TERRY'S TAKES

Your Weekly Florida Federal and State Appellate Caselaw Update for Personal Injury Lawyers

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Announcements

OFFICIAL FLORIDA BAR NEWS PODCAST WITH 4-5 MINUTE WEEKLY EPISODES: The Florida Bar has launched a weekly podcast "to tell the stories of the legal profession in a straightforward and entertaining way" that purports to be accurate, responsible, and fair. The weekly The Florida Bar News Briefs provides an easily digestible way to catch up on the latest news of the legal profession in Florida, including legislative highlights, actions of the Supreme Court, and the governance of Florida lawyers. Recent episodes have focused on the legislative session, especially HB 837. Either simply search "Florida Bar News Briefs" on any podcast-hosting site like iTunes or follow this link: https://redcircle.com/shows/tfb-briefs

ANTI-LAWYER BILL HB 837

https://www.myfloridahouse.gov/sections/bills/billsdetail.aspx?BillId=77575

The Florida Bar wrote a good article given a rundown on the bill and the sponsor's motivations for the bill. (Hint: he says trial lawyers have abused the system, turned insurance companies into an ATM, and turned Florida's courts into a "judicial hellhole." Read more: https://www.floridabar.org/the-florida-bar-news/house-civil-justice-subcommittee-moves-tort-measure/

As of 3/18/23, the bill passed the House as amended 80 to 31, and now it faces the Senate.

Eleventh Circuit Court of Appeals

Harris-Billups v. Anderson

11th Circuit Court of Appeals
3/13/23, Judge Newsom
Topics: 1983 (Excessive Force)

In this 1983 case alleging excessive force by a Georgia police officer, the Eleventh Circuit took the new step of citing to—and publicly posting—the video of the shooting, hyperlinking from the opinion to the court's website at https://www.ca11.uscourts.gov/media-sources This case came down to whether it was reasonable for an officer to shoot a man who had fired at police officers, had

been shot at 54 times by officers (four of the bullets striking him), assumed a fetal position on the ground, having dropped his guns, but then "violently lurched." Firing the single lethal shot in response to the "lurch" at 1:25 of the video was deemed by the court to be "reasonable" in light of the decedent's prior shooting at the police and the possibility that the lurch indicated another attack.

The officer was exercising discretionary authority and was entitled to qualified immunity unless she violated a constitutional right that was clearly established at the time of her actions. The constitutional right at issue was the Fourth Amendment's right against unreasonable seizure, as **use of deadly force is considered a seizure**. **This case involves what the court called "a bright(ish) line" entitling an officer to "use deadly force when [s]he 'has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others.'"** The inquiry is objective. Probable cause is "not a high bar."

The court agreed that the decedent's guns had been dropped outside his "immediate reach," but stated that he "probably could have reached them" with a "quick lunge." He had just surprised officers by dropping one gun and then pulling a second. His "access to deadly weapons" and demonstrated willingness to sue them was determinative here. When surrounded by officers, he'd held a gun to one officer's head, ignored calls to drop his weapons, and fired on the officers. He was acting unstable.

Because the lurch does not look like that big a deal to me, I'll let the court describe it:

> As we have explained—and as the bodycam video confirms—Mr. Harris's lurch was not the staggering, slow-to-get-up tossing of a dazed or injured athlete. It was the jolt of one jarred awake or springing into sudden, urgent action. In the blink of an eye, Mr. Harris's upper body rose off the ground, his legs kicked, and his arms swooped down toward his torso. Could he have been working up the momentum to stand or slide toward one of the guns on the ground? Might he have been reaching for a third gun in his pants? Or was he instead just writhing in pain? We can't be sure what Mr. Harris was doing. And that is precisely the point: "[A]n officer is not required to wait until an armed and dangerous felon has drawn a bead on [her] or others before using deadly force."

The estate argued that the decedent's movement was not a threat, but the court rejected this due to the sudden lurching. Affirmed. https://media.ca11.uscourts.gov/opinions/pub/files/202210033.pdf

Ilias v. USAA General Indemnity Company

11th Circuit Court of Appeals
3/14/23, Judge Marcus
Topics: Bad Faith

This is a plaintiff-friendly bad faith opinion involving a serious motor vehicle accident. In 2017, Tortfeasor Dunbar lost control of his van while driving in Pasco County, Florida. He jumped the center median, and his car landed on top of Plaintiff Ilias's car, severely injuring him.

Tortfeasor Dunbar's policy limits with USAA were $10,000. Even though USAA quickly determined that Tortfeasor Dunbar was at fault and that Plaintiff Ilias was severely injured and his

medical costs would almost certainly be over $10,000, USAA delayed settlement negotiations for a month. USAA also failed to answer Ilias's attorneys' question about whether Tortfeasor Dunbar lacked additional insurance coverage to satisfy a judgment, which made it impossible for the plaintiff to settle for $10,000 and release Dunbar from liability. Ilias filed suit and obtained a $5 million judgment against Dunbar in state court.

Ilias then filed a Florida common law bad faith claim against USAA, but USAA had the action removed to the Middle District of Florida on the basis of diversity jurisdiction. The district court granted USAA's motion for summary judgment on the ground that there was no genuine issue of material fact supporting the claim for bad faith. The district court held that, at the most, USAA had only acted negligently in handling the claim.

Ilias appealed, and the Eleventh Circuit reversed. First, the federal court was bound to follow Florida law under the Erie doctrine.

Second, the Eleventh Circuit summarized Florida's bad-faith common law cause of action as follows:

> Florida's bad-faith law "imposes a fiduciary obligation on an insurer to protect its insured from a judgment that exceeds the limits of the insured's policy," otherwise known as an "excess judgment." Harvey v. GEICO Gen. Ins. Co., 259 So. 3d 1, 3 (Fla. 2018). Although this "duty [of good faith] is one that the insurer owes to the insured," Florida law authorizes the victim -- here, Ilias -- to "sue the insurer directly for its bad-faith failure to settle on the insured's behalf." Eres v. Progressive Am. Ins. Co., 998 F.3d 1273, 1278 (11th Cir. 2021) (emphasis in original). Any damages claimed by the insured (or the victim standing in his shoes) "must be caused by the insurer's bad faith." Am. Builders Ins. Co. v. Southern-Owners Ins. Co., 56 F.4th 938, 945 (11th Cir. 2023) (quoting Harvey, 259 So. 3d at 7). **In other words, a bad faith claim under Florida law has two elements: (1) bad faith conduct by the insurer, which (2) causes an excess judgment to be entered against the insured.** See Perera v. U.S. Fid. & Guar. Co., 35 So. 3d 893, 899 (Fla. 2010).

Bad faith is determined under a totality of the circumstances standard where the focus is on the actions of the insurer in fulfilling their obligations. "**Insurers have obligations** to advise the insured of settlement opportunities, to advise as to the probable outcome of the litigation, to warn of the possibility of an excess judgment, and to advise the insured of any steps he might take to avoid the same, as well as to investigate the facts, give fair consideration to a settlement offer that is not unreasonable under the facts, and settle, if possible, where a reasonably prudent person, faced with the prospect of paying the total recovery, would do so." In Harvey, the Supreme Court of Florida emphasized that "the critical inquiry in a bad faith [action] is whether the insurer diligently, and with the same haste and precision as if it were in the insured's shoes, worked on the insured's behalf to avoid an excess judgment."

First, USAA unduly delayed in initiating settlement negotiations with Ilias. **In cases "[w]here liability is clear, and injuries so serious that a judgment in excess of the policy limits is likely, an insurer has an affirmative duty to initiate settlement negotiations."** The Plaintiff had been seriously injured, and USAA knew it. USAA tried to argue that it had the duty to wait for a global settlement with the other injured parties, but the Eleventh Circuit did not buy that argument because

the other injured person had only minor injuries and never even sought treatment. The Plaintiff was hospitalized and put in a coma. USAA knew everything it needed to know to tender the policy limits fairly quickly, and its delay resulted in the judgment in excess of policy limits.

Also, USAA failed to provide the Plaintiff's side with the information it needed to settle for policy limits when that offer was finally made. Plaintiff's attorney asked for—but did not receive—confirmation that the driver had no additional insurance coverage. The attorney would have advised the Plaintiff to accept policy limits if USAA had confirmed that there was no other coverage. Section 627.4137, Fla. Stat., requires an insurer, upon request, to disclose "the name and coverage of each known insurer to the claimant," as well as "[a] statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer."

Finally, in regard to causation—whether the bad faith "caused" the excess judgment—Florida law requires that Ilias show that the bad faith "directly and in natural and continuous sequence produce[d] or contribute[d] substantially to producing such [damage], so that it can reasonably be said that, but for the bad faith conduct, the [damage] would not have occurred." Again, failure to confirm that there was no other coverage was key to the attorney pressing forward with filing suit.
https://media.ca11.uscourts.gov/opinions/pub/files/202112486.pdf

Third DCA

The First Baptist Church of Greater Miami v. Miami Baptist Association, Inc.

3d DCA
3/15/23, Judge Emas
Topics: Discovery (Sanctions/Violations)

A trial court dismissed First Baptist's action against the Miami Baptist Association due to its failure to comply with a discovery order. The DCA reversed and remanded because the trial court failed to make express findings regarding each of the six factors set forth in Kozel v. Ostendorf, 629 So. 2d 817 (Fla. 1993).

To impose the ultimate sanction of dismissal with prejudice for a discovery violation, trial courts must expressly make findings on EVERY FACTOR as to 1) whether the attorney's disobedience was willful, deliberate, or contumacious, rather than an act of neglect or inexperience; 2) whether the attorney has been previously sanctioned; 3) whether the client was personally involved in the act of disobedience; 4) whether the delay prejudiced the opposing party through undue expense, loss of evidence, or in some other fashion; 5) whether the attorney offered reasonable justification for noncompliance; and 6) whether the delay created significant problems of judicial administration.

Interestingly, the DCA was unimpressed by the fact that the trial court entered a written order addressing Kozel. The judge's oral findings were vague, and the written order "was submitted by the Association's counsel, unsolicited by the court, and addressed only five of the six Kozel factors, failing to address 'whether the client was personally involved in the act of disobedience.'" Distinguishing between the actions of the client and actions of the attorney is critically important. If the client is not to blame, a lesser sanction "that is directed toward the person responsible for the" delay is more appropriate. A "fine, public reprimand, or contempt order may" be appropriate to impose on the attorney if the client is not responsible.

In regard to the order prepared by the appellee, I finish this summary with a full quote from footnote three of the opinion, which comments on the practice of counsel sending orders to the trial court:

> In light of our remand for further proceedings, we raise one additional issue. The day following the hearing, the Association's counsel sent a six-page order containing findings of fact purporting to address five of the six Kozel factors. **The trial court signed that order two hours after counsel sent it—as proposed, without addition, deletion or correction. While a trial court's verbatim adoption of a proposed order does not by itself constitute reversible error, see, e.g., Certain Underwriters at Lloyd's London v. Candelaria, 339 So. 3d 463 (Fla. 3d DCA 2022); Kendall Healthcare Grp., Ltd. v. Madrigal, 271 So. 3d 1120 (Fla. 3d DCA 2020), a party's proposed order "cannot substitute for a thoughtful and independent analysis of the facts, issues, and law by the trial judge." Perlow v. Berg-Perlow, 875 So. 2d 383, 390 (Fla. 2004).** The circumstances presented here merits reaffirming the need for a trial court's order to reflect its thoughtful and independent analysis of the facts, issues, and law, especially where a trial court is affirmatively required to address the Kozel factors and make express findings of fact as to each before imposing the ultimate sanction of dismissal with prejudice. Moreover, to the extent that a trial court directs one party to prepare a proposed order, the opposing party must be given a meaningful opportunity to comment or object prior to entry of the order. (Counsel for the Association emailed its proposed order to counsel for First Baptist, advising First Baptist it had a four-hour window within which to offer suggested revisions before the proposed order would be forwarded to the trial judge.) And, finally, as observed by the Florida Supreme Court, "the better practice would be for the judge to make some pronouncements on the record of his or her findings and conclusions in order to give guidance for preparation of the final judgment." Perlow, 875 So. 2d at 390.

https://supremecourt.flcourts.gov/content/download/863284/opinion/212311_DC08_03152023_100528_i.pdf

Full Pro Restoration v. Citizens Property Insurance Company

11th Circuit Court of Appeals
3/15/23, Judge Hendon
Topics: Summary Judgment Standard

This was a homeowners insurance claim related to Hurricane Irma, but the key issue is the summary judgment standard.

Full Pro, an assignee of the insured, sued over coverage for water intrusion, and when Citizens filed for summary judgment, Full Pro did not file the deposition of Citizen's expert until less than 20 days before the summary judgment hearing. Also, Full Pro did not file a response to Citizen's motion for summary judgment until four days before the hearing.

Counsel for Full Pro had just taken over the case and argued that the court should accept the late-filed depo and grant an emergency motion to continue under Rule 1.510(c)(5)(d), which allows

the court to defer considering the motion and to allow time to obtain affidavits, which counsel claimed she needed.

The best the Plaintiff could show was that Citizen's expert testified in his deposition that it was possible that two shingles were missing prior to the hurricane and then the hurricane opened that hole further and caused the water intrusion. Citizens answered that that would still not be a peril-created opening; it preexisted the storm.

The trial court denied the motion for continuance and granted the summary judgment motion on the basis that Rule 1.510 **did not give the court discretion** to consider the late-filed deposition or grant Full Pro additional time to continue discovery once the summary judgment hearing was underway.

Oddly, even though the DCA opinion **expressly states** that the judge ruled that the **court did not have discretion** to accept the depo or grant a continuance, the DCA then analyzed the issue under an abuse of discretion standard and held that it was not an abuse of discretion to reject the depo because it had been taken three months prior to the hearing and never filed and there was no abuse of discretion in denying a continuance because there was no showing how further discovery could salvage Full Pro's case. (NOTE: There's no question that there would be no abuse of discretion and rejecting counsel's request to push back the summary judgment hearing, but did the judge actually **exercise** any discretion?? Try to square this with Fuentes v. Luxury Outdoor Design, Inc., the 3/8/23 decision from the 4th DCA that reversed a grant of summary judgment solely because the judge was under the impression that the court had **no discretion** to do anything but grant summary judgment where the nonmovant failed to file a timely response because the trial court could exercise any of the options under the rule. The Fourth DCA held that the court could exercise any of the options under the rule and remanded for the judge to do so. The Third DCA here does not seem to appreciate the difference.)
https://supremecourt.flcourts.gov/content/download/863285/opinion/212312_DC05_03152023_100716_i.pdf

Mazda Motor Corporation v. Triche

3d DCA
2/13/23, Judge Logue
Topics: Personal Jurisdiction

Okay, this is a products liability case against Mazda over the design of Mazda cars, and the issue is whether the Florida circuit court could exercise personal jurisdiction over Mazda, which is incorporated and headquartered in Japan. And, boy, did the judges have a lot to say. The panel opinion, a special concurrence, and a dissent add up to a whopping 52 pages.

Believe it or not, when a Mazda was sold in Florida to a Florida resident and was rear-ended in Florida, ***it burst into flames and killed the owner***. The model involved was a 2016 Mazda3 Sport.

Plaintiff sued multiple Mazda entities, including Mazda Japan, Mazda North America, and Mazda South Florida, alleging claims for strict liability and negligence pertaining to a design or manufacturing defect of the subject vehicle. Mazda North America has submitted itself to the jurisdiction of the court and remains a defendant below. In the course of the litigation, however,

Mazda North America insisted it could provide no discovery regarding the design of the vehicle because all such information is possessed only by Mazda Japan, which refuses to provide American-style discovery concerning the design.

Mazda Japan moved to dismiss for lack of personal jurisdiction asserting that it was not subject to general or specific jurisdiction because it lacked sufficient minimum contacts with Florida such that the State of Florida's assertion of personal jurisdiction violated the due process clause of the Fourteenth Amendment to the U.S. Constitution. Mazda Japan submitted affidavits that essentially argue that it manufactures and designs the cars in Japan and that the Mazda North America company is separate.

Plaintiff responded with discovery materials showing Mazda Japan's control over the subsidiaries including documents about reforming their sales market for the U.S. market and developing market strategies for the U.S. market. Mazda Japan has an Executive VP for oversight of North American operations. Mazda Japan designs certain vehicles to comply with U.S. regulations, and it had registered trademarks for the U.S. market particularly for the U.S.-conforming models. It shipped vehicles to Florida. It held showcases in Florida. It ordered a recall in Florida.

The DCA reviewed the burden for establishing personal jurisdiction. If the allegations of the complaint show long-arm jurisdiction, the burden shifts to the defendant provide affidavits contesting jurisdiction. If they do so, the burden shifts back to the plaintiff to file affidavits to refute the evidence. If the affidavits can be harmonized, the trial court can simply decide the matter. If the affidavits conflict, an evidentiary hearing is required. In this case, no one asked for an evidentiary hearing, so the burden remained on the plaintiff, but because it was a motion to dismiss, all allegations by the plaintiff had to be taken as true.

Where general jurisdiction is lacking, the court can look to specific personal jurisdiction. In Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1028 (2021), the Supreme Court of the United States noted that a resident-plaintiff suing a global car company that extensively serves the state market is a "paradigm example" of how to trigger specific jurisdiction. For due process to be satisfied, the defendant's contacts with Florida must 1) involve some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum; 2) the contacts must be related to the plaintiff's cause of action or have given rise to it; and 3) the defendant's contacts with the forum must be such that the defendant should reasonably anticipate being haled into court there.

For purposeful availment (prong one), it's not enough that a company's product ends up in Florida. The defendant has to directly or indirectly target the forum. In World–Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980), the Supreme Court identified the following conduct as examples of the "additional conduct" indicating an intent or purpose to serve the market in the forum State: (1) sending products to the forum State; (2) "designing the product for the market in the forum State;" (3) "advertising in the forum State"; (4) "establishing channels for providing regular advice to customers in the forum State;" (5) "marketing the product through a distributor who has agreed to serve as the sales agent in the forum State;" and (6) the sale of the product in the forum State is "not simply an isolated occurrence." The DCA held that Mazda Japan, not just Mazda North America, satisfied this test. After all, the DCA asked, if not to serve the State's market, what was the purpose of Mazda Japan designing vehicles for, shipping vehicles to, and continuing to provide technical support in the form of recalls for its vehicles owned in Florida? Alternatively, even if only Mazda

North America had taken those actions, Eleventh Circuit precedent has held that where a company enters "into an exclusive agreement with a third party to market its product within the jurisdiction," that constitutes targeting the forum. And Mazda North America isn't just a "third party," it's a "wholly owned subsidiary" created by Mazda Japan to target the North American market.

Under prong two, the "arise out of or relate to" prong, this one is easy. The lawsuit is related to the purchase and sale of a Mazda vehicle, and the accident also occurred here.

Under prong three, the "fair play and substantial justice" prong, the court more or less admits that once the first prong is satisfied and the defendant has targeted the forum, is it really unfair to make them litigate in that forum? There's simply not a lot to the third prong once the first is satisfied.

JUDGE LINDSEY CONCURRED SPECIALLY, quoting Justice Gorsuch in noting that personal jurisdiction jurisprudence is kind of a mess. Here, though, the sale of Mazda Japan-designed vehicles in Florida is not an isolated occurrence. To the contrary, Mazda vehicles are sold throughout Florida because Mazda Japan designs its vehicles for the U.S. market, which it serves, albeit indirectly, through an authorized U.S. distributor and authorized Mazda dealers. In other words, the vehicles Mazda Japan designs do not end up in Florida as the result of random, fortuitous, or attenuated contacts or of the unilateral activity of another party or a third person. The remainder of the concurrence is devoted to answering the dissent.

JUDGE LOBREE dissented for more than 20 pages, arguing that the majority simply misinterpreted the facts and the Supreme Court precedents and that there was sufficient daylight between the actions of Mazda Japan and Mazda North America that Mazda Japan should be off the hook.
https://supremecourt.flcourts.gov/content/download/863283/opinion/210803_DC05_03152023_095840_i.pdf

Willis v. Accenture, Inc.

3d DCA

3/15/23, Judge Miller

Topics: 1983 (Excessive Force), Amendment of Pleadings; Business Records, Certificate of Service, Corporate Representative, Discovery, Florida Civil Rights Claim, Hearsay, Impact Rule, Medical Malpractice (Presuit), Negligence/Duty, Negligence/Breach of Duty, Negligence/Causation, Negligence/Damages, Personal Jurisdiction; Premises Liability, Privilege (Attorney-Client), Privilege (Psychotherapist), Sovereign Immunity (Florida), Summary Judgment Standard

Willis sued Accenture under the Florida Civil Rights Act of 1992 (FCRA) as codified in section 760.01, Fla. Stat. and for tortious interference with a business relationship. The DCA held that under Woodham v. Blue Cross & Blue Shield of Florida, Inc., 829 So. 2d 891, 897 (Fla. 2002), it is impossible to accept an EEOC (federal) notice of right to sue as a substitute for the reasonable cause finding of the Florida Commission on Human Relations (the state-level equivalent of the EEOC). Section 760.11(3) requires that a plaintiff get a "reasonable cause" right-to-sue letter from the FCHR as a condition precedent to suing. Thus, the Plaintiff's suit was dismissed, and the DCA affirmed.
https://supremecourt.flcourts.gov/content/download/863290/opinion/220431_DC13_03152023_101549_i.pdf

Fourth DCA

Jones v. Vasilias

4th DCA
3/15/23, Judge Conner
Topics: Negligence/Duty

An employee of a car dealership was pulling out of the dealership-owned van to make a delivery, and the driver struck a bicyclist who had been riding along the busy street that ran past the dealership.

The plaintiff bicyclist sued the driver and also sued the general manager and service manager of the dealership, the driver's supervisors, for negligence. The service manger had sent the employee out on the delivery. The plaintiff also sued the general manager's employer, North American Automotive Services, Inc, for negligent employment including vicarious liability for negligent training, retention, supervision, and entrustment.

The supervisors and employer corporation moved to dismiss for failure to state a claim. They argued that because they admitted that the employee was employed and in the scope of employment, the only way to sue them was for a separate tort outside of employment. The trial court dismissed all claims but those against the driver.

Unlike claims of vicarious liability, claims of direct liability against an employer can be alleged even if the tortfeasor was acting within the scope of employment. Reversed and remanded.
https://supremecourt.flcourts.gov/content/download/863298/opinion/213476_DC13_03152023_100015_i.pdf

Fifth DCA

Welch v. CHLN, Inc.

5th DCA
3/17/23, Judge Jay
Topics: Negligence/Breach of Duty, Summary Judgment Standard

CHLN owns a restaurant in Melbourne, Florida. Ms. Welch visited the restaurant for dinner in 2017, and she alleges that she slipped and fell on a puddle of liquid near the salad bar. She described the liquid as a large amount of liquid that was dirty, murky, and slimy. She alleges that she observed wet footprints that were not hers leading in different directions (as if the puddle had been present for a long time).

Welch sued CHLN for negligence. During a deposition, the restaurant manager testified that on a busy night like the night of the accident, two separate employees would have been assigned to the salad bar, and part of their duties would have been to keep the floor clean.

CHLN moved for summary judgment, arguing that there was no evidence that CHLN knew about the liquid on the floor. The trial court granted the motion, holding that there was no evidence of actual knowledge and "insufficient evidence" of constructive knowledge.

Elements of negligence are duty, breach of duty, causation, and damages. In slip-and-fall cases at a business, to prove breach of duty, a plaintiff has to also satisfy section 768.0755, Fla. Stat., which states:

> (1) If a person slips and falls on a transitory foreign substance in a business establishment, **the injured person must prove that the business establishment had actual or constructive knowledge of the dangerous condition and should have taken action to remedy it. Constructive knowledge may be proven by circumstantial evidence showing that:**
>
> (a) **The dangerous condition existed for such a length of time that**, in the exercise of ordinary care, **the business establishment should have known** of the condition; **or**
>
> (b) **The condition occurred with regularity and was therefore foreseeable**.

§ 768.0755(1), Fla. Stat. (2017).

Plaintiff's testimony that the liquid was dirty, etc, helped her case, but it is not enough by itself to create a jury instruction because some liquids have these features before being spilled, so a plaintiff must show that it is the kind of liquid that would only become this way over time. The best fact in Plaintiff's case, however, was the testimony that she saw wet footprints leading in different directions. Putting that together with the testimony that the liquid was dirty or slimy, that is sufficient to create a jury question about whether the liquid was there long enough to constitute constructive knowledge. Reversed and remanded for further proceedings.
https://supremecourt.flcourts.gov/content/download/863596/opinion/220357_DC13_03172023_084843_i.pdf