JANUARY 16TH, 2013
ELECTION DINNER

Congratulations to the incoming board members and the entire 2013 PBCJA Board of Directors. See more election photos on page 16 under the Events Spotlight.

Thank You To Our Election Dinner Sponsors

FOUNDING & BLACK DIAMOND
Sabadell United Bank

PLATINUM
Above & Beyond Reprographics
Rock Legal Services & Investigations • Visual Evidence

GOLD
Legal Graphicworks • PS Finance, LLC • Robson Forensic
Synergy Settlement Services • The Centers

SILVER
BEC Consulting • Bob Galt, MS, SIMD, CDEMS, QRP, BCPC
Global Engineering • Millennium Settlements
Park Creek & Delray Beach Surgery Centers
Signature Court Reporting • U.S. Legal Support

EVENT
Grand Bank & Trust of Florida • Lexis Nexis

EXEcutIve BoarD
Immediate Past-President
Mike Pike
President
Scott Smith
President-Elect
Freddy Rhoads
Treasurer
Greg Zele
Secretary
Farrah F. Mullen
Newly Elected
Adriana Gonzalez
John McGovern
Tim Murphy
Cynthia Simpson
Pat Tigue
Existing Board Members
John Carroll
Sean Domnick
Jack Hill
Greg Yaffa
New Paralegal Representative
Rosanna Schachtele
The principal author of the Declaration of Independence and the United States of America’s 3rd President, Thomas Jefferson, previously stated “I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution.” In so stating, President Jefferson provided a tremendous endorsement for the jury system not only in criminal cases, but also civil cases. These profound words of Jefferson and others alike in creating the framework for our Country undoubtedly laid the foundation for our current “trial by jury” system and most likely played pivotal roles in shaping our respective state governmental and judicial systems.

For example, the Virginia Declaration of Rights of 1776 stated “The civil jury trial is preferable to any other and ought to be held sacred.” Likewise, the Massachusetts Constitution of 1780 further wrote “In civil suits the parties have a right to trial by jury and this method of procedure shall be held sacred.” James Madison, the 4th President of the United States and one who is often described as the “Father of the Constitution” once said “In suits at common law, trial by jury in civil cases is as essential to secure the liberty of the people as any one of the pre-existent rights of nature.” The Virginia Bill of Rights of 1788 offered “In suits between man and man, the ancient trial by jury is one of the greatest securities to the rights of the people.” Former U.S. Supreme Court Chief Justice William Rehnquist, perhaps more conservative than liberal in his holdings and written opinions, stated much more recently that “The founders of our nation considered the right of trial by jury in civil cases an important bulwark against tyranny and corruption, a safeguard too precious to be left to the whim of the sovereign.”

These powerful and compelling words of many of this great nation’s founding members regarding the jury trial system most likely paved the way for our own state’s constitution and, in particular, Sections 21 and 22 of Article I. Section 21, Access to Courts, states clearly and succinctly “The Courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.” Section 22, Trial by Jury, further states “The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law.” As our own Florida Supreme Court has held the purpose of the Declaration of Rights provision that courts shall be open at all times to speedily avenge wrongs to person or property, was to give vitality to the maxim that for every wrong there is a remedy. Holland, for Use and Benefit of Williams v. Mayes, 155 Fla. 129, 19 So.2d 709 (Fla. 1944). Additionally, the 3rd District Court of Appeal has also written that the constitutional right to access to the courts guarantees every person the right to access for claims of redress.

continued on page 3
of injuries free of unreasonable burdens and restrictions and any restrictions must be liberally construed in favor of the constitutional right. G.B.B. Investments, Inc. v. Hinterkopf, 343 So.2d 899 (Fla. 3rd DCA 1977). Further consistent with Florida’s Constitutional intent to keep the Courts open to every person for redress of any injury and for justice to be administered without denial or delay, §768.16, Florida Statutes, the legislative intent section of the “Florida Wrongful Death Act” (Sections 768.16 – 768.26) states “It is the public policy of the state to shift the losses resulting when wrongful death occurs from the survivors of the decedent to the wrongdoer.”

Yet, despite the profound words that have previously been spoken and written by so many great men and women who helped shape the framework for our Federal and respective State Constitutions, Laws, Statutes and Court Systems, we still find that such steadfast truths and maxims are under attack and, perhaps more so than ever. Not only do we see it on an annual basis in our state’s capitol for our yearly legislative session, but we also see it here in the trenches as the trial lawyers who are grinding it out in our daily fight against the greed, arrogance, disrespect and selfishness of the insurance industry. In just the last fifteen years we have seen the injured citizen’s constitutional right to redress an injury without denial or delay and their right to trial by jury grossly limited by the passage of many misguided legislative bills that have been pursued and funded by the insurance industry to the extreme detriment of the safety, health and welfare of the citizenry.

For example, we have witnessed the insurance industry become successful in effectively abolishing joint and several liability in its entirety, we have watched the amount of compensatory damages one can be awarded in a meritorious medical negligence case arbitrarily and significantly limited and at the same time seen a Constitutional Amendment pass that limited what amount of professional service compensation could be paid to the lawyer representing the victim of medical negligence, but do nothing to limit or curtail the amount the medical industry could spend on its cadre of lawyers to defend such cases, no matter how grossly negligent such medical provider or facility may have been. We have witnessed the immunity provision of Florida’s Worker Compensation Statute become so absurd that it would appear no employer may ever again be held liable for injuries caused to their own employees even if it was the employer who so obviously and recklessly allowed a dangerous and unsafe work environment to exist that resulted in the injury. We have seen a statute created that doesn’t just limit, but essentially eliminates the Constitutional rights of the injured victim who lawfully consumed alcohol or lawfully took prescription medication before being injured by a negligent person despite this state having eliminated the draconian concept of contributory negligence a long time ago.

As Florida and its ever-expanding citizen population grows, we the trial lawyers, those who fight to ensure that the Courts shall be open to every person for redress of any injury by way of a jury trial and without denial or delay, are the last vanguard in ensuring that such fundamental rights do not get further diminished or even completely eliminated. It is us the trial lawyers, who fight daily for the little guy against the insurance industry and corporate America, that must continue to battle to ensure that access to the Courts and the right to trial by jury for those that are injured are forever held sacred. We are the ones who must keep Madison’s words meaningful and make the final stand to ensure that trial by jury in civil cases remains “essential to secure the liberty of the people as any one of the pre-existent rights of nature.”

In this regard, we should never forget the inspiring and revealing words of our 26th President, Theodore “Teddy” Roosevelt, delivered in his speech “Citizenship in a Republic” at the Sorbonne in Paris in 1910:

“It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs, who comes short again and again, because there is no effort without error and shortcoming; but who does actually strive to do the deeds; who knows great enthuismas, the great devotions; who spends himself in a worthy cause; who at the best knows in the end the triumph of high achievement, and who at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who neither know victory nor defeat.

Moreover, as we all move forward in our respective individual practices and as united members of the Palm Beach County Justice Association in our efforts to fight insurance industry greed, we should also take great inspiration and wisdom in the words of legendary Green Bay Packers head coach and winner of the first two Super Bowls for which now the coveted trophy is named after, Vince Lombardi, when he stated “Individual commitment to a group effort – that is what makes a team work, a company work, a society work, a civilization work. People who work together will win, whether it be against complex football defenses, or the problems of modern society.” Most likely Coach Lombardi was referring to and expounding upon Aristotle’s important maxim and unselfish teaching of “The sum of the collective whole (team) is greater than the sum of all its respective parts (individuals).”

We are in a dogfight with Big Insurance and Big Business like we have never been in before. We now see insulting and pathetic offers on nearly every case we have no matter how serious and substantial the client’s injuries and claims may be. The insurance industry has chosen to ignore and disregard the basic and fundamental concepts of dealing in good faith and with fairness when working with us and our clients after the unfortunate events that give rise to the claims in the first place. Instead, they have chosen to fight us, no matter how frivolous their defense, on every claim and on every issue embedded within each respective claim.

We cannot hide from this challenge and we must not run from this fight. We must continue to remain in the ring and “in the arena” that we all stepped into and “strive valiantly” against big insurance in their greed-motivated fight against the injured and harmed. Most certainly we will all take a body blow or two and most likely become “marred by dust and sweat and blood” in the process, but just as with any great prize-fighter, and as “Teddy” stressed, we must regain our thoughts and strength and battle on, because “there is no effort without error and shortcoming.” Coach Lombardi told us “It’s not whether we get knocked down, it’s whether we get back up” and he also reminded us that “Winners never quit and quitters never win.” Forge ahead for your clients with vigor and passion and daringly in redressing the injuries suffered by them and so that you are never one of “those cold and timid souls who neither know victory nor defeat.”

Thank you greatly for allowing me to serve as the 25th President of the Palm Beach County Justice Association f/k/a the Palm Beach County Trial Lawyers Association.

continued on page 4
Technology: What Effects it Has on Today’s Paralegal

By: Rosanna Schachtele, Paralegal with Rosenthal, Levy, Simon & Ryles

Technology has impacted every aspect of the legal field, from how the law firm operates, to courtroom operation and document management. Paralegals are using technology more than ever before, operating database applications specific to a certain practice area and using videoconference tools, Blackberries and other electronic devices to complete daily tasks.

As enhancements to technology revolutionize today’s legal landscape, the role of the Paralegal has evolved. The mechanization of the legal process has driven paralegals to become even more skillful at an ever-increasing assortment of legal technology.

Technology skills are one of the most desired paralegal skills in today’s legal market. As technology permeates every facet of a law practice, paralegals must master it. Paralegals that bring highly developed technology skills to the table have a competitive lead in the legal market.

Computer technology and the management of information in the law office have progressed from word processing and spreadsheets to running huge document databases and creating elaborate productions for courtroom presentations. This evolution of technology has created a new paralegal niche which merges the skills of a paralegal and a computer specialist into a legal technology specialist, more commonly known as a litigation support specialist.

Paralegals are valuable as litigation support specialists because of their comprehension of courtroom procedures and local rules. A person who only has technical knowledge will not understand when to display exhibits or the importance of preserving annotations made to documentary exhibits that are used in witness testimony. The technology is only useful if you know what the rules are for preparation and display in the courtroom. A paralegal background can be instrumental in understanding what is and isn’t allowed.

Document management was one of the starting points for the litigation support career field, but now it has evolved into complex courtroom presentations and trial graphics.

Courtroom presentations cover everything from creating digital presentations to setting up projectors in the courtroom. This is where the law firm uses technology to put on a show for the jury. This makes sense, taking into consideration that today’s jurors are getting their information through visual media, such as television and the Internet. The key element in determining the use of computer presentation technology is thinking about how the jury will receive and process the information.

Trial graphics cloud the line between creative ability and computer proficiency. It’s not necessary to physically draw charts and diagrams for court anymore; however, an inventive approach is necessary when developing trial graphics. Scaling, color schemes and other graphic artist skills are essential for creating professional and accurate visual aids. Today, there are several legal software programs available, which can be used to create professional presentations for use in court.

The best approach for us as paralegals is to develop a plan that will furnish us with the top training in legal and technical skills. If you have the legal qualifications, you must seek certification in information technology, such as database management or computer graphics. It is vital that paralegals seek out the newest litigation technology training in addition to the technologies that are used most frequently by law firms. Learning about and comprehending technology will enhance your appeal to law firms and give you an important advantage in this increasingly competitive profession. In today’s job market, it is essential that we as paralegals gain knowledge of and utilize the newest and finest legal technology available.

Welcome New Members

Cindy Diez
Feldman & Getz

Ken Dishman
Clark, Fountain, La Vista, Prather, Keen & Littky-Rubin

Dena Foman
McLaughlin & Stern

Sheri L. Hazeltine
Law Office of Sheri L. Hazeltine

Andrea Hill
Law Office of Joe Peduzzi

Scott Perry
Murray Guari

Brian Roller
Schwartz Roller, LLP

Nick Russo
The Russo Law Firm

Randall Spivey
Spivey Law Firm Personal Injury Attorneys, P.A.

Mary Susil
Searcy, Denney, Scarola, Barnhart & Shipley

President’s Message ->continued from page 3 ->

I consider it an extreme honor and privilege to be the President of what has been and will continue to be the best county trial lawyers association in this Country. Many, many great trial lawyers and people have previously served this Association as Board members, Executive Committee members and as Presidents, and I intend to follow in their footsteps in ensuring that the PBCJA remains committed to the needs of its members and serves as the overall Palm Beach County team in helping us all continue to fight back against those who want to deny our clients their constitutional rights to redress an injury in the courts of the people. This year will mark the 25th Anniversary of the PBCJA and we have every intention of making our Silver Anniversary a special one. We hope you will join with us in sustaining the rich tradition and legacy of this Association that has been created by so many past and present members over the last quarter century. Please never hesitate to call me with any questions, information and/or concerns you may have and I look forward to seeing all of you throughout this upcoming year. Fight on!
INTERPRETERS - PROTECTING THE CLIENT’S RIGHT TO GIVE EVIDENCE

By: Adriana Gonzalez, Esq. & Charles E. Cartwright, Esq. - Gonzalez & Cartwright, P.A.

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property...[2]

(This article discusses the present Rules regulating interpreters in judicial proceedings in Florida. For a complete list of Certified and Duly Qualified interpreters who have passed an oral language proficiency examination, please visit the Florida State Courts’ website at http://www.flcourts.org/gen_public/interpret/index.shtml).

As of 2011, twenty-seven percent (27%) of Palm Beach County residents spoke a language other than English in their homes. [3] Certainly, all but a very few plaintiff personal injury lawyers in Palm Beach County represent or have represented clients who do not speak English, and who have had to rely on interpreters during depositions, DMES, and even trials. These clients are entitled to equal rights under the law including the right to sue and the right to give evidence.[4] As plaintiff personal injury lawyers, we are often tasked with making sure that we protect, promote and defend these rights, thereby ensuring “that the courts will be kept open and accessible to every person for redress of any injury.”[5]

Personal injury cases often involve many of the same players - lawyers and judges who have tried countless cases, doctors and experts who have testified sometimes hundreds of times on behalf of insurance companies. Often, the only variable is the client, and it may be a client who cannot speak or understand English. Under these circumstances, an interpreter is required for depositions, DMES and trial. How does the plaintiff’s lawyer know that the interpreter is qualified and impartial? Surprisingly, there are no real rules regulating the qualifications and/or conduct of the interpreters in civil litigation.

Like most lawyers, when I first started practicing, I was not aware of the rules regulating interpreters. It’s one of those things they don’t teach you in law school. Then, I attended one of my client’s DMES. The interpreter, who had been hired by the defense, attempted to question my client concerning matters that the judge had already found irrelevant and not subject to discovery. The interpreter - on her own initiative - attempted to obtain this information even though the information was completely unrelated to the defense examination and completely unsolicited by the defense doctor.

Realizing that this interpreter was not acting as a neutral party but instead acting as a proxy for the defense, I immediately returned to my office and began researching whether there were any rules governing the qualifications and/or conduct of interpreters in civil litigation. This is what I found:

In 2003, the Florida Supreme Court began its effort to ensure that all Floridians had equal access to the justice system by attempting to eliminate language barriers. As its first step, the Court created the Interpreters Committee to “evaluate the court system’s ability to effectively deliver court interpreting services to Florida’s citizens.”[6] After considering whether rules regulating interpreters were necessary, “the Committee recommended that the Court adopt certification rules originally developed by the Trial Court Performance and Accountability Committee’s Court Interpreter Workgroup, as well as rule 2.073[7], previously approved by the Rules of Judicial Administration Committee.”[8] The Court, however, did not immediately adopt the recommendations until it received statutory authorization and funding from the legislature as was also recommended by the Committee.[9]

Upon receiving approval and funding from the legislature, the Court adopted the recommended certification rules in 2006. The rules were divided in four parts: Part I, General Provisions, includes definitions of, among other things, “certified court interpreter” and “duly qualified interpreter,” in rule 14.100. Rule 14.110 creates the Court Interpreter Certification Board, which is given the task of supervising the certification and conduct of persons engaged in foreign language interpreting in the courts.

Part II, Interpreter Certification, establishes, in rule 14.200, Qualification, the requirements that must be met in order to obtain certification. Rule 14.210, Waiver of Examination Requirements, provides the criteria for waiver of the oral proficiency examination requirement and outlines the requirements for reciprocity. The issuance of certificates is governed by rule 14.220; certification renewals are addressed in rule 14.230; and continuing education requirements are outlined in rule 14.240.


Part IV, Discipline, delineates the conditions under which disciplinary action may be taken against a certified court interpreter, which discipline may take the form of suspension or revocation of certification. Rules 14.410-14.460 set forth a detailed disciplinary process based loosely on those applicable to mediators. See Florida Rules for Certified and Court-Appointed Mediators 10.810-10.880. The entire disciplinary process is to be conducted by the Court Interpreter Certification Board, which is divided into an investigative and an adjudicatory arm in a manner similar to the Judicial Qualifications Commission. [10]

However, even with the adoption of these rules, aimed at ensuring that those individuals hired to interpret in our judicial proceedings have the necessary qualifications to accurately interpret the testimony of the witness, our clients remain at risk during their depositions, DMES, and, last but not least, during their trial testimony.

First off, these rules allow for two different kinds of interpreters: those who are Court Certified and those who are not.

A Court Certified Interpreter must:

(a) attend a two-day orientation program administered by the Office of the State Courts Administrator;
(b) pass a written examination approved by the board, which shall include an ethics component;
(c) pass an oral proficiency examination approved by the board, unless they qualify for waiver of the examination requirement pursuant to rule 14.210;
(d) take an oath to uphold the Code of Professional Conduct adopted in these rules;
(e) undergo a background check if prescribed by the board; and
(f) agree to obtain hours or credits of continuing education as determined by the board from a continuing education program.

continued on page 6
approved pursuant to these rules.

[11] The second kind of interpreter is described as a “Duly-Qualified” interpreter. These individuals have passed the written exam, attended the State Courts Administrator orientation course, are familiar with the code of ethics for interpreters and possess knowledge of legal terms in both languages. However, these individuals do not have to take the oath of ethics, do not have to obtain continuing education credits, do not have to undergo background checks, and most importantly, do not have to take and pass the language proficiency examination.[12] So, even when the Court appoints the interpreter in a matter such as a criminal hearing, the interpreter may never have been formally tested to determine whether or not he or she has the language skills necessary to accurately interpret for the witness.

In civil cases including personal injury cases, risks to our clients are even greater since there are no required minimum qualifications. The current rules only require credentials from interpreters who are appointed by the Court and not interpreters hired by the parties themselves. This makes it even less probable that the particular interpreter hired on the case is Certified or even “Duly-Qualified.”

More importantly, the risks posed by unqualified interpreters are even greater at trial. Our current jury instructions require that jurors follow the English translation provided by the interpreter, even if the translation conflicts with the witness’s language.[13] Although the jury instructions allow jurors to raise any accuracy issues with the judge privately, the instructions also state that, when the discrepancy cannot be resolved, the juror must follow the English translation provided by the interpreter.[14]

In addition to accuracy errors that may impact a client’s ability to provide evidence on their own behalf, there is also the issue of professionalism - meaning that an interpreter should remain neutral and not act as a proxy for the party who hired her like the interpreter at my client’s DME. When I later reviewed that interpreter’s credentials, I learned that she was neither Court Certified nor “Duly-Qualified.” Her resume and her prior work history clearly demonstrated that she had never been exposed to the ethics rules to which Court Certified Interpreters swear an oath.

In addition to failing to remain neutral, an interpreter’s ignorance of rules of professionalism may also negatively impact our client’s ability to present evidence by creating unnecessary stress for the client during deposition and trial. Many of us have seen interpreters become frustrated when the client is unable to clearly express themselves - often from being nervous or due to a lack of education or both - and this can make it even more difficult for a scared and confused client to provide accurate testimony and evidence.

So what can be done to correct some of these issues? Recently the Supreme Court adopted mandatory “Standard Practices” recommended by the Commission on Trial Court and Performance, which should incentivize interpreters to become Court Certified by setting a higher pay scale and by instructing Courts to give priority to Court Certified interpreters when filling court employee interpreter vacancies. [15] This, however, still falls short of where we need to be in order to protect our clients. As civil litigation attorneys, we must be proactive. We must video-tape our client’s depositions and DMEs.

We must insist that defense lawyers provide the qualifications for the interpreters they intend to use prior to the deposition, DME, or trial. We must insist that the defendants use Court Certified interpreters, or, at a minimum, a “Duly Qualified” interpreter who has passed an oral language proficiency examination. These interpreters can easily be located by visiting the Florida state Courts’ website at http://www.flcourts.org/gen_public/interpreter/index.shtml. We must encourage all interpreters to achieve Court Certification. And, we must advocate for more stringent rules and regulations to protect our clients’ right to give evidence by requiring Court Certification in all civil proceedings including depositions, DMEs and trials.

[1] The great weight of the case law supports the conclusion that “commencement of the action” under §1446(b) occurs when the original complaint is filed and that the addition of a new party or claim does not reset the one-year limitation period.


[6] In re Fla. Rules for Certification & Regulation of Court Interpreters, 933 So.2d at 504 (Fla. 2006).


[8] In re Fla. Rules for Certification & Regulation of Court Interpreters,933 So.2d at 504 - 505 (Fla. 2006).


[10] In re Fla. Rules for Certification & Regulation of Court Interpreters,933 So.2d at 505 - 506 (Fla. 2006).


[14] Id.

Handling the most personal of injuries.

Mark Maynor
Board-Certified in Marital & Family Law
AV Rated by Martindale-Hubbell®

Tana Sachs Copple
Family Law Attorney

West Palm Beach, FL  |  561.691.9336  |  mscfamilylaw.com

Who is handling your probate and guardianship cases? I have been assisting personal injury and wrongful death lawyers with these matters for over 17 years. We also have experience serving as curator for defendants’ estates and as guardian-ad-litem. We can handle these matters for you at reasonable rates and relieve you of that responsibility.

Law Office of Warren B. Brams, P.A.
2161 Palm Beach Lakes Blvd., Ste. 201
West Palm Beach, FL 33409
Phone: 561-478-4848
www.familylawwestpalmbeach.com

PO Box 3515
West Palm Beach, FL 33402
Tel: 561-790-5833
Fax: 561-790-5886
E-mail: kate@pbcja.org

PBCJA Briefings is published quarterly by the Palm Beach County Justice Association and furnished as a benefit to PBCJA members.

Editor: Kate Baloga
Committee Chair: Greg Zele
Co-Chair: Jack Hill
Committee Members: Tim Murphy Cynthia Simpson

Visit us online at www.pbcja.org

GREYTESH
“Criminal law is not black and white, it’s Grey”
561-686-6886
aaacriminaldefense.com

Robert G. Galt, MS, SDAD, CDMS, ORP, BCPC
Carrier’s Career Service Inc.
2001 Palm Beach Lakes Boulevard, Ste 502-E
West Palm Beach, Florida 33409-6510 = OFFICE
859 Ivy Drive • Wellington, FL 33414-8160 = MAILING ADDRESS
(561) 371 1652 telephone * (561) 753 4870 facsimile
FEDERAL IDENTIFICATION # 59-2947424
www.CARRIERCAREERSERVICE.COM

Trial Witness Services
• Psychological & Educational Testing
• Wage Reporting • Labor Market Surveys
• Wage Loss Calculations

odium
Citizens Not Required to Participate in Appraisal Where the Parties Could Not Agree on the Scope of the Appraisal Agreement

By: Greg Yaffa, Esq. Slawson, Cunningham, Whalen & Gaspari

(Casar) filed a claim with Citizens for damage to their home allegedly attributable to a water leak that originated from a defective refrigerator line. According to the homeowners’ public adjuster, all of the damage to the home was caused by the leak. Citizens, however, concluded that some of the items damaged were related to the leak and others were not. Additionally, Citizens evaluated the damages of the covered items significantly lower than the homeowners’ public adjuster.

In light of the disagreement, the homeowners, through their public adjuster, sent a written demand for appraisal of the entire claim. Citizens then forwarded an Appraisal Agreement wherein Citizens listed for appraisal only those items that it alleged were covered under the policy. Citizens specifically excluded from the appraisal agreement the items that it believed were not damaged by the defective refrigerator line.

The homeowners refused to sign the agreement and filed a motion to compel appraisal of the entire claim. The trial court granted the motion. The Third District Court of Appeal reversed, relying solely on language contained within the policy. Specifically, the insurance policy provided: b. Appraisal. If you and we fail to agree on the amount of the loss, either may request an appraisal of the loss by presenting the other party with a written request for appraisal of the amount of the loss. If the other party agrees in writing to participate in appraisal, then appraisal shall proceed pursuant to the terms of the written agreement between the parties.

Fourth District Court of Appeal rules that a crossclaim for third party bad faith against an insurer joined to an action pursuant to the nonjoinder statute is prohibited and that a third party bad faith claim must be brought in a separate action.

Fourth District Judge Kenneth Marra remanded the action to State Court, holding that GEICO’s removal was untimely because it had been filed more than one year from commencement of the action. [1] GEICO filed a Memorandum of Law in Opposition to Harvey’s Motion to Remand, arguing that its removal was timely because the one year clock should start on the date that it was added to the underlying lawsuit and that the bad faith action was “separate and independent” from the underlying tort claim, and therefore subject to removal.

District Judge Kenneth Marra remanded the action to State Court, holding that GEICO’s removal was untimely because it had been filed more than one year from commencement of the action. Addressing the “separate and independent action” argument, Judge Marra correctly held that 28 U.S.C. § 1441(c) limits the removability of separate and independent claims to those arising under a federal question, not those based on diversity. Since GEICO’s removal was based on diversity, this argument was unavailing.

The Court concluded its opinion by noting, “the trial court departed from the essential requirements of law by denying the insurer’s motion to dismiss. A third party bad faith claim against an insurer for failure to settle may not be brought in the underlying tort action but must be raised in a separate cause of action.”

Counsel for GEICO’s insured has filed a Motion for Rehearing and Certification.
Your case has been tried, but it’s not over. Our appellate experience and expertise can help.

We are available to provide appellate representation in:

- Appeals to the Fourth District Court of Appeal
- Appeals to the United States Court of Appeals
  - Appeals of Bankruptcy Court decisions
  - Appeals of County Court decisions
- Appeals in any substantive area of civil law
- Non-final appeals and petitions for review, including injunctions and arbitration disputes.

Shareholder Robert J. Hauser is an AV-rated, Board-Certified Specialist in Appellate Practice.

Beasley Hauser Kramer & Galardi, P.A.
561.835.0900 | BEASLEYLAW.NET
505 S. FLAGLER DRIVE, SUITE 1500 | WEST PALM BEACH, FLORIDA 33401
Available, Involved, Accountable.....

U.S. Legal Support is immersed in finding the best way to service each individual client. Our commitment at every level provides personalized service tailored to meet your specific needs. As one of the largest full-service legal support companies in the nation we have national presence and local expertise.

Court Reporting
Highly skilled court reporters with experience in all aspects of depositions and trials, arbitrations and videography services.

Record Retrieval
Place, track and download records online receiving up-to-date status. A personal customer service team is assigned to assist you every step of the way. Dedicated account executives and personal customer service teams.

Litigation Support
ESI Services, Early Case Assessment, Litigation Consulting and Trial Services.

Trial Services
Trial preparation and presentation staff at trials, arbitrations and hearings.

561.835.0220

Over 40 Offices Serving You Nationwide

Lana Shrode, Director of Business Development
lshrode@uslegalsupport.com
954.242.7174

www.uslegalsupport.com

Court Reporting | Record Retrieval | Litigation & ESI Services | Trial Services

National Presence. Local Expertise.

444 West Railroad Avenue, Suite 300, West Palm Beach, FL 33401
SPECIALTY ATTORNEY PROGRAM

2 OPTIONS TO MAXIMIZE YOUR FIRM’S EXPOSURE

You now have an opportunity to join our “Specialty Attorney Program” f/k/a Attorney Advocate Program (AAP) in 2 different ways.

Specialty Attorney **Signature** Option $2,500

Benefits include:
- Firm exclusivity on the attorney section of the website and in our quarterly newsletter
- Your firm name, profile, logo*, and link to your website
- Rotating Web Banner Ad*
- 2 black & white 1/4 page ads* published in the newsletter
- Complimentary Attendance for you and a guest at select ** PBCJA events
- Promotional signage & invitation recognition for sponsored events

Specialty Attorney **Spotlight** Option $1,250

- 2 black & white 1/4 page ads* published in the newsletter
- Rotating Web Banner Ad*
- Your firm name, profile, logo*, and link to your website

*All logos, print, and banner ads to be provided by the law firm
**Events include: 2 dinners or receptions chosen by the firm • Annual Barrister’s Bash in August • BCJA Joint Reception in November • Customized event & advertising packages available

The following legal specialties are available:
- Arbitration & Mediation
- Bad Faith
- Bankruptcy
- Corporate & Securities
- Criminal Defense
- Elder
- Immigration
- Real Estate & Foreclosure

Please contact
Kate Baloga
kate@pbcja.org
or 561.790.5833
for additional details.
Advocate Members & Attorney Advocates

The following advocate members are loyal supporters of the Palm Beach County Justice Association. Some have been with us from the very beginning and some are brand new this year, so please take a moment to review our growing list of notable advocates. As you know they are the cornerstone of the PBCJA. The wide range of educational and networking events offered to the members wouldn’t be possible without their financial support. Please join us in thanking our old and new Advocate Members for their support.

**Founding & Black Diamond**

**Founding & Black Diamond**

Sabadell United Bank, N. A.
Contact: Bud Osborne
Phone: 561.750.0075
or 561.688.9400
Osborne.b@mellon.com

**Platinum Members**

**Above & Beyond Reprographics**
Contact Debra Valle
Phone: 561.478.4774
debra@aboveandbeyondrepro.com

**Rock Legal Services & Investigations, Inc.**
Contact: Denise Rock
Phone: 561.296.7574
denise@rocklegal.com

**Visual Evidence**
Contact: Mike Downey
Phone: 561.655.2855
mdowney@visualevidence.org

**Gold Members**

**Grand Bank & Trust**
Contact: Vinny Cuomo
Phone: 561.615.5065
vcuomo@gbof.com
www.grandbankflorida.com

**Legal Graphicworks**
Contact: Jim Lucas
Phone: 561.655.0678
legalgraphicworks.com

**Robert G. Galt,**
MS, SMD, COM, ORP, BCPC
Phone: 561.371.1652
rbgtalt@aol.com or
www.carriercareerservice.com

**PS Finance, LLC**
Contact: Julie Trakh
Phone: 888.207.7400
jtrakht@psfinance.com
www.psfinance.com

**Robson Forensic**
Contact: Ronald P. Bertone, FSA, FACIA
Phone: 800.631.6605/561.839.1915
rbertone@robsonforensic.com

**The Centers**
Contacts: Jerry Greger & Todd Belisle
Phone: 877.766.5331
todd.belisle@centersmail.com
www.centersweb.com

**Silver Members**

**BEC Consulting, LLC**
Contact: Iola J. Goekte
Phone: 850.558.3104
igoekte@becserv.com

**Global Engineering & Scientific Solutions**
Contact: Jennifer Lovelady
Phone: 850.942.5300
info@gesi.com

**Park Creek and Delray Beach Surgery Centers**
Contacts: Saul R. Epstein or Richard Famiglietti
Phone: ParkCreek: 954.312.3500
Delray Beach: 561.495.6766
sepstein@ParkCreekSurgery.com
rfamiglietti@ParkCreekSurgery.com
www.parkcreeksas.com
www.delraybeachasc.com

**Signature Court Reporting**
Contact: Dawn Ramos Bachinski, RPR, CRR, FPR
Phone: 561.659.2120
dawn@signaturecrs.com
www.signaturecrs.com

**Synergy Settlement Services**
Contact: B. Josh Pettingill, MBA, MS, MSCC
Phone: 561.685.7035 (direct)
josh@synergysettlements.com

**U.S. Legal Support**
Contact: Lana Shrode
Phone: 561.835.0220
lshrode@uslegalsupport.com
www.uslegalsupport.com

**Specialty Attorneys**

**Warren Brams**
Contact: Warren Brams
Phone: 561.478.4848
wbrams@aol.com
Specialty: Probate & Estate

**Maynor Sachs Coppell**
Contact: Mark Maynor
Phone: 561.691.9336
mark@mscfamilylaw.com
Specialty: Family & Divorce

**Rosenthal, Levy, Simon & Ryles**
Contact: Jonathan Levy
Phone: 561.478.2500
jlevy@rosenthallevy.com
Speciality: Social Security Disability

Visit us online at www.pbcja.org

**Calendar of Events**

**April 5th**

**JOINT LUNCHEON WITH THE PALM BEACH COUNTY BAR ASSOCIATION**
The Marriott Hotel
West Palm Beach
11:45A - 1:00P

**April 12th**

**SPRING PARALEGAL BREAKFAST**
Bear Lakes Country Club
West Palm Beach
8:30A - 10:30A

**April 27th**

**25TH ANNIVERSARY GALA**
Old Marsh Country Club
Palm Beach Gardens
7:00P - 11:00P

Go to www.pbcja.org and click the Events Calendar
You can register online on our secure site for any of these events.
Fatal Heart Attack?
External Defibrillator Litigation

Toll free: 1-800-GOLD-LAW
Telephone 561-697-4440
2090 Palm Beach Lakes Boulevard, Suite 402
West Palm Beach, Florida 33409

Do you have a client whose family member died from a heart attack at work, a gym, a golf course, a condo association common area or other public venue?

If so, the premises may be liable for not having, or for failing to use, an Automated External Defibrillator ("AED") like the one pictured here:

Call the Law Offices of Craig Goldenfarb, P.A. to discuss the matter.

Mr. Goldenfarb lectures nationally about this area of law.

Referral fees paid in accordance with Florida Bar rules
www.800GOLDLAW.com
Would You Hire a Mechanic With Only One Wrench?

The Centers provides a full range of services specifically designed to meet the needs of law firms and the clients they serve. From our accounting department to our dedicated case management center, our organization offers a full spectrum of tools to optimize your client’s settlement, minimize your risk and increase your bottom line.

Settlement Optimization™
Lien Resolution
MSA Allocation
MSA Administration
Life Care Planning
Special Needs Trust Administration
Fiduciary Support Services
Public Benefits Compliance
Structured Settlements
Investigative Services

Because a structured settlement may not be everything your client needs.

www.centersweb.com
(877) 766-5331
Wait for it... Wait for it... It’s almost here!

The long overdue redesign of the website is just days away from debuting.

What you can expect from Phase 1:

Visually Appealing Web Design, Easy Navigation & Search Options, Simpler Event Registration Process

Updated Litigation Bank with More Search Categories, Consolidated Membership Resources, Social Media Updates and Plenty More!

Phase 2 should be completed by summer 2013

Our goal is to have a trial calendar with trial dates, presiding judges, defense attorney(s), verdict results & more!

Certified Florida Supreme Court Circuit Civil Mediator:

- Fulltime Mediator
- Member: PBCJA and FJA
- ABOTA PB Chapter-Advocate Member
- FJA (Eagle Member); Board of Directors (1992-1999)
- Past President Miami-Dade Justice Association (1992)
- Board Certified Civil Trial Lawyer for 25 years (1983-2008)
- Certified Federal Court Mediator: Southern & Middle Districts of Florida

Mediates cases statewide & nationally

Stephen G. Fischer
Matrix Mediation
Scheduling: 561.340.3500
Direct Line: 561.630.7761
Email: steve@matrixmediation.com
Website: www.matrixmediation.com
Event Spotlight

JANUARY 16TH, 2013 ELECTION DINNER

New PBCJA President Scott Smith with Chief Judge Blanc

Trey Lytal, Joe Reiter, Chief Judge Blanc, and PBCJA President Scott Smith

Farrah F. Mullen, Lance Ivey, and Todd Pronath

2009 Past President Fred Cunningham with Scott Smith

Molly Smith, Ellen Roberts, and Dee Jacobs

State Attorney Dave Aronberg, Greg Zele, and Art Cavaturo

2007 Past PBCJA President Richard Schuler with Lake Lytal

Ellen Roberts, Marci Ball, and Yvette Treilles

PBCJA Presidents: Immediate Past President Michael Pike, 2009 Past President Fred Cunningham, and current President Scott Smith

PBCJA Board Members left to right: Freddy Rhoads, Greg Yaffa, John McGovern, Cynthia Simpson, Farrah F. Mullen, Jack Hill, and Scott Smith

2001 Past PBCJA President Richard Schuler with Lake Lytal

Farrah F. Mullen, Lance Ivey, and Todd Pronath

2007 Past President Rick Benrubi, Sean Pendray with Millennium Settlements, and Immediate Past President Michael Pike

Trey Lytal, Joe Reiter, Chief Judge Blanc, and PBCJA President Scott Smith

If the critical law is physics... You need an Engineer!

Accident Reconstruction
Automobile
Motorcycle/Bicycle
Tractor-Trailer
Pedestrian

Industrial Equipment
Metallurgical Analysis
Biomechanical
Slip/Trip/Fall
Product Design

Engineering 101 isn’t taught in Law School. Our engineers can assist you from the initial investigation through trial with our wide range of engineering services.

Tallahassee, FL www.becconsult.com 850-558-3100
While The Presumption Of Negligence In A Rear-End Collision Still Exists, A Party Seeking To Rebut The Presumption Need Not Establish A Complete Absence Of Negligence On The Part Of The Rear Driver - If The Defendant Rebutts The Presumption, Its Legal Effect Is Dissipated, And The Presumption Is Reduced To The Status Of A Permissable Inference Or Deduction From Which The Jury May Find Negligence


The court began its analysis by recognizing that recovery in Florida negligence cases is predicated on the principles of comparative negligence. Additionally, the supreme court has never held that the rear-end presumption bars a claim for damages caused by a rear driver, when there is evidence from which the jury could conclude that the front driver was negligent and comparatively at fault in causing the collision.

The rear-end presumption has never been recognized as anything more than an evidentiary tool that facilitates a particular type of negligence case by filling an evidentiary void, where the evidence is such that there is no relevant jury question on the issue of liability and causation.

Finding that rear-end collision cases are substantively governed by the principles of comparative fault, the supreme court held that where evidence is produced from which a jury could conclude that the front driver in a rear-end collision was negligent and comparatively at fault in bringing about the collision, the presumption is rebutted and the issues of disputed fact regarding negligence and causation should be submitted to the jury. Thus, where the presumption is rebutted, the legal effect of it is dissipated and the presumption is reduced to the status of a permissible inference or a deduction from which the jury may, but is not required to, find negligence on the part of the rear driver.

A Preliminary Showing That Plaintiff Was Referred To Doctor By Lawyer--Directly, Indirectly Or Through Third-Party--Allows Defendant Basis To Discover Information Regarding Extent Of Relationship Between The Doctor And Possibly The Law Firm - Order Compelling Law Firm To Produce Discovery Pertaining To Relationship With The Treating Physician Was Premature Where The Record Did Not Establish That The Physician And Law Firm Had A Financially Beneficial Relationship

Steinger Iscoe & Green v. Washington, 37 Fla. L. Weekly D2688 (Fla. 4th DCA November 21, 2012):

GEICO sought request to produce from the law firm, seeking all records of payments by the firm to the four medical providers involved in the case; (2) all letters of protection to those providers; (3) all phone records between the firm and the four providers; and (4) all deposition and trial transcripts to those individuals or entities in the firm’s possession. Judge Cox ordered the Steinger firm to produce everything but the phone records.

On appeal, the Fourth District noted the two “significant” issues raised by the case: (1) when is a treating physician an expert subject to expert interrogatories; and (2) when does the nature of the relationship between the law firm and the treating physician raise the specter of financial bias sufficient to warrant discovery from the law firm and discovery beyond that generally allowed from an expert?

The court wrote that typically the correct balance for bias discovery from the so-called “hybrid witness,” is the same balance contained in the rule for all other experts because there’s no logical distinction between treating physicians and retained experts for the purposes of covering this type of information.

In this case, the court was confronted with the discovery to a non-party law firm. The court concluded that where there’s a preliminary showing that a Plaintiff was referred to the doctor by the lawyer or vice versa, the defendant is entitled to discover information regarding the extent of the relationship between the law firm and the doctor, finding the circumstances analogous to those presented in Boecher.

In this particular case, the record did not establish a financially beneficial relationship, but if there was one, the jury would be entitled to know of the extent of the financial connections between the doctor and the law firm. The existence of a financial arrangement is clearly a permissible ground for impeachment of a doctor (relying on Flores v. Miami Dade County which involved a law firm and a doctor which shared a runner, not just had patients/clients in common).

The court actually said that normally discovery seeking to establish that a referral has occurred should be sought from the party, the treating doctor, or other witnesses, and not the party’s attorney.

Respectfully, this opinion overlooks the important differences between treating physicians and retained physicians, e.g., attorney client privilege, the difference between one who “treats” versus one who simply “testifies,” the burdens of being dragged into litigation versus interjecting one’s self by choice..... The plaintiff’s firm has sought rehearing and certification of these questions to the Florida Supreme Court, and hopefully, will be successful in persuading the court to bring these questions to our State’s highest court once and for all (13 years after Boecher).

Florida Law Looks To See Whether An Insurer Acted In Bad Faith In Handling A Claim, By Viewing The “Totality Of The Circumstances;” The Issue Of Whether An Insurer Acted In Bad Faith Is Decided By Reviewing The Steps Taken By The Insurer And Not By Focusing On The Actions Of The Claimant--Rehearing Granted And Summary Judgment For The Insurer Reversed

Coffey v. American Vehicle Insurance Co., 37 Fla. L. Weekly D2774 (Fla. 4th DCA December 5, 2012):

On a motion for rehearing, the Fourth District reversed its original grant of summary judgment in this bad faith case. The decedent had suffered catastrophic injuries in an accident, and remained hospitalized in a coma until she died three months later. There was only $10,000 in insurance coverage.

Two days after the accident, the insured reported it to his insurance company. The insurance company then made several attempts to contact the victim’s family, and upon learning an attorney was involved, tried several times unsuccessfully to get the attorney’s name. As of April (two months after the accident), the adjuster had not actually tendered its policy limits, asserting that with the 40 year-old plaintiff in a coma, there was no one to whom to tender the limits.

The Fourth District reiterated that an insured’s duty towards its insurer is still best summarized by Boston Old Colony. That case requires that an insurer has a duty to use the same degree of care and

continued on page 14
diligence as a person of ordinary care and prudence in managing his or her own business, and the duty of good faith involves diligence and care in the investigation and evaluation of the claim against the insured.

The insurance company asserted it acted fairly and honestly with due regard for its insured’s interests, but was prevented from entering into the settlement negotiations or consummating them because the plaintiff was in a coma, and there was no one to make the offer to. It also claimed that insurer ethics precluded them from communicating with the plaintiff or her mother, because there was a lawyer involved.

Plaintiff introduced an expert who filed an affidavit stating that there was bad faith even in the face of all those assertions.

The Fourth District reminded us that the issue of whether an insurer acted in bad faith is decided by reviewing the steps taken by the insurer to offer to settle or tender, and not by focusing on the actions of the claimant. Because there were questions of fact regarding whether the insurer was able to consummate a settlement, the court’s evaluation of the claimant’s case against the insurer was error for the trial court to grant summary judgment. Judge Levine, the original author of the opinion, dissented.

The Physician-Patient Confidentiality Statute, Section 456.057 Prohibits Ex Parte Meetings Between Non-Party Treating Physicians And Attorneys Selected And Provided By The Defendant’s Insurance Company

Hasan v. Garvar, 37 Fla. L. Weekly S769 (Fla. December 20, 2012): In 1988, the Florida Legislature broadened the statutory protections for patient-physician confidentiality. There are only three situations where absolute patient confidentiality is waived: (a) medical negligence actions where healthcare providers are or reasonably expect to be named as defendants; (b) with written authorization by the patient; or (c) when compelled by subpoena at a deposition, evidentiary hearing or trial after proper notice has been given.

The exception regarding medical negligence actions applies only when the healthcare provider is or reasonably expects to be named as a defendant. The Florida Supreme Court in Acosta rejected that the exception does away with the privilege in all medical negligence cases. Acosta also rejected the notion that the statute violates a physician’s First Amendment right to free speech, because the statute strikes a balance between a patient’s individual privacy rights and society’s need for limited disclosure of medical information.

The Supreme Court concluded that Section 456.057(8) creates a broad and expansive privilege of confidentiality for the patient’s personal information with only limited, defined exceptions. The privilege prohibits ex parte meetings between non-party treating physicians and others outside the confidential relationship, irrespective of whether they intend to discuss privileged or non-privileged matters, unless there are measures to absolutely protect the patient and the privilege.
Call the best!

• Legal Exhibits
• PowerPoint
• Confidential Legal Copy Service
• Deposition Synching

• Document Scanning/ Coding/Bates Stamping
• CD / DVD Copies
• Creative Services
• Business Services

✓ Creative Solutions
✓ Conservative Approach
✓ Professional Results

Above & Beyond Reprographics provides the legal community with more than two decades of experience providing support services for the preparation and organization of your cases. Having earned a reputation as a company keenly aware of the importance of strict confidentiality, fast turnaround, outstanding customer service and superior quality, our clients can rest assured they’ve made the best choice for their legal support & trial preparation needs.
So...you're saying you've never seen her before in your life?

A strong argument for a Video Deposition.

Capture their attention and capture a verdict with demonstrative aids.

Palm Beach, Florida  |  561.655.0678  |  legalgraphicworks.com