Negligence

Alcohol

Gonzalez v. Stoneybrook West Golf Club, LLC, 225 So. 3d 891(Fla. 5th DCA 2017)

Stoneybrook is a golf club whose employees serve alcoholic beverages both inside its clubhouse and on the golf course. Hartman was a golfer who routinely played golf at Stoneybrook and purchased alcohol from Stoneybrook employees. After playing a round of golf and consuming alcohol, Hartman caused an automobile crash that resulted in the death of the decedent. At the time of the crash, he had a blood alcohol content of .302. The decedent's family sought damages against Stoneybrook pursuant to Florida Statute 768.125. Stoneybrook filed a Motion for Final Summary Judgment contending that there was no competent evidence of record that Hartman was habitually addicted to alcohol or, if so, that Stoneybrook had any knowledge of the alleged addiction. The trial court agreed and granted Summary Judgment.

In response to the Motion for Summary Judgment, the Plaintiff filed the deposition of Hartman, a friend of his and various Stoneybrook employees. The depositions established that Hartman had played golf at the club approximately 70-80 times over a three year period prior to the crash. Hartman's friend testified that Hartman was intoxicated virtually every time they played together at Stoneybrook noting that he normally started the day by drinking two strongly poured whiskey and cokes in 16-ounce Styrofoam cups poured by bartenders who were familiar with Hartman. At the midpoint of the golf round, Hartman normally went to the Stoneybrook Clubhouse and purchased another strongly poured 16-ounce whiskey and coke and would often buy additional drinks from a Stoneybrook employee out on the course.

Hartman's friend testified that, on the day of the crash, Hartman had four whiskey and cokes including approximately 8 ounces of straight alcohol poured by one of the club's employees while on the course. The Plaintiff also filed an Affidavit of an expert who opined that Hartman's blood alcohol content when he left Stoneybrook was over .27. Based upon this record evidence, the Fifth District reversed Summary Judgment.

Stewart v. Draleaus, 226 So. 3d 990 (Fla. 4th DCA 2017)

In this motorcycle accident case, there was wildly conflicting testimony of how the accident occurred. One version was that the Defendant driver challenged the motorcyclist to a race. Another was that the Defendant had revved his engine as a warning to the motorcyclist and then he saw one of the cyclists attempt to turn and did so directly into the path of another causing them to collide and hit a curb. There was also independent witness testimony that the motorcyclist and the Defendant were traveling 100 miles per hour and another witness who testified that the vehicles were traveling 55 to 60 miles per hour and that the car was nowhere near the motorcycle when one of the wheels began to wobble and then crash. There was yet another witness, a minor, who was involved in a fender bender shortly after the accident. She testified that she did not see the accident because a truck was traveling in front of her, but she saw the motorcycle speeding and weaving in and out of traffic before the accident occurred. When the truck turned on to an intersecting street, she saw three people laying on the road and on the sidewalk and she had to swerve to avoid them at which point she hit a car that was pulled over to render aid to the Plaintiffs.

The Plaintiffs moved in limine to keep out a minor witness' prior inconsistent statement where she told the police officers that she saw one of the motorcyclists move into the other motorcyclist's lane and make contact with it arguing that the statement was protected by the accident report privilege. The trial court excluded the testimony of the minor based upon that privilege. The Fourth District pointed out that the immunity provided by the accident report privilege is not extended to witnesses because they have no obligation to provide a statement to law enforcement. The Fourth District found that the trial court erred in excluding in the statement under the theory that the second accident was part and parcel of the first accident. The Fourth District found that conclusion erroneous because neither the minor witness nor the vehicle she struck had collided with the Plaintiffs, their motorcycles or any of the debris from the accident. Additionally, the investigating officer who obtained the minor's statement indicated in his proffered testimony that he was investigating only the motorcycle accident and not the minor's accident. In fact, the minor's accident was memorialized in a separate report authored by a different officer.

The trial court also excluded evidence of the Plaintiff's pre-accident alcohol consumption. Recognizing the inflammatory effects of a party's use of alcohol in the context of a car accident, the jury is still supposed to hear the totality of fault of each side and the specific acts of negligence of each party even when liability is admitted. In this case, one Plaintiff admitted that he had two drinks between 7:30

p.m. and 10:30 p.m. which meant he could have been drinking up to 48 minutes before the accident which happened at 11:18 p.m. A responding officer also smelled alcohol on one of the motorcyclists and one of the defense experts testified that even small quantities of alcohol can impair a motorcycle operator's perception of events.

Because the evidence conclusively established that at least some of the Plaintiffs were drinking prior to the accident, the Fourth District ruled that the issue as to whether alcohol consumption was a contributing factor should have been admitted and made a question of fact for the jury. The Fourth District also ruled that the Defendant would be permitted to pursue his defense under Florida Statute 768.36 when the case was retried. This statute prohibits the Plaintiff from recovering damages for his or her own injuries when the Plaintiff was under the influence of alcohol or drugs to the extent that normal faculties were impaired or the blood alcohol level was .08% or higher and the Plaintiff was more than 50% responsible for his or her own harm.

Lastly, the Plaintiff successfully excluded evidence that one of the Plaintiffs had not taken a required examination and therefore only possessed a temporary motorcycle license that did not allow him to carry passengers. The Judge ruled a violation in this case was irrelevant because failure to take the requisite test and obtain the permit and license did not suggest negligence in the subject accident. The Fourth District stated that the vast majority of jurisdictions hold that a violation of a driver's license law is not evidence of negligence in the absence of some casual connection between the violation and the injury; however, in some situations the violation of a restriction may be relevant to show a driver's inexperience and incompetence.

Attorney/Client privilege

Worley v. Central Florida Young Men's Christian Association, Inc., 228 So. 3d 18 (Fla. 2017)

The Supreme Court held that the attorney/client privilege protects a party from being required to disclose that his or her attorney referred the party to a physician for treatment. In doing so, the Supreme Court distinguished the *Boecher* decision noting that *Boecher* involved disclosure of financial information of a retained expert as opposed to a treating physician.

Comparative negligence

Petruzzella v. Church on the Rock of Palm Coast, Inc., 219 So. 3d 239 (Fla. 5th DCA 2017)

The Plaintiff was a member of the church band and he tripped and fell over a bass player's unsecured cord during rehearsal. He alleged negligent failure of the church to maintain the premises in a reasonable safe condition. The Defendants moved for Summary Judgment on the basis of express assumption of risk and the trial court granted same. The Fifth District reversed holding that the doctrine of express assumption of risk is applicable only to express contracts not to sue and injuries resulting from contact sports. They further held that the Plaintiff's conduct of repeatedly walking across the stage with unsecured electrical cords on it was properly characterized as an implied assumption of the risk that must be evaluated by the jury under the principles of comparative negligence.

Duty

The Las Olas Holding Company v. Demella, 228 So. 3d 97 (Fla. 4th DCA 2017)

The Plaintiff sued the Defendant hotel for negligence related to an accident in which an intoxicated driver drove her car into a wall of the hotel's cabana. This caused a collapse of the structure thereby killing the Plaintiff. In this accident, the driver swerved from the roadway, traveled across a sidewalk and through bushes before colliding with the cabana but still had enough force to cause collapse of the steel-reinforced concrete columns of the cabana. The Fourth District found that the trial court should have granted the hotel's Motion for Directed Verdict.

In doing so, they held that the evidence that the hotel was aware of the roadway's slight curve and that some speeding occurred on the roadway was legally insufficient to establish that the hotel knew or should have known that a dangerous condition existed on its own premises. Further, even if a dangerous condition existed on the hotel's premises of which it knew or should have known (i.e. the placement of the cabana) the hotel did not breach its affirmative duty to protect the users of the pool cabana from these dangers and that even if it did breach its duty, the Plaintiff's death was unequivocally attributable only to "an improbable freak accident."

Additionally, the Fourth District also criticized Plaintiff's counsel who stated during opening that "the reason why we are in this courtroom today is that this corporation has refused to accept any responsibility for its role in this death." After the trial court sustained an objection, the Plaintiff's lawyer then stated "they

will look at everyone else's conduct but their own and these are defenses that are just attempts to avoid responsibility." Lastly, in closing argument, the Plaintiff's counsel talked about the "value of a human life" which is not an element of damages and is not the proper topic for a closing argument.

Equitable subrogation

Holmes Regional Medical Center v. Allstate Insurance Company, 225 So. 3d 780 (Fla. 2017)

Hintz sustained head injuries when his scooter collided with an automobile driven by an individual insured by Allstate. Hintz received medical treatment at Holmes Regional Medical Center where according to Allstate, his injuries were "exacerbated by medical negligence." Hintz filed suit against the operator and owner of the vehicle. The Plaintiff successfully argued that the Defendants could not present evidence that medical negligence was a contributing cause of the Plaintiff's injuries. The jury found the Defendants liable for the Plaintiff's injuries and a judgment in excess of $11,000,000 was entered. Thereafter, Allstate paid $1,100,000 which was its policy limit and the Defendants had not paid the remainder of this judgment.

Following the verdict, the Plaintiff filed a separate medical malpractice lawsuit against Holmes Regional Medical Center. Allstate and its insureds were granted leave to intervene in the lawsuit and both parties filed complaints claiming they were entitled to equitable subrogation from the medical providers. In response, the medical providers sought dismissal of the complaint because neither Allstate nor its insured had paid the Plaintiff's damages in full. The trial court agreed and dismissed that action. The Supreme Court upheld the trial court's decision and held that a party that has had judgement entered against it was not entitled to seek equitable subrogation from a subsequent tortfeasor when the judgment had not been fully satisfied.

Error to disclose guest information

Josifov v. Kamal-Hashmat, 217 So. 3d 1085 (Fla. 3d DCA 2017)

In an action against a hotel for the death of a patron who drowned in the hotel's swimming pool, the Third District granted certiorari and held that the trial court departed from the essential requirements of law in compelling disclosure of non-party identification information and surveys completed by guests at the hotel.

The Third District held that the names and contact information of non-party hotel guests who completed the survey were constitutionally protected private details.

Express assumption of risk

Petruzzella v. Church on the Rock of Palm Coast, Inc., 219 So. 3d 239 (Fla. 5th DCA 2017)

The Plaintiff was a member of the church band and he tripped and fell over a bass player's unsecured cord during rehearsal. He alleged negligent failure of the church to maintain the premises in a reasonable safe condition. The Defendants moved for Summary Judgment on the basis of express assumption of risk and the trial court granted same. The Fifth District reversed holding that the doctrine of express assumption of risk is applicable only to express contracts not to sue and injuries resulting from contact sports. They further held that the Plaintiff's conduct of repeatedly walking across the stage with unsecured electrical cords on it was properly characterized as an implied assumption of the risk that must be evaluated by the jury under the principles of comparative negligence.

Fraud on the Court

Obregon v. Rosana Corp., 232 So. 3d 1100 (Fla. 3d DCA 2017)

The Plaintiff sued Uncle Tom's for injuries to her neck, back, right leg, right shoulder, and right arm as a result of a slip and fall. Although the Plaintiff revealed some of the medical providers who had treated her prior to this slip and fall, she failed to disclose numerous healthcare providers who had treated her for injuries and pain directly related to the injuries she was seeking damages for.

During her deposition, Uncle Tom's learned that Obregon had medical insurance through Medica Healthcare which was a fact not previously disclosed by her in responses to collateral source interrogatories. Uncle Tom's also learned that Obregon had received treatment at a local hospital and with two other healthcare providers. These healthcare providers had been omitted from her answers to interrogatories.

As a result of subpoenaing the records from these healthcare providers, Uncle Tom's uncovered 16 additional treating facilities and healthcare providers that had not been disclosed by her in her answers to interrogatories or during her deposition. The Plaintiff also denied that she had been diagnosed with a herniated disc and the records subpoenaed revealed that she had been diagnosed with this at

least three years prior to the slip and fall. The Plaintiff also denied being involved in any motor vehicle accidents within four years of the slip and fall; however, subpoenaed records reflect that she had been involved in an accident the year before the slip and fall and had filed a PIP claim for injuries to her back, neck and left shoulder as a result of that accident.

Moreover, she was treated 41 times by healthcare providers as a result of that accident and this had never been disclosed in answers to written discovery or during her deposition. Uncle Tom's also learned that the Plaintiff was receiving Social Security Disability benefits and they then subpoenaed the non-privileged records of the attorney who represented her in conjunction with her disability claim and in doing so discovered nine more physicians and facilities that had treated her which had also not been disclosed. The trial court dismissed the claim for fraud on the court and the Third District affirmed same.

Willie-Koonce v. Miami Sunshine Transfer & Tours Corp., 233 So. 3d 1271 (Fla. 3d DCA 2017)

The Plaintiff was injured as she was removing her luggage from a trailer pulled by a Miami Sunshine vehicle. The vehicle and trailer began backing up and ran over her pinning her under the axle of the trailer. The Plaintiff sustained serious injuries including a 10-day hospital stay for treatment of her fractured femur. The treatment included implanting a titanium rod and several screws to repair the bone followed by extensive physical therapy to regain much of her pre-injury mobility. During pre-trial discovery, the Plaintiff provided sworn answers to Interrogatories and deposition testimony that included statements that she had a "permanent limp;" she needed a cane to get around; and that when she walks a "few steps" to her car without a cane, she limps. She also testified that she could not walk without a cane carrying large boxes; had not tried carrying heavy or bulky items; and had to use a hand rail to walk up steps without a cane.

Unbeknownst to her, the Plaintiff had been surveilled. Surveillance clearly showed her walking continuously up and down steps without using a cane or hand rail, carrying large bulky items (of indeterminate weight) without assistance, up and down steps without using a cane or a hand rail. It also showed her walking to the back of her car, opening her trunk, and carrying packages (again, without the assistance of another person) into her home without using the cane or limping. The Defendant moved to dismiss the case for fraud on the court and the trial court granted same. The Third District upheld the dismissal finding that there was clear and convincing evidence of an intention to deceive the court.

IME

Smart v. Bock, 220 So. 3d 1196 (Fla. 4th DCA 2017)

The Fourth District granted certiorari finding that an order granting an IME in an employment discrimination action departed from the essential requirements of law where the order failed to specify the time, place, manner, conditions and scope of examination and the person or persons by whom the examination was to be made.

Incident report

Ruby Tuesday, Inc. v. Metalonis, 225 So. 3d 397 (Fla. 5th DCA 2017)

The trial court entered an order compelling the production of an incident report prepared after a patron was injured when a chair collapsed at the restaurant. In this case, the reporter testified that she made the report in accordance with company policy to report incidents of injury to patrons. Although the reporter did not personally foresee the potential claim and did not know the purpose for the company policy, this did not negate a finding that the report was work product. The Fifth District concluded that the alleged injury was caused by an object in the restaurant's control and there was some evidence to suggest that the restaurant had prior knowledge of the defective condition of the chair. Under these circumstances, it was foreseeable that the event might form the basis for a claim and the District Court held that the incident report was, therefore, protected work product.

Loss of consortium

Kelly v. Georgia-Pacific, LLC, 211 So. 3d 340 (Fla. 4th DCA 2017)

The Fourth District held that a spouse who was not married to a decedent at the time of the decedent's injury may not recover consortium damages as part of a wrongful death suit. In this case, the decedent worked in construction and was exposed to asbestos from 1973 to 1974. The decedent and his wife did not marry until 1976. In 2014, the decedent was diagnosed with mesothelioma and alleged that the exposure to asbestos caused the disease. He ultimately died from the mesothelioma in 2015.

Medicaid lien

Willoughby v. Agency for Healthcare Administration, 212 So. 3d 516 (Fla. 2d DCA 2017)

Willoughby suffered serious injuries in a motor vehicle accident. Medicaid paid almost $150,000 for medical expenses incurred. After the accident, he sought uninsured motorist benefits from his carrier and they denied coverage and refused to pay him. Willoughby then sued the insurance company for bad faith and unfair claim settlement practices and eventually they settled; paying the Plaintiff $4,000,000. He also received $20,000 from another insurance company for bodily injury and uninsured motorist benefits under the driver's insurance policy. Willoughby and AHCA stipulated that the full value of his personal injury claim was at least $10,000,000. They also stipulated that the Plaintiff suffered at least $23,800 in lost wages and the loss of future earning capacity was valued between $800,000 and $2,000,000. They also agreed that his past medical expenses paid by Medicaid were almost $148,000 and that his future medical expenses would exceed $5,000,000. Finally, they stipulated that his past non-economic damages exceeded $1,000,000 and the parties stipulated that, under the settlement with the uninsured motorist carrier, Willoughby recovered less than $148,000 as payment for his past medical expenses.

Willoughby argued that the Administrative Law Judge improperly included the bad faith portion of the $4,000,000 settlement obtained from his uninsured motorist carrier as being available to satisfy the lien. They also argued that AHCA was only entitled to recover the Medicaid lien from that portion of settlement funds allocated to past medical expenses, whereas AHCA argued that they were entitled to make a claim against past and future medical expenses. The Second District ruled that the Administrative Law Judge could properly order recovery from the bad faith damages. At the same time, they found that AHCA was only entitled to recover that portion of the settlement allocated to past medical expenses and then remanded for further calculations of the lien.

Notice

Miami-Dade County v. Jones, 232 So. 3d 1127 (Fla. 3d DCA 2017)

The Third District held that the trial court erred in denying the County's post-trial Motion for Directed Verdict and Judgment Notwithstanding the Verdict finding the County liable for injuries sustained by the Plaintiff where she slipped

and fell on a grease spot on County-owned sidewalk where the Plaintiff failed to introduce evidence that the County have actual or constructive knowledge of the dangerous condition. The Third District noted that there was no evidence in the record indicating how long the grease was present on the sidewalk. As the court noted "Jones failed to present any evidence that a grease spill occurred on the discolored sidewalk even once before Jones' fall, let alone with such frequency that the county should have known about it."

The Plaintiff also introduced evidence that County inspectors and employees were present in the area numerous times over a course of years; however, the Plaintiff did not introduce any evidence to suggest that there was grease on the sidewalk during any of these inspections which would have put the County on notice that the grease collection system employed by the adjacent restaurant was insufficient. The Third District also noted that the trial court erred in introducing County ordinances related to inspections and permits for public food establishments as evidence tending to show that the County had constructive notice of the grease spill.

The Third District noted that the mere fact that an ordinance may cover the subject of inspecting food establishments does not imply that the County had constructive knowledge of a dangerous condition created by a food establishment. Moreover, they concluded that the ordinances would only be relevant if they were introduced to show that the County should have had or failed to comply with its duty to inspect the barbeque stand; however, the County has sovereign immunity from liability for enforcing or failing to enforce its laws. Lastly, the Third District concluded that the trial court erred in allowing the Plaintiff to testify that the barbeque stand was owned and operated, in part, by off-duty County bus drivers. The Third District concluded that such testimony was irrelevant because the County was not sued for its off-duty bus drivers who were clearly not acting within the scope of their employment.

Premises liability

Wilson–Greene v. City of Miami, 208 So. 3d 1271 (Fla. 3d DCA 2017)

The Plaintiff was involved in a slip and fall at the lobby elevator bank in a building owned by the City of Miami. Vista Maintenance Services had the maintenance contract for the building at the time of the incident. On the day of the incident, the Plaintiff arrived at the building between 11:00 a.m. and noon to deliver some paperwork to an office located on the second floor of the building.

According to her own testimony, she took an elevator from the lobby to the second floor just as she had done on 2-3 prior occasions. She did not see any substance on the floor before she entered the elevator nor did she see any substance on the floor during her prior visits to the building.

The Plaintiff testified that she spent "longer than 15 minutes" on the second floor conducting her business and then returned to the lobby using an elevator in the same elevator bank. After taking just a couple of steps out of the elevator, the Plaintiff slipped and fell backwards in the hallway between the two facing banks of elevators that service the building, hit her head and lost consciousness. When she regained consciousness, she observed a green substance all over her feet, sandals, between legs and on the parts of her upper body. She testified that the substance was "not hot."

The building's incident report, which the parties stipulated was authentic, stated that the accident occurred at 11:15 a.m. and the substance was "soup that was on the floor in the hallway of the elevators." The Plaintiff said the manager of the building's security company told her the substance was green pea soup. Although there was a restaurant in the lobby of the building, there was no evidence in the record that the restaurant was serving pea soup that day.

Vista Maintenance moved for Summary Judgment on the grounds that it did not owe the Plaintiff a legal duty to constantly patrol and supervise the area where the incident occurred. Alternatively, they argued that if they did owe a duty to the Plaintiff, that they had no actual or constructive knowledge of the dangerous condition. The City also moved for Summary Judgment on the same grounds. The trial court granted Summary Judgment and the Third District affirmed.

In doing so, they noted that the language of the maintenance company's contract with the City did not create a heightened standard of care on the maintenance company and did not make the maintenance company owe a duty to building patrons to constantly patrol and supervise the area. Further, the court ruled that the fact that the soup was not hot was not enough to establish constructive notice to either of the Defendants. Specifically, the court found that the jury would have to stack inferences in order to come to this conclusion because there was no evidence the soup was hot prior to being spilled on the floor and therefore could infer from this that it was on the floor for a sufficient amount of time for it to have cooled.

Trainor v. PNC Bank, 211 So. 3d 366 (Fla. 5th DCA 2017)

The Plaintiff drove to PNC Bank intending to make a deposit at the drive thru teller. She arrived to a closed bank and opted to make the deposit through the bank's outdoor ATM. After parking her car, she discovered that the area was under construction and there was a barricade in front of the ATM. According to the Plaintiff, there was a sign with an arrow in red lettering directing customers to walk around. She complied and began to walk around the barricade. While walking through the parking lot, she stepped in what she described as a pothole. The unexpected drop in pavement levels caused her foot to get caught and twist resulting in a fall that fractured her left foot and leg and injured her neck and back. Although she did not see the pothole before she stepped in it, the Plaintiff acknowledged that there was nothing prohibiting her from looking down and seeing the pothole.

The Plaintiff filed suit against the bank and its general contractor and presented two theories of liability: breach of the duty to warn; and breach of the duty to maintain. The contractor then filed a Third Party Complaint against another company that actually performed the construction alleging counts for common law indemnity and/or contribution, negligence and equitable subrogation.

The Defendants and Third Party Defendants moved for Summary Judgment claiming that they were entitled to a judgment as a matter of law pursuant to the obvious danger doctrine. The Plaintiff responded that the condition was not open and obvious and that the doctrine did not absolve the bank of its duty to maintain. The trial court granted Summary Judgment and the Fifth District reversed finding that there was a factual issue as to whether the owner or the possessor breached its duty to maintain the premises in a reasonably safe condition.

The court also declined to affirm the Summary Judgment as to the general contractor and company that performed the construction on the basis that they did not owe a duty to the Plaintiff on a premises liability theory where that ground was not raised in the underlying Motion for Summary Judgment.

Encarnacion v. Lifemark Hospitals of Florida, Inc., 211 So. 3d 375 (Fla. 3d DCA 2017)

The Third District affirmed the trial court's granting of summary judgment in favor of the hospital because there was no evidence in the record suggesting the existence of the foreign substance on the floor was known to the hospital. In the absence of evidence of actual knowledge, it was incumbent on the Plaintiff to

come forward with circumstantial evidence that the hospital, in the exercise of ordinary caution, should have known of the condition. In this case, the answers to Interrogatories and depositions did not establish how long the substance had been on the floor. In fact, if the Plaintiff's testimony was to be believed, the liquid was deposited on the floor by a non-hospital employee at the same time that Plaintiff fell. Further, her belated testimony that the substance on the floor was oily, dirty, and dark, even if true, was insufficient to create a jury issue. For such testimony to create a jury issue, the testimony must be accompanied by something else; namely some additional fact or facts from which a jury could reasonably conclude that the substance was on the floor long enough to have become discolored without assuming other facts such as the substance in its original condition was not oily, dirty and dark.

Brookie v. Winn-Dixie Stores, 213 So. 3d 1129 (Fla. 1st DCA 2017)

The Plaintiff went to Winn-Dixie to make a purchase and to obtain empty boxes. During his visit, the Plaintiff made a total of four trips into and out of the store. On the first trip, he made his purchase and took it to his car and then made three more trips into the store to obtain the empty boxes. During this time, a beer shipment was being made. The beer was stacked approximately five feet high on a pallet between the store's entrance and exit doors and an empty pallet was sitting on the pallet jack's prongs to the right of the exit. On the Plaintiff's third trip exiting the store, he saw the empty pallet, but tripped and fell over it suffering injuries as a result.

He sued Winn-Dixie for negligently failing to warn of the dangerous condition and negligently failing to make the sidewalk safe to walk across. The trial court granted Summary Judgement and the First District affirmed finding that Winn-Dixie owed no duty to warn the Plaintiff of an open and obvious condition where its knowledge of the condition was not superior to the Plaintiff's knowledge. Further, Winn-Dixie did not breach its duty to exercise ordinary care to maintain the premises in a reasonably safe condition where the condition was open and obvious and not inherently dangerous, and, even if the pallet's location was dangerous, it was so open and obvious and previously observed by the Plaintiff that Winn-Dixie could reasonably expect the Plaintiff to protect himself from the purported danger.

McNabb v. Bay Village Club Condominium Association, Inc., 216 So. 3d 688 (Fla. 2d DCA 2017)

The trial court granted Summary Judgment in favor of a Condominium Association in a slip and fall case determining, as a matter of law, that the Association did not have notice of an oil leak that allegedly caused the accident. In opposition to the Motion for Summary Judgment, the Plaintiff presented the Affidavit of a professional engineer who estimated the depth of the oil in the area and concluded that the oil had been leaking for approximately 18 days. The expert also opined that, even if the depth of the oil had been less, it would still have been leaking for at least 4 ½ days. The trial court discounted the expert's Affidavit finding that it both lacked credibility and left open other possibilities for why the fall occurred. The Second District reversed finding that the trial Judge erroneously weighed the credibility and reliability of the expert. At the same time, they recognized that trial Judges are not required to consider Affidavits that are not based upon personal knowledge or are devoid of evidentiary support; however, in this case, they found that the expert's Affidavit was based on personal knowledge and gleaned from analysis of record documents.

Arp v. Waterway East Association, Inc., 217 So. 3d 117 (Fla. 4th DCA 2017)

At around 11:00 p.m. one evening, the Plaintiff was injured while walking over a pathway of paver stones located in the area of a utility easement on property owned by W.E. Association and operated as a shopping center. The Plaintiff stopped on a cracked paver stone that was a little loose which caused her to roll her ankle and fall. The accident occurred as the Plaintiff was walking back to her home after taking a dinner cruise in Delray Beach.

Although the Plaintiff had walked along the public roads on the way to the dinner cruise, she and her companion decided to take a short cut on the way home. To access the Plaintiff's street via this cut-through, they had to walk through the shopping center's parking lot, step over a raised curb at the end of the parking lot, and then walk through a grassy area, over a short path of paver stones located next to a storm pump station, through more grass, and around a guard rail. The cut through area of the property was subject to a perpetual easement in favor of the City of Delray Beach for the purpose of the installation and maintenance of public utilities. The easement contains multiple storm pumps which are maintained by the city.

The cut-through did not have a "No Trespassing" sign at the time of the incident and the Plaintiff testified that she regularly saw other people use the cut-

through area. On the evening of the accident, the Plaintiff did not visit any of the businesses in the shopping center and the reason why she took the short cut on the association's property was because she just wanted to get home.

The association moved for Summary Judgment and the Fourth District affirmed the granting of same finding that it was undisputed that the Plaintiff entered the property without any express or reasonably implied invitation and where the record established, without a genuine issue of material fact, that the owner did not breach any duty it owed to the Plaintiff as an uninvited licensee or trespasser.

Vancelette v. Boulan South Beach Condominium Association, Inc., 229 So. 3d 398 (Fla. 3d DCA 2017)

The Plaintiff tripped and fell on an unmarked curb on the side of a sidewalk access ramp which was part of a renovation project undertaken by the Florida Department of Transportation. The trial court entered summary judgment for the Defendant condominium association developer, contractor, subcontractor and engineers where the DOT had accepted the work before the Plaintiff suffered the injury and the alleged defect in the project was patent rather than latent. The Third District upheld the granting of the summary judgment holding that acceptance of completed work by the owner relieves construction and design defendants of further liability as to alleged patent defects.

Davie Plaza, LLC v. Iordanoglu, 232 So. 3d 441 (Fla. 4th DCA 2017)

The Fourth District ruled that the trial court erred in denying the Defendant's Motion for Directed Verdict where the circumstantial evidence presented by the Plaintiff was insufficient to establish the cause of the fall or even precisely where the fall occurred. Further, they found that the evidence was insufficient to support an inference that the ladder was placed on a defect in the premises to the exclusion of all other equally reasonable inferences.

Miami-Dade County v. Jones, 232 So. 3d 1127 (Fla. 3d DCA 2017)

The Third District held that the trial court erred in denying the County's post-trial Motion for Directed Verdict and Judgment Notwithstanding the Verdict finding the County liable for injuries sustained by the Plaintiff where she slipped and fell on a grease spot on County-owned sidewalk where the Plaintiff failed to introduce evidence that the County have actual or constructive knowledge of the dangerous condition. The Third District noted that there was no evidence in the record indicating how long the grease was present on the sidewalk. As the court

noted "Jones failed to present any evidence that a grease spill occurred on the discolored sidewalk even once before Jones' fall, let alone with such frequency that the county should have known about it."

The Plaintiff also introduced evidence that County inspectors and employees were present in the area numerous times over a course of years; however, the Plaintiff did not introduce any evidence to suggest that there was grease on the sidewalk during any of these inspections which would have put the County on notice that the grease collection system employed by the adjacent restaurant was insufficient. The Third District also noted that the trial court erred in introducing County ordinances related to inspections and permits for public food establishments as evidence tending to show that the County had constructive notice of the grease spill.

The Third District noted that the mere fact that an ordinance may cover the subject of inspecting food establishments does not imply that the County had constructive knowledge of a dangerous condition created by a food establishment. Moreover, they concluded that the ordinances would only be relevant if they were introduced to show that the County should have had or failed to comply with its duty to inspect the barbeque stand; however, the County has sovereign immunity from liability for enforcing or failing to enforce its laws. Lastly, the Third District concluded that the trial court erred in allowing the Plaintiff to testify that the barbeque stand was owned and operated, in part, by off-duty County bus drivers. The Third District concluded that such testimony was irrelevant because the County was not sued for its off-duty bus drivers who were clearly not acting within the scope of their employment.

Lago v. Costco Wholesale Corp., 233 So. 3d 1248 (Fla. 3d DCA 2017)

The Plaintiff slipped on a liquid substance and fell and broke her knee as she was walking into a Costco. She sued Costco for negligent maintenance of the property. The trial court entered Summary Judgment finding that there was no evidence presented that the Defendant had actual or constructive knowledge of the liquid substance on the floor. The trial court's Summary Judgment was issued but did not contain a statement of the court's basis for granting Summary Judgment. While noting that a trial court's setting forth the basis of their holdings in granting Summary Judgment would facilitate appellate review, the Third District affirmed the lower court's granting of Summary Judgment noting that there is no requirement that the trial court explain its reasoning. It also upheld the

determination that the Defendant had no actual or constructive knowledge of the liquid substance on the floor.

Stand Your Ground

Kumar v. Patel, 227 So. 3d 557 (Fla.2017)

Kumar attacked Patel without provocation at a bar. In reaction to Kumar's aggression, Patel struck Kumar's face with a cocktail glass, resulting in permanent loss of sight in Kumar's left eye. The State of Florida filed an information charging Patel with felony battery. Patel then moved to dismiss the information citing immunity from prosecution under the Stand Your Ground law. The trial court granted the motion holding Patel immune under the law. Kumar then filed a civil action against Patel for battery and negligence. Patel asserted as an affirmative defense the immunity found by the Circuit Court under the Stand Your Ground law and moved for Summary Judgment. The Circuit Court denied the Summary Judgment and ordered an evidentiary hearing to determine Patel's immunity. Before the hearing could be held, Patel filed a Petition for Writ of Prohibition with the Second District, arguing that the Circuit Court lacked jurisdiction over him in the civil case based upon the immunity determination in the criminal case. The Second District granted Patel's petition holding that Florida Statute §776.032 guarantees a single Stand Your Ground immunity determination for both criminal and civil actions. The Supreme Court unanimously held that the Stand Your Ground law does not confer civil liability immunity to a criminal Defendant based upon an immunity determination in a criminal case.

Summary Judgment

Wilson–Greene v. City of Miami, 208 So. 3d 1271 (Fla. 3d DCA 2017)

The Plaintiff was involved in a slip and fall at the lobby elevator bank in a building owned by the City of Miami. Vista Maintenance Services had the maintenance contract for the building at the time of the incident. On the day of the incident, the Plaintiff arrived at the building between 11:00 a.m. and noon to deliver some paperwork to an office located on the second floor of the building. According to her own testimony, she took an elevator from the lobby to the second floor just as she had done on 2-3 prior occasions. She did not see any substance on the floor before she entered the elevator nor did she see any substance on the floor during her prior visits to the building.

The Plaintiff testified that she spent "longer than 15 minutes" on the second floor conducting her business and then returned to the lobby using an elevator in the same elevator bank. After taking just a couple of steps out of the elevator, the Plaintiff slipped and fell backwards in the hallway between the two facing banks of elevators that service the building, hit her head and lost consciousness. When she regained consciousness, she observed a green substance all over her feet, sandals, between legs and on the parts of her upper body. She testified that the substance was "not hot."

The building's incident report, which the parties stipulated was authentic, stated that the accident occurred at 11:15 a.m. and the substance was "soup that was on the floor in the hallway of the elevators." The Plaintiff said the manager of the building's security company told her the substance was green pea soup. Although there was a restaurant in the lobby of the building, there was no evidence in the record that the restaurant was serving pea soup that day.

Vista Maintenance moved for Summary Judgment on the grounds that it did not owe the Plaintiff a legal duty to constantly patrol and supervise the area where the incident occurred. Alternatively, they argued that if they did owe a duty to the Plaintiff, that they had no actual or constructive knowledge of the dangerous condition. The City also moved for Summary Judgment on the same grounds. The trial court granted Summary Judgment and the Third District affirmed. In doing so, they noted that the language of the maintenance company's contract with the City did not create a heightened standard of care on the maintenance company and did not make the maintenance company owe a duty to building patrons to constantly patrol and supervise the area. Further, the court ruled that the fact that the soup was not hot was not enough to establish constructive notice to either of the Defendants. Specifically, the court found that the jury would have to stack inferences in order to come to this conclusion because there was no evidence the soup was hot prior to being spilled on the floor and therefore could infer from this that it was on the floor for a sufficient amount of time for it to have cooled.

McNabb v. Bay Village Club Condominium Association, Inc., 216 So. 3d 688 (Fla. 2d DCA 2017)

The trial court granted Summary Judgment in favor of a Condominium Association in a slip and fall case determining, as a matter of law, that the Association did not have notice of an oil leak that allegedly caused the accident. In opposition to the Motion for Summary Judgment, the Plaintiff presented the Affidavit of a professional engineer who estimated the depth of the oil in the area

and concluded that the oil had been leaking for approximately 18 days. The expert also opined that, even if the depth of the oil had been less, it would still have been leaking for at least 4 ½ days. The trial court discounted the expert's Affidavit finding that it both lacked credibility and left open other possibilities for why the fall occurred. The Second District reversed finding that the trial Judge erroneously weighed the credibility and reliability of the expert. At the same time, they recognized that trial Judges are not required to consider Affidavits that are not based upon personal knowledge or are devoid of evidentiary support; however, in this case, they found that the expert's Affidavit was based on personal knowledge and gleaned from analysis of record documents.

Vancelette v. Boulan South Beach Condominium Association, Inc., 229 So. 3d 398 (Fla. 3d DCA 2017)

The Plaintiff tripped and fell on an unmarked curb on the side of a sidewalk access ramp which was part of a renovation project undertaken by the Florida Department of Transportation. The trial court entered summary judgment for the Defendant condominium association developer, contractor, subcontractor and engineers where the DOT had accepted the work before the Plaintiff suffered the injury and the alleged defect in the project was patent rather than latent. The Third District upheld the granting of the summary judgment holding that acceptance of completed work by the owner relieves construction and design defendants of further liability as to alleged patent defects.

Lago v. Costco Wholesale Corp., 233 So. 3d 1248 (Fla. 3d DCA 2017)

The Plaintiff slipped on a liquid substance and fell and broke her knee as she was walking into a Costco. She sued Costco for negligent maintenance of the property. The trial court entered Summary Judgment finding that there was no evidence presented that the Defendant had actual or constructive knowledge of the liquid substance on the floor. The trial court's Summary Judgment was issued but did not contain a statement of the court's basis for granting Summary Judgment. While noting that a trial court's setting forth the basis of their holdings in granting Summary Judgment would facilitate appellate review, the Third District affirmed the lower court's granting of Summary Judgment noting that there is no requirement that the trial court explain its reasoning. It also upheld the determination that the Defendant had no actual or constructive knowledge of the liquid substance on the floor.

Wrongful death

Heiston v. Schwartz & Zonis, LLP, 221 So. 3d 1268 (Fla. 2d DCA 2017)

Following the death of a 16-year old in a motor vehicle accident, his parents attempted to be qualified as the Personal Representative of their son's estate. Both parents did not qualify and, as such, the decedent's brother was appointed as the Personal Representative. The law firm of Morgan & Morgan, P.A. represented the brother in his capacity as Personal Representative. Morgan & Morgan filed an action for wrongful death following which the respective carriers tendered their policy limits and death benefit. Schwartz & Zonis, LLP had a contingency fee agreement with the decedent's parents. Although they did not represent the Personal Representative, it actively pursued the wrongful death claim and sent demand letters to the two insurance companies and received the settlement drafts. They also filed a wrongful death action on behalf of the surviving parents and inaccurately described the father as being appointed as the Personal Representative. The trial court eventually awarded the entire fee to the firm that represented the decedent's statutory survivors and nothing to Morgan & Morgan who represented the Personal Representative. The Second District reversed and noted that, by statute, the Personal Representative is the only party with standing to bring a wrongful death action and settle the action. The trial court was ordered to award the full contingent fee to the attorneys for the Personal Representative and then reduce the fee award in a manner commensurate with the value, if any, of the services that Schwartz & Zonis, LLP provided to the statutory survivors.