

## KIMBERLY KANOFF BERMAN

SHAREHOLDER



### AREAS OF PRACTICE

Appellate Advocacy & Post-Trial Practice

### CONTACT INFO

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Suite 1100  
Fort Lauderdale, FL 33308

### ADMISSIONS

Florida  
2005

U.S. District Court Southern  
District of Florida  
2006

U.S. District Court Middle District  
of Florida  
2011

U.S. Court of Appeals 11th Circuit  
2011

U.S. District Court Northern District  
of Florida  
2013

U.S. Court of Appeals 3rd Circuit  
2019

### EDUCATION

University of Miami School of Law  
(J.D., 2005)

University of Florida (B.S., 2002)

### OVERVIEW

Kimberly is a shareholder in the firm's Appellate Advocacy and Post-Trial Practice Group in the Professional Liability Department and is board certified in Appellate Practice by the Florida Bar. She has litigated numerous appeals in Florida state and federal appellate courts across a wide variety of subject matters in cases involving medical malpractice, construction defect, insurance coverage, bad faith, maritime, aviation and premises liability. Kimberly handles the brief writing, motion practice and oral arguments. In addition to her extensive appellate practice, Kimberly provides litigation support in insurance coverage, construction defect, premises liability, professional malpractice and bad faith cases.

Kimberly has an AV Preeminent rating by Martindale-Hubbell, the highest rating for professional competence. From 2015-2020, Kimberly was recognized as a Super Lawyers Rising Star, a designation given each year to only 2.5 percent of lawyers in the state of Florida. She has also been recognized as a Top Lawyer for Appellate Law by the South Florida Legal Guide.

Kimberly is actively involved in bar association and related legal societies. She is a member of the Board of Trustees of the Florida Supreme Court Historical Society and currently serves as Secretary. An active member of the Florida Bar, she is Vice Chair (Live Programs) of the Appellate Practice Section's CLE Committee. She is additionally a member of the Broward County Bar Association, the Dade County Bar Association, the Defense Research Institute, the Florida Defense Lawyers' Association, the Third District Court of Appeal Historical Society and the Rosemary Barkett American Appellate Inn of Court. She has served as the president of the Third District Court of Appeal Historical Society and as co-chair of the Dade County Bar Association's Appellate Practice Section.

She has spoken on appellate and litigation support topics and written multiple articles on important issues impacting appellate and trial lawyers. Kimberly has also served as adjunct faculty at three law schools: Nova Southeastern Shepard Broad College of Law in Davie, Florida; Ave Maria School of Law in Naples, Florida; and St. Thomas University School of Law in Miami Gardens, Florida.

Prior to joining the firm, Kimberly was the head of the appellate division at a local defense firm. Before entering private practice, Kimberly served as a Career Research Attorney for the Honorable David M. Gersten of the Third District Court of Appeal in Miami, Florida. She also interned at the Third District and at the Florida Supreme Court in Tallahassee, Florida, while in law school.

Kimberly graduated from the University of Florida, Gainesville, with a Bachelor of Science in Public Relations with high honors. She subsequently attended the University of Miami School of Law in Coral Gables, Florida, where she obtained her *juris doctor*.

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## HONORS & AWARDS

AV® Preeminent™ by Martindale-Hubbell®

Florida Trend, Legal Elite, 2023  
Notable Women Leaders in Law

South Florida Legal Guide, Top  
Lawyer, Appellate Law  
2021

Florida Super Lawyers Rising Star  
2015-2020

South Florida Legal Guide, Top Up  
and Comers, 2020

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## ASSOCIATIONS & MEMBERSHIPS

Broward County Bar Association

Dade County Bar Association

Florida Association of Women  
Lawyers, 2009-2013

Florida Bar, Appellate Practice  
Section Vice Chair (Live  
Programs), CLE Committee, 2023;  
Pro Bono Committee Chair, 2021;  
Executive Council, 2016-Present;  
Legislative Committee Vice Chair,  
2018-2020; Programs Committee  
Chair, 2015-2018

Florida Bar, Board Certified in  
Appellate Practice, 2020

Florida Supreme Court Historical  
Society, Secretary, 2023

Rosemary Barkett American  
Appellate Inn of Court

Third District Court of Appeal  
Historical Society

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## YEAR JOINED

2018

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## CERTIFICATIONS

Board Certified, Appellate Practice,  
The Florida Bar

## PRO BONO

Florida Guardian Ad Litem Office,  
Defending Best Interests (DBI)  
program

## THOUGHT LEADERSHIP

### Where Are We Now? Punitive Damages Claims in Fla. 2 Years Post-Interlocutory Review Rule Change

Fort Lauderdale  
Appellate Advocacy & Post-Trial Practice  
March 15, 2024

### Florida High Court Tapped Brakes on Dangerous Instrumentality Liability

Fort Lauderdale  
Automobile Liability  
December 26, 2023

### Kimberly Kanoff Berman and Elizabeth Ferguson Named Women Leaders in Law by Florida Trend

Appellate Advocacy & Post-Trial Practice  
Architectural, Engineering & Construction Defect Litigation  
December 1, 2023  
Marshall Dennehey is pleased to announce that two of its Florida shareholders, Kimberly Kanoff Berman and  
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### Florida Passes Tort Reform: What You Need to Know

Fort Lauderdale  
General Liability  
March 27, 2023

On March 24, 2023, Florida Governor Ron DeSantis signed House Bill 837, "Civil Remedies," into law. The material in this law alert has been prepared for our readers by Marshall Dennehey.

### A Not-So-Little Problem With Precedent: Intra-District Conflict in Florida District Courts of Appeal

Fort Lauderdale  
Appellate Advocacy & Post-Trial Practice  
January 1, 2023

## PUBLISHED WORKS

"Where Are We Now? Punitive Damages Claims in Fla. 2 Years Post-Interlocutory Review Rule Change," *Daily Business Review*, March 15, 2024

"Transparency in Damages Now or Later: The Jury is Still Out," *CJLA Quarterly Digest*, December 2023

"Viewpoint: Florida High Court Tapped Brakes on Dangerous Instrumentality Liability," *Insurance Journal*, December 26, 2023

"A Not-So-Little Problem With Precedent: Intra-District Conflict in Florida District Courts of Appeal," *Florida Bar Journal*, December 15, 2022

"Punitive Damage Amendments Soon Subject to Immediate Interlocutory Appeal," *Daily Business Review*, February 9, 2022

"Decision Creates Potential for Legal Malpractice Actions Against Retained Defense Attorneys," *Daily Business Review*, July 30, 2021

"How I Made Partner: I Opened the Door to Partnership by Becoming an Appellate Specialist, Says Kimberly Berman of Marshall Dennehey," *Law.com*, May 4, 2021

"Senate Bill 72 May Be Effective 'Vaccine' Against COVID-19-Related Claims," *Orlando Medical News*, April 7, 2021

"Commentary: Florida Adoption of Federal Judgment Standard a Win For Insurers," *Insurance Journal*, January 6, 2021

"Florida Courts Clarify Role of Appraisal in Coverage Claims Disputes", *Insurance Journal*, December 10, 2020

"Florida Supreme Court Hosts Historic Remote Oral Arguments During the COVID-19 Pandemic," Florida Supreme Court Historical Society's *Historical Review* magazine, Spring/Summer 2020

"Transitioning From In-Person to Remote Oral Arguments in Fla. Appellate Courts," April 28, 2020, *Daily Business Review*

"Justice Alan Lawson's Commitment to Service Runs Deep," *Florida Supreme Court Historical Society Historical Review Magazine*, Fall/Winter 2019

"Justice R. Fred Lewis Returns to Miami for a Celebration of His Legal and Judicial Career," *Florida Supreme Court Historical Society Historical Review Magazine*, Summer/Fall 2019

"Drafting Jury Instructions That Win Appeals," *Certworthy*, the newsletter of the DRI's Appellate Advocacy Committee, Issue 1, June 29, 2018

"A Cure for 'Acute Motion Sickness': A Practitioner's Guide to Motion Practice in Florida's Appellate Courts," *FIU Law Review*, Vol. 12, Number 2, Spring 2017

"Is That Claim Covered?," *Claims Magazine*, January 2017

"How to Confuse Your Read Effectively," *For the Defense*, DRI:The Voice of the Defense Bar, December 2012

"The Butler Tetralogy: The Topsy Coachman Doctrine Revisited," 85 Fla. B.J. 7, July/August 2011

"Common Mistakes Students Make at Oral Argument," *The Gavel*, Ave Maria School of Law Moot Court Newsletter, Vol. 5, Issue 2, Fall 2011

"Upstairs at the Third DCA: The Specific Duties of an Appellate Law Clerk, Part II," *The Bulletin*, Dade County Bar Association, June 2011

"Upstairs at the Third DCA: The General Duties of an Appellate Law Clerk, Part I," *The Bulletin*, Dade County Bar Association, January 2011

"A Day in the Life of a Third DCA Law Clerk: The Arms of An Appellate Judge," *The Record*, Journal of the Appellate Practice Section of the Florida Bar, Vol. XVIII, No. 1, Fall 2010

## MEDIA COMMENTARY

"Appellate Pro Bono Attorneys Step Up to Defend Children," *The Florida Bar News*, February 16, 2023

## **CLASSES/SEMINARS TAUGHT**

*A Not-So- "Little" Problem with Precedent: Intra-District Conflicts in Florida's District Court of Appeals*, The Florida Bar Appellate Practice Section's Audio Webcast, August 15, 2023

*Insurer Malpractice Claims Against Defense Counsel: Recognizing, Defending, and Preventing Potential Claims - Common Errors and Strategies for Avoiding Them*, Panelist, Strafford CLE Webinar, January 24, 2023

*Brief Writing for the Third DCA*, Moderator, Florida Bar's Appellate Practice Section's Practicing Before the Florida Third District Court of Appeal 2022 CLE Seminar, Miami, FL, October 28, 2022

*Preventing Defective Jury Instructions In Personal Injury Trials: Leveraging Errors on Appeal - Part III Common Objections*, Panelist, Strafford CLE Webinar, September 7, 2022

*UNprecedented*, Summarily: A Podcast for Busy Lawyers, June 23, 2022

*Punitive Damages and Interlocutory Appeals*, Panelist, Miami-Dade Bar Miami Law Con, April 22, 2022

*Everything Old is New Again Series - A Conversation with the Judiciary: Challenges and Opportunities in the Changing Landscape of Appellate Practice*, Co-Host/Moderator, Florida Bar Winter Meeting Virtual CLE, Guardian ad Litem Program and Florida Bar Appellate Practice Section, January 26, 2022

*56 Feds are Coming: Strategies Using the Upcoming Florida Summary Judgment Standard*, Marshall Dennehey Client Webinar, January 15, 2021

*The Great Font Debate*, Issues on Appeal Podcast, January 2021

*Hidden Essentials of Appellate Law*, Co-Chair, Florida Bar Appellate Practice Section, West Palm Beach, FL, February 2019

*Understanding Hearsay and Keeping Evidence Out (Pre and Post Trial)*, The Rules of Evidence: A Practical Toolkit, National Business Institute, Fort Lauderdale 2017

## **LEGAL TEACHING POSITION**

Adjunct Faculty, Nova Southeastern Shepard Broad College of Law, Davie, FL (2014-2015)

Adjunct Faculty, Ave Maria School of Law, Naples, FL (2009-2013)

Adjunct Faculty/Mock Trial Team Coach, St. Thomas University School of Law, Miami Gardens, FL (2008-2011)

## **PRO BONO**

Florida Guardian Ad Litem Office, Defending Best Interests (DBI) program

## RESULTS

### Dismissal With Prejudice Secured in Complex Florida Litigation Matter

**Non-Profit D&O**  
**October 31, 2023**

We obtained a dismissal with prejudice in an action based on an alleged violation of contract, constitutional challenge of a Florida statute, and enforcement of a third-party settlement agreement. We represented an international nonprofit private membership organization in an action by a former member for violation of his membership in said organization. The plaintiff attempted to use a settlement agreement from a prior case to show that he was in compliance with the organization's membership requirements.

### Appellate success in wrongful death product liability action.

**Appellate Advocacy & Post-Trial Practice**  
**Product Liability**  
**December 2, 2021**

Our attorneys succeeded in obtaining an affirmance in the Fifth District Court of Appeal of a final dismissal order of a wrongful death product liability action. The decedent's estate filed the lawsuit two years after the statute of limitations expired. The estate argued the statute was tolled for a variety of reasons. The trial court dismissed the case, with prejudice, after giving the Estate five attempts to amend. The Fifth District affirmed the dismissal and dispensed with oral argument that same day.

### Court affirms dismissal of real estate agent and his broker.

**Appellate Advocacy & Post-Trial Practice**  
**Real Estate E&O Liability**  
**December 2, 2021**

Our attorneys succeeded in obtaining an affirmance by the Fourth District Court of Appeal. The Fourth District affirmed the dismissal, with prejudice, of our clients, a listing real estate agent and his broker, in an alleged negligence and fraud case. The court rejected the plaintiff's arguments that the trial court abused its discretion in dismissing their pleadings due to their attorney's conduct. The court detailed how the plaintiff's attorney dropped the ball in litigating the case in a separate opinion reversing the plaintiffs' attorney's contempt conviction.

### Successful appeal of negligent security action.

**Appellate Advocacy & Post-Trial Practice**  
**Premises & Retail Liability**  
**February 9, 2021**

We obtained an affirmance by the First District Court of Appeal of a defense verdict in a negligent security action. A chef was taking garbage outside of a restaurant when he was shot and killed. The estate sued our client, the owner of the commercial building and parking lot, as well as the defendants involved in the development, design and maintenance of the retail center. The jury returned a defense verdict in favor of all defendants.

### Claim affirmed under the Florida Birth-Related Neurological Compensation Plan.

**Appellate Advocacy & Post-Trial Practice**  
**Birth & Catastrophic Injury Litigation**  
**November 23, 2020**

Our appellate attorneys convinced Florida's Fifth District Court of Appeal to affirm an administrative law judge's final order finding a claim compensable under the Florida Birth-Related Neurological Compensation Plan. A minor child was permanently and substantially brain damaged as a result of his complicated birth. The parents sought compensation pursuant to NICA under protest.

## SIGNIFICANT REPRESENTATIVE MATTERS

Succeeded in convincing the Fifth District Court of Appeal to quash an amended discovery order to compel a church to identify church members and produce membership lists in a suit for exploitation, theft, conversion, declaratory relief, and other causes of action brought by a church member against the church. The court agreed with the church's arguments that the trial court's order was deficient in that it failed to address the church's claims of associational privilege under the First Amendment and that there was a disputed issue below as it related to the incorporation status of the church. *St. Paul's Catholic Church v. Hilt*, 5D23-0955 (Fla. 5th DCA Mar. 1, 2024).

Obtained a per curiam affirmance in the Fifth District Court of Appeal of an order declaring the children dependent due to their father's drug use and overdose in front of his children. Kimberly served as pro bono counsel for the statewide Guardian ad Litem program to represent the interests of the child as part of the Defending Best Interests Project. *S.M. v. Dep't of Children & Families*, 5D23-3142 (Fla. 5th DCA February 1, 2024).

Obtained an affirmance by the Fifth District Court of Appeal for the firm's client in an appeal of a nonfinal order denying plaintiff's motion to disqualify counsel. Plaintiff's counsel moved to disqualify our firm and defense counsel for their communications with a post-incident treating physician employee/agent of the client's owner during the course of a premises liability lawsuit. Our client argued there was no conflict of interest and no violation of the patient-physician privilege to communicate with a post-incident treating physician, who was also an employee/agent of our client. The trial court agreed and denied the motion, and the Fifth District affirmed the denial of the nonfinal order on appeal and granted our client's motion for appellate attorney's fees on a provisional basis. *Figueroa v. OHRI, LLC*, 5D22-1894 (Fla. 5th DCA Jan. 16, 2024).

Obtained an affirmance by the Fourth District Court of Appeal of a venue order obtained by our client, a school board member. Plaintiff/Petitioner/Appellant, a convicted felon had run for a seat on a school board before his rights had been restored and won the election but refused to be sworn in with the other newly elected board members. Since he failed to qualify and refused to accept the seat within thirty days, the Governor issued an executive order that declared a vacancy and appointed our client to the school board instead. The Plaintiff filed a writ of quo warranto and a declaratory judgment action in Broward County urging the trial court to void the executive order and order that the Plaintiff take and hold the office of the school board immediately. The Governor and our client moved to transfer the case to Leon County based on the home venue privilege. The trial court granted the motion, and the Fourth District affirmed the nonfinal order on appeal. *Velez v. DeSantis*, 2023 WL 8636899 (Fla. 4th DCA Dec. 14, 2023).

Obtained a per curiam affirmance by the Sixth District Court of Appeal of a motion for summary judgment entered in favor of a rental manager. In granting summary judgment, the trial court found that the rental manager, which did not own the premises, did not owe the Plaintiff a non-delegable duty and had no duty to maintain the exterior of the premises pursuant to the owner agreement with the homeowner. The trial court also found that the guest failed to establish any genuine issue as to any material fact regarding an insufficiency or issue with the operation of the lighting of the porch on the property which would give rise to a breach of any possible duty. The Court also provisionally granted the rental manager attorney's fees upon the determination of the trial court at the conclusion of the case, pursuant to a proposal for settlement. *Janice Dillard v. VHC Hospitality LLC d/b/a Vacation Home Collection, Luciana Pinto, and Terra Resort Villa Homeowners Association Inc.*, No. 6D23-1256 (Fla. 6th DCA May 16, 2023).

Obtained an affirmance by the Third District Court of Appeal of a nonfinal order dissolving a temporary injunction initially entered against a multi-condominium association following the erroneous entry of a temporary injunction. Three unit owners contended the Association improperly passed a special assessment to be used toward reconstruction of one of the buildings following a fire. The unit owners obtained a preliminary injunction invalidating the special assessment, halting construction, and mandating the Association convene a membership meeting and community-wide vote. The Association swiftly moved to dissolve the injunction, which the trial court granted, recognizing that it committed clear legal error and a misapprehension of the facts when it entered the injunction. In affirming the order below, Judge Miller commended the trial judge for acknowledging its error and found there was a sufficient basis in law and fact for the dissolution and that allowing the injunction to stand would have been incompatible with equity principles. The Court also granted the Association entitlement to a conditional award of appellate attorney's fees should it prevail below. *Lecorps v. Star Lakes Association, Inc.*, No. 3D21-2195 (Fla. 3d DCA May 25, 2022).

Obtained an affirmance by the First District Court of Appeal of a termination of parental rights judgment entered against a father who refused to acknowledge he was the father and instead wanted to wait 5 years until he was released from prison to establish paternity and have a relationship with the child. Kimberly served as pro bono counsel for the statewide Guardian ad Litem program to represent the interests of the child as part of the Defending Best Interests Project. In affirming the order below, Judge Tanenbaum gave an in-depth analysis for the least restrictive means prong in TPR cases. *P.B., Natural Father of J.C.T., Minor Child v. Fla. Dep't of Children & Families & Guardian ad Litem for J.C.T.*, No. 1D21-3420 (Fla. 1st DCA March 29, 2022).

Obtained an affirmance by the Fifth District Court of Appeal of a final summary judgment in a premises liability action arising from a slip and fall in the bathroom of a renter's own residential unit. The trial court ruled that there were no genuine issues of material fact as to actual or constructive notice concerning the transitory foreign substance found or negligent maintenance of the bathroom. The Fifth District agreed and affirmed. *Foreman v. Grep Southeast, LLC & Sabal Club Holdings, LLC, LLC*, No. 5D21-1724 (Fla. 5th DCA March 22, 2022).

Obtained an affirmance in the Fourth District Court of Appeal of a final dismissal order of third party claims for tortious interference with an advantageous business relationship, civil conspiracy to commit tortious interference with a contract, aiding and abetting tortious interference with a contract, and vicarious liability, against a law firm and its lawyers who filed the underlying lawsuit against the appellant. *Jallali v. Zhou*, 4D20-5 (Fla. 4th DCA April 22, 2021).

Obtained an affirmance of a final summary judgment by the First District Court of Appeal in a slip and fall case. The appellant argued that a restaurant/bar owner should have warned a patron about the bar stool being a dangerous condition and of the slippery dance floor, but presented no evidence that the owner was in a superior condition than the appellant. The Court rejected the appellant's arguments and affirmed the final judgment in favor of the owner. *Aljuni v. Blackfinn Jax, LLC*, No. 1D20-946 (Fla. 1st DCA April 20, 2021).

Succeeded in obtaining an affirmance in the Fifth District Court of Appeal of a final dismissal order of a wrongful death products liability action. The Estate had filed the lawsuit two years after the statute of limitations expired, and claimed the limitations period was tolled due to the alleged adverse interest of the child's mother who had been abused by the deceased prior to the accident on an agricultural production site. The trial court dismissed the case with prejudice after giving the Estate five attempts to amend. The Fifth District affirmed the dismissal and dispensed with oral argument that same day. *Rude v. Morbark, Inc.*, Case No. 5D20-976 (Fla. 5th DCA April 20, 2021).

Succeeded in obtaining an affirmance by the Fourth District Court of Appeal of a final judgment entered in favor of an insurance carrier in a case involving an alleged assignment of benefits for a water loss. The county court granted final summary judgment in favor of the insurer, finding the plaintiff lacked standing to sue. The case sat in limbo in the circuit court appellate division and then was transferred to the Fourth District Court of Appeal after the jurisdictional changes took place. Four months later, the Fourth District issued a written opinion citing to one of the cases that the insurance carrier relied on in its Answer Brief. *Empire v. United Property & Casualty Company*, No. 4D21-65 (Fla. 4th DCA April 14, 2021).

Obtained a dismissal by the Fourth District Court of Appeal of an appeal of an order denying emergency relief in our client's action to foreclose a claim of lien and for damages and breach of contract against a former unit owner. The appellant attempted to revive an untimely appeal of a prior order by obtaining a new order to the same effect as the original and then filing the notice of appeal within thirty days of that most recent order. The Fourth District dismissed the appeal and granted the association its motion for entitlement to appellate attorney's fees. *Sawyers v. Lakeside Manor North Association*, No. 4D21-225 (Fla. 4th DCA April 7, 2021).

Obtained an affirmance by the Fourth District Court of Appeal of the dismissal with prejudice of a listing real estate agent and his broker, in an alleged negligence and fraud case. The Fourth District rejected the plaintiffs' arguments that the trial court abused its discretion in dismissing their pleadings due to their attorney's conduct and detailed how the plaintiff's attorney dropped the ball in litigating the case, in a separate opinion reversing the plaintiffs' attorney's contempt conviction. *Arnoul v. Perlstein*, No. 4D20-67 (Fla. 4th DCA Feb. 3, 2021).

Obtained an affirmance by the Second District Court of Appeal of a directed verdict entered at trial in an action to hold a welfare agency vicariously liable for an alleged assault and battery by an employee who was terminated for forgery of the victim's signature. The Second District rejected the plaintiff's arguments, and affirmed the final judgment in favor of the defendant. *Fields v. The Devereux Foundation, Inc.*, No. 2D19-2947 (Fla. 2d DCA Jan. 6, 2021).

Obtained an affirmance by the First District Court of Appeal of a defense verdict obtained for client, an owner of a commercial retail center and parking lot, in a negligent security action. A chef was taking garbage outside a restaurant, when he was shot and killed. The Estate sued the owner of the building and the parking lot as well as defendants involved in the development, design, and maintenance of the retail center. The jury returned a defense verdict in favor of all defendants. The Estate appealed, arguing that the trial court abused its discretion in excluding subsequent remedial measure evidence of the installation of lighting, signs, and cameras in the parking lot after the shooting. The First District rejected the Estate's argument, and affirmed the final judgments in favor of the defendants. *Rowe v. Rowin*, No. 1D19-2637 (Fla. 1st DCA Nov. 25, 2020).

The Fifth District Court of Appeal affirmed the final judgment entered in favor of a hospital and three of its trauma/critical care physicians, where the Plaintiff's sole expert on liability and causation was a retired internal medicine physician, and the trial court found that the Plaintiff's expert lacked the requisite qualifications under Florida law to render opinions against the hospital and its three specialist physicians. *Pisano v. Orlando Health, Inc. d/b/a Orlando Regional Medical Center*, 5D19-524 (Fla. 5th DCA 2019).

The First District Court of Appeal affirmed final judgment entered in favor of the Association in a

dispute over the use of a condominium unit as a full-service restaurant. *Fehrman v. Gateway Commons II Condominium Association, Inc.*, 1D17-4555 (Fla. 1st DCA 2018).

The Fifth District Court of Appeal affirmed final summary judgment entered in favor of the insurer in a claim for post-arbitration interest and bad faith, stemming from an underlying uninsured motorist claim. *Huffman v. Commerce West Ins. Co.*, No. 5D16-4692 (Fla. 5th DCA 2018).

The Fourth District Court of Appeal affirmed the trial court's finding of defense and indemnity and an award of attorney's fees to a contractor. *Blok Builders, LLC v. Katryniok*, No. 4D16-1811 (Fla. 4th DCA 2018).

The Third District Court of Appeal reversed and remanded an adverse final judgment entered against the insurer in an uninsured motorist case. The Court found that the insurer was either entitled to a summary judgment or a directed verdict because coverage was a legal and not a factual question, and the insurer was entitled to judgment as a matter of law. *Zurich American Insurance Company v. Cernogorsky*, No. 3D16-689 (Fla. 3d DCA 2017).

The Southern District Court of Florida, acting in its appellate capacity, affirmed a bankruptcy court's order denying a motion to reopen the case for action effecting discharge of debtor. *Verdecia v. Valentine*, No. 17-CV-60723-WPD (S.D. Fla. 2017).

The Third District Court of Appeal affirmed the trial court's denial of a non-final order granting the defendants' motion to transfer venue based on forum nonconveniens in an aviation case. *Theobald v. Piper Aircraft, Inc.*, No. 3D16-1504 (Fla. 3d DCA 2016).

The Fourth District Court of Appeal reversed in part an adverse final judgment entered in favor of an insurance agent, finding that the contract between the agent and the agency was divisible so that the statute of limitations for each commission began to run when a commission was received by the agency. *Access Ins. Planners, Inc. v. Gee*, No. 4D14-1883, 4D14-2706 (Fla. 4th DCA 2015).

The Fourth District Court of Appeal affirmed the entry of summary judgment in favor of a shopping center owner who was sued after a motorcycle patron was injured in an accident on the roadway outside of the shopping center. *Ball v. Black*, No. 4D14-276 (Fla. 4th DCA 2015).

The Second District Court of Appeal denied the plaintiff's petition for certiorari challenging the trial court's discovery order on attorney-client privilege issues in a bad faith case. *Mabie v. Universal Underwriters Ins. Co.*, No. 2D14-847 (Fla. 2d DCA 2014).

The Eleventh Circuit Court of Appeals affirmed a final summary judgment entered in favor of an excess carrier, finding that its insured breached the policy by failing to notify the excess insurer of the occurrence, claim, and suit until almost four years after the occurrence and claim and several months after final judgment was entered against the insured. *American Guarantee & Liability Insurance Co. v. Simon Roofing & Sheet Metal Corp.*, No. 13-11685 (11<sup>th</sup> Cir. 2014).

The Third District Court of Appeal affirmed the trial court's entry of post-trial directed verdict in favor of a cruise line in a slip in fall case, where the plaintiff failed to prove negligence. *Deutsch v. Celebrity Cruises, Inc.*, No. 3D12-1710 (Fla. 3d DCA 2013).

The Third District Court of Appeal affirmed a final summary judgment entered in favor of a spa servicer on a cruise ship. The trial court found that the spa did not have a legal duty to the cruise patron to provide CPR or defibrillation after a patron collapsed while exercising on a treadmill in the cruise ship's gym. *Amaran v. Royal Caribbean Cruises, Ltd.*, (Fla. 3d DCA 2013).

The Third District Court of Appeal reversed the trial court's order denying the spa operator's motion to dismiss based on a contractual forum selection clause. *Steiner Transocean Limited v. Efremova*, No. 3D12-2390 (Fla. 3d DCA 2013).