Legal Update
ROPER TOWNSEND SUTPHEN
March/April 2026

FLORIDA THIRD DCA: SOVEREIGN IMMUNITY BARS NON-ECONOMIC DAMAGES UNDER PUBLIC-SECTOR WHISTLEBLOWER ACT

On March 25, 2026, the Florida Third District Court of Appeal made a ruling finding that non-economic damages are unavailable to a plaintiff in a cause of action brought pursuant to the public-sector Whistleblower Act, Fla. Stat. §112.3187. In the case of *Miami-Dade Cnty v. Garavan*, No. 3D25-0014, 2026 Fla. App. LEXIS 2255, at *6 (Fla. 3rd DCA Mar. 25, 2026), the County appealed a jury verdict in favor of a former employee of the medical examiner's office, which awarded him both economic and non-economic damages after the County demoted and subsequently terminated the former employee. The employee brought a cause of action under the Whistleblower Act, and the jury awarded him damages for emotional distress and reputational harm. It was those non-economic damages that the County sought to have set aside. The County, on appeal, argued that the award of non-economic damages was barred as a matter of law because the County is entitled to sovereign immunity; therefore, any recovery is limited to only those damages expressly waived.

The Florida Third DCA agreed with the County's argument and reversed the award of non-economic damages. In its reasoning, the Court opined that, "[t]he immunity of the State of Florida and its

Cont'd 2

THE RISE OF ARTIFICIAL INTELLIGENCE IN THE LEGAL FIELD

Artificial Intelligence is rapidly rising all around us, and the legal field is no exception. The use of AI is reshaping the legal profession by offering powerful tools that can enhance efficiency and strategy and streamline legal work. However, AI's lack of true judgment can create real risks – from inaccurate outputs and confidentiality concerns to ethical pitfalls that can expose attorneys to liability if the AI software is not carefully managed.

Take, for example, the case of *Mata v. Avianca, Inc.* from the Southern District of New York, which is one of the leading cases on the consequences of the misuse of AI in legal pleadings. This case showed the public and the legal profession that AI tools such as ChatGPT can produce "hallucinations," which are fabricated legal authority. In this case, the Plaintiff sued Avianca Airlines

Cont'd 3

agencies from liability for claims arising under Florida law or common law is *absolute* absent a clear, specific, and unequivocal waiver by legislative enactment." *Daly v. Marion Cnty.,* 265 So. 3d 644, 650 (Fla. 1st DCA 2018) (quoting *State, Dep't of Elder Affairs v. Caldwell,* 199, So. 3d 1107, 1109 (Fla. 1st DCA 2016)) (emphasis added). The Court continued that, absent an express and unmistakable waiver of immunity, waiver will not be reached as a product of inference or implication. *See Garavan*, No. 3D25-0014, at *6.

In reviewing the "Relief" section of Fla. Stat. §112.3187 (section 9), the Court detailed the relief listed, including:

(a) Reinstatement of the employee to the same position held before the adverse action was commenced, or to an equivalent position or reasonable front pay as alternative relief.

(b) Reinstatement of the employee's full fringe benefits and seniority rights, as appropriate.

(c) Compensation, if appropriate, for lost wages, benefits, or other lost remuneration caused by the adverse action.

(d) Payment of reasonable costs, including attorney's fees, to a substantially prevailing employee, or to the prevailing employer if the employee filed a frivolous action in bad faith.

(e) Issuance of an injunction, if appropriate, by a court of competent jurisdiction.

(f) Temporary reinstatement to the employee's former position or to an equivalent position, pending the final outcome on the complaint, if an employee complains of being discharged in retaliation for a protected disclosure and if a court of competent jurisdiction or the Florida Commission on Human Relations, as applicable under s. 112.31895, determines that the disclosure was not made in bad faith or for a wrongful purpose or occurred after an agency's initiation of a personnel action against the employee, which includes documentation of the employee's violation of a disciplinary standard or performance deficiency. This paragraph does not apply to an employee of a municipality.

The Third DCA noted that while the list of relief the statute provides is not exhaustive, all of the relief identified is of an economic nature. The Court then opined that where waivers of immunity must be express, clear, and unequivocal, they will not extend that carefully drawn list to encompass qualitatively different, non-economic damages that the Florida Legislature did not include. *See Garavan*, No. 3D25-0014, at *6. The Court reasoned that if the Legislature wanted to make non-economic damages under the Act, then they would have; and further pointed out how Florida's private-sector Whistleblower Act expressly authorizes additional relief.

The Court supported its ruling by citing to the 2025 Florida First DCA case of *State v. Toal*, which reached the same conclusion. *See State v. Toal*, 406 So. 3d 978, 979 (Fla. 1st 2025) ("Noneconomic damages are not specified as a form of relief under the Whistleblower's Act, full stop."). Notably, both the *Garavan* Court and the First DCA in *Toal* discussed in their opinions the 2019 Third DCA case of *Iglesias v. City of Hialeah*, which concluded that non-economic damages *were* available in a claim against a City under the Act. *See Iglesias v. City of Hialeah*, 305 So. 3d 20, 22 (Fla. 3rd DCA 2019). The *Gravan* and *Toal* Courts each noted that the *Iglesias* opinion did not expressly address the application of sovereign immunity. While *Iglesias* can still be relied on for the position that the relief stated in the statute is not an exhaustive list, *Iglesias* has been overruled to the extent that it ruled that non-economic damages are available to plaintiffs in a cause of action against a governmental entity pursuant to the statute. Therefore, any governmental entities that were under the impression that non-economic damages were available to plaintiffs for claims pursuant to Fla. Stat. §112.3187 due to the *Iglesias* ruling should instead rely on *Garavan* and *Toal* to support that those damages are unavailable.

By: Chris Prusinowski

after he was allegedly injured when a metal pole struck his knee. Avianca attempted to have the case dismissed, but the Plaintiff's lawyers objected and submitted a 10-page brief citing more than half a dozen relevant court cases. However, the Judge and Avianca's lawyers could not find the decisions or the quotations cited and summarized in Plaintiff's brief. ChatGPT had come up with the hallucinated cases on its own. The attorney for the Plaintiff took the blame and threw himself at the mercy of the court, and apologized for relying on ChatGPT without verification. The Judge fined the Plaintiff's lawyers and the firm $5,000.

It is not just attorneys who have been caught using AI, but judges have as well. Two federal judges, U.S. District Judge Henry T. Wingate of the Southern District of Mississippi and District Judge Julien Xavier Neals of the District of New Jersey, withdrew orders that they had issued after the litigants pointed out AI errors. In these two incidents, both Judges blamed their staff for using generative AI tools and for premature docket entries for the Orders issued on their behalf. The orders were riddled with errors, including misquotations and references to parties not in the current cases. The orders were later withdrawn, but Senator Chuck Grassley sent a letter to both Judges asking for an explanation. Judge Neals stated that he prohibits the use of generative AI in legal research and in drafting opinions, and, after this ordeal, he made it a written policy.

As the use of generative AI tools becomes increasingly prevalent in the legal landscape, some jurisdictions have begun to take action. Take Florida, for example, where some judicial circuits have implemented mandatory Artificial Intelligence Disclosures for both attorneys and pro se litigants. Two of Florida's largest judicial circuits, the 11th Circuit, which covers Miami -Dade County, and the 17th Circuit, which covers Broward County, issued Administrative Orders that require the Disclosure of the use of Generative Artificial Intelligence by Attorneys and Pro Se Litigants. The Administrative Orders go on to say that any attorney or self-represented litigant who uses any generative artificial intelligence tool in the preparation of a pleading, motion, memorandum, response, proposed order, or other court record must disclose such use on the face of the filing, and that the party must list a required certification that must appear on AI-generated court submissions. Failure to comply with these orders could lead to sanctions, which include: contempt; striking pleadings or dismissal of the action; fines and/or the imposition of attorney's fees; and referral to the Florida Bar for disciplinary proceedings. Other Florida state judicial circuits with similar Administrative Orders include the 18th Circuit, which covers Brevard and Seminole counties, and the 7th Circuit, which covers Flagler, Putnam, St. Johns, and Volusia counties.

The Federal Courts have also begun issuing orders. Judge Brantley Starr from the Northern District of Texas issued the first federal standing order in May of 2023, requiring AI certification. In December of 2025, Judge Nina Wany of the United States District Court for the District of Colorado issued a standing order on the use of generative AI in court filings, requiring parties to submit a certification on whether they used generative AI, such as ChatGPT, Hugging Face, or Google Gemini. As of now, the 11th Circuit Court of Appeals, which covers Alabama, Georgia, and Florida, has not issued a standing order, but as AI use becomes more and more widespread, especially with cases filed by pro se litigants, we should expect to see more and more courts adopt these standing orders.

Cont'd 4a

4a

While Artificial Intelligence is a powerful tool, it should not be a substitute for the judgment of attorneys and professionals, and it should be used to enhance the practice of law, not replace it. Individuals must be mindful of these tools and, if used, must always verify their accuracy.

By: Pausha Taghdiri

EVALUATING FUTURE CHALLENGES TO MUNICIPAL ORDINANCES – *OLIVIER V. CITY OF BRANDON*

On March 20, 2026, the United States Supreme Court decided *Olivier v. City of Brandon*, *Mississippi*, which clarified the Court's previous ruling in *Heck v. Humphrey*. Gabriel Olivier is a street preacher in Mississippi who believes sharing his religious views with fellow citizens is an important part of exercising his faith. As part of his outreach, he would occasionally visit the amphitheater in the City of Brandon, where he would find sizeable audiences attending events. In 2019, the City adopted an ordinance requiring all individuals or groups engaging in "protests" or "demonstrations" at around the time events were scheduled to stay within a "designated protest area." In 2021, Olivier was arrested for violating that ordinance. He pled no contest in municipal court. The court imposed a fine, one year of probation, and 10 days of imprisonment to be served only if he violated the ordinance during his probation. Olivier did not appeal, paid the fine, and served no prison time.

Later, because he still wanted to preach near the amphitheater, he filed suit against the City in federal court under 42 U.S.C. §1983, alleging the city ordinance violates the Free Speech Clause of the First Amendment by consigning him and other speakers to the amphitheater's protest area. The City challenged Olivier's suit on the basis that it is barred by *Heck v. Humphrey*, which prohibits the use of §1983 to challenge the validity of a prior conviction or sentence so as to obtain release from custody or monetary damages and bars the suit from moving forward.

The Supreme Court noted that Olivier's suit did not seek damages for his past conviction – he sought only prospective relief. The Court noted that Heck did not consider such a suit, and was not meant to address it. *Heck*, properly understood, does not preclude suits that only attempt to prevent future prosecutions. As a result, the Supreme Court ruled that Olivier's suit to enjoin future prosecutions under the city ordinance can proceed.

By: David R. Jadon

TRANSIENT SUBSTANCE

Under Florida law, a plaintiff bringing a negligence claim based upon a transitory foreign substance on the floor of a business must prove the business had actual or constructive knowledge of the dangerous condition and should have taken action to remedy it. Fl. Stat. §768.0755(1).

Actual knowledge refers to "direct and clear knowledge as distinguished from constructive knowledge." *Knowledge, Black's Law Dictionary*, 12th ed. (2024). Thus, actual knowledge of a dangerous condition exists when business owners, employees or agents are aware of a hazard or have actual knowledge that their actions created a hazardous condition.

Under the statute, a plaintiff may establish constructive knowledge using circumstantial evidence by showing that the dangerous condition existed for such a length of time that, in the exercise of ordinary care, the premises owner should have known of the condition. Florida courts have generally agreed that 15-20 minutes is a reasonable amount of time to provide constructive notice to the premises owner. Florida courts have generally found lengths of time under 15 minutes to be insufficient for establishing constructive knowledge.

Thus, consider the timing in premises liability actions alleging constructive notice.

By: Jeffrey A. Carter

FIRM NEWS

We would like to congratulate Susan G. Gainey for being appointed as a Partner with the firm!

FIRM SUCCESS

Florida Supreme Court Affirms Victory for Employer in Discrimination Case

The firm secured a win on appeal in an employment discrimination matter before the State of Florida Commission on Human Relations. Cindy A. Townsend and Farideh E. Tadros attended a final hearing before Administrative Judge John G. Van Laningham, on behalf of Respondent employer. The final hearing took place following Petitioner's complaints of being subjected to discriminatory employment practices. Upon hearing the arguments of both sides and reviewing the evidence presented, Judge Laningham entered a Final Order Dismissing Petitioner's Petition for Relief with Prejudice ("Final Order"). Petitioner appealed the Final Order in the First District Court of Appeals. Upon reviewing the briefs submitted by the parties, the record on appeal, and otherwise being fully advised in the premises, the First District Court of Appeals affirmed the Florida Commission on Human Relations' Final Order Dismissing Petitioner's Petition for Relief with Prejudice. Petitioner then filed an Appeal with the Florida Supreme Court who similarly denied Petitioner's appeal in favor of Respondent.

Voluntary Dismissal with Prejudice of Wrongful Death and Civil Rights Lawsuit

Ramon Vazquez secured a voluntary dismissal with prejudice in favor of a local municipality and one of its police officers in a lawsuit filed by the Estate of a man who was arrested for resisting without violence, was taken to the County Jail, and developed symptoms that caused him to be comatose, ultimately resulting in his death. Plaintiff alleged that the Defendants deprived the Decedent of his rights under the Fourth, Fifth and Fourteenth Amendments to the U.S. Constitution, as well as claims under 42 U.S.C. §§1983 & 1988, and *Monell v. Dept. of Social Services*, 436 U.S. 658 (1978).

After conducting ample discovery, the record was devoid of evidence of any wrongdoing by the City or its officer. Mr. Vazquez discussed the issue with opposing counsel, who agreed to voluntarily dismiss the case with prejudice, with no consideration paid to Plaintiff, other than Defendants agreeing to not pursue fees and costs.

FIRM SUCCESS

Firm Team Achieves Full Dismissal of Claims Against CDD

We are proud to recognize the outstanding work of Sherry G. Sutphen and Susan G. Gainey, who secured a complete summary judgment victory on behalf of a local CDD. On February 2, 2026, the St. Johns County Circuit Court granted the CDD's Motion for Final Summary Judgment, dismissing all claims asserted against the CDD. The plaintiff—a subcontractor who performed landscaping work—attempted to impose liability under Florida's public works bonding statute and sought to foreclose a construction lien on CDD-owned property. Sherry and Susan persuasively established that the plaintiff's statutory and lien theories could not be sustained under Florida law. The Court held that the subcontracted landscaping and irrigation work did not qualify as a "public works project" under Florida law.

On the lien-foreclosure claim, Sherry and Susan secured a decisive ruling grounded in long-standing Florida law: property owned by a governmental entity—including a community development district—is exempt from construction liens and execution. The Court held that a mechanic's lien will not attach to property held and used for a public purpose, and that CDD property is expressly protected from levy and sale. The Court agreed with the arguments advanced by Sherry and Susan, bringing the litigation to a definitive and favorable conclusion for the CDD.

Summary Judgment in Heavily Contested Employment Case

Ramon Vazquez recently obtained a summary judgment in favor of a local County in a lawsuit filed by a former employee, which included ten counts alleging various types of retaliation, discrimination, and hostile work environment in violation of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e et seq. ("Title VII"); the Florida Civil Rights Act, Fla. Stat. § 760.01 et seq. ("FCRA"); the Florida Whistleblower's Act, Fla. Stat. § 112.3187 et seq. ("FWA"), as well as allegations of negligent infliction of emotional distress.

In a well-reasoned order, the Court held that dismissal was appropriate and granted summary judgment in favor of the County on all ten counts.

CONTACT A MEMBER OF THE FIRM

Jeffrey L. Ashton - jashton@roperpa.com

Jennifer C. Barron - jbarron@roperpa.com

David A. Belford - dbelford@roperpa.com

David B. Blessing - dblessing@roperpa.com

Jeffrey A. Carter - jcarter@roperpa.com

Susan G. Gainey - sgainey@roperpa.com

David R. Jadon - djadon@roperpa.com

Jamie A. McManus - jmcmanus@roperpa.com

J. Chris Prusinowski - cprusinowski@roperpa.com

Syed M. Qadri - sqadri@roperpa.com

Michael J. Roper - mroper@roperpa.com

Sherry G. Sutphen - ssutphen@roperpa.com

Farideh E. Tadros - ftadros@roperpa.com

Pausha Taghdiri - ptaghdiri@roperpa.com

Cindy A. Townsend - ctownsend@roperpa.com

Ramon Vazquez - rvazquez@roperpa.com

M. Ryan Williams - rwilliams@roperpa.com

If you are interested in being added to our newsletter e-mail list, or if you wish to be taken off of this list, please contact Krysta Reed at kreed@roperpa.com.

THE INFORMATION PRINTED IN THIS NEWSLETTER IS FACT BASED, CASE SPECIFIC INFORMATION AND SHOULD NOT, UNDER ANY CIRCUMSTANCES, BE CONSIDERED SPECIFIC LEGAL ADVICE REGARDING A PARTICULAR MATTER OR SUBJECT. PLEASE CONSULT YOUR ATTORNEY OR CONTACT A MEMBER OF OUR FIRM IF YOU WOULD LIKE TO DISCUSS SPECIFIC CIRCUMSTANCES AND THE LAW RELATED TO SAME.