawrence Forman in support of their request for a \$19,856,000 life care plan.

Through the testimony of the defense engineer Roland Lamb, PE, the defense was able to establish that Plaintiffs' expert engineer's analysis was faulty and that the physical evidence supported Michelelett Auguste's account of the facts. Furthermore, the Defense contended Lanea Everett was drunk, was speeding and ran the red light. As for damages, the defense also argued that the life care planner's figures were excessive, inflated, and not based on the actual life expectancy of Plaintiff Simeon. Moreover, through cross-examination and the testimony of the Defense's expert neurologist, Kenneth Fischer, MD, the Defense was able to establish that Plaintiff Joachim's recurrence of seizures was due to his failure to adhere to the recommended dosage of medication as prescribed.

Slip and Fall—Defense Verdict

Managing Partner Dan Santaniello and Fort Lauderdale Partner Allison Janowitz received a defense verdict on June 16, 2016 in the slip and fall matter styled De Jesus, Luciano v. Defendant Retail Store when jury found no negligence on behalf of the Defendant. Plaintiff alleges that he was walking through the lighting area of the store, when he slipped and fell, landing in the dark liquid on the floor. The allegations center on Plaintiff's accusations that

Defendant Retail Store failed to maintain the property. Plaintiff claims that he struck his lower back and his right elbow, resulting in a ruptured tendon when he fell. Defendant maintained that there was no liquid on the ground, and if there was, Plaintiff failed to present any evidence that the transitory substance had been there for any amount of time. None of the employees saw any liquid, even when they touched the ground to determine if there was any.

Plaintiff alleged that as a result of the fall he ruptured his right triceps tendon, which had to be surgically repaired. As a result of the rupture, Plaintiff alleged he was unable to lift his arm, and do certain motions. His physician, Dr. Jesse Shaw, testified that the rupture was as a result of the fall and was acute in nature. He also testified that the injury was permanent in nature. Despite Plaintiff's complaints that he could not lift his arm, and had a limited range of motion, we obtained surveillance on Plaintiff that contradicted his statements.

Slip and Fall—Defense Verdict

Orlando Managing Partner Paul Jones and Partner Farrah Fugett-Mullen received a defense verdict in the slip and fall matter styled Demce Demce v. Defendant Retail Store on June 16, 2016 in Palm Beach County. Plaintiff alleged he slipped and fell on water in the cart vestibule area as he was entering the store. Defendant admitted there was water on the floor, as it was pouring rain outside at the time of the incident. However, Defendant denied that it had actual or constructive notice of the water prior to the time of Plaintiff's fall, as an employee of Defendant was in and out of the subject area multiple times just prior to Plaintiff's fall and had implemented Defendant's inclement weather procedures. Plaintiff alleged injuries to his neck and back as a result of his fall, though he conceded that his neck issues had resolved with physical therapy. Plaintiff underwent a series of facet injections and one epidural injection to his lumbar spine at L4-5 with Dr. Lowell Davis. Dr. Kingsley Chin recommended decompression and fusion at L2-3 in 2012, which Plaintiff had not undergone prior to the time of trial.

Read More . . . P. 13

Verdicts and Summary Judgments cont.

Roadway Design—Motion to Dismiss with Prejudice

The Miami Office prevailed in the matter styled Sewell v. Racetrac Petroleum, Inc. when the Court granted Defendant's Motion to Dismiss and/or to Strike Plaintiff's Second Amended Complaint and dismissed Plaintiff's Complaint with prejudice on the issue of duty at a Special Set hearing on April 4, 2016. The case arises out of a 2007 intersectional automobile accident allegedly caused by a phantom vehicle turning left out of the Racetrac gas station located at 1955 NE 8th Street (Campbell Drive) in Homestead, Florida. As a result of the accident, Plaintiff sustained catastrophic injuries, including alleged traumatic brain injury and the loss of an eye. Plaintiff's medical bills exceeded \$670,000.00, and Plaintiff's counsel, Schlesinger Law Offices sought several millions of dollars in this case.

In her Second Amended Complaint, Plaintiff alleged that Racetrac negligently obtained a median opening to allow full left turn ingress-egress, misrepresented traffic counts to Miami-Dade County, negligently failed to prohibit or restrict left turns out of its gas station, and negligently failed to erect signage preventing left turns out of its gas station.

Luks & Santaniello had previously argued Racetrac's Motion for Summary Judgment. There, Miami-Dade Circuit Court Judge Thomas Rebull narrowed the issue in the case to whether Racetrac could have taken affirmative action on its own property to prohibit or restrict left turns, close the ingress-egress, or erect signage preventing or restricting left turns, and requested supplemental briefing on those issues. Luks & Santaniello's Miami attorneys prepared two supplemental briefs educating the Court in the premises of the narrowed issue, including Racetrac's inability to interfere with Miami-Dade County's exclusive jurisdiction to control traffic on public roadways and abutting lands.

At the hearing on Racetrac's Motion to Dismiss Plaintiff's Second Amended Complaint, the Court was prepared with knowledge of Racetrac's two supplemental briefs and heavily questioned counsel for both parties as to the duty of Racetrac. Plaintiff argued that Racetrac created the danger and failed to mitigate the same after it was on notice of accidents occurring off of its premises. Racetrac maintained its position that there was not sufficient notice of the alleged dangerous condition based on Plaintiff's own expert's testimony; however, even if that was the case, there was no duty to Plaintiff to take affirmative action to control traffic on the adjacent public roadway. Ultimately, the Court agreed that Racetrac owed no duty to the Plaintiff and granted Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint with prejudice.

Negligence Action— Summary Final Judgment

Tampa Junior Partner Joseph Kopacz obtained a Summary Final Judgment in the matter of April Sheffield and as guardian on behalf of Alexander Sheffield v. RRJTM Investments 1, LLC. and 1120 N. Washington, LLC. in Sarasota County, Florida in front of the Honorable Judge Brian Iten on April 4, 2016. Plaintiffs alleged a negligence cause of action against RRJTM (and the Co-Defendant 1120) regarding a dangerous concrete barrier separating two properties owned by the Defendants. Plaintiffs alleged to have sustained significant back/neck injuries when the vehicle driven by April Sheffield at approximately 35-40 mph hit the concrete barrier causing property damage and personal injuries to Plaintiff and her 10-year old son, Alexander (who was also named as a Plaintiff). We argued the concrete barrier was not a hidden and/or dangerous condition requiring a duty to warn and Defendant reasonably maintained its property in reasonably safe condition in accordance with Florida law. Plaintiffs attempted to introduce several hearsay statements/affidavits of other tenants and customers who alleged to have seen other accidents as a result of this particular concrete barrier. The Court ruled hearsay statements would not create an issue of fact and granted summary judgment finding the concrete barrier was a not dangerous condition as a matter of law.

Read More . . . P. 14

Verdicts and Summary Judgments cont.

Final Summary Judgment—Personal Injury

Jacksonville Partner Dale Paleschic and Associate Bradley Latone, recently obtained a Final Summary Judgment in the matter of Lieupo v. State of Florida, Department of Highway Safety and Motor Vehicles, Florida Highway Patrol. The case involved a tow truck operator who was injured while in the process of removing a tractor trailer rig that was involved in a single vehicle accident. The driver apparently suffered a heart attack and his rig ran off the highway near Jasper, Florida. The truck was engulfed in flames and was carrying a load of car batteries at the time. The car batteries were ejected from the trailer and broke apart causing battery acid to be leaked into the wooded area of the crash. The Jasper Fire Department and FHP, along with other agencies responded. The Plaintiff was summoned to the scene to help remove the wreckage after the fire had been put out and the FHP had completed its investigation. Discovery revealed that the Plaintiff actually arrived early because he listened to his police scanner and went to the scene of his own volition. He claimed that he was asked to help locate the body and while walking around the area, his feet were exposed to battery acid.

The case was litigated for almost 2 years. We moved for Summary Judgment on the basis that the FHP owed no duty to the Plaintiff since the FHP does not have responsibility to determine that the area is free of hazardous materials and did not undertake any special actions on his behalf as a part of their statutory duties to investigate crashes. Furthermore, even if it did have a duty, the testimony established that the Plaintiff was warned by the troopers of the potential hazard which was obvious to even the Plaintiff when he arrived. The Court agreed that there was no duty owed by the FHP and granted Final Summary Judgment

Motion for Final Summary Judgment—DEC Action

Tallahassee Associate Alec Masson prevailed on a Motion for Final Summary Judgment in the Dec Action matter styled Ascendant Commercial Insurance v. Best of Bricks, et al.

Motion for Summary Judgment on Benefits Exhaustion—PIP

Fort Lauderdale PIP Partner Jairo Lanao prevailed on a Motion for Summary Judgment on Benefits Exhaustion in the matter styled Fountains Therapy Center v. State Farm. Plaintiff argued there was a gratuitous payment as a late bill was paid to another provider. The Court agreed with Defendant that Plaintiff needed to have filed a reply to our Affirmative Defenses in order to claim a gratuitous payment.

Final Judgment—Slip and Fall

Boca Raton Senior Partner Marc Greenberg received a Final Judgment in Palm Beach County in the slip and fall matter styled Naomi Stephens v. Defendant Retail Store.

Motion for Summary Judgment—Premises Liability

Boca Raton Senior Partner Marc Greenberg was granted Defendant's Motion for Summary Judgment in Palm Beach County in the premises liability matter styled Smith, Renelle v. Defendant Retail Store. Plaintiff claims to have slipped and NOT fallen due to water on the floor dripping from the ceiling.

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.

“AV®, BV®, AV Preeminent® and BV Distinguished® are registered certification marks of Reed Elsevier Properties Inc., used under license. They are to be used in accordance with the Martindale-Hubbell® certification procedures, standards and policies. For a further explanation of Martindale-Hubbell's Peer Review Ratings, please visit www.martindale.com/ratings.



LUKS, SANTANIELLO PETRILLO & JONES

Our verdicts tell the story.



New Attorneys Join the Firm



MIAMI: **Andrew Genden**, Associate practices in auto and general liability matters. Andrew is a 2013 graduate of St. Thomas University School of Law and a 2008 graduate of the University of Miami. While attending law school he interned with The Honorable Alan S. Gold in the United States District Court for the Southern District of Florida. He is admitted in Florida (2013). Contact Andrew Genden at T: 305.377.8900 or AGenden@insurancedefense.net.

MIAMI: **Victor Rams**, Junior Partner has 27 years of experience handling auto and general liability matters. Prior to joining the firm, Victor managed the BI legal department for a major insurance carrier and served as staff counsel for several leading insurance carriers. He is admitted in Florida (1988). Victor is bilingual, fluent in Spanish. Contact Victor Rams at T: 305.377.8900 or VRams@@insurancedefense.net.



FORT LAUDERDALE: **Aaron Wong**, Senior Partner has 20 years of experience in both State and Federal Courts and is AV® Preeminent™ Rated by Martindale-Hubbell and his peers. He practices in complex commercial litigation and is admitted in Florida (1996) and to the U.S. District Court, Southern and Middle Districts of Florida, including the Eleventh Circuit Court of Appeals. Aaron is bilingual, fluent in Spanish. Contact Aaron Wong at T: 954.761.9900 or AWong@insurancedefense.net.



FORT LAUDERDALE: **Allison Janowitz**, Associate concentrates her practices in general liability, auto liability, personal injury litigation, nursing home defense, medical malpractice and construction defect matters. She is admitted in Florida (2010) and to the U.S. District Court, Southern District of Florida. Contact Allison Janowitz at T: 954.761.9900 or AJanowitz@insurancedefense.net.



Congratulations to Patrick Hinchey in the Jacksonville office who obtained **Board Certification in Construction Law**. He is a Florida Bar Board Certified Construction Law Expert.



JACKSONVILLE: **Bradley Latone**, Associate practices in the areas of general liability, auto, premises and negligent security. Bradley is a 2013 graduate of Florida Coastal School of Law and a 2009 graduate of the University of Buffalo. While attending law school he interned with The Honorable Ronald V. Swanson in the Florida First District Court of Appeal. He is admitted in Florida (2013) and to the United States District Court, Middle District of Florida. Contact Bradley Latone at T: 904.791.9191 or BLatone@insurancedefense.net.

ORLANDO: **Vicki Lambert**, Junior Partner has been practicing law for fifteen years and handles matters involving complex civil litigation. Prior to joining the firm, Vicki served as Assistant General Counsel for two leading insurance carriers where she managed House Counsel and Litigation operations for Personal Injury Defense and handled claim, coverage and litigation issues for commercial, property and auto lines of insurance. She is admitted in Florida (2000). Contact Vicki Lambert at T:407.540.9170 or VLambert@insurancedefense.net.

TAMPA: **Michael Bohnenberger**, Senior Associate has over a decade of experience in handling complex and severe bodily injury and wrongful death claims arising from automobile, trucking, roadway construction, premises liability and defective products. He is admitted in Florida (2005) and to the U.S. District Court, Middle District of Florida. Contact Michael Bohnenberger at T: 813.226.0081 or MBohnenberger@insurancedefense.net.



Joseph Kopacz was Named Junior Partner on July 1, 2016. Joseph is AV® Preeminent™ Rated by Martindale-Hubbell and is admitted in Florida (2007) and to the U.S. District Court, Southern, Middle and Northern Districts of Florida.



Paul Shalhoub was Named Senior Associate on August 1, 2016. Paul is AV® Preeminent™ Rated by Martindale-Hubbell and is admitted in Florida (2011) and to the U.S. District Court, Southern District of Florida (2011).



LUKS, SANTANIELLO PETRILLO & JONES

Our verdicts tell the story.



Jack D. **LUKS**, Founding Partner
AV Preeminent® Rated, Peer Review Rated
110 SE 6th Street—20th Floor
Fort Lauderdale, Florida 33301

Daniel J. **SANTANIELLO**, Founding/Managing Partner
Florida Bar Board Certified Civil Trial Expert
AV Preeminent® Rated, Peer Review Rated
301 Yamato Road—STE 4150
Boca Raton, Florida 33431

Anthony J. **PETRILLO**, Tampa Partner
Florida Bar Board Certified Civil Trial Expert
AV Preeminent® Rated, Peer Review Rated
100 North Tampa Street—STE 2120
Tampa, Florida 33602

Paul S. **JONES**, Orlando Partner
Florida Bar Board Certified Civil Trial Expert
255 S. Orange Avenue—STE 750
Orlando, Florida 32801

Contact Us

MIAMI

150 W. Flagler St—STE 2750
Heather Calhoon, Senior Partner
T: 305.377.8900
F: 305.377.8901

BOCA RATON

301 Yamato Rd—STE 4150
Dan Santaniello, Managing Partner
T: 561.893.9088
F: 561.893.9048

FORT LAUDERDALE

110 SE 6th St—20th Floor
Jack Lusk, Founding Partner
T: 954.761.9900
F: 954.761.9940

FORT MYERS

1412 Jackson St—STE 3
Howard Holden, Senior Partner
T: 239.561.2828
F: 239.561.2841

ORLANDO

255 S. Orange Ave—STE 750
Paul Jones, Managing Partner
T: 407.540.9170
F: 407.540.9171

TAMPA

100 North Tampa ST—STE 2120
Anthony Petrillo, Managing Partner
T: 813.226.0081
F: 813.226.0082

JACKSONVILLE

301 W. Bay St—STE 1050
Todd Springer, Senior Partner
T: 904.791.9191
F: 904.791.9196

TALLAHASSEE

6265 Old Water Oak Rd – STE 201
James Waczewski, Senior Partner
T: 850.385.9901
F: 850.727.0233

FIRM ADMINISTRATOR: 954.847.2909 | CLIENT RELATIONS: 954.847.2936 | ACCOUNTING: 954.847.2903

HUMAN RESOURCES: 954.847.2932 | ATTORNEY COMPLIANCE OFFICER: 954.847.2937

[www. LS-Law.com](http://www.LS-Law.com)

| LS@LS-Law.com