KASHI LAW LETTER
A Synopsis of Florida Case Law

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TORTS: CONVERSION; CIVIL PROCEDURE: DISMISSAL: FAILURE TO JOIN INDISPENSABLE PARTIES: IT IS UNNECESSARY TO JOIN ALL POTENTIALLY RESPONSIBLE PARTIES: FORUM NON CONVENIENS: DEFENDANTS HAVE BURDEN OF ESTABLISHING EXISTENCE OF ALL FOUR KINNEY FACTORS: TRIAL COURT IMPROPERLY SHIFTED TO PLAINTIFFS THE BURDEN OF PROVING THAT THE ALTERNATE FORUM WAS INADEQUATE: DEFENDANTS DID NOT PROVE THAT THE ALTERNATE FORUM WAS ADEQUATE BECAUSE IT WAS UNCLEAR WHETHER IT WOULD ACCEPT SUBJECT MATTER JURISDICTION: DEFERENCE TO BE ACCORDED TO PLAINTIFFS' CHOICE OF FORUM MUST BE CONSIDERED BEFORE WEIGHING PRIVATE INTEREST FACTORS: ALTHOUGH IT IS CLEAR THAT THE CHOICE OF FORUM OF A PLAINTIFF FROM ANOTHER COUNTRY IS NOT ENTITLED TO GREAT DEFERENCE, IT IS UNCLEAR WHETHER THE CHOICE IS ENTITLED TO ANY DEFERENCE AT ALL: PRIVATE INTEREST FACTORS WEIGHED HEAVILY IN PLAINTIFFS' FAVOR BECAUSE THE MAJORITY OF THE WITNESSES LIVED IN FLORIDA, SPLIT THEIR TIME BETWEEN VENEZUELA AND FLORIDA, OR WERE WILLING TO TRAVEL TO FLORIDA; THE DOCUMENTARY EVIDENCE COULD EASILY BE TRANSMITTED TO FLORIDA BY ELECTRONIC MEANS AND DID NOT WEIGH HEAVILY IN FAVOR OF EITHER FORUM; IT WOULD BE EASIER TO ENFORCE A JUDGMENT IF THE ACTION REMAINED IN FLORIDA BECAUSE THE DEFENDANTS RESIDED IN FLORIDA; AND THE PRACTICALITIES FAVORED FLORIDA BECAUSE THE DEFENDANTS LIVED IN FLORIDA AND WERE UNWILLING TO TRAVEL TO THE ALTERNATE FORUM, AND THE ALTERNATE FORUM MIGHT REFUSE TO ACCEPT JURISDICTION: IT WAS UNNECESSARY TO CONSIDER PUBLIC INTEREST FACTORS BECAUSE THE PRIVATE INTEREST FACTORS FAVORED THE PLAINTIFF: REINSTATING ACTION IN FLORIDA IF ALTERNATE FORUM REFUSED TO ACCEPT JURISDICTION WOULD NOT BE AUTOMATIC BECAUSE PLAINTIFF WOULD BE REQUIRED TO DEMONSTRATE EARNEST EFFORT TO LITIGATE IN THE ALTERNATE FORUM, AND PLAINTIFFS WOULD INCUR ADDITIONAL EXPENSE, LOSS OF TIME, INCONVENIENCE AND PREJUDICE

Publicidad Vepaco, C.A. v. Mezerhane, ___ So. 3d ___, 40 Fla. L. Weekly D197 (Fla. 3d DCA January 14, 2015)

The defendants, the owner and the chief executive officer of a Venezuelan bank, stole $72 million of the plaintiffs' United States Treasury Bills and fled to Florida. The plaintiffs, two Venezuelan corporations, sued the defendants in Miami. The trial court dismissed the plaintiffs' lawsuit based upon (1) failure to join indispensable parties because the defendants temporarily diverted the plaintiffs' treasury bills to Curacao with the assistance of two Curacaoan entities that were not included as defendants, and (2) forum non conveniens because Curacao would have been a more convenient forum. The appellate court reversed. (1) "An indispensable party is one whose legal or beneficial interest in the subject matter makes it impossible [to adjudicate completely] the matter without affecting that party's interest," but "it is not necessary to join all persons [or entities] potentially liable for damages for an action to proceed." In this case, the defendants failed to "demonstrate[] that the Curacaoan entities [were] indispensable in this action such that 'no final decision [could] be rendered without their joinder.'" (2) The trial court abused its discretion by dismissing the action based upon the doctrine of forum non conveniens. Under *Kinney System, Inc. v. Continental Insurance Company,* 674 So. 2d 868 (Fla. 1996), which was codified by *Fla. R. Civ. P.* 1.061(a), a trial court evaluating the applicability of the doctrine of forum non conveniens must consider (1) the existence of an adequate alternate forum, (2) private interest factors, (3) public interest factors if the private interest factors are evenly balanced or favor the alternate forum, and (4) the inconvenience or prejudice associated with reinstating the action in the alternate forum. (1) Although the defendants have the burden of proof on each of these factors, the trial court placed the burden of proving the first factor upon the plaintiffs. Rather than requiring the defendants to prove that Curacao would accept subject matter jurisdiction over the controversy, an issue that was unclear, the trial court provided that the plaintiffs could seek reinstatement of the action in Florida if the Curacaoan courts refused to accept subject matter jurisdiction. (2) Before considering private interest factors, the court must "address the presumption in favor of a plaintiff's choice of forum. If the plaintiff does not reside in a foreign country, "the plaintiff's initial choice of forum is always entitled to great deference." Although not entitled to great deference, it is unclear whether a foreign plaintiff's choice of venue is entitled to any deference whatsoever. In this case, the issue was academic because the private interest factors weighed heavily in favor of the plaintiffs. (a) "A majority of the witnesses, including key witnesses such as the Defendants themselves and the former directors or high-level employees of [the Venezuelan bank] either live[d]in 'Florida, split time between Venezuela and Miami, or [were] willing to travel to Florida for the litigation." (b) The documentary evidence was located in Venezuela, but the documents "[could] be easily transmitted by electronic means," making "the location of the documents . . . a 'minor consideration.'" (c) A judgment would be more easily enforceable in Florida because the defendants resided there. (d) The practicalities favored the plaintiffs because the defendants refused to travel from Florida to Curacao, and Curacao might refuse to accept jurisdiction. (3) The public interest factors were irrelevant because the private interest factors were not evenly balanced or did not favor the defendants. (4) If Curacao refused to accept jurisdiction, reinstatement in Miami would not be automatic. The plaintiffs would be required to show that they exercised "earnest efforts" to exercise jurisdiction in Curacao, which would consume additional time and expense and result in inconvenience and prejudice to the plaintiffs. Judge Emas concurred in Judge Rothenberg's majority opinion, and Judge Shepherd wrote a specially concurring opinion.

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APPEALS: MOTION TO ENFORCE MANDATE: TRIAL COURT LACKED DISCRETION ON REMAND TO DENY DEFENDANT'S MOTION FOR DECLARATORY JUDGMENT IN ITS FAVOR AFTER APPELLATE COURT REVERSED DECLARATORY JUDGMENT FOR PLAINTIFF BECAUSE DEFENDANT WAS ENTITLED TO PREVAIL ON THE MERITS

Casino Investment, Inc. v. Palm Springs Mile Associates, Ltd., ___ So. 3d ___, 40 Fla. L. Weekly D201 (Fla. 3d DCA January 14, 2015)

The plaintiff, which owned a shopping center, filed an action for declaratory relief and injunction against the defendant, which owned a parcel in the shopping center, contending that the defendant's proposed construction violated the Declaration of Easement for the center. The plaintiff prevailed in the trial court, but the appellate court reversed, holding that "the clear and unambiguous provisions of the Easement [did] not expressly bar [the defendant's] proposed construction." On remand, the trial court denied the defendant's motion for final declaratory judgment in its favor and granted the plaintiff's motion to amend its complaint. The defendant responded by filing a motion in the appellate court to enforce mandate. The appellate court granted the defendant's motion because it previously held that "the trial court erred in ruling that the proposed construction was barred by the Declaration of Easement and erred in entering declaratory judgment in favor of [the plaintiff] on that basis." As a result, "on remand, the trial court was without discretionary power to deny [the defendant's] motion for final declaratory judgment on the merits of [the plaintiff's] single count complaint for declaratory relief."

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REAL ESTATE: MORTGAGE FORECLOSURE: NOTICE OF DEFAULT: ACCELERATION: STATUTE OF LIMITATIONS: NOTICE OF DEFAULT DID NOT TRIGGER ACCELERATION OF DEBT AND START RUNNING OF STATUTE OF LIMITATIONS

Snow v. Wells Fargo Bank, N.A., ___ So. 3d ___, 40 Fla. L. Weekly D201 (Fla. 3d DCA January 14, 2015)

The appellate court rejected the borrower's statute of limitations defense and affirmed final judgment of foreclosure for the lender. The borrower contended that the lender accelerated the debt and the statute of limitations began to run when the lender provided the borrower with notice of default, but the notice merely stated that the lender retained the option to accelerate if the borrower failed to cure the default within the time specified in the notice. The lender did not actually exercise its option to accelerate until it filed its foreclosure complaint, which stated that "Plaintiff declares the full amount due under the note and mortgage to be now due."

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CONTRACTS: CONSTRUCTION: ARBITRATION: CONFIRMATION: ARBITRATOR DID NOT SHOW PARTIALITY BY COMMENTING ON EVIDENCE

OR SEEKING CLARIFICATION OF PARTY'S POSITION: CONFIRMATION OF AWARD WAS INVALID BECAUSE ARBITRATOR RESERVED JURISDICTION TO AWARD INTEREST BUT HAD YET TO DO SO: CONFIRMATION OF PARTIAL AWARD WAS INVALID AND DID NOT DIVEST ARBITRATOR OF JURISDICTION TO AWARD INTEREST: ATTORNEY'S FEES: AWARD OF ATTORNEY'S FEES WAS NOT SUBJECT TO REVERSAL BASED UPON PREVAILING PARTY'S FAILURE TO ESTABLISH MARKET RATE OF ASSOCIATES AND PARALEGALS BECAUSE LOSER STIPULATED THAT WINNER WAS NOT REQUIRED TO PROVIDE EXPERT EVIDENCE ON REASONABLENESS OF FEES, LEAD PARTNER TESTIFED ABOUT RATES CHARGED OTHER CLIENTS AND THAT RATES WERE TYPICAL FOR REGION, AND LOSER DID NOT PROVIDE COUNTER EVIDENCE: REDUCTION OF LEDESTAR BASED ON LIMITED RECOVERY WAS NOT ABUSE OF DISCRETION: APPEALS: PRESERVATION: LOSER DID NOT PRESERVE RIGHT TO CHALLENGE CALCULATION OF INTEREST

Jomar Properties, L.L.C. v. Bayview Construction Corporation, ___ So. 3d ___, 40 Fla. L. Weekly D206 (Fla. 4th DCA January 14, 2015)

The contractor sought damages from the owner for breach of contract and to foreclose on a construction lien. After an evidentiary hearing, the arbitrator awarded damages to the contractor and reserved jurisdiction to award interest and attorney's fees. The owner moved to vacate the award based upon evident partiality on the part of the arbitrator, and the contractor moved to confirm the award. The circuit court denied the motion to vacate and granted the motion to confirm. After confirmation of the award, the arbitrator awarded interest and determined that the contractor was entitled to fees, but the parties agreed to have the circuit court determine the amount. After the award of fees, both parties appealed, but the appellate court affirmed on all issues. (1) The arbitrator did not show partiality by making permissible comments on the evidence and seeking clarification of a party's position. (2) The trial court's confirmation of the arbitrator's award of damages was invalid because the arbitrator reserved jurisdiction to award interest but had yet to do so. As a result, the confirmation did not divest the trial court of jurisdiction to award interest. (3) The trial court's award of attorney's fees was not subject to reversal because of the contractor's failure to establish the market rates of the associates and paralegals who worked on the case because the owner stipulated that expert evidence on the reasonableness of attorney's fees was unnecessary, the lead partner testified about the fees charged to other clients and that the fees were typical for the region, and "[the owner] did not provide any counter evidence." (4) The trial court did not abuse its discretion by reducing the lodestar fee based upon the results obtained because the contractor "recovered substantially less damages than it had sought." (5) The owner failed to preserve its challenge to the trial court's calculation of post-award interest.

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ESTATES: PROBATE: ADVERSARY PROCEEDINGS: ATTORNEY'S FEES: FLA. R. CIV. P. 1.525 APPLIES TO ADVERSARY PROBATE PROCEEDING IF JUDGMENT WAS ENTERED BEFORE SEPTEMBER 28, 2011, THE EFFECTIVE DATE OF THE AMENDMENT TO FLA. PROB. R. 5.025(d)(2)

Finnegan v. Compton, ___ So. 3d ___, 40 Fla. L. Weekly D208
(Fla. 4th DCA January 14, 2015)

Fla. Prob. R. 5.025(d)(2) was amended on September 28, 2011. Prior to the amendment, *Fla. R. Civ. P.* 1.525 applied to adversary probate proceedings; after the amendment, Rule 1.525 no longer applies. In this case, judgment in an adversary probate proceeding was entered over eight months before the amendment to Rule 5.025(d)(2). Therefore, Rule 1.525 applied, and a motion for attorney's fees filed twenty months after the entry of final judgment was untimely.

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INSURANCE: HOMEOWNERS' INSURANCE: SINKHOLE: NEUTRAL EVALUATION: STAY: COURT DISTINGUISHES BETWEEN ACTION FOR BREACH OF CONTRACT AND ACTION ON CONTRACT: HOMEOWNERS BROUGHT ACTION ON CONTRACT, RATHER THAN AN ACTION FOR BREACH OF CONTRACT, BY SEEKING A DETERMINATION OF ENTITLEMENT TO AND AMOUNT OF DAMAGES: LOSS PAYABLE CLAUSE CONTEMPLATES LITIGATION BEFORE LOSS IS PAYABLE: EVEN IF INSUREDS' LAWSUIT WAS PREMATURE BECAUSE IT WAS FILED BEFORE PAYMENT WAS DUE UNDER LOSS PAYABLE CLAUSE, SUMMARY JUDGMENT WAS NOT AN APPROPRIATE REMEDY BECAUSE INSURER ADMITTED COVERAGE: INSUREDS' ACTION ON CONTRACT AFTER INSURER INITIATED NEUTRAL EVALUATION DID NOT VIOLATE STAY PROVISION OF STATUTE OR THE SUITS AGAINST US PROVISION OF THE INSURANCE POLICY: INSURER WAS NOT ENTITLED TO SUMMARY JUDGMENT BASED UPON INSUREDS' FAILURE TO COOPERATE WITH INSURER'S COSMETIC REPAIR CONTRACTOR BECAUSE INSURER DID NOT SHOW THAT IT WAS PREJUDICED, AND INSURED COOPERATED WITH INSURER'S ENGINEER ON A MORE SIGNIFICANT ASPECT OF DAMAGES

Curtis v. Tower Hill Prime Insurance Company, ___ So. 3d ___, 40 Fla. L. Weekly D209 (Fla. 2d DCA January 14, 2015)

When the insureds made a claim for damage to their home, the insurer retained an engineer, who determined that the loss was caused by sinkhole activity. After this determination was made, the parties disagreed about the cost of remediation, the insurer initiated neutral evaluation, and the insureds filed an action on the insurance contract. The trial court entered summary judgments for the insurer because (1) the action was filed before payment was due under the loss payable clause of the policy, and (2) the action was filed after the insurer initiated neutral evaluation, but the trial court denied summary judgment based upon (3) the insureds' failure to cooperate with the insurer's cosmetic repair contractor. The appellate court reversed the summary judgments. (1) The court distinguished between an action for breach of contract and an action on the contract. In this case, the plaintiffs brought an action on the contract because they were not alleging that the contract was violated; they were merely seeking "to determine their entitlement to and amount of damages. The [loss payable provision of the policy, which specifies when a loss is payable] did not render the suit premature; indeed, that provision expressly contemplated that there might be a final judgment – presumably stemming from a lawsuit – before payment was due. But certainly, even when an insurance suit is filed prematurely, final summary judgment would not be the appropriate remedy where, as here, the insurance company has admitted coverage." (2) "[T]he [neutral evaluation] statute does not by its terms preclude the filing of a lawsuit." As a result, "[t]he [insureds'] mere filing of suit did not violate the stay provision in the statute, and therefore, it did not violate the [Suits Against Us clause in the] insurance policy." (3) The insurer was not entitled to summary judgment based upon the insureds' failure to cooperate with the insurer's cosmetic repair contractor because (a) "[the insurer] did not show that it was prejudiced, and (b) "the [insureds] partially complied by cooperating with the investigation by [the insurer's] engineer on the more significant aspect of damages. '[I]f the insured cooperates to some degree or explains his failure to comply, whether the insured materially breached the policy remains a question for the fact finder."

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UNLICENSED PRACTICE OF LAW: MEDICAID PLANNING ACTIVITIES: NONLAWYER ENGAGES IN UNAUTHORIZED PRACTICE OF LAW BY DRAFTING PERSONAL SERVICE CONTRACT; DETERMINING THE NEED FOR, PREPARATION, AND EXECUTION OF QUALIFIED INCOME TRUST AND GATHERING INFORMATION TO COMPLETE THE TRUST OR SELLING QUALIFIED INCOME TRUST FORMS OR KITS FOR MEDICAID PLANNING; AND RENDERING LEGAL ADVICE REGARDING THE IMPLEMENTATION OF FLORIDA LAW TO OBTAIN MEDICAID BENEFITS: NONLAWYER DOES NOT ENGAGE IN UNLICENSED PRACTICE OF LAW BY PREPARING MEDICAID APPLICATION BECAUSE THIS ACTIVITY IS AUTHORIZED BY FEDERAL LAW: DCF STAFF DOES NOT ENGAGE IN UNLICENSED PRACTICE OF LAW BY TELLING MEDICAID APPLICANTS ABOUT MEDICAID TRUSTS AND OTHER ELIGIBILITY LAWS AND POLICIES GOVERNING THE STRUCTURING OF INCOME AND ASSETS RELEVANT TO THE APPLICANT'S FACTS AND FINANCIAL SITUATION

The Florida Bar Re: Advisory Opinion – Medicaid Planning Activities by Nonlawyers, ___ So. 3d ___, 40 Fla. L. Weekly S14 (Fla. January 15, 2015)

The Florida Supreme Court approved a revised proposed advisory opinion of the Florida Bar

Standing Committee on the Unlicensed Practice of Law dealing with Medicaid planning activities. The amended opinion concluded that a nonlawyer engages in the unlicensed practice of law by (1) "draft[ing] a personal service contract and determining the need for, prepar[ation], and execut[ion] of a Qualified Income Trust including gathering the information necessary to complete the trust" or "sell[ing] personal service or Qualified Income Trust forms or kits in the area of Medicaid Planning," (2) "render[ing] legal advice regarding the implementation of Florida law to obtain Medicaid benefits. . . . "includ[ing] advising an individual on the appropriate legal strategies available for spending down and restructuring assets and the need for a personal service contract or Qualified Income Trust." A nonlawyer does not engage in the unauthorized practice of law by "prepar[ing] the Medicaid application itself . . . as it is authorized by federal law." DCF staff does not engage in the unlicensed practice of law by "tell[ing] Medicaid applicants about Medicaid trusts and other eligibility laws and policies governing the structuring of income and assets when relevant to the applicant's facts and financial situation."

REAL ESTATE: MORTGAGE FORECLOSURE: NOTICE OF DEFAULT: EVIDENCE: HEARSAY: TRIAL COURT ERRED BY ALLOWING LENDER'S ORAL TESTIMONY REGARDING BORROWER'S CHANGE OF ADDRESS AND NOTICE TO BORROWER AT NEW ADDRESS, RATHER THAN REQUIRING LENDER TO INTRODUCE ITS BUSINESS RECORD OF THE WRITTEN CHANGE-OF-ADDRESS FORM EXECUTED BY BORROWER

Webster v. Chase Home Finance, LLC, ___ So. 3d ___, 40 Fla. L. Weekly D213 (Fla. 5th DCA January 16, 2015)

The appellate court reversed final judgment of foreclosure because the trial court erred by allowing the lender to introduce inadmissible hearsay evidence to prove that it provided notice of default to the borrower at his new address. The trial court, over the borrower's objection, permitted the lender's witness to testify about the borrower's "change of address and notice to [the borrower] at [his] new address. The trial court should have required [the lender] to present its business record of the written change-of-address document that it claims [the borrower] executed to change the address where notice was to be provided. The trial court abused its discretion in allowing this oral testimony over [the borrower's] objection."

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REAL ESTATE: HOMEOWNER'S ASSOCIATION: LIEN FORECLOSURE: CIVIL PROCEDURE: TRIAL COURT DEPRIVED PRISON INMATE OF DUE PROCESS OF LAW BY IGNORING HER MOTION TO APPEAR TELEPHONICALLY AT SUMMARY JUDGMENT HEARING: NONLAWYERS: INMATE'S DAUGHTER, WHO WAS NOT LICENSED TO PRACTICE LAW, LACKED AUTHORITY TO APPEAR AS HER MOTHER'S REPRESENTATIVE AT THE HEARING AND TO AGREE TO THE ENTRY OF JUDGMENT

Hubsch v. Howell Creek Reserve Community, ___ So. 3d ___, 40 Fla. L. Weekly D214 (Fla. 5th DCA January 16, 2015)

The appellate court reversed final summary judgment foreclosing a homeowner's association lien for unpaid assessments. The trial court deprived the defendant, a prison inmate, of due process of law by ignoring her motion to appear telephonically. Although the defendant's daughter supposedly appeared as the defendant's representative and agreed to the entry of final judgment, the daughter was not licensed to practice law and lacked the authority to act as her mother's legal representative.

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INJUNCTIONS: STALKING: ONE EMAIL THAT WOULD CAUSE A REASONABLE PERSON TO SUFFER SUBSTANTIAL EMOTIONAL DISTRESS WAS INSUFFICIENT TO SUPPORT AN INJUNCTION AGAINST STALKING

Laserinko v. Gerhardt, ___ So. 3d ___, 40 Fla. L. Weekly D214
(Fla. 5th DCA January 16, 2015)

The petitioner withdrew from her relationship with the respondent when he wanted to expand it beyond mere friendship. Over the next four month period, the respondent sent to the petitioner five emails; one card with "a small stuffed teddy bear, chocolates, and a compact disc;" and one letter. After she received the letter, the petitioner filed a petition for injunction for protection against stalking. The trial court granted the petition after conducting a nonjury trial, but the appellate court reversed because only one communication would have caused a reasonable person to suffer substantial emotional distress and, "by its statutory definition, stalking requires proof of repeated acts." Section 784.048(1)(a) and (b), Florida Statutes.

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TORTS: PERSONAL INJURY: CAUSATION: SHOPPER STRUCK IN BACK BY 8.4 OUNCE, SQUISHY, ORNAMENTAL PUMPKIN: TRIAL COURT ERRED BY GRANTING NEW TRIAL ON DAMAGES FOR INITIAL MEDICAL EVALUATION OF PLAINTIFF, AFTER JURY RETURNED ZERO VERDICT, BECAUSE BIOMECHANICAL ENGINEER TESTIFIED IMPACT COULD NOT HAVE CAUSED INJURY TO PLAINTIFF; APPEALS: PRESERVATION: PLAINTIFF DID NOT PRESERVE CHALLENGE TO VERDICT BECAUSE SHE FAILED TO OBJECT TO JURY INSTRUCTIONS OR VERDICT FORM AND FAILED TO MOVE FOR A DIRECTED VERDICT ON ENTITLEMENT TO RECOVERY OF DIAGNOSTIC BILLS

Schwartz v. Wal-Mart Stores, Inc., ___ So. 3d ___, 40 Fla. L. Weekly D215

(Fla. 5th DCA January 16, 2015)

The plaintiff was struck in the back by an 8.4 ounce, squishy, ornamental pumpkin while shopping at Wal-Mart. Although the store admitted that its employees were negligent, it "vigorously contested causation and damages" and called a biomedical engineer, who testified that the impact could not have caused injury to the plaintiff. The jury returned a verdict for zero damages, but the trial court granted a new trial on damages for initial medical evaluation. The appellate court reversed because the expert testimony from the biomedical engineer "sufficiently supported the conclusion that the impact could not have caused any injury to [the plaintiff]." In general, "the plaintiff is still entitled to recover those expenses incurred for medical examination and diagnostic testing reasonably necessary to determine whether the incident caused injuries" "even when a jury finds that a plaintiff was not injured as a result of the subject accident." Exceptions to this general rule exist if there is evidence of "pre-existing injuries with extensive treatments, lack of candor with the treating physicians, video tapes that show actual physical capabilities, and expert medical opinions which conflict as to causation." The biomedical testimony in this case triggered the exception to the general rule. Furthermore, the plaintiff failed to preserve the claimed error by failing to object to the jury instructions and verdict form and failing to move for a directed verdict on entitlement to recover the cost of initial medical evaluation. The verdict form instructed the jury to date and sign the verdict form if it found that negligence on the part of the defendant was not a cause of loss, injury, or damage to the plaintiff. The plaintiff did not ask to modify the verdict form to enable the jury to make findings, despite a negative response to the causation question, "whether it was reasonable and necessary for [the plaintiff] to have incurred medical expenses for her initial diagnostic care and, if so the amount of those expenses. Additionally, [the plaintiff] never moved for a directed verdict on the issue of recovery for these diagnostic bills. In failing to do so, she elected to leave this issue up to the jury. . . . Therefore, because there was sufficient evidence to support the jury's finding that Wal-Mart did not cause [the plaintiff] any loss, injury, or damage, and because [the plaintiff] elected to leave this issue up to the jury, [the court found] that the granting of a new trial was unwarranted."

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