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Continuing our tribute to our nation’s national parks this Bar year, this issue’s cover features a photo of the iconic Half Dome at Yosemite National Park in California, taken by our very own President Gordon Hill, on a trip with his family this July. The Half Dome rises nearly 5,000 feet above the Yosemite Valley and is a popular and challenging destination for hikers.
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A while back, my wife and I had dinner with friends. As I sat down with the other husbands in the group, we began talking about two topics I know something about: professional wrestling and 1980s baseball. As the evening wore on, however, the topic turned to something that I—both fortunately and unfortunately—didn’t know anything about.

One of the husbands, a naval flight officer, mentioned some difficulty he had adjusting after returning from one of several tours of duty in Iraq. To me, it was a startling admission. Although my friend doesn’t strike me as some sort of macho man, he’s certainly a physically imposing guy. And he speaks matter-of-factly about things I can’t comprehend—flying through a war zone in a single-engine Cessna, to name one. The other husband, a mental health professional who has worked with veterans in the past, wasn’t the least bit surprised.

What I learned from talking with my friends is that what is at once a great blessing to this nation is also a curse.

We are blessed that our military is made up of the finest warriors the world has ever known. And I don’t mean “warrior” in the way athletes do when they casually throw around the term (“That guy was a warrior out there today!”). I mean it in the literal sense of the word. When most of us sense danger, we have two options: fight or flight (with flight, when available, usually the more attractive option). Those who serve our country in times of war, however, are seemingly programmed one way—to fight. Fight, mind you, for freedom for others without asking anything in return. These are people who instinctively run to danger the way most instinctively flee from it.

But this superhuman quality can be a curse. The trauma that veterans experience during times of war is difficult to comprehend. My naval flight officer friend was asked daily to make decisions that literally determined whether someone was going to live or die. I can’t imagine the stress that must cause. Sadly, the same superhuman quality that causes our warriors to literally risk their life for others often prevents them from admitting the traumatic effects war has on them for fear they’ll be perceived as weak, not to mention the fear it might affect their military career.

The result? Untold numbers of veterans return from combat suffering from posttraumatic stress disorder, often leading to substance abuse and other issues.

In his song *All-American Kid*, Garth Brooks sings about a typical All-American football star from Small Town, USA who spurns college football offers from top schools to enlist in the military, serves three tours of duty, and returns a hero.

*Three tours of duty*
*And a silver star*
*Brought him back home with his battle scars*
*He stepped off the plane*
*In his combat boots*
*He saluted the red, the white and blue*
*And the whole town cheered*
*And his mama cried*
*Another hometown boy*
*Made it home alive*
*Got his picture in the paper and the headline read*
*“Welcome Back All-American Kid”*
*Yeah, this song is for those who never did*
*Come back All-American kids*

I know those last two lines refer to young kids who have paid the ultimate sacrifice for our country—kids we read memorials about and honor on Memorial Day. But when I hear those lines now, I think about our veterans who have returned from war but will never be the same because of their (mental) battle scars. Veterans who often suffer in silence. This is for those who never did come back All-American kids.
The Bar Leadership Institute

It is incredible to see how the Leadership Institute has grown from Caroline (Black Sikorske)’s vision to today.

In 2007, then HCBA President Caroline Black Sikorske contacted a group of young lawyers to see if we had an interest in helping her launch a flagship program for her Bar year — the Bar Leadership Institute (BLI). Her vision was to establish a program to help the HCBA identify and train young lawyers to become leaders of the Bar and the community at large.

I had just finished my term as president of the Young Lawyers Division when she pitched the idea, and I candidly admit that I was a little concerned that the BLI might interfere with or dilute the YLD, which was already a proven training ground for Bar leadership. Fortunately, I did not share those thoughts with Caroline, and an excellent team of young lawyers designed and then put themselves through the program as the inaugural BLI class.

Continued on page 5
Continued from page 4

The initial program was a success, but was refined and improved a few years later by Bob Nader and others to more closely resemble the Chamber of Commerce’s Leadership Tampa program. Now, the BLI takes participants through eight modules designed to get participants out in the community and learn from some of our finest leaders. Some highlights from this year’s program will be visits to the Port of Tampa, Moffitt Cancer Center, MacDill Air Force Base, Tampa International Airport, and of course, our Courthouse. At each stop, the class will tour the facilities, meet their leaders, and learn their secrets to success. In addition — and critical to the program’s mission — each BLI class plans and implements a community service project. The last few classes have volunteered at the Shriners Hospitals for Children in conjunction with the East-West Shrine Bowl Game, served at Metropolitan Ministries, and collected and donated books and then read to children in poorly performing schools.

The BLI’s success was recognized last summer when the organizers of The Florida Bar’s Voluntary Bar Leaders Conference asked a delegation from our BLI — Scott Johnson, John Kynes, and Lyndsey Siara — to share the program with other voluntary bar associations from all over Florida. After this session, I understand that several other associations are now interested in creating their own leadership programs.

It is incredible to see how the Leadership Institute has grown from Caroline’s vision to today. And, contrary to my initial concern, the BLI has worked very well as a complement to our Young Lawyers Division. I look forward to getting to know this year’s class and watching them become the future leaders of this great Association and Tampa Bay. (Photos from the opening reception with this year’s class on page 16.)

As promised, I am closing each of my articles by telling the story of attorneys who have gone above and beyond in their civic involvement. However, rather than focus on the efforts of just one lawyer this month, I wanted to highlight the efforts of our entire Young Lawyers Division. The YLD has a long history of community service, but they have stepped up their efforts even more this year. Under the leadership of YLD President Melissa Mora and her Board, the YLD is undertaking two new community service projects this year, starting with volunteering at Feeding Tampa Bay — a food bank that provides food to the more than 700,000 hungry in West Central Florida. The YLD will add another similar project in the spring, so I wanted to personally thank them for their leadership and help in improving the lives of so many in our community.
Young Lawyers Make a Difference

“Young Lawyers Make a Difference

“Unless someone like you cares a whole awful lot, nothing is going to get better. It’s not.” — Dr. Seuss

The quote with my article this month is from *The Lorax*, written by Dr. Seuss. Although *The Lorax* was published more than 45 years ago, its message still holds true today (for children and adults alike) and provides a guiding principle for the HCBA YLD. Not only does the YLD encourage members to get involved, but its board members lead by their actions and set an example for others in our community. These individuals go beyond what their day job requires by helping those in the Tampa Bay community and elsewhere. Over the past few years, the YLD has participated in a number of events that leave a lasting impact on the Tampa Bay community. These events benefit a variety of groups, including our youth, new attorneys, and our veterans. As YLD President, it is my mission to make sure we continue these programs and find ways to help out even more.

In the 2015-2016 Bar year, the YLD reached 3,561 students through its participation in Law Week. In 2016-2017, that number increased to 3,868. YLD and HCBA members led mock trials, gave courthouse tours, and volunteered to be classroom speakers, benefitting elementary, middle, and high school students throughout Hillsborough County. In addition to our Law Week program, the YLD hosts The Honorable Robert J. Simms High School Mock Trial Competition annually, in which teams of six to eight high school students simulate the roles of attorneys and witnesses in a fictional trial. Last year, 28 attorneys volunteered their time for that competition, benefitting 30 students from four high schools.

The YLD has also partnered with Big Brothers Big Sisters to host “Cornhole for a Cause,” an annual event that raises funds for Big Brothers Big Sisters’ programs. Since that event’s inception, the YLD has helped raise over $20,000. And each year the YLD hosts Steak & Sports Day at a local foster home. The Steak & Sports Day program, which benefits youngsters who are separated from their families, typically reaches 30-50 kids a year.

Last year, under the direction of HCBA President Kevin McLaughlin, the YLD participated in the John F. Germany Young Readers Initiative, a volunteer reading program geared toward local students who are at the lowest reading competency levels. As part of that program, YLD and HCBA members teamed up to share and promote the enjoyment of reading to elementary school children. During the 2016-2017 school year, members read to 167 children at six underserved schools; the result was a total of 208 hours of volunteer reading time and 557 books provided to children to take home.

The YLD also hosts a number of programs to assist its members transition from law school to practice. Last year, our Coffee at the Courthouse program hosted 50 young lawyers and law students, with 25 judges participating. This event is a great way for new lawyers to meet and mingle with judges outside of the courtroom setting. The

Continued on page 7
YLD also hosts a pro bono luncheon each year, where a number of pro bono groups share information about the services they provide to the community and invite young lawyers to get involved.

A few years ago, the YLD also partnered with Bay Area Legal Services to start the YLD evening family forms clinic. The clinic is a successful monthly clinic that serves eight to 15 clients per month. It is a wonderful complement to the daytime clinic, and it enables clients, who work or have other conflicts during the day, to receive assistance with filling out family law forms.

For years, YLD members have found that not only are they helping our community by participating in these events, but that their involvement is rewarding and beneficial to them in more ways than they could have ever imagined.

In closing, we should all care and find ways to make a difference. I encourage each of you to find a way to get involved; your involvement has a tremendous positive impact on our current community, as well as our future generations. Please reach out to me if you have any questions or would like to get further involved with the YLD and our programs.
#TampaStrong

“Everybody has a plan until they get punched in the face ... We’re about to get punched in the face.” — Tampa Mayor Bob Buckhorn, quoting boxer Mike Tyson, at a Sept. 10, 2017 news conference about the forecast path of Hurricane Irma

Hurricane Irma spared Tampa Bay from the worst, but it will not soon be forgotten.

Floridians will not soon forget the anticipation and agonizing dread associated with obsessively following the path of the storm as it approached landfall in mid-September.

They won’t forget the exhaustion everyone experienced preparing their homes for the storm, and also the community spirit demonstrated afterwards, with neighbor helping neighbor as never before.

Continued on page 9
And they won’t forget the steady leadership provided by our government officials, the valuable service provided by the media to keep the public informed about the storm, and the courageous work of first responders to help keep us safe.

A strong Category 5 hurricane with winds up to 185 mph, Irma was the most powerful storm ever recorded in the Atlantic Ocean, according to the National Hurricane Center.

As Irma churned through the Caribbean and slammed into Cuba, the video images showing the incredible winds, major flooding, and mass destruction caused by the massive storm were shocking, even for seasoned Floridians who had been through multiple hurricanes before.

Everywhere you went around town, the sense of unease was palpable.

Evacuations plans were made and sandbags were filled. Grocery store shelves were quickly emptied. Long lines formed to get plywood to board up homes. And people moved into local storm shelters.

Technological advances helped people stay better informed about the progress of the storm, but no doubt also contributed to increased stress levels.

People were constantly refreshing social media sites such as Twitter on their phones to get the latest news. Also, weather alerts and City of Tampa emergency warnings lit up people’s mobile devices throughout the day and late into the night.

National media heavyweights, such as CNN’s Anderson Cooper, descended upon Tampa and provided unending storm coverage from the Riverwalk.

And there was no missing the regular hurricane advisories when local TV meteorologists explained the latest U.S. and European “spaghetti models” of the storm’s track, as well as updated information about the storm’s “cone of uncertainty.”

Eventually, Irma made its anticipated “turn north,” and it had Tampa Bay in its crosshairs.

On Sept. 10, Irma ripped through the Florida Keys and made landfall on Marco Island as a Category 3 hurricane.

Fortunately, as Irma moved up the Florida peninsula from the south, it wobbled a bit east from its projected path and spared Tampa from a direct hit.

“We were very, very lucky last night,” Tampa Mayor Bob Buckhorn told the “Today” show on Sept. 11, the day after Irma moved north past the area.

Still, Irma ravaged parts of the Florida, causing at least 42 deaths, and leaving more than six million people without power, some for weeks.

The last time Tampa Bay took a direct hit from a hurricane was in 1921 when a Category 3 storm swept through the area with winds gusting more than 100 mph.

The region’s population at the time was about 135,000. Today, the Bay area’s population is close to three million.

Winds from the 1921 hurricane pushed an estimated 11-foot wall of water into Tampa Bay, causing major flooding in low-lying areas and in Ybor City.

H.P. Macfarlane was serving as HCBA president in 1921, and one can only imagine how the storm impacted Tampa’s small but tight-knit legal community.

In the aftermath of Irma, Tampa’s and Florida’s legal community has stepped up in a major way as “second responders” to help those in need of legal advice.

For example, numerous Florida lawyers have volunteered to answer questions from residents who call the Florida Bar’s Disaster Relief Hotline. The project is operated through a partnership with the Florida Bar YLD, the ABA Young Lawyers Section, and the Federal Emergency Management Agency.

And a number of Tampa law firms and individual lawyers have organized efforts to help meet the humanitarian needs of residents in Florida and in Puerto Rico, which was devastated by Hurricane Maria later in September.

As a Tampa Bay Times editorial aptly stated just after Irma hit: “Florida bent but did not come close to breaking, and we will bounce back stronger. This historic storm was a uniquely shared experience for the entire state. Floridians must remain united as they begin the weeks and months of cleaning up and rebuilding.”

See you around the Chet.
For too long, our juvenile justice system in Hillsborough County has been ineffective: It’s been too focused on a reflexive system of arrest and detention — especially for minor, non-violent misdemeanors — and not enough on targeted treatment and rehabilitation, and reducing recidivism. It hasn’t worked. Our system must take a more innovative approach — one that considers the long-term impact of how we prosecute our youth, one that breaks the cycle of juvenile recidivism, and one that is designed to keep our kids on the right path, all while keeping public safety as a number one priority.

On August 1, 2017, Hillsborough County took an important first step towards that goal. The State Attorney’s Office was honored to lead the

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effort to expand and make permanent in Hillsborough County the Juvenile Arrest Avoidance Program, commonly referred to as the juvenile civil citation program. It is an evidenced-based, smart alternative to arrest and detention of juveniles for first-time minor offenses, allowing for early intervention into delinquency, and holding youth accountable with targeted and immediate sanctions. Studies have shown that a youth is up to 50 percent less likely to reoffend after completing a civil citation program, because it significantly reduces the likelihood of the youth escalating into the juvenile justice system.

There is another significant benefit of the juvenile civil citation program: It makes economic sense. The average cost to prosecute a juvenile is $5,000.1 To incarcerate a juvenile costs approximately $55,000 annually.2 By contrast, the average cost to enroll a juvenile in a civil citation program is less than $400.3 It reduces costs to taxpayers, and allows our office to focus more resources on those violent and repeat crimes that pose the greatest threats to public safety.

Here’s how the program works: Officers issue civil citations for first-time offending youth for any misdemeanors, other than thirteen enumerated more dangerous offenses, like DUI or a lewd and lascivious act, unless there is an immediate and material threat to public safety. The youth, along with a parent or guardian, will then meet with a caseworker to assess appropriate sanctions, including drug treatment, restitution, community service, specialized classes, supervision, or others. Once the juvenile successfully completes the sanctions, the citation is closed without referral to the State Attorney’s Office. If the juvenile does not successfully complete the sanctions, the case is then referred to the State Attorney’s Office for a charging decision. Ultimately, this program allows good kids who have made a mistake to be held accountable and receive appropriate sanctions without an arrest or conviction record following them for years to come, hindering their ability to go to college, join the military, or find a job.

Our office was pleased to work with our criminal justice partners in making this program a part of the permanent fabric of our community. But make no mistake, change takes time, sustained involvement, and community support and engagement. This first step has been critical, and we will monitor the success of the program for expansions or adjustments in the future. Interceding in delinquency early not only reduces crime over time, but it gives our youth a greater opportunity for a productive and positive future — a goal to which we are dedicated.

1 American Bar Association, Criminal Justice Section, State Policy Implementation Project, 2, available at https://www.americanbar.org/content/dam/aba/administrative/criminal_justice/spip_civilcitations.authcheckdam.pdf.
2 Justice Policy Institute, Calculating the Full Price for Youth Incarceration (December 2014), available at www.justicepolicy.org.
3 American Bar Association, State Policy Implementation Project, supra note 1, at 2.
Juvenile Offenses Can Result in Positive Outcomes

The goal (of the program) is to minimize progressive involvement in the juvenile, and ultimately adult, justice system.

My last article focused on the work done in our Dependency Divisions, which seek positive outcomes for children whose families are in turmoil. But the Thirteenth Judicial Circuit Court is able to affect children’s lives in a number of other ways, as well. I will now shine the spotlight on one of those other ways: our Juvenile Diversion Program (JDP).

JDP provides community-based alternatives to formal court processing of eligible juvenile offenders. Diversion is facilitated by the court’s JDP case managers and specialists who conduct evidence-based risk assessments and cater sanctions and referrals to the youth’s individual needs. It is meaningful to convey that the children are held accountable for their actions; however, the goal is to minimize progressive involvement in the juvenile, and ultimately adult, justice system.

No one contests the impact an arrest can have on a young life. Arrest history can minimize educational and professional opportunities, with consequences that can last a lifetime. There is great interest across the state of Florida in implementing comprehensive arrest-avoidance programs. In August, the Thirteenth Circuit’s court partners entered into a Delinquent Act Citation Pilot program, a one-year program permitting citations to be issued for first-time juvenile possession of cannabis (20 grams or less) or possession of drug paraphernalia. The pilot was successful, with 222 children receiving citations under the pilot. Overall, 54 percent of pilot participants successfully completed the program, and another 19 percent are still active in the program as of October of 2017. Success is also demonstrated by the $2,105 collected in restitution and the 4,123 hours of community service completed because of the JAAP program’s existence. Imagine how much more can be accomplished with nearly all misdemeanor offenses qualifying for diversion.

Delinquency court has a purpose, but addressing the needs of children who are new to the juvenile justice system and facing minor offenses is rarely one of them. I am confident that accountability accompanied by targeted services has the potential to impact children in a positive way. The court and our juvenile justice partners have the ability to combine sanctions with services that fit the needs of the children we encounter. Their future success rests in our efforts.

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During this year's Annual Convention of The Florida Bar, we were privileged to be sworn in as members of the Board of Governors of The Florida Bar Young Lawyers Division. We are often asked: What does the YLD do? Simply put, the YLD is the “work horse” of The Florida Bar, and we work hardest for our members and our constituents.

The YLD is an important engine of The Florida Bar that produces top-notch programming, provides support for attorneys, and stimulates involvement in the more than 26,000 Florida Bar members who are either below the age of 36 or have been practicing for five years or less. The YLD also coordinates legal services for Floridians affected by disasters like Hurricane Irma.

One of the YLD’s primary roles is to assist its members transition from law school to practice. Historically, this responsibility has included administering the Practicing with Professionalism seminars, as well as the Basic Skills CLE courses. Through our efforts, these courses are now offered online.

The YLD has also focused its efforts on providing resources to help attorneys operate in today’s legal marketplace. For instance, the YLD recently launched a website providing information on how to start a Florida law firm — www.startmyfloridalawfirm.com. There, you will find information you need to launch your own firm — and it’s free! The YLD is also continuing to compile and build a library of videos and webinars, with the YLD library of “How To” and “Mentoring with the Masters” videos quickly becoming one of the most robust collections in the nation.

This year, the YLD is continuing its support of every young lawyer in Florida by creating a website designed to provide virtual education and mentorship. The website will aggregate all the YLD’s existing resources in one searchable place, while adding thousands of short three-minute videos answering questions young lawyers have.

The YLD’s diversity efforts have also earned attention from across the country. The YLD’s Pipeline Initiative Diversity Symposium — which seeks to motivate, encourage, and help high school, college, and law students enter our profession — received a national award from the American Bar Association.

Just recently, the YLD also impressed upon The Florida Bar Board of Governors the importance of the proposed Parental Leave Continuance Rule for all young lawyers. With our assistance, that groundbreaking rule was passed by the Board of Governors with unanimous support. Additionally, the results of a poll conducted by the YLD’s Women in the Profession committee garnered national attention and fueled a YLD effort to support the achievements of women in the profession.

That is only a small fraction of the work that we do for you. We encourage all YLD members to reach out to us, your Circuit representatives, for more information and for opportunities to get involved.

The authors — John Dicks, Alexandra Palermo, and Anisha Patel — are elected members of the Florida Bar Young Lawyers Division Board of Governors for the Thirteenth Judicial Circuit. To learn more about the Florida Bar YLD, please visit https://flayld.org.

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16  NOV - DEC 2017 | HCBA LAWYER
The endgame matters.

Ceci Berman & Steve Brannock

An appeal is a company’s last chance to preserve a win or reverse a loss. With over 50 years of experience handling commercial litigation appeals, Brannock & Humphries can get you to the finish line.
The battle came down to one of discretion: prosecutorial on the one hand versus executive on the other.

Three subjects at the core of the Florida Supreme Court’s institutional role in state government — constitutional interpretation, separation of powers, and the death penalty — intersected on a cooler-than-usual Tallahassee day in June 2017, when political leaders gathered under the Court’s recently refurbished dome to observe oral arguments in Ayala v. Scott. The result, issued two months later in a written opinion by the Court’s newest Justice, C. Alan Lawson, offered insight into the scope of executive power and the standards that the state’s highest court applies to actions taken by its highest-ranking public official.

The dispute stemmed from statements by Ninth Circuit State Attorney Aramis Ayala, made soon after becoming Florida’s first and only African American elected as a lead prosecutor, that she did not plan to pursue the death penalty as a sentencing option in first-degree murder cases. See Ayala v. Scott, No. SC:17-653, 2017 WL 3774788, at *1 (Fla. Aug. 31, 2017); see also id. at *5 (Pariente, J., dissenting). Unhappy with this decision, Governor Rick Scott swiftly responded, issuing a series of executive orders reassigning death-penalty eligible cases in Ayala’s circuit to the state attorney in a neighboring circuit. Id. at *1. Ayala then petitioned the Florida Supreme Court to intervene, claiming that Governor Scott lacked the legal authority to remove her for exercising her independent judgment. Id.

The battle came down to one of discretion: prosecutorial on the one hand versus executive on the other. Nowhere were these battle lines more clearly on display than in the disparate framing of the appellate issue by the Supreme Court’s majority and dissenting opinions. Speaking for four members of the Court, Justice Lawson saw Ayala’s petition as a “challenge [] to the Governor’s exercise of his broad discretion in determining ‘good and sufficient reason’ for assigning a state attorney to another circuit.” Id. at *2 (quoting Finch v. Fitzpatrick, 254 So. 2d 203, 205 (Fla. 1971) (internal quotation marks omitted)). Viewed in this light, Justice Lawson said the executive orders fell “well ‘within the bounds’ of the Governor’s ‘broad authority.’” Id.

By contrast, Justice Pariente’s dissent framed the case as one “about the independence of duly elected State Attorneys to make lawful decisions within their respective jurisdictions as to sentencing and allocation of their offices’ resources, free from interference by a Governor who disagrees with their decisions.” Id. at *4 (Pariente, J., dissenting). Viewed this way, Justice Pariente opined, “State Attorney Ayala’s decision was within the bounds of the law and her discretion” and Governor Scott therefore did not have “good and sufficient reason” to remove her. Id. at *7.

So, in this case at least, executive discretion prevailed over prosecutorial discretion. Whether that theme permeates future Supreme Court rulings remains to be seen. But in any event, Ayala v. Scott offers a good reminder that appellate outcomes are often shaped by something as simple as the framing of the issue on appeal.

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Trademark Law
My own collaborative divorce process wrapped up in March, and honestly, I can’t thank my ex-husband’s attorney enough for recommending it. Let me set the stage for you.

I was running for election for circuit court judge and campaigning against a very formidable opponent, all while trying to manage my practice at a large law firm. I received a call from a lawyer who calmly informed me that my husband wanted a divorce after thirty years of marriage. I was stunned. During that fifteen-minute conversation, my whole world fell apart. How could I possibly handle my practice, the campaign, and the stigma of a divorce and its potentially negative effects on my election? How would I tell my campaign finance committee, my supporters, the voters, and my campaign consultant, who stressed the importance of family support for any candidate in an election? Above all, how would I tell my children? As this surreal and seemingly endless conversation came to a close, the attorney informed me that my ex-husband wanted to make every effort to preserve my chance for election. She suggested that I join him in considering a more private, less combative method of resolution called “collaborative divorce.” Both confused and relieved, I promptly researched the collaborative process. After my research and much reflection, my ex-husband and I opted to proceed with the collaborative process, which we both now agree was a very good decision.

How collaborative divorce works and what it involves varies; there is a wide range of flexibility and creativity built into the process. In my case, my ex-husband and I each retained our own collaborative attorney, an excellent financial expert who compiled our joint financial statements, and an equally impressive mental health professional who managed our expectations and sometimes raw emotions throughout the process. This symbiotic team of four specially trained professionals facilitated a resolution that preserved the relationship between us and our two sons, protected our privacy through the election and beyond, and minimized the anger and resentment between us throughout the inevitable emotional drama that comes with divorce. The process allowed us to remain friends and to be reciprocal support for each other generally and in crises, such as the recent Hurricane Irma. These trained professionals kept us focused on the end game and the best interest of our children and did not allow us to succumb to greed or revenge. At the end of the day, while both of us felt that we each gave up more than we should have, the inequity was far exceeded by the emotional peace of mind, our ongoing positive relationship, and the money saved in litigation costs that could instead be used to benefit our two sons.

I urge local bar association family law sections to add collaborative divorce to their repertoire and offer it to clients in an effort to give them a more peaceful, positive, productive, and less expensive alternative to the destructive, time consuming, and often expensive nature of litigation.

Author:
Judge Kim Vance - Thirteenth Judicial Circuit
When addressing construction defects, both property owners and contractors often ask how repair work will be treated for statute of limitations purposes — i.e., will repairs be subject to the limitations period applicable to original construction under section 95.11(3)(c), Florida Statutes? Although many practitioners assume that repairs will be treated under the same limitations period applicable to original construction, the Third District Court of Appeal clarified the issue in some detail six months ago in Companion Property & Casualty Group v. Built Tops Building Services, Inc., 218 So. 3d 989 (Fla. 3d DCA 2017).

In Companion, plaintiff Companion Property & Casualty Group sued Built Tops Building Services, Inc., a construction services firm, for water damage suffered by its insured because of a negligent roof repair. Companion’s complaint, filed February 8, 2016, alleged that Built Tops performed the defective roof repair on November 21, 2006, and that the defective roof resulted in water intrusion and damage to the insured’s condominium structure on February 9, 2012. Built Tops obtained dismissal of Companion’s claims on the grounds that the claims were time barred under section 95.11(3)(c) because the limitations period began on the initial repair date (November 21, 2006), rather than the date that the deficient repairs failed (February 9, 2012).

Before the Third DCA, Companion asserted that limitations should be measured from the date of its actual “injury” — i.e., when the roof leak failure occurred in 2012 — not the date of actual repair. Companion ultimately prevailed, and the Third District reversed and remanded the trial court’s dismissal.

In so doing, the Third DCA expressly held that “[w]ith regard to roof leaks on real property, the statute of limitations begins to run from the time the defect is discovered or should have been discovered.” Companion, 218 So. 3d at 991 (citing Kelley v. Sch. Bd. of Seminole County, 435 So. 2d 804 (Fla. 1983)). More interesting, the Third DCA also held that the roof repair was not governed by section 95.11(3)(c), because: (i) Companion’s claim was based in negligence; and (ii) repairs are not “improvements.” Id. Specifically, the court held that a claim arising from deficient repairs is not an “action founded on the design, planning, or construction of an improvement to real property” because improvements were more than “mere repairs” or an amelioration of existing conditions. Id. at 991 -92 (quoting Dominguez v. Hayward Indus., Inc., 201 So. 3d 100 (Fla. 3d DCA 2015)). The court also relied on Pinnacle Port Community Association, Inc. v. Orenstein, 952 F2d 375, 378 (11th Cir. 1992), where the Eleventh Circuit held that “repairs were intended not to enhance the assumed value of the property but to restore the walls to their original watertight state.”

On the one hand, the Third DCAs decision in Companion should provide courts clarity when addressing limitations issues arising from defective repair work. On the other hand, by holding that claims for defective repairs fall outside section 95.11(3)(c), further judicial attention will be required.

A new Third District opinion should lend clarity to addressing limitations issues arising from repairs.

Author:
Mark A. Smith - Carey, O’Malley, Whitaker, Mueller, Roberts & Smith, P.A.

Plan to Attend Construction Law Section’s Annual Half-Day CLE on Feb. 15, 2018.
Construction Section Luncheon/CLE

On September 21, Brian Albritton with the firm Phelps Dunbar LLP gave an overview to the Construction Law Section on the topic “False Claims Act: Recent Trends and Reducing Risks of Whistleblower FCA Suits in the Construction Industry.” He covered FCA trends and recoveries; elements of claims; sanctions for violations; FCA investigative powers; and examples of construction fraud prosecuted under FCA.

The section would like to thank its luncheon sponsor: Construction Defect Professionals.
Rule 3.801 has some basic requirements. Specifically, a motion under Rule 3.801:
1. Must be filed within one year of the date the sentence became final.
2. Shall be under oath.
3. Shall include a brief statement of the facts, including the dates and locations of incarcerations and the amount of time already credited.
4. Shall include whether any other criminal charges were pending during any period of incarceration and, if so, the location, case number, and resolution of those charges.
5. State whether any credit was waived and, if so, the amount waived.
6. Must be signed by the defendant certifying that: the defendant has read the motion or that it has been read to the defendant and that the defendant understands its content; the motion is filed in good faith and with a reasonable belief that it is timely filed, has potential merit,

Continued on page 25
and does not duplicate previous motions that have been disposed of by the court; and, the facts contained in the motion are true and correct. The defendant must further certify that the defendant can understand English or, if the defendant cannot understand English, that the defendant has had the motion translated completely into a language that the defendant understands. If the motion was translated, it shall contain the name and address of the person who translated the motion, and that person shall certify that he or she provided an accurate and complete translation to the defendant.

The most difficult and time-consuming task is finding the defendant’s incarceration history and determining whether he or she should receive credit for the time served in a particular jurisdiction. For example, a defendant may be arrested in Pasco County for driving on a suspended license while he or she was serving a probationary sentence in Hillsborough County. If the defendant did not have a Hillsborough “hold” placed on him for the violation or was not served with the violation warrant while in custody, he may not be entitled to credit for the time served in Pasco towards his subsequent sentence in Hillsborough. But if the jail records indicate Hillsborough placed the hold, then counsel must look at the Pasco disposition to see whether anything in the sentencing in that case would cause the defendant to not be able to use the credit in Hillsborough.

Once all the research is concluded, it’s a good practice to attach printouts from the jail and clerk to substantiate the credit claimed in the motion.

Once a completed motion is signed, certified by the client, and filed with the court, it proceeds in same manner as a Rule 3.850 motion – i.e., the court will review the motion for sufficiency and, if sufficient, forward to the State Attorney for a response. Depending on the response, it will be granted, denied summarily, or set for a hearing. If the motion was originally deemed insufficient by the court for whatever reason, counsel will have 60 days to file an amended motion.

Author: Adam L. Bantner, II - The Bantner Firm
The year 2013 was a big one. After accruing substantial medical school debt and enduring residency, I finally became a licensed physician. With a year of residency remaining, I responded to an ad to supervise physician assistants in South Florida. The job entailed fielding clinical questions, co-signing charts, and ordering medical equipment for 40 house-bound patients.

Shortly after beginning, I received mail that other providers had prescribed my patients interacting medications or nearly identical drugs to what they were already taking. I went to the clinic to talk with the manager and physician assistants about my concerns. They told me they would address the problems, but no changes were made. Four months after starting, I realized the patient management wasn’t going to improve, so I handed in my resignation. I cited conflicts with my other job. As a favor to the manager, I agreed to review one more month of charts while a replacement was found.

Days later, I received news no physician wants to hear — the clinic I was working for was being investigated for fraudulently billing Medicare. After I cooperated with the investigator, he requested that I not notify the clinic of the investigation. At this point, I decided to hire an attorney.

Based on my attorney’s advice, I immediately resigned from my position at the clinic, citing concerns over the clinic’s billing practices. This strategy worked, and I never heard from the company again.

Since my interaction with the clinic, I have been contacted by investigators on five separate occasions about prescriptions written in Miami, even though I work in Tampa. Investigating parties have included the FBI, police detectives, pharmacies, and Medicare contractors. The perpetrators of these fraudulent schemes have managed to escape discovery by opening and closing new pharmacies faster than they can be investigated.

From this experience, and after speaking with my attorney, I learned that the consequences of medical identity theft for providers can be severe, even when a provider has done nothing wrong. Providers’ national provider identifiers (NPIs) and Drug Enforcement Administration numbers are easy prey for thieves. NPIs are publicly available on the National Plan and Provider Enumeration System, and DEA numbers are listed on every page of a physician’s prescription pad.

To limit the occurrence of future thefts or significant loss, providers should do the following:

• Avoid giving identifiers to potential employers before taking the time to learn about the potential employers.
• Be aware of billings in your name, paying close attention to any organization you have reassigned billing privileges to.
• Monitor mid-level provider activities and charting to ensure that documentation supports billed services.
HOW I FOUND MYSELF ENTANGLED IN MEDICAL IDENTITY THEFT
Health Care Law Section

Continued from page 26

- Sparingly share your DEA number and e-prescribing log-in information.
- Make sure that your prescription pads are locked up in a secure area. Use watermarks on your prescription pads to make it more difficult to replicate.
- Notify your legal counsel, CMS, and the DEA if you believe your NPI or DEA number was compromised.

The primary risk factor that physicians can control for medical identity theft is complicity in fraud schemes. Physicians who voluntarily permit misuse of their identities place this information at significant risk for subsequent theft. I strongly encourage providers to take the above cautionary measures to mitigate the chances of falling victim to identity theft and the nightmarish scenario of trying to reclaim your identity.

Author:
Gregory Schwaid, DO, MPH - Florida Hospital Centra Care, Lake Erie College of Osteopathic Medicine

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O
nce you purchase a product, do what you want with it! That statement is the result of Impression Products, Inc. v. Lexmark Int'l, Inc., 137 S. Ct. 1523 (2017), where the U.S. Supreme Court examined the applicability of the doctrine of patent exhaustion. Patent exhaustion basically states that a patent owner loses all rights to a patented product once it is sold. In Impression Products, the Court was presented with two issues: (1) whether a patent owner can use a patent infringement suit to enforce contractual restrictions on the purchaser’s right to resell or reuse the patented product; and (2) whether a patent owner exhausts its patent rights by selling the product in a foreign country. Id. at 1529.

Historically, a patent owner was allowed to sue for patent infringement when it attached contractual restrictions to a purchaser’s subsequent use or sale of a patented product and then that purchaser violated those restrictions. See Mallinckrodt, Inc., v. Medipart, Inc., 976 F.2d 700, 709 (Fed. Cir. 1992). A patent owner also retained the ability to bring a patent infringement suit against a purchaser who imported the product and sold it within the United States. See Jazz Photo Corp. v. International Trade Commission, 264 F.3d 1094 (Fed. Cir. 2001). Thus, before Impression Products, the patent owner had more control than the purchaser.

But in an 8-0 decision on the issue of contractual obligations and a 7-1 decision on the issue of foreign sales (Justice Ginsberg dissented), the Court held that “a [patent owner’s] decision to sell a product exhausts all of its patent rights in that item, regardless of any restrictions the [patent owner] purports to impose or the location of the sale.” Impression Products, 137 S. Ct. at 1529. That is, the doctrine of patent exhaustion applies to products that are sold regardless of any restrictions the patent owner imposes or the location of the sale. The Court reasoned that the doctrine applied to both issues because at its essence, the exhaustion doctrine “marks the point where patent rights yield to the common law principle against restraints on alienation.” Id. at 1531.

The Impression Products decision is a massive win for purchasers, and a new obstacle for patent owners. Many business models will change. For example, pharmaceutical companies typically charge higher drug prices domestically compared to internationally, which will likely facilitate the development of “grey markets,” meaning sales initially made abroad will be resold domestically at dramatically reduced costs. It is thus likely that patents will become devalued as the incentive to innovate will be stifled by the reality of smaller profits.

So, while the purchaser is the immediate victor in the Impression Products decision, the larger patent owners may eventually structure their pricing scheme to be uniform throughout the industry. That is, purchasers may pay higher prices to offset the costs of the growing grey markets. Interestingly, the Impression Products decision largely impacts the pharmaceutical industry at a time when domestic drug prices are a fiery topic for political debate. Coincidence?

Author: Cole Carlson - GrayRobinson, P.A.
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YLD Golf Tournament

The HCBA Young Lawyers Division had a great turnout for their annual golf tournament on October 6. About 80 golfers came out for the YLD’s signature fundraising event at the Temple Terrace Golf & Country Club. Congratulations to the winning team: the Hon. Jim Whittemore, Jason Whittemore, Chris DeCort and Anthony Martino.

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Fall Membership Luncheon

HCBA welcomed 500 members to its fall membership luncheon on Sept. 20. Members enjoyed a fascinating talk by Col. Matthew Grant, Staff Judge Advocate for U.S. Central Command at MacDill Air Force Base, on the mission of U.S. Central Command and the role and daily life of JAGs within the Command. Bill Schifino, member of the Florida Constitution Revision Commission and immediate past president of The Florida Bar, also provided an overview of the work of the Florida Constitution Revision Commission.

At the luncheon, HCBA welcomed several guests, including representatives from U.S. Central Command, the Greater Tampa Chamber of Commerce, and the Port of Tampa. The HCBA would like to thank its luncheon sponsor, The Bank of Tampa, for their continuing support.

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The attorneys from the Lawyer Referral & Information Service were at it once again in August and September, answering phones as part of Fox 13’s Ask-A-Lawyer program. We appreciate all those who volunteered to take calls and help out local residents. In September, LRS members especially went beyond the call of duty, taking calls and answering questions just a few days before Hurricane Irma hit the area.

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Florida’s Amendment II passed last November with more than 71 percent of the vote, legalizing medical marijuana use under Florida law.

The ADA further provides that illegal drugs are to be defined by the CSA, not state law. So, until Congress amends the CSA, employers are free to refuse to allow the use of medical marijuana by their employees without fear of violating the ADA.

Legalized medical marijuana use will raise other legal issues for Florida employers. For instance, it is foreseeable that challenges will be brought under Florida’s unemployment compensation, worker’s compensation, and drug free workplace laws, as well as under other federal laws, such as the Family and Medical Leave Act. A majority of states now allow medical marijuana use, and several states have legalized recreational use of marijuana. The public’s perception about marijuana use is changing. Such changing views indicate that prudent labor and employment practitioners should be prepared to litigate medical marijuana employment issues.

Author:
Gregory A. Hearing - Thompson, Sizemore, Gonzalez & Hearing, P.A.
THANK YOU!

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As a family law attorney, you have likely dealt with a contentious case involving parenting issues. These are the cases where the parties cannot get along or agree on any issue or resolve any dispute on their own. The conflicts these parties are dealing with range from highly important issues regarding medical treatment, educational decisions, holiday schedules, and discipline to disagreements over extracurricular activities, haircuts, and clothing choices. These conflicts between parents have an impact on their children. While the parties often don’t intend to put their children in the middle of a conflict or dispute, that is often what happens. It is important that parents in these situations are given the resources they need to co-parent effectively.

One such resource is a parenting coordinator. A parenting coordinator is an impartial third party whose role is to assist parents successfully create or implement a parenting plan and to help develop the parents’ co-parenting skills. § 61.125, Fla. Stat. To help parents resolve their conflicts, the court may appoint a qualified parenting coordinator. Section 61.125 outlines the requirements for a qualified parenting coordinator.

Under section 61.125, a parent coordinator must be a licensed mental health professional under chapter 490 or 491, Florida Statutes; a licensed physician under chapter 458, Florida Statutes, with certification by the American Board of Psychiatry and Neurology; a Florida Supreme Court Certified family law mediator with a minimum of a master’s degree in mental health; or an attorney in good standing with the Florida Bar. Additionally, the parenting coordinator must have been in practice for three years after receiving their license or certification, have taken a family mediation training program certified by the Florida Supreme Court, and have a minimum of 24 hours of parenting coordination training. Id.

The overall objective of parenting coordination is to help high-conflict parents implement their parenting plan; monitor compliance with the details of the plan; resolve conflicts regarding their children and the parenting plan in a timely manner; and protect and sustain safe, healthy and meaningful parent-child relationships. See Association of Family and Conciliation Courts, Guidelines for Parenting Coordination (2005). Parenting coordination provides a child-focused alternative dispute resolution process. § 61.125, Fla. Stat.

Parenting coordinators help parties resolve their parenting issues and come to a resolution that is in the child’s best interest. Once appointed, a parenting coordinator can address conflicts between parties faster than the conflicts can be addressed through the courts. Parenting coordination is also less expensive than what parties could potentially pay in attorney’s fees and court costs litigating the same issues. And it gives parties the opportunity to learn the skills necessary to enable them to positively co-parent for years to come. While parenting coordination may not work for every case, it is something that should be thought of next time you are faced with a high-conflict parenting situation.

Author:
Laurel Tesmer - Brandon Legal Group

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The SCRA literally alters the terms of written contracts when those contracts come under the protection of the Act.

The Servicemembers Civil Relief Act protects active duty members of the Armed Forces against a variety of civil proceedings, such as evictions, termination of installment sales contracts, mortgage foreclosures, and sales of stored goods to pay for storage liens.

The Act is not limited in its application to servicemembers who have been involuntarily called to active duty. It applies to all servicemembers (including Reservists and Guardsmen) on active duty, whether they volunteered, enlisted, or were brought onto active duty kicking and screaming — and not just members serving in combat zones or outside the continental United States.

To gain the Act’s protections against eviction, self-help repossessions of automobiles and other property, mortgage foreclosures, and enforcement of storage liens; a servicemember generally must be prepared to show that he or she has been “materially affected” by the call to military service. Although the phrase “materially affected” is not defined anywhere in the Act, it has evolved through usage to generally mean that the servicemember and his or her family have less overall income after entering military service than he or she did “in the civilian world,” either before enlisting or being called to active duty.

Assuming it applies, the Act literally alters the terms of written contracts. For example, all self-help creditors' remedies are prohibited for pre-service obligations. In mortgage foreclosure actions, for instance, there is no self-help nonjudicial foreclosure, regardless of the language of the deed of trust or credit sale deed. Unless the creditor brings an action in a court of competent jurisdiction and obtains a return of service satisfactory to the court and a valid court order authorizing the proceedings, there can be no valid sale, foreclosure, or seizure of the mortgaged property.

In addition to protecting servicemembers by altering the terms of written contracts, the Act, thanks to a 2010 amendment, now authorizes a servicemember to sue for damages for violations of the Act, including allowing servicemembers to recover punitive damages and reasonable attorneys’ fees and costs. Creditors beware!

Since September 11, 2001, more than 1.2 million citizen-soldiers have been mobilized to active military duty, many of whom have been swept up in the national crisis of home foreclosures and other debt-related actions. Those who are protected by the Act have rights and remedies that only attorneys who understand the Act can enforce.


Author:
John S. Vento,
Colonel,
USAFR (Ret.)*
- Trenam Law
* Chair,
Government Contracting Practice Team, Trenam Law
A warm and gracious thank you from all of us!

We did it! A big thank you to everyone who contributed towards our Veterans Legal Initiative Endowment Fund, and our 50th Anniversary Celebration Dinner. By supporting this effort, we can ensure that Bay Area Legal Services will provide legal aid to veterans today and in the future. To learn more about this effort please contact Rose Brempong at 813.232.1222 ext.131, Development@bals.org.

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Buying foreign property can be a lifelong dream for some. If one has the resources, then why not buy a villa in the coastal paradises of Costa Rica? For one thing, the process (and dangers inherent therein) of buying land in these places makes obtaining such property far more risky than it may initially appear, and it may turn a “dream” into a nightmare. The danger with buying property in many of these countries is not finding pieces of paradise, but the people who find them for you.

A mistake many American property seekers or owners make in these countries is to assume each country places the same rules and regulations on its real estate market as the United States.¹ For example, in Florida, a real estate license is necessary to perform any property transaction that ends in compensation for the real estate agent.² Unfortunately, this is often not the case in Mexico and many Central American countries, where any person off the street can offer their “services” to unsuspecting foreigners, since there are minimal or no license requirements. In Mexico and Costa Rica, realtors are not required to have a realtors’ license before conducting business.³

In fact, across all of Mexico and Central America, only two countries require and enforce a real estate license: the Republic of Panama and Guatemala.⁴

Imagine you are visiting Costa Rica on holiday. You recently inherited a piece of property there, but would like to sell it to buy a bigger house closer to the beach. You are discussing your possible selling options on a cab ride when the cabbie turns to you and says he knows “so many people” who would love to buy the land from you, and he would even help you find a new property closer to your desired location. You excitedly agree. Weeks go by with no word from your new “friend.” Then, out of the blue, a neighbor tells you that your “realtor” has been making incredibly controversial claims about your property to prospective buyers. When you race off to confront the man, you discover he has skipped town.

This may seem like an overly dramatic example, but in reality it illustrates a less damaging outcome of unknowingly hiring an unlicensed realtor in a foreign country. When money begins changing hands, the results can be much worse than falling behind on your plans to build a tropical paradise.

But real estate sales and purchases in Mexico and Central America do not have to be a nightmare. Many countries, like Costa Rica, are trying to fix market flaws in their real estate operations, and Panama and Guatemala already require all real estate agents to be licensed.⁵

So what can attorneys do to help their clients interested in a piece of paradise? For starters, remind them that a friendly foreign cabbie who says “they know a guy” is most likely not a licensed real estate agent. One should deal with these people with extreme caution, if at all. The most prudent course of action is to advise clients to seek out licensed and experienced real estate agents, preferably an agent that has lived in the area for years, and to keep involved in their transactions or obtain local counsel.

¹ States have their own real estate brokering and licensing laws, often codified in statutes and regulations. For example, real estate licenses in Florida are governed by Chapter 475, Florida Statutes, and Chapter 61J2, Florida Administrative Code.
³ Costa Rica proposed legislation for real estate licenses in 2010, but the proposed legislation did not pass. “Ley Regulatora de los Contratos Inmobiliarios y de la Correduría de Bienes Raíces” (La Gaceta No. 54 del 18 de Marzo del 2010). Ivo Henfling, Will Real Estate Licensing Soon be Mandatory in Costa Rica? (2016),

Continued on page 47
Continued from page 46


Author: Kristin Morris - Shutts & Bowen LLP & Contributing author: Julian C. Velez - Aspiring Law Student, University of Florida

Collaborative Law Section Luncheon/CLE

On September 28, Thirteenth Circuit Court Judges Kimberly Vance and Wes Tibbals shared their experiences through a discussion on “Collaborative Law: A Personal Perspective from the Bench.” Judge Vance shared the ups and downs of her own collaborative divorce, with key takeaways as a client. Judge Tibbals then shared his insights and impressions of watching collaborative law in action from the bench.
John Germany Young Readers "Read to Dream" Initiative

HCBA members have been actively involved in supporting the John Germany Young Readers “Read to Dream” Initiative since last year. This summer, Leonard Gilbert (pictured right) presented books written by a partner at his firm, Holland & Knight, on the U.S. presidents to give to the children in the participating schools. HCBA Board Members Grace Yang and Cory Person also submitted a photo (below) of the two of them reading in October at a local school as part of the program. Learn more about the program at www.hillsbar.com.
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Because cybersecurity is currently a hot topic with regulators, substantial guidance is being generated to outline best practices that firms should follow when designing robust cybersecurity programs. The SEC’s Office of Compliance Inspections and Examinations (OCIE) recently provided such guidance in a Risk Alert reporting its recent sweep examination results. See SEC, Observations from Cybersecurity Examinations, Vol. VI, Issue 5 (Aug. 7, 2017).

While the industry awaits definitive rules surrounding cybersecurity, the SEC makes a number of resources available to provide firms guidance when implementing and managing cybersecurity programs. This guidance was created in part from OCIE’s 2014 Cybersecurity Initiative and examination findings of over 50 firms’ cybersecurity practices. See SEC OCIE, Cybersecurity Initiative, Vol. IV, Issue 2 (Apr. 15, 2014); SEC OCIE, Cybersecurity Examination Sweep Summary, Vol. IV, Issue 4 (Feb. 3, 2015).

Cybersecurity Procedures Are Improving

In 2015, OCIE’s examinations focused on governance and risk assessment, access rights and controls, data loss prevention, vendor management, training, and incident response. The results of those examinations, which were recently released, revealed that firms have generally increased their overall cybersecurity preparedness.

In fact, the results show that nearly every firm examined maintained some form of cybersecurity policies and procedures. The majority of firms also conducted periodic risk assessments and penetration tests, and used systems to prevent or detect data breaches.

The cybersecurity programs that firms adopted have several similarities. OCIE found firms regularly addressed business continuity planning and privacy concerns, and nearly all firms developed response plans to cover data breaches. Firms have also begun to clearly identify cyber-security roles and responsibilities for associated persons.

Improving Cybersecurity Procedures

In addition to providing the results of its examinations, OCIE has identified several specific elements that firms should adopt when designing an effective cybersecurity program:

• maintain an inventory of data, information, and vendors;
• create detailed cybersecurity-related instructions in policies;
• maintain schedules and processes for testing data integrity and vulnerability;
• enforce data access controls;
• conduct employee training; and
• obtain senior management support and approval.

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Firms’ oversight of third party vendors has been and is still a significant concern. While examined firms were conducting risk assessments of vendors, their assessments were limited to the outset of the relationship, rather than an initial and ongoing review.

While nearly every firm that was examined maintained cybersecurity policies and procedures, OCIE expressed concern that some cybersecurity programs were inadequately tailored to address firm-specific needs, were general in nature, and did not provide adequate tools for implementation by associated persons.

OCIE also found that firms failed to follow or enforce policies and remediate or address identified system weaknesses. Although policies included good cybersecurity program elements, in many cases firms did not follow them (e.g., completion or frequency of required employee training).

Whether a firm has already established cybersecurity policies and procedures or is in the creation and adoption phase, following best practices published by regulators will help the firm assure that it is in compliance with the ever-changing landscape related to managing cyber risks.

Authors:
Dionne Fajardo
and Trisha Cram - Wiand
Guerra King

Securities Law Section Luncheon

On October 5, the Securities Law Section held a CLE entitled “Lunch with Galleon Group Hedge Fund Informant Roomy Khan,” where Ms. Khan discussed her involvement with “Operation Perfect Hedge,” which led to the indictment and conviction of over 90 individuals connected to Galleon Group, a billion-dollar hedge fund. Ms. Khan also discussed her years of undercover cooperation that ultimately led to these convictions, as well as the lessons she has learned since her own conviction for passing inside information.

The section would like to thank its luncheon sponsor:
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Each year, many “snowbirds” pack up their lives and take their talents to Florida. While in Florida, many of these taxpayers decide to pursue a more entrepreneurial endeavor (in stark contrast to their steady paycheck back home). That accountant in Philadelphia may make a phenomenal snow cone, and the data processor in Chicago may have always dreamed of selling his one-of-a-kind Polish sausage recipe to the masses. Why not turn these pursuits into full-time businesses?

While any taxpayer is welcome to use their hard-earned money to start a new venture, not all businesses are treated equally from a tax perspective. Ordinarily, the IRS allows a deduction for all ordinary and necessary expenses paid or incurred by a taxpayer in carrying on a trade or business, and to the extent these expenses exceed the income in a given year, the resulting loss can be used to offset other sources of income in current, previous, or future years. Despite this general rule, deductions related to activities that do not have a profit motive (in the eyes of the Internal Revenue Service) are limited to income from that activity.

Whether an activity has a profit motive depends on whether the facts and circumstances indicate that the taxpayer entered into or continued the activity with the intent to make a profit. In examining a taxpayer’s intent, the IRS looks to “objective standards, taking into account all the facts and circumstances of each case” to determine whether the taxpayer engaged in the activity with a profit motive. To avoid a “hobby” classification, the facts and circumstances must indicate that the owner entered into the activity or continued the activity with the objective of making a profit; however, a reasonable expectation of profit is not required.

To aid in determining whether a profit motive is present, regulations promulgated by the IRS identify nine objective factors (none individually determinative) to aid in supporting that an activity is engaged in for profit: (1) the extent to which the taxpayer carries on the activity in a businesslike manner; (2) the taxpayer’s expertise or reliance on the advice of experts; (3) the time and effort the taxpayer expends in carrying on the activity; (4) the expectation that the assets used in the activity may appreciate in value; (5) the taxpayer’s history of income or loss from the activity; (7) the amount of occasional profits, if any; (8) the taxpayer’s financial status; and (9) the elements of personal pleasure or recreation. Of course, the best way to avoid a fact-intensive discussion (and to create a presumption that profit motive exists) is to produce a taxable profit from the activity for two or more taxable years in a period of five consecutive years.

Many businesses go through growing pains in their early years. Therefore, to avoid the potential loss disallowances, any new owner should consider the factors listed above (regardless of the individual’s lofty expectations for future profitability).

Author:
Matthew E. Livesay - Barnett, Bolt, Kirkwood, Long & Koche
WELCOME! MESSAGE FROM THE SECTION CHAIR
Trial & Litigation Section
Chair: Brandon Faulkner – Holland & Knight, LLP

Welcome! I would first like to thank Caroline Levine for her leadership as chair of the Trial & Litigation Section for the past year, and for her continuing support. The Section, and the board in particular, is fortunate to have such a tireless and motivated leader passing the baton.

I would also like to take this opportunity to highlight upcoming events and encourage those with interest to become engaged in our Section’s programs and activities. The Bar is uniquely situated to foster professionalism, community involvement, continuing education, and pro bono efforts among our members and with the judiciary. This year, the Trial & Litigation Section will focus its efforts on promoting these activities, while also continuing to offer our traditional programs. For those who have practiced law in our community for any length of time, it is evident that the HCBA benefits from an active and engaged membership. Collegiality among opposing counsel, despite zealous advocacy, is a hallmark of our local bar. We should all be proud of this.

We will continue to host Section luncheons that feature speakers with unique perspectives or experiences. Mayor Bob Buckhorn was the keynote speaker at our October 4, 2017 luncheon. He discussed the challenges Tampa faced during hurricane Irma, as well as the projects and developments underway to help propel our community into the future. (See photos on opposite page.)

Please mark your calendars for our next luncheon, which is scheduled for December 14, 2017.

The CLE that our Section will sponsor this year will continue our focus on enhancing trial advocacy skills — paired with ethics, of course. This has been a theme of our CLEs for the past few years. We’ve had very qualified, seasoned trial lawyers teach courses on opening statements, witness examinations, and closing arguments. If there is a particular topic that is of interest to you, please let us know.

This year, the Trial & Litigation Section continued to support the

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HCBA Bench Bar Conference as a sponsor, and through the participation of our Section’s membership. This event offered a fantastic opportunity to interact with our judiciary outside of chambers and the courtroom, particularly during the Annual Judicial Reception that immediately followed the conclusion of the conference meetings. The conference is hosted in October of each year, so be sure to add it to your list of things to do next year.

With respect to pro bono, there are renewed efforts by the Thirteenth Judicial Circuit Pro Bono Committee to coordinate and facilitate pro bono projects among the HCBA sections. The Trial & Litigation Section is answering the call. Providing pro bono representation is imperative to further justice and instill public confidence in our judicial system. Please contact any Section board member to learn more about what opportunities are available to help. Our contact information is on our Section webpage at: www.hillsbar.com/group/TLS.

Our board members are exemplary attorneys, citizens, and leaders who are dedicated to improving our profession and serving our members. Please thank them for their often-unnoticed labor when you get a chance. I look forward to seeing you at our events.

Author: Brandon Faulkner - Holland & Knight LLP

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Trial & Litigation Section Hosts Mayor Buckhorn

On October 4, City of Tampa Mayor Bob Buckhorn was the keynote speaker for the Trial & Litigation Section luncheon, where he discussed the challenges Tampa faced during Hurricane Irma, as well as the projects and developments underway to help propel our community into the future.

The section would like to thank its luncheon sponsor:
CONGRATULATIONS TO NEW ADMITTEES

Twenty admittees to The Florida Bar gathered at the George Edgecomb Courthouse on September 22 for a celebratory swearing-in ceremony by the judges of the Thirteenth Judicial Circuit. The Hon. Samantha Ward presided over the ceremony, with the Hon. Christopher Nash discussing the importance of professionalism. HCBA President Gordon Hill and YLD President Melissa Mora also spoke to the new admittees about the benefits of joining the HCBA.

Congratulations to all who were sworn in, and thank you to the ceremony’s sponsor:
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HCBA & YLD Boards
Plan for the Year Ahead

The Hillsborough County Bar Association Board of Directors and the Young Lawyers Division Board of Directors joined forces for a retreat on August 11-12 at the Wyndham Grand Clearwater Beach Hotel. Both boards discussed its plans and programs for the upcoming Bar year, and how to improve member engagement.

The board members would like to thank the retreat sponsors:
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AROUND THE ASSOCIATION

Steven M. Berman - The law firm of Shumaker, Loop & Kendrick, LLP is pleased to announce that Tampa partner Steven M. Berman moderated a panel discussion at the 25th Annual Southwest Bankruptcy Conference in Coronado, California.

M. John Burgess - Shumaker, Loop & Kendrick, LLP, is pleased to welcome M. John Burgess at the Tampa office as a partner in the Employee Compensation and Benefits and Taxation practice groups.

Alex Caballero - The law firm of Sessums Black Caballero Ficarrotta PA is proud to announce that shareholder Alex Caballero has been selected as chair of the Judicial Nomination Commission for the Thirteenth Judicial Circuit, in and for Hillsborough County, Florida.

Dionne C. Fajardo - The law firm of Wiand Guerra King is pleased to announce that Dionne C. Fajardo has been named a shareholder of the firm. Since 2010, Fajardo has led the development of Wiand Guerra King’s Compliance and Regulatory Consulting Group.

Amy S. Farrior - Buell and Eligett is pleased to announce that Amy S. Farrior has recently been elected to The Florida Bar Board of Governors.

Arda Goker - Burns, P.A. is pleased to welcome new associate Arda Goker, a former notes and comments editor for the Stetson Law Review, who graduated in the top ten percent of his class. Goker will join the firm’s appellate practice.

Sessums Law Group, P.A. - Mark A. Sessums and Brittany M. Pinson attended the Interdisciplinary Collaborative Practice Training at Barry University School of Law in August 2017. The two-day training included lawyers, as well as financial and mental health professionals, interested in the practice of Collaborative Marital and Family Law.

Tom Scarritt - Tom Scarritt of Scarritt Law Group, P.A. received the Chair’s Award from the Hillsborough County Democratic Party for Outstanding Public Service at the Kennedy-King Dinner Gala on September 16, 2017. Scarritt was recognized for leading the effort to raise private funds to relocate a Confederate Memorial located at the Hillsborough County Courthouse Annex.

April Zinober - Shumaker, Loop & Kendrick, LLP, is pleased to announce that Tampa associate April L. Zinober has been named to the Board of Directors of the PACE Center for Girls, Hillsborough County.

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Se Habla Español

Wenzel Fenton Cabassa, P.A., represents employees who are victims of illegal workplace violations in state and federal courts throughout Florida.
For the month of June 2017
Judge: Hon. Cheryl K. Thomas
Parties: Pamela Thompson v. Anthony Harn, Barr Co., Inc.
Attorneys: For plaintiff: Felipe Fulgencio, George Hunter
Nature of case: Motor vehicle accident
Verdict: $1,400,000.

For the month of June 2017
Judge: Hon. Laurel Lee
Parties: Angela Abbadesa v. State Farm
Attorneys: For plaintiff: J.D. Dowell; For defendant: Mark Ramey, Amber Inman
Nature of case: Rear-end automobile accident resulting in back surgery
Verdict: $20,000 for plaintiff. Plaintiff asked the jury for over $300,000 in medical bills. Defendant’s motion for attorneys’ fees and costs is pending.

For the month of June 2017
Judge: Hon. Martha Cook
Parties: David C. Briggs, as Personal Representative of the Estate of Richard Davies Briggs v. Rebekah Robinson
Attorneys: For plaintiff: Douglas Beam, Jerry McGreal; For defendant: Mark Ramey, Amber Inman
Nature of case: Wrongful death resulting from motorcycle versus car collision. Defendant’s motion for attorneys’ fees and cost is pending.
Verdict: For Defendant - $0.00 award

For the month of July
Judge: U.S. District Court Judge Kenneth Marra, Palm Beach
Parties: Julian Bivins, as Personal Representative of Estate of Oliver Wilson Bivins v. Brian O’Connell, Ashley Crispin, and Ciklin Lubitz O’Connell Law Firm
Attorneys: For plaintiff: J. Ronald Denman, Charles D. Bavol, Grant Kindrick, Christina Hebert; For defendant: Rachel Studley and Brandon Hechtman
Nature of case: Professional negligence and breach of fiduciary duty against attorneys representing guardians
Verdict: In favor of Plaintiff for $16.4 million

For the month of July 2017
Judge: Hon. Claudia R. Isom
Parties: Leda Bravo v. Mi Supermercado 2, LLC
Attorneys: For plaintiff: Web Brennan, Felipe Fulgencio
Nature of case: Premises Liability - Commercial
Verdict: $3,458,635

For the month of September 2017
Judge: Hon. Elizabeth Rice
Parties: Barbara Johnson v. Hillsborough Area Regional Transit Authority
Attorneys: For plaintiff: Jonathan Zaifert; For defendant: Michael H. Rosen
Nature of case: Negligence of paratransit driver
Verdict: For defendant. Defendant’s motion for attorney’s fees and cost pending.

For the month of October
Judge: Hon. Mary Scriven, Middle District of Florida
Parties: Barbara J. Harvey v. Florida Health Sciences Center, Inc. d/b/a Tampa General Hospital
Attorneys: For plaintiff: Joseph Williams, as substitute for Nathaniel W. Tindall, II; For defendant: Ed Carbone & Jacqueline Root
Nature of case: Jury was presented with plaintiff’s claims for unjust enrichment and Medicare private cause of action. Plaintiff sought an award of $1.8 million.
Verdict: Judgment as a matter of law in favor of Tampa General Hospital at the close of all evidence

To submit news for Around the Association or Jury Trial Information, please email Stacy@hillsbar.com.
To view additional HCBA news and events, go to www.facebook.com/HCBAtampabay.
Save the Date

◆ DECEMBER 7, 2017
Holiday Open House at the
Chester Ferguson Law Center

◆ JANUARY 10, 2018
Diversity Membership Luncheon
at the Hilton Tampa Downtown

◆ FEBRUARY 10, 2018
Diversity Networking Social at the
Chester Ferguson Law Center

◆ MARCH 3, 2018
15th Annual Judicial Pig Roast/Food
Festival & 10th Annual Pro Bono 5K
River Run, on the grounds of Stetson
Law Tampa Campus

◆ MAY 9, 2018
Law Day Membership Luncheon
at the Hilton Tampa Downtown

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