Legal Update
ROPER TOWNSEND SUTPHEN
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DUTY TO WARN AND DUTY TO MAINTAIN ARE TWO DISTINCT AND SEPARATE DUTIES

In a recent decision, *McWhorter v. Event Services America, Inc., d/b/a Contemporary Services Company*, the Second District Court of Appeal affirmed summary judgment in favor of the defendant on the issue of whether it owed a duty to warn of an open and obvious condition. However, the appellate court reversed the trial court's ruling as to whether the defendant breached its separate duty to maintain the premises in a reasonably safe condition.

The facts giving rise to the appeal stem from an incident in which McWhorter attended a Tampa Bay Rays baseball game and tripped and fell in the entrance rotunda of Tropicana Field. McWhorter alleged that she tripped over a metal battery case - approximately the size of a shoebox - that a security guard employed by the defendant had placed and left in the walkway. At the time of the incident, the rotunda was well lit and featured a green-painted floor depicting a miniature baseball diamond. Only a

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HIGHER INSURANCE PREMIUMS FOR LOCAL GOVERNMENTS?

After failing to obtain legislative approval during the last session, Florida Representative Fiona McFarland (R-Sarasota) remains committed to amending Florida's sovereign immunity limits. On January 15, 2026, the Florida House of Representatives voted 104-7 to approve her bill, HB 145, which would raise the current $200,000.00 per person / $300,000.00 per incident limits against government entities to $500,000.00 per person and $1 million per incident, which would go into effect on October 1, 2026. The now-approved House bill would also automatically raise the limits again in October 1, 2030, to $600,000.00 per person and $1.2 million per incident.

The most immediate concern with this effort is one that Representative McFarland herself fully acknowledges: the likelihood of increased liability premiums for those local government entities, including, but not limited to, counties, cities and school districts, which have long opposed such efforts. She has defended her efforts, stating that "I know they're going to have to pay more in insurance, I'm just telling you it's worth it, and it's time." But she also knows that she has her work cut out for her.

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few patrons were present in the rotunda. The security guard had set the battery case on the floor and walked a few feet away to pick up a piece of trash, leaving the case unattended for a very brief period of time.

During that interval, four individuals walked through the same area without incident. The entire sequence of events occurred in less than one minute. Within seconds of McWhorter's fall, another employee removed the battery case from the walkway, while the security guard returned to assist McWhorter, who was lying on the ground.

In her deposition, McWhorter testified that she did not see what caused her to trip, but acknowledged that the battery case was not concealed and was left in the open rotunda walkway. She further admitted that she was looking to her right immediately before the fall.

Based on these facts, the trial court granted summary judgment in favor of Event Services America, who conceded it was responsible for maintaining the rotunda at the time of the accident. The trial court concluded that the defendant had no duty to warn McWhorter of the battery case because it was open and obvious, and further determined that leaving the battery case in the walkway did not constitute a dangerous condition.

On appeal, the Second District agreed that the battery case was an open and obvious condition. The court emphasized that the rotunda was well lit, the case was metallic, it contrasted with the green floor, and it was left out in the open. However, the appellate court disagreed with the trial court's conclusion that the condition was not dangerous as a matter of law. The court noted that the battery case measured approximately six inches tall and fourteen inches long and was left on the floor of a stadium rotunda where large numbers of patrons customarily walk. Although the condition may have been open and obvious, the Second District held that it was nonetheless foreseeable that a stadium patron could trip over it, given its placement.

The appellate court emphasized the distinction between the two duties owed by a landowner to an invitee: the duty to warn and the duty to maintain the premises in a reasonably safe condition. These duties are separate, and compliance with one does not necessarily satisfy the other. As the court reiterated, "even when a hazard is open and obvious, a landowner or possessor can still be liable for failing to exercise reasonable care to prevent foreseeable injury to invitees." *Cook v. Bay Area Renaissance Festival of Largo, Inc.*, 164 So. 3d 120, 123 (Fla. 2d DCA 2015) (quotation omitted). The court further held that genuine issues of material fact existed as to whether the condition was dangerous and whether the defendant should have anticipated that it could cause injury despite its open and obvious nature.

By: Cindy A. Townsend

During her last attempt, smaller localities with limited budgets strongly opposed the effort, lobbying that they simply could not afford it. And last session, the Florida House of Representatives voted 103-11 to approve her initial attempt, HB 301, but the measure failed to advance beyond the Senate Rules Committee before the end of the legislative session, essentially killing it.

Some additional aspects of the now-approved HB 145 include that it:

- Prohibits an insurance policy from conditioning liability coverage or the payment of benefits on the enactment of a claims bill;
- Provides that a government entity may choose to settle a claim or judgment which exceeds the limits without seeking additional action by the Legislature (i.e., without going through the claims bill process);
    - However, government entities would not be deemed to have waived any defense of sovereign immunity or to have increased the limits of its liability as a result of its obtaining insurance coverage for tortious acts in excess of the new limits
- Provides that the liability limits for a claim that are in effect on the date the claim *accrues* will apply to the underlying claim;
- Amends the current four-year statute of limitations for filing a claim against a government entity to the following:
    - Negligence – within two (2) years;
    - Medical Malpractice or Wrongful Death – within the limits established in Section 95.11(4), *Fla. Stat.* [3 years]
    - Sexual Battery on a Victim Under 16 – at any time, but does not resuscitate any claims that may have already been time-barred by previous statutes of limitations
    - Any Other Claim – within four (4) years
- Decreases the required pre-suit notice period from three years to 18 months, decreases the wrongful death notice period from two years to 18 months, but keeps the sexual battery of a victim under 16 period, at any time
- Would have an effective date of October 1, 2026

At time of publication, however, Florida Senator Jason Brodeur (R) has also since introduced a companion bill in the Florida Senate, SB 1366, which has now advanced in committee. This version increases the sovereign limits from $200,000.00 / $300,000.00 to $300,000.00 / $450,000.00, with an adjustment every five years thereafter starting on July 1, 2031, made by the Department of Financial Services to correlate to the Consumer Price Index, not to exceed three percent for any such adjustment (leaving potential additional ambiguity). The bill also decreases the timeframe to present a claim from three years to 18 months, and furthermore decreases the timeframe of a final disposition from six months to four months.

At this point, it remains unknown if the bills will reconciled and ultimately make its way to Governor DeSantis' desk. The current legislative session began on January 13, 2026, and runs through March 13, 2026. It is also currently unknown what Governor DeSantis' position is on the matter and whether or not he would veto the measure should the Legislature ultimately send it to his desk. In the meantime, however, government entities, especially those smaller entities with limited budgets, should continue to keep a watchful eye on the bills' progression, if any, through the legislative process.

By: Joshua D. Roth

DUDE, WHAT'S THAT SMELL?

Smell of Cannabis as Justification for a Warrantless Search

The legalization of medical marijuana in the State of Florida had an unexpected consequence for law enforcement officers – greater difficulty justifying warrantless vehicle searches. Historically, the smell of cannabis alone provided probable cause for a search under the automobile exception to the warrant requirement, which allows officers to search a vehicle if they have probable cause to believe the vehicle contains contraband or evidence of a crime. However, cannabis legally dispensed from a medical treatment center is not evidence of a crime, and therefore, the smell of it no longer supports search or detention. *Williams v. State*, 421 So. 3d 809 (Fla. 2nd DCA 2025).

Though the smell of cannabis is not enough *on its own* to justify a search, the courts still engage in a totality of the circumstances analysis in determining the objective reasonableness of the search. In *State v. Simpson*, Florida's Sixth District Court of Appeal reaffirmed a principle that matters deeply to law enforcement agencies operating in an era of legalized hemp and medical marijuana: probable cause is not a game of isolated facts, but a common-sense evaluation of the whole picture. The case arose after officers conducted a lawful traffic stop for a window-tint violation in a known high-crime area. When an experienced narcotics officer detected the odor of fresh cannabis coming from the vehicle, officers searched the car and discovered illegal drugs and a firearm. The trial court suppressed the evidence, reasoning that the odor of fresh cannabis alone could not establish probable cause because hemp and medical marijuana are legal. The appellate court disagreed and reversed. 414 So. 3d 291 (Fla. 6th DCA, 2025).

The Sixth District held that this was not a "smell-alone" case. Instead, the court emphasized the totality of the circumstances: the officers' extensive narcotics experience, the well-documented drug activity in the area, the lawful stop, and the immediate detection of fresh cannabis once the vehicle windows were opened. Probable cause, the court explained, does not require certainty or the elimination of innocent explanations. It requires only a fair probability, viewed through the lens of a reasonable and experienced officer, that contraband or evidence of a crime will be found.

This decision is particularly important for law enforcement agencies navigating post-hemp search-and-seizure challenges. The court made clear that while the odor of cannabis may no longer automatically justify a search in every case, it remains a powerful factor when combined with officer training, experience, and contextual indicators such as location and observed circumstances. Officers are permitted to draw reasonable inferences from their experience, and courts must resist parsing facts in isolation after the fact.

The practical takeaway for law enforcement is that properly articulated observations, clear testimony regarding training and experience, and attention to the surrounding circumstances continue to matter. When officers can explain not just what they perceived, but why those perceptions reasonably indicated criminal activity, courts will uphold searches grounded in real-world policing rather than sterile hypotheticals.

By: Jamie A. McManus

FIFTH DISTRICT REAFFIRMS NO LIABILITY FOR MINOR SIDEWALK VARIATIONS IN *JACKSON V. FDOT*

The Fifth District's decision in *Jackson v. Florida Department of Transportation* delivers a clear, defense-oriented reaffirmation that minor sidewalk height differentials—here, less than one inch—are considered open, obvious, and ordinary conditions that do not create a duty for government entities to warn of the condition. The Court affirmed summary judgment for FDOT and its contractor, holding that such commonplace irregularities are not inherently dangerous as a matter of law, even when a plaintiff presents expert testimony suggesting a technical code violation.

The plaintiff, Nancy Jackson, alleged she was injured when she tripped on a sidewalk expansion joint on a state-maintained sidewalk. The vertical offset between the concrete slabs measured approximately ¾ inch. Jackson relied on expert testimony, arguing that the condition violated safety standards. In forming his opinions, the expert relied on numerous standards and regulations, including, inter alia, the Florida Building Code.

The Court rejected those arguments, affirming "the trial court's conclusion that the minor vertical misalignment at the expansion joint of the sidewalk where Jackson fell is 'so open, obvious, and ordinary' that it does not constitute a dangerous condition as a matter of law." The Court further held that expert testimony cannot convert a trivial, everyday irregularity into a dangerous condition for purposes of premises liability, concluding that the Florida Building Code was not applicable to the case.

Jackson provides a strong, practical precedent limiting liability for minor, unreported sidewalk defects. The ruling underscores that plaintiffs cannot manufacture liability through expert opinions when the condition is one the law deems open and obvious. The decision reinforces that public entities are not insurers of pedestrian safety and cannot reasonably be expected to eliminate every slight imperfection across the vast sidewalk networks they maintain.

By: Susan G. Gainey

LATE DISCOVERY, MOTIONS TO COMPEL AND SANCTIONS

Typically, attorneys who represent plaintiffs allege a plethora of damages in the Complaint. Accordingly, defense counsel serves paper discovery tailored towards those allegations and prayers for relief. It is also a common professional courtesy to extend the discovery deadline among attorneys. However, quite often the answers and responses to defendants' discovery is still late, incomplete, or both. Under such a scenario, which should be resolved amongst counsel without the court's intervention, sometimes it is inevitable to seek relief from the court through a motion to compel.

For discovery purposes, relevance "has been construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case." *Drone Nerds Franchising, LLC v. Childress*, 2021 WL 7543800 at *3 (S.D. Fla.). Courts have long held that relevance for discovery purposes is much broader than relevance for trial purposes. *Id*. The Federal Rules of Civil Procedure strongly favor full discovery whenever possible. *Yergey v. Brinker Florida*, 2020 WL 10817752 at *1 (M.D. Fla. 2020). According to Rules 1.340 & 1.350, Florida Rules of Civil Procedure, objections, answers, or responses to these discovery requests should have been served within 30 days. The same holds true under federal law. Federal courts have long required attorneys to confer before filing certain motions, including those pertaining to discovery matters. More recently, Florida courts have likewise required such a conference between counsel.

When discovery is not provided, and conferral is futile, a party has the option to move the Court to compel its opponent to produce the requested discovery. Generally, an order is issued in that regard and, more often than not, it resolves the issue. However, there are situations when even Court orders are ignored. It is then that a party has the option, and arguably an obligation towards its client, to move for sanctions against the non-compliant party. This is so because a court has the power to impose formal sanctions upon litigants that can range from a reprimand to an order dismissing the action. *Vaughan v. Apfel*, 209 F.R.D. 496, 498 (M.D. Fla. 2001). The court's power to dismiss is inherent in its authority to enforce its orders and to insure prompt disposition of lawsuits. *Jones v. Graham*, 709 F.2d 1457, 1458 (11th Cir. 1983); *Phipps v. Blakeney*, 8 F.3d 788, 790 (11th Cir. 1993) (District court has broad discretion to control discovery, including the ability to impose sanctions upon uncooperative litigants.). Moreover, dismissal may be appropriate when a plaintiff's recalcitrance is due to willfulness, bad faith, or fault. *Id*.

The next time a plaintiff fails to comply with the procedural rules of discovery, it is imperative that one contact opposing counsel and try to resolve the issue promptly and with professionalism. Should your efforts fail, then you should move to compel, set your motion for hearing, if required, and make sure that the Court is aware of all your diligent efforts. If an order is issued and still ignored, know that a request for sanctions is deemed appropriate. A party's recalcitrance to follow procedural rules and comply with court orders may ultimately serve your client's best interest, with a dismissal of the lawsuit.

By: Ramon Vazquez

FIRM NEWS

Attorney Ryan Williams was recently admitted to the American Board of Trial Advocates ("ABOTA"), a national association of experienced trial lawyers and judges dedicated to the preservation and promotion of the civil jury trial right provided by the Seventh Amendment to the U.S. Constitution. ABOTA's mission is to foster improvement in the ethical and technical standards of practice in the field of advocacy to ensure litigants receive effective representation and to benefit the public through a more efficient system of justice. Beyond approval by the National Board of ABOTA, Ryan had to demonstrate his qualifications, including a minimum of seven civil jury trials. Congratulations to Ryan on this recognition and we look forward to his participation enriching the firm's robust trial experience and improving our community through service.

FIRM SUCCESS

Summary Judgment for Failure to Provide Proper Notice, Pursuant to Florida Statutes, Section 768.28(6)

Ryan Williams recently secured a summary judgment on behalf of a local county government in a premises liability trip-and-fall lawsuit. The plaintiff alleged that pre-suit correspondence sent to the County Attorney constituted proper notice under Florida law. Mr. Williams successfully argued that the letter failed to satisfy the statutory notice requirements applicable to claims against governmental entities and that no valid notice of claim was ever filed. The Court agreed and granted summary judgment in favor of the county, finding the plaintiff failed to comply with Florida Statutes, Section 768.28(6), resulting in a complete defense victory.

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