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St. Paul African Methodist Episcopal Church is one of Tampa’s must-see stops on the Florida Black Heritage Trail. The congregation formed in 1870 when T.W. Long, a former slave and son of a Zulu warrior, arrived in Tampa after a long journey by foot from Brooksville. The pastor built a makeshift sanctuary out of palmetto leaves at the corner of Harrison and Tampa streets, where he began preaching. The church moved to its current location, at 506 E. Harrison St., in 1872, and the impressive brick structure you see today was constructed between 1906 and 1917. The St. Paul AME congregation has played an important role in Tampa’s history, hosting civil rights meetings in the 1950s and 1960s and housing the Historic Harlem Academy/School No. 2 periodically after it was burned down in 1892.

Sources: Florida Black Heritage Trail, harlemacademyschool.org, Walk of Legends marker
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Chester H. Ferguson Law Center
1610 N. Tampa Street, Tampa, FL 33602
Telephone (813) 221-7777
FAX (813) 221-7778
www.hillsbar.com

Editor
Rena Upshaw-Frazier
Executive Director
John F. Kynes

ADVERTISING
PR/Communications Coordinator
Corrie Benfield
corrie@hillsbar.com
(813) 221-7778

Officers
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IN EVERY ISSUE

THE HILLSBOROUGH COUNTY BAR ASSOCIATION
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Giving Thanks to Our Mentors

Let us remember to thank our mentors for allowing us to stand on their shoulders so that we may see further.

The fall season seems to be the time of year that we all become acutely aware of things for which we are thankful. We reflect, outwardly and internally, on gratitude for our family and friends, our careers and jobs, and of course the necessities that we have — food, shelter, and clothing. Recently, I was fortunate to have an experience that opened my eyes to a gift that is of great importance to me but for which I had rarely “given thanks.” I share this with you so that you may add it to your “thank you” list this season, if you have not already done so.

Anyone who knows me well knows that I believe that mentors and champions are important in all aspects of life — but particularly in one’s career. Those lucky enough to have mentors who are engaged and involved understand the opportunities for learning, growth, and progression that such relationships can provide. As Isaac Newton is often credited as writing: “If I have seen further than others, it is because I have stood on the shoulders of giants.” Mentors, through their experience and guidance, help us to see further and to become the people, colleagues, partners, and community members we strive to be.

A short time ago, one of my mentors retired. As part of the retirement celebration, someone had the idea of putting together a momento from those who wished to express their gratitude for the things this person had done to enrich their careers or lives. In essence, it was a formal “thank you” package, filled with personal gifts and messages.

As I prepared my message, I realized that it was the first time I was outwardly thanking this person for investing in me, my career, and my goals. I had thanked this person for isolated events, such as for sharing inspiring articles or for introducing me to a certain person. But I had not said “thank you” for the time. I was glad to now have the opportunity; however, I felt remiss that I had not done it sooner. I had taken it for granted that this mentor, and my other mentors, knew that I was thankful for their time and counsel.

Although my mentor’s retirement has not meant the end of our relationship, it has lessened the frequency of our casual conversations during which I would seek advice. Such discussions now take more planning, but I am thankful that we still have the opportunity to talk.

This year, as we enjoy this season of giving thanks for the things that we have and appreciate, let us remember to thank our mentors for allowing us to stand on their shoulders so that we may see further. Now is as good a time as any.

Keep up with HCBA news and events – facebook.com/HCBAtampabay
Out of Failure Comes Success

Despite the negative connotation, failures actually give birth to greater life experiences and the chance to become bolder, more creative, and more courageous.

“O ur goal over the next four years is to make sure your son fails at something.” So began the speech by the president of my son’s high school at the freshmen parents’ meeting four years ago. “What?” thought I and no doubt the majority of the parents in the room. But these are our precious sons, the ones whose self-esteem we have carefully constructed and cultivated, and painstakingly nurtured and protected. We don’t want them to fail.

From a very early age, most of us are taught how to be winners … how to succeed. All too often these lessons are further distorted with the false notion that everyone is a winner. Truth is, contrary to popular wisdom and the prevailing emotions that day, we should all welcome, even embrace, failure. Most of us are not taught, let alone encouraged, to fail. Why is failure considered so bad? Simply put, it doesn’t feel good, and it’s often associated

Continued on page 5
with weakness. Most of us don’t wake up in the morning hoping that the day will bring failure. But maybe we should. Despite the negative connotation, failures actually give birth to greater life experiences and the chance to become bolder, more creative, and more courageous.

Basketball icon Michael Jordan admits to missing more than 9,000 shots, losing almost 300 games, and missing the game-winning shot 26 times during his career. But he credits those failures as the reason for his success. Thomas Edison is famously said to have failed with a thousand filaments before finally hitting on the right material for the incandescent light bulb. Without his persistence, I might very well be writing this article by very dim candlelight. To be certain, I am very thankful for the fruit of his failures.

In the interest of full disclosure, I freely admit that I have failed many times. I have failed as a friend and as a parent. As a college student, I failed to make the required grade in many of the science and math classes that made up the curriculum for my pre-med track. However, that failure allowed me to be honest with myself about where my true academic passions lay, to let go of my parents’ dreams for me, and to hone in on my own dreams for myself. And yes, as a lawyer here in Tampa, I failed in my first attempt at seeking election to the Hillsborough County Bar Association Board of Directors. Indeed, these failures have led me to greater life experiences and have made me bolder, more creative, and more courageous.

All of the above experiences, along with many others, culminated in my becoming more open-minded, persistent, and audacious. In retrospect, that opening line at the freshmen parents’ meeting makes perfect sense. Why wouldn’t I want my son to begin the journey toward audacity, and the sooner the better? This time of year, and especially this month, as we reflect on things that we are thankful for, we often focus on our successes. Perhaps we should consider instead our failures and be thankful for them because in the end they may very well have led to our greatest successes.
YOUNG LAWYERS DIVISION QUARTERLY LUNCHEON

At the HCBA Young Lawyers Division quarterly luncheon/CLE on September 26, attendees learned about malpractice claims and liability insurance. YLD President Jacqueline Simms-Petredis welcomed the crowd and introduced guest speaker Nancy Stuparich, risk manager at Florida Lawyers Mutual Insurance Company. Stuparich gave an overview of attorney errors, the relationship between malpractice claims and The Florida Bar, and how coverage limits are used.

SAVE THE DATE: The next YLD Quarterly Luncheon will be Tuesday, December 10.

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It was nearing 7 a.m. on a recent Thursday inside the studios of WTIV, Fox 13, on Kennedy Boulevard. The “Good Day” show’s early morning broadcast team had been cheerily running through the latest news, weather, and traffic backups on the local bridges since well before dawn.

During a commercial break, one of the show’s producers told the group of 20 or so volunteers from the Hillsborough County Bar Association to quickly get seated at the rows of phone banks set up in the studio. Given the early morning hour, all the attorneys were surprisingly bright-eyed and alert. It was time for the morning show’s popular “Ask-A-Lawyer” call-in segment to begin.

“We started the ‘Ask-A-Lawyer’ segment in 1993, and it has been part of ‘Good Day’ ever since,” said John Hoffman, vice president and news director of Fox 13. “We think it’s a great value to our viewers, and judging by the number of calls we get, our viewers truly appreciate it.”

“Ask-A-Lawyer” airs the first Thursday of every month, and all the attorneys involved are members of the HCBA’s Lawyer Referral & Information Service (LRIS). The attorneys generously volunteer their time by fielding questions from “Good Day” viewers and offering free legal advice.

Attorney Larry Samaha said he has participated in the monthly program for “at least 10 years” and that he enjoys fielding calls from viewers on a wide range of topics. Everyone works together to help manage the high volume of phone calls that come into the studio during the broadcast, Samaha said.

Also, beginning a few months ago, viewers gained the ability to ask questions online via FOX 13’s Facebook page. Several attorneys, including Shazia Sparkman, sat at computers in the newsroom and answered questions in an online chat room set up by the station. “It’s pretty amazing,” Sparkman said, referring to the use of social media to respond directly to questions from the public.

Attorney Dale Appell has been a regular volunteer on the program for the past eight years. He says it has been a great opportunity “to develop relationships with like-minded people

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who don’t mind getting up early in the morning to help people with legal questions who can’t afford to get help anywhere else.”

“There’s also a good degree of camaraderie among the group,” Appell added.

Lupe Mitcham, the HCBA’s energetic LRIS director, helps coordinate the attorneys who participate each month and oversees LRIS on a day-to-day basis. “LRIS provides a great community service, and the legal referrals we provide also benefit the lawyers who participate,” Mitcham said.

In case you don’t know, the LRIS works like this: Individuals looking for legal advice call the LRIS at (813) 221-7780; an HCBA staff member briefly interviews the callers and assesses their situation; and, if appropriate, callers are then referred to a participating LRIS attorney for a 30-minute consultation, for a small fee, to discuss their legal problem.

Mitcham says the public can have confidence in the LRIS when they call because every attorney in the program has to meet certain qualifications and, depending on the practice area, has to have a certain level of trial experience. Plus, it is one of only two LRIS programs in Florida certified by the American Bar Association.

Last year, LRIS received just more than 14,000 individual calls from the public. Based on the information provided by callers, more than 4,800 legal referrals were made to participating attorneys in various practice areas, from bankruptcy to probate.

As an additional public service, the HCBA waives the initial consultation fees for callers who have certain legal problems, such as those involving Social Security, senior wills, torts, personal injury, workers’ compensation, and others. In addition, consultation fees are waived for all active-duty members of the military, no matter what their problem.

If you are interested in participating in the LRIS, or if you just want to learn more about this outstanding HCBA community program, please contact Lupe Mitcham directly at (813) 221-7783.

See you around the Chet.

THANK YOU TO OUR VOLUNTEERS FOR SEPTEMBER’S ASK-A-LAWYER ON FOX 13!

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To volunteer for the Ask-A-Lawyer programs, please contact HCBA Lawyer Referral & Information Service at (813) 221-7780.
Revoking Bond

The custody status of a defendant pending trial is a balance between the defendant’s presumption of innocence and the need to keep the community safe.

Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained. Art. I, § 14, Fla. Const.

The custody status of a defendant pending trial is a balance between the defendant’s presumption of innocence and the need to keep the community safe. Under Florida law, there is a presumption in favor of nonmonetary conditions of release for defendants who are not charged with dangerous crimes. In most cases, a criminal defendant is entitled to release on bond while awaiting trial. In Florida, the terms “bail,” “bond,” and “pretrial release” are usually interchangeable.

By statute, the defendant must comply with certain conditions of release. While out on bond, a defendant cannot engage in criminal activity or contact the victim in the case. The court may also set other special conditions of release if those special conditions are reasonable. When determining the amount of bail or other conditions of release, the court has to consider such factors as the nature of the charges, the weight of the evidence, the prior record and individual circumstances of the defendant, and the potential danger to any victims.

What happens when a defendant violates the conditions of release? Florida law allows a defendant who has violated the conditions of pretrial release to be held without bond under certain circumstances.

If there is probable cause to believe that the defendant has committed a new crime, the court may revoke bond on its own. This frequently occurs when the defendant is at first appearance on a new charge. The probable cause affidavit prepared for the new charge can be sufficient to revoke bond on the initial case.

The court may also order pretrial detention if a defendant violates a condition of release and the court finds that “no conditions of release can reasonably protect the community from risk of physical harm to persons or assure the presence of the accused at trial.” The state must file a motion for pretrial detention, and the state carries the burden at the motion hearing.

My office protects the community, not just by seeking convictions, but also by seeking to revoke bond before trial where it is necessary to keep our community safe.

6. See Hernandez v. Roth, 890 So. 2d 1173 (Fla. 3rd DCA 2004).
9. See Perry v. State, 842 So. 2d 301 (Fla. 5th DCA 2003).
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When I first took office as clerk of the circuit court in January 2005, I pledged to make it my goal to transition from mounds of paper to a paperless system. We have been moving steadily toward attaining that goal, and now, it truly is in sight.

This is a monumental achievement for our paper-filled office. To put it in perspective, if you ever visited the Empire State Building in New York City and were awestruck by its height, it's nothing compared to our paper piles here. If we took all of the paper court records from the clerk's office and placed them in a stack — they would not only exceed the height of the Empire State Building — you would actually need to stack 57 more Empire State Buildings on top of one another to surpass the height of all of our paper court records! And the Empire State Building reaches 1,454 feet into the sky.

Our transition to e-Filing is the natural transition to a paperless system. The paper that comes in is digitized within our Odyssey Case Maintenance System. Thus, the official court record will be in electronic form, with only select paper documents retained in compliance with court rules of procedure.

Our big jump in that direction came when we instituted a new system known as CRIBS — Clerks Reactive Intelligent Back Scanning System. The software for CRIBS was actually developed in-house by our own IT shop. The software permits the automated examination of the Odyssey case progress docket for case events that do not have an electronic image associated to them.

This is how CRIBS works: The software generates an intelligent separator sheet, which contains a barcode for each document that must be imaged. This intelligent separator sheet is placed on top of the document to be imaged. Once the document is scanned, it is passed through OCR processing in order to create a text-searchable document and is placed sequentially through multiple layers of quality control. Once completed, the image is then automatically linked to the appropriate case and case event.

CRIBS software is being piloted in the Circuit Civil Division – Mortgage Foreclosure Division M. The judge in that division will use only electronic case files through the Thirteenth Judicial Automated Workflow System (JAWS) and alleviate the need for the department to provide a paper court file. Once the CRIBS software passes through the pilot test, we will work closely with the court administrator to identify other opportunities for the deployment of this software. Together, we will identify the divisions that provide the greatest opportunities for the overall back scanning of paper court files.

The good news about CRIBS is that it is scalable and can be applied to other areas in our court system. Paper is definitely an endangered species in the clerk’s office.
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Member of the Public Investors Arbitration Bar Association (PIABA) since 1997. President of PIABA, November 2012-October 2013. Elected member of PIABA’s Board of Directors.
Florida Rule of Appellate Procedure 9.400(b) governs the procedure for seeking attorneys’ fees on appeal. It requires the party seeking fees to file a motion no later than the time for filing a reply brief. There is no rule that expressly states a different procedure for original proceedings, such as petitions for writ of certiorari. Consequently, many practitioners simply interpret Rule 9.400(b) to require a motion for fees to be filed no later than the due date for the reply to the response to the petition. However, in Advanced Chiropractic and Rehabilitation Center Corp. v. United Automobile Insurance Company, the Fourth District Court of Appeals held that Rule 9.400 does not apply to original proceedings, and it imposed a “pleading requirement” for attorneys’ fees in original proceedings.

In Advanced, the petitioner was awarded certiorari relief, then moved for fees three days later. The Fourth District denied the motion as untimely, citing cases applying Rule 9.400(b).

Continued on page 15
The petitioner moved for rehearing, arguing that Rule 9.400(b) applied only to “a standard appeal with respect to a series of briefs,” not to original proceedings. The Fourth District agreed. Rule 9.400(b)’s plain language refers only to a “reply brief,” so the rule does not apply to original proceedings that have only a “petition,” a “response,” and a “reply.”

However, the Fourth District reaffirmed that the petitioner’s request was untimely. The court ruled, “Nothing in the appellate rules sets forth the procedure for requesting attorneys’ fees in a Rule 9.100 proceeding.” The court relied upon Stockman v. Downs.2 In Stockman, the supreme court held “a claim for attorney’s fees ... must be pled.” The supreme court was concerned about notice to the opposing party. The Fourth District recognized the same concern applies to original proceedings. Therefore, the Fourth District held the petitioner was required to “plead” its entitlement to attorneys’ fees in its petition or reply, just as a trial practitioner would plead entitlement in a complaint, answer, or counterclaim.3 The petitioner’s failure to do so was fatal to his claim for fees.

The Advanced opinion creates two uncertainties. First, it does not detail the level of specificity necessary in the “pleading.” It is unclear whether one must establish a full legal and factual basis for fees in the pleading or simply make a request to establish notice. Second, the opinion does not establish the time within which a motion for fees — if any — should follow the pleading. Stockman said, “Proof of attorney’s fees may be presented after final judgment, upon motion within a reasonable time.”4 But in an original proceeding, there is no “judgment” from which to determine a “reasonable time.”

In the wake of Advanced, appellate practitioners should plead entitlement to fees in original proceedings and proceed cautiously thereafter.

1 103 So. 3d 869 (Fla. 4th DCA 2012), rev. granted, SC13-153 (Fla. June 4, 2013).
2 573 So. 2d 835, 837 (Fla. 1991).
3 See Fla. R. Civ. P. 1.100(a).
4 573 So. 2d at 838.

Author: Jared M. Krukar, Butler Pappas Wehmuller Katz Craig LLP

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A s collaborative dispute resolution (CDR) grows in Hillsborough County and throughout Florida, several professionals have perceived a need to give back to the community, educate the public, and provide newly trained professionals with opportunities to work in CDR. Thus was born a joint project of the Collaborative Law Section, Collaborative Divorce Institute of Tampa Bay, Tampa Bay Collaborative Divorce Group, and Bay Area Legal Services to provide divorcing couples of limited means the benefits of this interdisciplinary process.

For those who are not familiar with CDR, it is a private alternative to courtroom divorces. Each client retains a separate attorney for the limited purpose of helping to reach a settlement without adjudication by the court. A neutral facilitator guides the parties through the emotional process of dissolution. A joint accountant or financial planner gathers the necessary financial information and provides financial guidance.

We are very proud to report that our joint program has produced the first pro bono collaborative divorce in Florida. Nancy Lugo and Bay Area Volunteer Lawyer Program staff selected our first client. The client chose Joryn Jenkins as her attorney. Adam B. Cordover offered to work as her husband’s attorney. Dr. Jennifer Mockler volunteered to serve as the neutral facilitator, and accountant Monica Ospina took on the role of the neutral financial professional. All of the participants signed the pro bono collaborative participation agreement.

The clients had divided up their personal property. There was no real property to distribute. Timesharing and parental responsibility were therefore the critical issues to be resolved, especially because there was a significant other involved and a child born of that subsequent relationship.

The clients brought noteworthy effort to their collaborative table, and the clients and professionals,

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Continued from page 16

as a team, helped to sort out their issues. Issues were identified in individual meetings with the clients and each neutral professional. The parties and the full team of professionals met several times to resolve their disputes. Dr. Mockler ably discharged her duties as the team leader, directing the discussion of the parenting plan details. Ospina increased the size of the clients’ limited financial assets by suggesting they not alternate the child tax credit every other year. Rather, she suggested they maximize the value of that refund by annually awarding credit to the father. The mother could already claim head of household status with her child born outside the marriage, so the father agreed to reimburse her share of the refund.

The clients reached a full settlement. Before this is published, they will be divorced. They will not have antagonized each other by swearing to horrific things about each other in pleadings. They will have collaborated, under the tutelage of trained professionals, to forge a new and different bond as co-parents for the benefit of their children for the rest of their lives.

If you have an interest in working with our Pro Bono Committee, please contact our Pro Bono Committee co-chairs, Joryn Jenkins or Jeremy Gluckman.

Authors:
Joryn Jenkins,
Joryn Jenkins Law; and Jeremy Gluckman, Jeremy E. Gluckman, P.A.
As attorneys, we all know that law can be a very stressful profession, and it is easy to get caught up in the cycle of complaining about the unhappiness that we often feel about our jobs and our lives. What we do not often take the time to realize, though, is just how lucky we really are when we compare ourselves to the rest of the population in this country (and the world, for that matter). We are fortunate to have been able to develop invaluable skills and accomplish incredible goals in our lives that we so easily take for granted. We also often forget that we did not make it to where we are on our own. Whether it was with the blessing of loving and giving parents, true friends, or inspiring teachers, most (if not all) of us have had the love and support of others to help and guide us along the way.

Others’ lives have not been as fortunate. There are some people who were simply dealt a different hand and may never have the opportunity to enjoy or accomplish what we have. Some children have suffered abuse that we could never imagine and have to fight a battle that many of us would not have the strength to fight. Imagine how different our lives would be if we had started out that way. We should really feel lucky to have what we do and to have the privilege to help those less fortunate.

When I first volunteered for the Community Services Committee (CSC), I gave a few hours of my time to help with the Dining with Dignity event, which provides the homeless with a lovely, sit-down meal. I was touched by how the members of this committee are willing to take time out of their busy lives and give so generously to those in need.

This committee is about more than making a monetary donation. It is about spending valuable time to truly touch the lives of others. You may not think you have the time, or you may think an hour of volunteer events we have planned for this year.

Being involved in the CSC is your opportunity to make your mark on humanity and on this profession. Who knows, you may even find more happiness in your life as a result. After all, as Booker T. Washington said, “Those who are happiest are those who do the most for others.”

Please contact Lara LaVoie (llavoie@garrisonyount.com) or Lisa Esposito (lisa@lesposito.com) for information on joining the CSC or volunteering for an event.

Author: Lara M. LaVoie, Garrison, Yount, Forte & Mulcahy, LLC

“The best way to find yourself is to lose yourself in the service of others.”
— Mohandas Gandhi
Hillsborough County Bar Association 100 Club
Law firms with 100% membership in the HCBA

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13th Judicial Circuit Court
13th Judicial Circuit Court Plant City
2nd District Court of Appeal Lakeland
Addison & Howard, P.A.
Allen Dell, P.A.
Alley Clark Greive
Almenio & Money
Alvarez Garcia
Ans Arruscallo, LLP
Anthony & Partners, LLC
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Shock, Hardy & Bacon, LLP
Sisco Law
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Specter Gadoni & Rosen
Stanton Cronin Law Group, PL
Stetson University College of Law
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Terrana Perez & Salgado, P.A.
The Bowes Law Group
The Criminal Defense Group, P.A.
The Davis Law Group, P.A.
The Dieudue Law Firm, P.A.
The Fernandez Firm
The Foster Law Group, P.A.
The Law Firm of Beverly J. White, P.A.
The Plante Law Group, PLC
The Thorpe Law Firm, P.A.
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Wenzel, Fenton, Cabassa, P.A.
Whitney Bardy Mediation Group, Inc.
Wilson Law Group, P.A.

FOR YOUR FIRM TO BE LISTED HERE, CONTACT CORRIE BENFIELD, CORRIE@HILLSBAR.COM
Reading Commercial General Liability (CGL) policies can feel a lot like tracking a flow chart or solving an LSAT logic game. There are covered claims, exclusions to coverage, and then exceptions to those exclusions. Not to mention endorsements.

One of the more common provisions is the “Your Work” exclusion. A typical CGL policy will exclude damages if the work is defective. Policies will not cover costs to replace defective work. However, such policies normally include an exception to the “Your Work” exclusion if the work was performed by a subcontractor.

Beware, however, of the oft-dreaded endorsement that can negate a policy term. Similar to the “Your Work” exclusion, many CGL policies contain a “Your Product” exclusion that operates in a related manner. For instance, a CGL policy for a door supplier would not cover the cost to replace a defective door. One of the questions that arises but has not been thoroughly addressed by Florida courts is how to define “Your Work,” when the product has been installed and altered in the process.

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Recently, the Second District Court of Appeals, in *Liberty Mut. Fire Ins. Co. v. MI Windows & Doors, Inc.*, 2013 WL 4734045 (Fla. 2d DCA Sept. 4, 2013), held that the standard for determining whether the “Your Work” exclusion applies is whether the nature and function of the product has been changed.

In *MI Windows*, MI manufactured and sold sliding glass doors to a contractor who agreed to install the windows in five condominium projects along the Alabama coast. The contractor then subcontracted out the installation to third parties. Id. at *1. In two out of the five projects, the doors were installed with no change. However, in the other three projects, installers used transoms along the top of the doors. This apparently weakened the structural integrity of the doors. MI had to pay more than $3 million to settle defective-product lawsuits. Id.

MI sought coverage under its CGL policy, but its carrier, Liberty, cited the “Your Product” exclusion and denied the claim. The lower court granted summary judgment in MI’s favor, ruling that the “Your Product” exclusion did not apply because the addition of the transoms significantly changed the doors.

The Second District Court of Appeals reversed the lower court’s decision and held that the “Your Product” exclusion applied because there was no “alchemy” that changed the original product. Put simply, because the sliding doors were installed for their intended purpose, and operated as sliding doors, the “Your Product” exclusion applied, thereby precluding coverage.

Every CGL policy is different, and it is unclear how the courts will enforce the multitude of exclusions, exceptions, and endorsements, so it is very important to read and re-read the entire CGL policy to best inform clients on what coverage may be available.

Author: Bennett Acuff, Hill Ward Henderson
CALL FOR NOMINATIONS: 2014 BUBBA HUERTA AWARD
Criminal Law Section
Chair: Matt Luka, Trombley & Hanes, P.A.

In March 2009, local defense counsel Marcelino “Bubba” Huerta III passed away at the too-young age of 56. For his professionalism, good heart, and friendly personality, Bubba was universally respected throughout the Tampa Bay area by defense counsel, prosecutors, and judges alike. His quiet commitment to pro bono service was not known to many, but it was appreciated and admired by those who knew him best. With his passing, the Hillsborough County Bar Association lost a friend, and the criminal justice system lost a great lawyer and public servant.

In Bubba’s memory, the Criminal Law Section of the Hillsborough County Bar Association created the Marcelino “Bubba” Huerta III Award for Professionalism and Pro Bono Service. This award is presented to an attorney who exhibits the professional practice, dedication to pro bono service, and diligent work in the pursuit of equal justice that made Bubba a remarkable lawyer. The recipient of the award is selected by a committee consisting of local, state, and federal criminal practitioners. In 2009, the first Bubba Huerta Award was presented to James Felman of Kynes, Markman & Felman.

The process has begun to select the recipient of the 2013-2014 Bubba Huerta Award. The award will be presented at our section’s luncheon meeting on February 27, 2014. Please nominate an attorney who exemplifies the professionalism and pro bono spirit that made Bubba Huerta exceptional.

Your nomination can be submitted by emailing me at mluka@trombleyhaneslaw.com or Mark Rankin at mrankin@shutts.com.

Author: Matt Luka, Trombley & Hanes, P.A.
Clark & Martino, P.A. has the experience and resources to handle serious brain, neck and spine injury cases related to automobile and truck accidents. When a valued client comes to you for help related to a traumatic brain or spine injury, refer them to us. We will pay you a referral fee of up to 25% of the ultimate settlement or verdict.

If you have a brain or spinal injury case, please talk to our partners about the advantage of allowing Clark & Martino to take the lead. Call anytime, we are always happy to help.

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SECOND CHANCE:
Florida’s 1973 - 1976 Cuban Lawyer Admission Project

As you entered your office this morning, the one document you probably did not look at was your license to practice law. The idea that one day our system of law could end and we would lose our careers never enters our minds. This happened to Cuban lawyers when they fled Cuba after Fidel Castro’s revolution. They came to our shores, knowing that because their law schools taught the Civil Law of Cuba, not the American Bar Association Common Law courses, they were not eligible to join The Florida Bar.

Forty years ago, on July 31, 1973, a Florida Supreme Court Order opened a door that brought the skills of these lawyers to Tampa and other Florida cities. The court order authorized a special program of study as a prerequisite to taking the Bar exam. The University of Florida’s law school created and taught a 21-month weekend course of study to acquaint Cuban lawyers with our Common Law system and its application to Florida law.

Most Floridians were unaware of the unmet legal needs of Cuban refugees who fled to Florida and the wealth of legal talent we received during the exile. Per the court’s findings, by 1973 only 40 Florida lawyers spoke Spanish, but the refugee population of Florida exceeded 300,000. The number of Cuban lawyers and judges in Florida was so great that many retained the name and operations of the Havana Bar Association.

The 1973 order was sought after other alternatives proved inadequate. Hillsborough County Bar Association President Reece Smith asked the Honorable E. J. Salcines to introduce Cuban lawyers to Tampa law

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firms. Without the ability to practice law, few options were available. Carlton Fields employed Felipe Ramon Pacheco. He established and organized the firm’s library and served as a translator for the firm. His return to practice on December 18, 1975, became possible only when the court authorized the special law school program for Cuban lawyers.

Similarly, former Cuban Judge Adalberto Tosca worked at St. Joseph’s Hospital until then-State Attorney E. J. Salcines hired Tosca to interview and translate affidavits for criminal proceedings. He had left Cuba with $5 after he resigned his Cuban judgeship because the Cuban government informed him of the sentence of the people who appeared before him, prior to the defendants’ trials. After the 1973 order, he became a Tampa lawyer on October 23, 1975.

The Tampa students held review sessions each week at the offices of Tampa attorney Luis Dial, Jr.

Upon completion of the program, the experienced former lawyers, judges, and law professors from Cuba joined young law students in taking the Miami Bar exam. Pacheco, Tosca and others returned to join and enrich our legal community.

Their struggle 40 years ago and dedication to our profession’s aspirations will soon be appropriately recognized. In upcoming ceremonies proposed for the University of Florida, the HCBA’s Diversity Committee, and the Tampa Bay Hispanic Bar Association, the few surviving Hillsborough Cuban lawyers who rejoined our profession and the HCBA members who assisted them will be recognized.

Author: Harley Herman, de Beaubien, Knight, Simmons, Mantzaris & Neal, LLP
As lawyers, we share a commitment to justice. The Florida Bar Foundation, a 501(c)(3) public charity, turns that commitment into action through its funding of programs that provide access to justice for Floridians living in poverty. Through our support of The Florida Bar Foundation, we can demonstrate our belief that the justice system works best when it works for everyone — regardless of economic status.

Locally, The Florida Bar Foundation is an important funding source for Bay Area Legal Services. Through its Administration of Justice (AOJ) Grant Program, the foundation also helps fund special projects and initiatives across the state such as the Innocence Project of Florida, which has succeeded in exonerating 13 wrongfully imprisoned Floridians using DNA evidence since 2003, as well as the Florida Law Related Education Association, which teaches Florida students about democracy and the American legal system. Several years ago, another AOJ grant went to Bay Area Legal Services for a highly successful

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and widely emulated Bankruptcy Pro Se Assistance Project that involved a collaboration with several other legal services organizations and the U.S. Bankruptcy Court, Middle District.

If you visit the foundation’s website at www.floridabarfoundation.org, you will be impressed with the number and diversity of the grantees assisted by the foundation.

Since 1981, the primary source of funding for The Florida Bar Foundation has been Florida’s Interest on Trust Accounts (IOTA) Program, which has enabled the foundation to provide about one-third of the total funding for civil legal aid organizations in Florida. Over the past 32 years, Florida’s IOTA Program has distributed more than $425 million to help hundreds of thousands of poor people receive critically needed free civil legal assistance throughout Florida.

The Foundation also funds initiatives such as salary supplementation and loan repayment programs that help attract and retain legal aid attorneys. The salary supplementation grant for Bay Area Legal Services was $403,260 in 2012-13.

In recent years, due to the impact of extremely low interest rates on IOTA revenue, the foundation has had to drastically reduce its funding to legal aid agencies. Whereas in 2010, Bay Area Legal Services received a foundation general support grant of $396,467 to provide legal services, as well as a $164,800 foundation grant specifically for Children’s Legal Services, in 2013 those grant amounts were $180,393 and $71,957, respectively. Overall, foundation funding is now about a quarter of legal aid funding statewide.

I urge you to take a few minutes to learn more about The Florida Bar Foundation, an organization in which all of us, as Florida attorneys, can take tremendous pride, and one that brings critical resources back to our community. If you have questions about the foundation, feel free to ask me or my fellow Florida Bar Foundation board members from Hillsborough County, Hala Sandridge, Paige Greenlee, and Judge James M. Barton, II.

Author: Gregory P. Brown, Florida Bar Foundation Board Member

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Continued from page 26

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Author: Gregory P. Brown, Florida Bar Foundation Board Member

BOARD MEMBER OPENING FOR BAY AREA LEGAL SERVICES

The Standing Selections Committee of the Hillsborough County Bar Association is seeking applicants for five attorney seats on the Board of Directors of Bay Area Legal Services, Inc. The positions carry three-year terms beginning in January 2014.

Bay Area Legal Services, Inc., is a nonprofit corporation that provides legal services to the indigent. The board is charged with guiding Bay Area Legal Services in its efforts to provide high-quality assistance to those who otherwise would be unable to afford legal counsel and to ensure that the agency is accountable to clients.

In accordance with 45 C.F.R. § 1607.3, appointments will be made to ensure that attorney board members include women and minorities and reasonably reflect the population of the area served. Special consideration is given to current active members of the board who are eligible to serve another term. (This year, only two of the five attorney vacancies are held by board members who are eligible to re-apply.) Applicants should have a demonstrated commitment to providing legal services to the indigent. People who have previously applied but have not been selected are encouraged to re-apply.

People interested in serving may obtain an application from selection committee chair, Karen M. Buesing, either by calling (813) 223-7333 or emailing her assistant at corinne.bylone@akerman.com. Completed applications should be mailed to Karen M. Buesing, Akerman Senterfitt, 401 E. Jackson St., Suite 1700, Tampa FL 33602, or emailed no later than November 15.
HCBA Kicks Off Bar Year with Membership Luncheon

Members of the Hillsborough County Bar Association came out in full force for the Membership Luncheon on September 10. About 400 people showed up to network, munch, and listen to a rousing presentation from guest speaker Ken Lawson, secretary of the Florida Department of Business and Professional Regulation.

HCBA President Susan Johnson-Velez welcomed everyone to the new Bar year and recognized special guests from the Lawyer Referral & Information Service, as well as the new Bar Leadership Institute Class.

Lawson entertained the crowd as he enthusiastically outlined the progress his department has made in reducing the amount of time it takes to process business licenses, including those for the popular food trucks that are popping up across the state. He also discussed the move to offer an “Inspection Bill of Rights” card to business owners who are undergoing inspections.

Other speakers at the luncheon included Judge Caroline Tesche, who encouraged everyone to attend the Bench Bar Conference and Judicial Reception on November 6, and Young Lawyers Division President Jacqueline Simms-Petredis, who discussed the YLD’s exciting plans for the year.

The HCBA greatly appreciates the support of The Bank of Tampa, which sponsored the event.
The peculiarities of agricultural law in Florida

For good reason: We are less connected to agriculture today than we were in the past. Because of the phenomenal increase in agricultural output over the past 100 years, we have gone from 80 percent of our population working in agriculture to only 2.5 percent. Yet agriculture is still Florida’s second-largest industry. Perhaps we should not be surprised by these peculiarities, when such a large industry is understood by so few.

Practitioners should be aware of these differences precisely because they do not affect other land uses or types of activities. These peculiarities usually take the form of pre-emptions and exemptions.

In the land-use arena, nonresidential farm buildings, farm signs, and even farm fences are exempt from the Florida Building Code as well as local government codes and fees. § 604.50, Fla. Stat.

Another land-use pre-emption is the Agricultural Lands and Practices Act, which since 2003 has prevented counties from adopting any law or policy “to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural land” if the activity is regulated by any one of a number of state and federal agencies.

Did you know that this year, the Florida Legislature prevented local governments from adopting new laws or policies that regulate or restrict agritourism? See § 570.96(1), Fla. Stat. Or that owners of most cattle-dipping vats are exempt from state pollution-control laws? See § 376.306, Fla. Stat. Did you know local governments in Florida cannot regulate apiculture? (Or that apiculture is the science of beekeeping?) See § 586.10, Fla. Stat.

It doesn’t take long for the environmental and land-use practitioner to realize that agriculture is different in Florida. Many people are surprised by these peculiarities.

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THE PECULIARITIES OF AGRICULTURAL LAW IN FLORIDA

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regulatory agencies. § 163.3162(3), Fla. Stat. See also § 823.14, Fla. Stat. (Florida Right to Farm Act, providing for similar pre-emption along with protections for farms against public and private nuisance suits). Later, the Agricultural Lands and Practices Act was strengthened to prohibit the enforcement of many existing laws and policies related to agriculture. This year, Senate Bill 203 extended the act beyond counties to virtually all local and regional governmental entities.

Beyond land use, agriculture is subject to numerous exemptions to state environmental laws and permitting regimes. See, e.g., § 373.406, Fla. Stat. (certain agricultural activities exempt from state permitting of activities altering surface water flows); § 403.7045, Fla. Stat. (agricultural byproduct material and process waste generally not hazardous waste); and § 403.927 (exempts agricultural activities and agricultural water management systems from typical dredge and fill permit requirements).

Keep in mind that almost all of the pre-emptions and exemptions discussed above require that the agricultural operation be “bona fide” — that is, be used in good faith for commercial agriculture. The standards for making this determination are found in § 193.461, Fla. Stat, the agricultural tax classification (which is not really an “exemption,” even though it is commonly called one).

Author:
Jacob T. Cremer,
Smolker, Bartlett, Schlosser, Loeb & Hinds, P.A.

Pro Bono Service Awards

Each year, the Florida Supreme Court and The Florida Bar give special recognition to lawyers, groups and a member of the judiciary who have freely given their time and expertise in making legal services available to the poor.

The 2014 Pro Bono Service Awards nominations are due by November 12. The awards ceremony will be held at the Florida Supreme Court at 3:30 p.m. January 30, 2014.

Awards include:

The Tobias Simon Pro Bono Service Award: Presented annually by the chief justice to an attorney to recognize extraordinary contributions in assuring the availability of legal services to the poor. All current recipients of The Florida Bar President’s Pro Bono Awards are considered for this prestigious award, as are direct nominees who have demonstrated exemplary pro bono service over the course of their careers.

The Florida Bar President’s Pro Bono Service Award: This award is given to an outstanding attorney residing in each of the state’s 20 judicial circuits and to an outstanding attorney among the out-of-state Florida Bar members.

The Chief Justice’s Law Firm Commendation: This statewide award recognizes a law firm that has demonstrated a significant contribution in the provision of pro bono legal services to individuals or groups that cannot otherwise afford the services.

The Chief Justice’s Voluntary Bar Association Pro Bono Service Award: Also presented by the chief justice, this award recognizes a voluntary bar association that has demonstrated a significant contribution in the delivery of legal services on a pro bono basis to individuals or groups that cannot otherwise afford the services.

The Florida Bar’s Young Lawyers Division Pro Bono Service Award: With nearly 26,000 members, the Young Lawyers Division includes all lawyers in good standing under age 36 and all new Florida Bar members of any age for their first five years in practice. The award will be given to the division member who best exemplifies the highest ideals of public service.

The Distinguished Judicial Service Award: Presented by the chief justice, this award is presented for outstanding and sustained service to the public, especially as it relates to support of pro bono legal services.

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Mark your calendar for these important membership events:

DECEMBER 5
Holiday Open House
at the Chester H. Ferguson Law Center

JANUARY 16
Membership Luncheon
at the Hilton Tampa Downtown

MARCH 22
Judicial Pig Roast/Food Festival & 5K Pro Bono River Run
on the grounds of Stetson’s Tampa Law Center

MAY 13
Law Day Membership Luncheon
at the Hilton Tampa Downtown

Learn more about HCBA events at www.hillsbar.com.

Stay Connected
The Bar Leadership Institute class of 2013-2014 met for a welcome reception on September 25 at the Chester H. Ferguson Law Center. Congratulations to those who were chosen this year:

- Zachary L. Bayne
- Kimberly B. Cook
- T.J. Ferrante
- Melissa Gonzalez
- Ashley S. Grant
- Alexandra N. Haddad
- Lee Harang
- Maja Lacevic
- Tim Martin
- Karen Middlekauff
- Jason Montes
- Maria Obradovich
- Anthony J. Palermo
- Rinky S. Parwani
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- Product liability
- Assisted living facilities
It is not uncommon for a child support or alimony obligor to agree, in a marital settlement agreement (MSA), to continue to maintain a life insurance policy that names the obligee as beneficiary, as security for future support payments. Often obligors who already have such coverage in place want to provide this financial security for their minor children and even for their former spouses.

Unbeknownst to many people divorced before July 1, 2012, such provisions in their MSAs are trumped by § 732.703, Fla. Stat., which went into effect July 1, 2012, and applies retroactively. For anyone who dies on or after the effective date, a “designation made by a decedent providing for the payment or transfer at death of an interest in an asset [including life insurance] to or for the benefit of the decedent’s former spouse is void as of the time the decedent’s marriage was judicially dissolved ... if the designation was made prior to the dissolution ... .” § 732.703(2), (9), Fla Stat.

Continued on page 39
Continued from page 38

One exception is when the final judgment of dissolution of marriage requires the decedent to acquire or maintain the policy for the benefit of the former spouse or children of the marriage, only if other assets fulfilling the requirement do not exist upon the decedent’s death. § 723.703(4)(d), Fla Stat. The former spouse will have no rights to the estate unless the decedent has executed a will under which the former spouse is a beneficiary. Still, whether other assets exist to “fulfill the requirement” will require a determination of whether the MSA requires the insurance to cover only the amount of unpaid support, and whether and to what extent the insurance was meant to secure child support versus alimony. See Busciglio v. Busciglio, 116 So. 3d 620 (Fla. 2d DCA 2013) (Altenbernd, J., concurring) (describing complications that can arise without clear statutes governing life insurance in divorce proceedings).

Another exception is when the final judgment prohibits the decedent’s unilateral termination or modification of the disposition of the asset. § 723.703(4)(e), Fla. Stat. It is not clear that this exception would apply when such a prohibition is stated in the MSA but not expressly stated in the judgment itself. Further, would language simply requiring that the policy be maintained satisfy this exception?

Given the questions presented by these exceptions, insurance companies likely will not pay anyone but rather file an interpleader action to determine the disposition of the death benefit. Thus, the surviving former spouse will end up in court, despite having an MSA supposedly resolving these issues.

Until the constitutionality of the retroactive invalidation of existing contracts is successfully challenged, former clients with potentially affected MSAs should be advised of the law and possible remedial steps. Some may simply ask their former spouses to re-affirm the pre-divorce beneficiary designation. Otherwise, a motion to enforce the final judgment, premised on the statutory invalidation of the beneficiary designation, may spur a former spouse to action. At the very least, former clients should provide a copy of the MSA and final judgment to the insurance company.

Author: Bridget Remington, Harris and Hunt, P.A.

A NEW HONORARY COMMANDER

Former HCBA President Amy Farrior has been named the honorary commander of the Staff Judge Advocate’s Office for the 6th Air Mobility Wing at MacDill Air Force Base. On September 6, about 30 civilians were inducted to serve two-year terms as honorary commanders of various departments and divisions of both the 6th Air Mobility Wing and the 927th Air Refueling Wing at MacDill.

Farrior succeeded HCBA Immediate Past President Bob Nader as honorary commander. Pictured from left to right are Dr. Edward Farrior, her husband; Amy Farrior; Lt. Col. Christopher A. Brown, staff judge advocate of the 6th Air Mobility Wing; and his wife, Catherine Brown.
It may have been raining outside, but Tampa Mayor Bob Buckhorn delivered a bright outlook for the city’s future during the Trial & Litigation Quarterly Luncheon on September 23. The mayor discussed important local issues such as the future of downtown, urban growth, public transportation and talk of moving the Rays stadium. He also explained his motivation for keeping the city competitive with other areas of the country — his children. Buckhorn stressed the importance of making Tampa a place young people want to live, where restaurants and shops thrive next to residences in downtown.

Trial & Litigation Section Chair Brad Kimbro thanked the mayor for his commitment.

Hillsborough County Bar Association board member Kevin McLaughlin also briefed the audience on recent efforts by attorneys from the HCBA and doctors from the Hillsborough County Medical Association to revise the Medical Legal Code.
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The Hillsborough County Bar Association is once again offering court access cards to provide quicker access at the front entrance (800 E. Twiggs St. - Main Courthouse) and at the rear entrance (401 N. Jefferson St. - Criminal Annex a.k.a. Law Enforcement Entrance) of the courthouse.

The new cards will be effective November 18 and will be good through December 2015.

Applications are available at hillsbar.com. If you need a photo taken for your card, please call the HCBA at (813) 221-7777 to schedule an appointment.

The cost of the card is $75 for all first-time applicants, and $50 for card renewals.

*Note: No one is prohibited from entering the courthouse without a court access card. The card simply allows more rapid entry into the courthouse.

Are you getting the HCBA’s weekly e-newsletter?

If not, we may not have your email address on file.

Call (813) 221-7777 to update us!
Some modern discovery situations are so complex and involve so many unknown factors that the only certainty is that it will be costly. Add intractable positions to the mix, and litigants are often unable to resolve resulting discovery disputes. In many situations, mediation offers a cost-effective, solution-based, and low-risk opportunity to resolve discovery disputes without a judge or special master’s involvement.

Why should litigants consider discovery mediation?

1. **It avoids judicial intervention.** Every “view from the bench” event or article urges litigants to resolve discovery disputes. Discovery mediation forestalls negative attention, avoids adverse orders (and the risk of sanctions), shows collaboration, fosters professionalism, and builds credibility.

2. **It minimizes costs.** Discovery mediation can be as narrow or broad as needed. Mediating an issue will cost less than obtaining a court order. It minimizes unproductive conversations and correspondence between litigants, and it eliminates the need for motions, briefs, and reply briefs. Litigants can informally educate a mediator about applicable rules and case law or about precedential, business, or industry implications. They will also save money by not traveling to and attending hearings. They may even agree to a telephonic mediation conference.

**Continued on page 47**

**UPCOMING CLEs**
- **November 13 - Elder Law**
- **November 19 - Judicial Luncheon with a panel of criminal law judges**
- **November 21 - Construction Law**
- **December 5 - ELUS**
- **December 10 - Tax Law**
- **December 11 - Elder Law**
3. **It resolves discovery disputes quickly.** Hearing time — much less enough time to work through complex or numerous discovery problems — is hard to get and has a strict end time. Mediators are available on short notice, nights, and weekends, and they can spend as much time as litigants need to resolve a dispute. A mediated resolution allows litigants to move their case forward, instead of putting a case on hold pending a discovery hearing and order.

4. **It offers flexibility.** A mediated agreement can accommodate contingencies, alternatives, and subsequent developments, and it can be revisited by the parties. Unlike “court order” and “flexibility,” “mediated solution” and “flexibility” are not mutually exclusive. If involving IT or other specialists helps litigants reach an agreement, mediation would allow their real-time involvement, compared to introduction of potentially obsolete or out-of-context affidavits or deposition testimony at a hearing.

5. **It is solution-oriented.** In court, real solutions may fall victim to advocacy and the court’s need to render a clear decision. Practically speaking, mediated solutions formulated by the parties with the assistance of a neutral may be more effective.

6. **It is risk-free.** Discussions with the mediator are confidential. Party-crafted solutions offer certainty that is unavailable in court. Litigants worried an opponent will shirk a mediated discovery agreement may propose reducing it to an agreed order. Finally, if mediation is unsuccessful, the parties may still seek court intervention.

Litigants who want to resolve a discovery dispute without judicial intervention should consider mediating it. A professional neutral will help them work through contentious issues and craft workable solutions.

*Author: Hilary High, Hilary High, PA.*

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### 2013 ABRAHAM LINCOLN AWARD

The Honorable John N. Conrad has won the 2013 Abraham Lincoln Award, an annual honor given to the Tampa Bay American Inn of Court member who best exemplifies the organization’s goals in promoting legal excellence, civility, professionalism, and ethics in the practice of law. Judge Conrad joined the Tampa Bay Inn of Court in 2007 and has held the following positions with the inn: president-elect, 2008-2009; president, 2009-2010; and counselor, 2010-2011.

He has served as a county judge for the Thirteenth Judicial Circuit in Hillsborough County since 2006. Judge Conrad has also been the speaker for various CLE conferences, as well as for The Florida Bar and the Hillsborough County Bar Association. He has authored articles for the HCBA Lawyer magazine and *The Florida Bar.*

The Abraham Lincoln Award is accompanied by a contribution to the Hillsborough County Bar Foundation, which supports and promotes programs and projects that encourage assistance to the poor and disadvantaged, primarily with regard to their legal needs and to educate the public about the legal system. Judge Conrad’s name will be placed on the Lincoln Award plaque in the lobby of the Chester H. Ferguson Law Center, and a brick in his name will be placed in the commemorative brick walkway outside the center.

Judge Kimberly Fernandez and Judge John N. Conrad
A few days ago, I mentioned to Corrie Benfield, the Hillsborough County Bar Association’s new Lawyer magazine coordinator (Welcome, Corrie!), that the Solo-Small Firm Section would be late with its first column of the year because we were “short-handed.” Corrie graciously accommodated us. Now, as David Stamps and I write to tell you about what we have planned for the year, the “short-handed” comment seems to dovetail perfectly with those plans.

The section’s theme for this Bar year is to help our members improve how they use non-lawyers to help them build and strengthen their practices. Non-lawyers are all around us. They are an abundant resource and are often very keen to work with us. By harnessing their interest and leveraging it properly, lawyers can become more effective in their practices, reduce unnecessary risks, and bring about a better work-life harmony.

So this year, our goal will be to have every lunch speaker and column author be a non-lawyer, with each being from a different field. David and I have identified many non-lawyer roles that we feel are instrumental to the practice of law, including traditional and forensic accountants, financial advisors, technology professionals, and business coaches. This list is hardly complete, and because all of our programs and columns are not yet spoken for, we solicit your thoughts and suggestions for non-lawyers whom you use in your practices.

On September 25, we started our year off by partnering with the Marital & Family Law and Real Property, Probate & Trust Law Sections to host Patrick Dougherty, a CPA with The Florida Bar. Dougherty spoke about best practices for law office accounting and how to meet your trust accounting requirements with the greatest efficiency.

Please mark your calendars for our remaining lunches of the year on February 4 and April 22, for which the planning is underway. And stay tuned. We hope that our programming for the year will leave you feeling a bit less “short-handed.”

Author: James A. Schmidt, James A. Schmidt, P.A.
HCBA VISITS COOLEY LAW SCHOOL

Students at Cooley Law School in Riverview stopped by the HCBA booth at the school information fair in September to learn about the benefits of becoming a member. The HCBA gave away two free student memberships at the event.

Pictured from left to right: Adriannette Williams, Lupe Mitcham and Alex Owen.

Pictured from left to right: Corrie Benfield, Associate Dean of the Tampa Bay Campus Jeff Martlew, and Lupe Mitcham

Do you mentor or work with law students?
Encourage them to join the HCBA! Student memberships are only $25.
There continue to be cases reflecting a fundamental misunderstanding with regard to individual liability in the context of actions involving corporations. As the cases cited below make clear, in order to determine whether claims are derivative, which must be brought in the name of and on behalf of the corporation, or direct, which may be brought by shareholders individually, it is important to first identify the characteristics that define what constitutes and distinguishes derivative from direct/individual actions:

### Derivative Actions:

1. “(A)ction brought by one or more stockholders of a corporation to enforce a corporate right or to prevent or remedy a wrong to the corporation.” *Alario v. Miller*, 354 So. 2d 925, 926 (Fla. 2d DCA 1978); *Doltz v. Harris & Assoc.*, 280 F.Supp.2d 377, 385 (E.D. Penn. 2003).

2. “(T)he gravamen of the complaint is injury to the corporation or to the whole body of its stock or property and not injury to the plaintiff’s individual interest as a stockholder.” *Alario*, 354 So. 2d at 926; *Doltz*, 280 F.Supp.2d at 385.

3. “(T)he injury is primarily against the corporation, or the stockholders generally.” *Id.*

4. “(T)he injury is the determining factor in deciding whether a claim is direct or derivative; if the injury is to the corporation, and only indirectly harms the shareholder, the claim must be pursued as a derivative claim.” *Fox v. Professional Wrecker Operators of Fla., Inc.*, 801 So. 2d 175, 178 (Fla. 5th DCA 2001).

### Direct/Individual Actions:

1. “(A) direct action, or as some prefer, an individual action, is a suit by a stockholder to enforce a right of action existing in him.” *Alario*, 354 So. 2d at 926; *Doltz*, 280 F.Supp.2d at 385.

2. An injury suffered directly by the stockholder, which is separate and distinct from that sustained by other stockholders. *Alario*, 354 So. 2d at 926; *Professional Wrecker Operators of Fla., Inc.*, 801 So. 2d at 179; *Doltz*, 280 F.Supp.2d at 385.

In attempting to clarify any confusion, it is further noteworthy that derivative claims and direct/individual claims are not mutually exclusive. A shareholder/officer/director of a corporation has a fiduciary duty to both the corporation and to fellow shareholders. In some cases, the shareholder/officer/director has breached his/her fiduciary duty to the corporation as well as his/her fiduciary duty to other shareholders. In that instance, a complaint may contain both derivative and direct/individual causes of action. See, e.g., *Doltz, supra; see also Sheridan Health Corp., Inc. v. Amko*, 993 So. 2d 167, 171 (Fla. 4th DCA 2008) (citing *Donahue*) (“The fact that joint adventurers may determine to carry out the purpose of the agreement through the medium of a corporation does not change the essential nature of the relationship.”)

As recently as October 2012, the Fourth District Court of Appeals confirmed the ongoing viability of *Donahue* and *Sheridan*. *Barreiro v. Braver*, 98 So. 3d 746 (Fla. 4th DCA 2012). Locally, Judge Herbert J. Baumann, Jr., also recently acknowledged the ongoing viability of *Donahue/Sheridan* in holding “that the parties’ decision to operate their real estate development venture [through corporations] did not eliminate the fiduciary duties that they owed to one another.” *Order on Motion to Dismiss*, Jan. 30, 2013, Hills. Cty. Cir. Case No. 07-CA-15878.

Authors: J. Kevin Carey, The Law Offices of J. Kevin Carey, P.A.; and Michael L. Jones, Demands and More
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The son of an economist and writer, Stein was born in Washington, D.C. and attended school in Maryland. He graduated from Columbia University in 1966 with honors in economics and from Yale Law School in 1970 as valedictorian of his class by election of his classmates. He has worked as an economist at The Department of Commerce, a poverty lawyer in New Haven and Washington, D.C., a trial lawyer in the field of trade regulation at the Federal Trade Commission in Washington, D.C., a university adjunct at American University in Washington, D.C., at the University of California at Santa Cruz and at Pepperdine University in Malibu, CA. He has taught about the political and social content of mass culture, political and civil rights under the Constitution, libel law, securities law, and ethical issues since 1986.

In 1973 and 1974, he was a speech writer and lawyer for Richard Nixon at The White House and then for Gerald Ford. (He did NOT write the line, "I am not a crook.") He has been a columnist and editorial writer for The Wall Street Journal, a frequent contributor to Barrons, a regular columnist for Los Angeles Magazine, New York Magazine, E! Online, and has written a lengthy diary for twenty years for The American Spectator. He currently writes a column for The New York Times Sunday Business Section, has a column about personal finance for Yahoo!, and is a commentator for CBS Sunday Morning and Fox News. He has written, co-written and published thirty books, including seven novels. His most recent books are the best-selling humor self-help series, How To Ruin Your Life.

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E. Kelly Bittick, Jr.; Steven C. Dupré; and Sylvia H. Walbolt, all shareholders at Carlton Fields’ Tampa office, were presented with the Children’s Advocacy Award at the 12th Annual For the Public Good event on September 27 in Fort Lauderdale. Legal Aid Service of Broward County and Coast to Coast Legal Aid of South Florida present the award to an advocate — in this case, a team of advocates — whose actions exemplify a personal and professional commitment to making justice available to the poor and disadvantaged. The firm was also recognized at the event.

Robert W. Boos, Marilyn Mullen Healy, Richard Malchon, Donald A. Mihokovich, and Lynn Welter Sherman of Adams and Reese have been named to the 2014 edition of The Best Lawyers in America. Boos was recognized for bankruptcy litigation, construction litigation, and real estate litigation. Healy was recognized for land use and zoning law. Malchon was recognized for bankruptcy and creditor-debtor rights law. Mihokovich was recognized for commercial litigation. Sherman was recognized for bankruptcy and creditor-debtor rights law and bankruptcy litigation.

Robert A. Colton, Gary I. Teblum, and John S. Vento of Trenam Kemker have been named Lawyers of the Year by The Best Lawyers in America for their areas of practice in Tampa. Colton was recognized for bankruptcy litigation. Teblum was recognized for securities/capital markets law. Vento was recognized for construction litigation.

B. Ben Dachepalli, a shareholder at Hill Ward Henderson, was recently appointed by Gov. Rick Scott to the Construction Industry Licensing Board for a two-month term, at which time he will be eligible for reappointment to a four-year term. The Construction Industry Licensing Board is responsible for licensing and regulating the construction industry.

Scott W. Dibbs, a shareholder at Hill Ward Henderson, was recently named the vice chair of the Leasing Group of the Real Property, Trust & Estate Law Section (RPTE) of the American Bar Association (ABA). The ABA RPTE Section is a diverse community of nearly 25,000 U.S. and international lawyers, paralegals, real estate and financial services professionals, law students, and legal educators. They provide leadership and subject matter expertise on current regulatory and legal issues, trends, and best practices with the singular goal of empowering members to better serve their clients. The Leasing Group is an ensemble of six substantive leasing committees: Retail Leasing, Office Leasing, Industrial and Warehouse Leasing, Ground Leasing, Emerging Issues and Specialty Leases, and Assignment and Subletting. The goal of the Leasing Group is to keep members apprised of current legal issues in the leasing community and to communicate the variety of responses to leasing issues.

David S. Felman, Bret T. Hamlin, and Benjamin H. Hill, III, of Hill Ward Henderson have been named Lawyers of the Year by The Best Lawyers in America. Felman was recognized as Leveraged Buyouts and Private Equity Lawyer of the Year. Hamlin was recognized as Employee Benefits Lawyer of the Year. Hill was recognized as Professional Malpractice - Defendants Lawyer of the Year. In all, 41 attorneys from Hill Ward Henderson were named to the 2014 Best Lawyers in America, including Marie Attaway Borland; Gregory P. Brown; Charles W. Callahan, III; John C. Connery, Jr.; Landis V. Curry, III; Mark A. Danzi; Timothy C. Ford; S. Katherine Frazier; Troy A. Fuhrman; Robert B. Gough, III; John B. Grandoff, III; Gina K. Grimes; William C. Guerrant, Jr.; R. Reid Haney; Linda D. Hartley; Thomas N. Henderson, III; K. Tyler Hill; John L. Holcomb; Stephen M. Hudoba; Timothy A. Hunt; C. Howard Hunter; Jonathan P. Jennewein; Robert E. V. Kelley, Jr.; David T. Knight; Morris C. Massey; Erik R. Matheney; Scott A. McLaren; Brett J. Preston; R. James Robbins, Jr.; Robert A. Shimberg; W. Lawrence Smith; Brian C. Sparks; Christopher J. Stephens; R. Dennis Tweed; Kirsten L. Vignec; Dennis P. Waggoner; and Alton G. Ward.

James E. Felman of the law firm Kynes, Markman & Felman, P.A., in Tampa has been elected as the first vice chair of the Criminal Justice Section of the American Bar Association. Felman has also been appointed to a second three-year term as the American Bar Association’s liaison.
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to the United States Sentencing Commission. Felman concentrates his practice in the areas of criminal defense and criminal appeals in federal and state courts.

Stann W. Givens, a partner at Givens Givens Sparks law firm, was selected by his peers for inclusion in The Best Lawyers in America in the field of marital and family law. Givens has been practicing family law in the Tampa Bay area for more than 30 years.

Thomas M. Gonzalez, Gregory A. Hearing, and Kevin D. Johnson of Thompson, Szemore, Gonzalez & Hearing, P.A., were recently selected by their peers for inclusion in The Best Lawyers in America for their expertise in employment law, management; labor law, management; and labor and employment litigation. Gonzalez was also named The Best Lawyers’ 2014 Lawyer of the Year for employment law, management.

Barbara Hart and Michael Bachman have been named shareholders at Stichter, Riedel, Blain & Prosser, P.A. Hart joined the firm in 2009 and is actively involved in the firm’s bankruptcy, work-out, and transactional practices.

Derrill L. McAteer has joined Smolker, Bartlett, Schlosser, Loeb & Hinds, P.A., a Tampa law firm concentrating in real estate and property rights representation, as an associate. McAteer most recently worked for Volusia County as an assistant county attorney.

George Nader has signed a partnership with Mediation.com to expand his online influence. The partnership will assist Nader, a shareholder in the law firm of Trenam Kemker, in sharing his expertise in the field of mediation and personal injury law.

Scott I. Steady, a Tampa partner at Burr & Forman LLP, has been elected to serve as the Urban Land Institute’s (ULI) district council chair for Tampa. In this capacity, Steady will work to provide the avenues for active dialogue among private industry, environmental organizations, and public agencies to create solutions to local and regional issues. Steady has been an active member of ULI Tampa Bay’s Advisory Board for 12 years, serving as sponsorship chair and chair of mission advancement.

Carlton Fields is pleased to announce that 78 of its attorneys were selected by their peers for inclusion in The Best Lawyers in America, including Mark A. Brown; David P. Burke; Edward J. Carbone; Chris S. Coutroulis; Richard A. Denmon; Nathaniel L. Doliner; Steven Dupré; Linda Fleming; Robert S. Freedman; Edward W. Gerecke; Joel B. Giles; Shannon Gray; James J. Kennedy, III; Donald R. Kirk; John J. Lamoureux; Hywel Leonard; Edgel C. Lester, Jr.; Richard C. Linquanti; Laurel E. Lockett; John P. McAdams; C. Douglas McDonald, Jr.; George J. Meyer; Kevin J. Napper; Michael F. Nuechterlein; Edward J. Page; Luis Prats; Harry L. Roberts, III; R. Andrew Rock; Thomas J. Roehn; Samuel J. Salario, Jr.; Gary L. Sasso; Roger D. Schwenke; Michael J. Virgadamo; Sylvia H. Walbolt; J. Michael Walls; James R. Wiley; Wm. Cary Wright; Gwynne A. Young; Matthew Conigliaro; David R. Punzak; and Lee H. Rightmyer.

Thompson, Szemore, Gonzalez and Hearing, P.A., celebrated the firm’s 30th anniversary recently. Over the past 30 years, the firm has developed and fostered a reputation for excellence in the field of labor and employment law.

To submit news for Around the Association, email Corrie Benfield at corrie@hillsbar.com.

For more HCBA news, go to www.facebook.com/HCBAtampabay
**JURY TRIAL INFORMATION**

For the month of: August 2013  
Judge: Honorable Thomas B. McCoun, II  
Parties: Mims Properties Investments, LLC; Mims/Alafia, LLC; Florida Sand and Fill, LLC; Innovation Environmental, Inc.; Mims Properties, LLC; Mims Hammocks, LLC; Nichols Ranch, LLC vs. Mosaic Fertilizer, LLC  
Attorneys: For Plaintiff: Robert L. Rocke and Raul Valles; For Defendant: David B. Weinstein, Christopher Torres and Ryan D. Maxey  
Nature of case: Breach of contract  
Verdict: $1,545,430

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**ATTENTION MEMBERS:**  
To submit your Jury Trial Information, email Corrie Benfield at corrie@hillsbar.com.

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**FOWLER AND KNIGHT TO BE HONORED ALONG RIVERWALK**

Two of Hillsborough County’s most prominent early Bar members will be honored with permanent monuments along Tampa’s Riverwalk. Cody Fowler (1892-1978) and Peter O. Knight (1865-1946) have been selected by the Friends of the Riverwalk to be honored along the Riverwalk’s Historical Monument Trail.

The solid granite monuments with bronze busts of the two will be unveiled by Mayor Bob Buckhorn on December 3, said Tampa attorney Steve Anderson of Steven A. Anderson is president of the 501 (c) (3) nonprofit group. The unveiling will be at the Tampa Convention Center.

Details of the event, information about the Monument Trail, and biographies of the honorees may be found at www.TheTampaRiverwalk.com.

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