

Super Lawyers



# THE SHIELD



## FIRM SUCCESSFULLY DEFENDS CHUCK E. CHEESE'S IN COMPLEX PREMISES TRIAL



Plaintiff, a 73 year old grandmother had exited a Tampa area Chuck E. Cheese's (CEC) into the breezeway of a shopping mall. She turned to say goodbye to her family and allegedly slipped and fell on a slippery substance in the mall's common area. Plaintiff was stabilized and taken by ambulance to a nearby hospital where she was diagnosed with a fractured hip. Plaintiff immediately had a full hip replacement surgery. Plaintiff suffered complications with the original hip replacement and required a second surgery to replace the original prosthetic hardware implanted. Total past medical bills were approximately \$300,000.

In this week and a half long jury trial in Hillsborough County, Plaintiff called 15 witnesses including Elliott Stern Ph.D. to testify on building codes, industry standards, and local regulations for maintenance of commercial facilities. He testified as to proper maintenance plans and reasonable protocols for increases in foot traffic for business.

Plaintiff also called Frank Fore, a biomechanical engineer regarding human factors, re-creation of the subject fall, and why certain building codes are intended to prevent similar falls. Fore was asked to analyze the surveillance video of the subject fall and create a simulation of the missing frames to try to provide evidence that Plaintiff, in fact, slipped on a substance.

Plaintiff called radiologist, Dr. Michael Foley, and orthopedic surgeon, Dr. Fabio Fiore, to testify regarding Plaintiff's severe disabilities and loss of enjoyment of life. Foley confirmed the nature of the injury and Fiore testified on the nature and severity of the Plaintiff's two surgeries.

Life Care Planner, Dr. John Merritt was called to explain to the Jury why Plaintiff would need home health care, occupational therapy,

multiple future surgeries, motorized wheelchairs, and a handicapped accessible van in the future. Forensic accountant, Brenda Mulder, explained to the jury that the future-care needs required a present money investment of \$1.8 million.

For the Defense, attorneys for CEC argued that the lease agreement called for the landlord to maintain the common areas. They established that per the terms of the lease agreement, the legal duty for all janitorial services fell upon the landlord. Additionally, CEC presented evidence that when debris was present in the breezeway, they would go above and beyond their legal duty to clean it up. Evidence showed that CEC put the safety of their patrons, young and old, of paramount importance.

Finally, the Defense also presented video evidence of the fall in the breezeway. CEC argued that the video showed that there was no substance on the ground where the Plaintiff fell. Furthermore, the video clearly showed that just moments before, a family traversed the same spot without problem. On the issue of damages, the Defense called an orthopedic surgeon, a radiology expert, and a biomechanical/ biomedical engineer.

At the end of the 7-day trial, Plaintiff asked the Jury to award more than \$4 million. Jury returned *defense verdicts for CEC and Landlord*.



Lee A. Kantor



Michael A. Scanio

## FOR GREAT SETTLEMENTS — “WALK SOFTLY BUT CARRY A BIG STICK”

...is a famous line from “the soldier President”, Teddy Roosevelt. It's the same for companies defending personal injury cases in Florida. If you want great settlements, you've got to have the reputation for trying cases if you need to. The plaintiff attorneys know which big defense firms always fold right before trial. They call them “Daniel Boone” defense firms—the great settlers. Ask your defense attorney how many trials he has had in the past 24 months. More than likely, two or less—one per year. That's not enough! Morgan & Morgan PA makes their attorneys try at least three cases per year. John Morgan knows that for his firm to have credibility when negotiating, the defense must be convinced they will go to trial if necessary. Our firm averages six jury trials a year with only 22 attorneys. We may try more cases per capita than any other defense firm in Florida. That's part of the reason companies who want great settlements choose our firm—because we are known as a real trial firm. We are constantly in publications, winning trials for Marriott, Publix, Waste Management, and other prestigious companies. And the plaintiff attorneys who lose to us inevitably tell others not to test our will. We know what cases to advise our business partners to take to trial and we win 80% to 90% of those. Everyone agrees that going to trial should be a last resort, but you also need to have the guts to try cases that call for it. If you always run from a fight, people won't respect you. To avoid fights, you need to stand up to bully plaintiff attorneys and knock them out with a defense verdict every now and then. Morgan insists his attorneys try cases—shouldn't you require the same of your defense firm? It's not a big risk if we give you an 80% chance to win, right?

## BROWARD JURY BELIEVES PUBLIX DRIVER RATHER THAN MISSIONARY'S POSITION



Dale R. Hightower



Dan M. Novigrod



Plaintiff claimed that after he was rear-ended by a Publix tractor-trailer, he couldn't work anymore and decided to become a missionary in Central America. The accident happened in July 2011, and the Plaintiff stated that he was so incapacitated by severe pain in his neck, back and right knee that he could not move to get out of his vehicle. An ambulance came to the scene and put the Plaintiff on a backboard to take him to a nearby hospital. X-rays were taken of Plaintiff's neck, back, and knee, and a CAT scan of his brain was taken due to complaints of dizziness. Plaintiff left the hospital on crutches, wearing a knee brace.

Plaintiff commenced medical treatment the following day for neck, back, and right knee pain which went on for 5 months. In December of 2011, he saw orthopedic surgeon, Dr. Rozenwaig, for treatment of his knee. Rozenwaig testified at trial that Plaintiff had a permanent injury and recommended surgery, which was performed by Dr. Kazdan in February of 2012. Kazdan testified at trial that Plaintiff suffered a permanent injury from the subject accident.

Dr. Stauber, who treated Plaintiff's low back, recommended possible discectomy and fusion if Plaintiff's pain continued. Plaintiff denied prior injuries to his neck, back, or right knee, but discovery revealed treatment 5 years prior in these same areas.

Plaintiff was examined by a defense orthopedic surgeon who opined that his injuries were pre-existing degenerative conditions. Plaintiff called accident reconstruction expert who testified Plaintiff was rear-ended and it was the fault of the Publix driver. The Defense retained an accident reconstruction expert who testified that Plaintiff hydroplaned, lost control of vehicle, and struck the side of the Publix truck in two separate locations.

Plaintiff incurred \$77,000 in past medicals and demanded \$2 million when the lawsuit was filed. Publix filed a Proposal for Settlement for \$25,000.

### *Jury Decision – Defense Verdict*

## FIRM'S FLAT FEE FOR PRE-SUIT MEDIATION SLASHES DEFENSE COSTS



To better serve our business partners during the claims negotiation process, the firm announces flat fee arrangements for all pre-suit mediations set in or near our four offices. After hearing our business partner's concerns of Plaintiffs quickly filing suit after failed negotiations, our firm decided to offer a solution to this "all or nothing" situation.

Our statewide offices each have video conference capability so you can see, speak, and listen to the claimants during mediation, just as if you were there in person. Doing virtual, real-time mediations from the convenience of your own computer saves thousands of dollars in airplane, hotel, and transportation costs—not to mention precious TIME away from family and other work matters.

At only \$1,950 for simple matters and \$2,950 for more complex matters, you can close out a file instead of racking up \$50,000 or more in defense costs. It's straightforward, inexpensive, and effective!

Simply e-mail us the Plaintiff's attorney's name, and we will set up a mutually convenient time for all parties to meet and take another shot at resolving the case. And with our firm's 50% success rate, it makes sense to spend a little to save a lot.

Please contact Partner Chris Stratton for details.



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## VERDICT REACHED IN TRACTOR-TRAILOR CRASH THAT SHUT DOWN FLORIDA'S TURNPIKE

In the early morning hours of October 1, 2010, Plaintiff was traveling southbound on a foggy Florida's Turnpike in Ft. Pierce, Florida in an Old Dominion tractor with tandem trailer. The Defendant's tractor-trailer crashed into a dump truck going slower, causing it to jackknife across all southbound lanes of traffic. The Plaintiff's loaded dual tractor-trailer ran into the broad side of a Stericycle trailer after first hitting a Sealy Mattress truck. The Florida Turnpike was shut down for several hours as a result of the crash. Damage to the Plaintiff's vehicle was extensive as shown in the photograph below.



Plaintiff was transported by Fire Rescue to the St. Lucie Medical Center. He was found to have a massive tear to his right shoulder. Approximately one month after the accident, Plaintiff underwent an arthroscopic repair of the right shoulder. In the months following, Plaintiff suffered a fall after a physical therapy session. Plaintiff's orthopedic

surgeon recommended a total reverse arthroplasty of the right shoulder, also known as total shoulder replacement. Plaintiff allegedly lost his job as a truck driver when he made approximately \$75,000 per year as a result of this accident.

At trial, Plaintiff presented testimony from his orthopedic surgeon, Dr. Rahul Deshmukh. Deshmukh opined that Plaintiff needed the shoulder replacement and that it was directly connected to the subject crash, and would cost more than \$20,000 in surgeon's fees. Plaintiff also presented Vocation Rehabilitation Counselor and Life Care Planner, John Roberts. Roberts first testified that Plaintiff's future surgery would cost approximately \$64,000. He then testified that Plaintiff could never go back to his job as a truck driver. He said, Plaintiff has no transferable skills in the job market and had not been able to get a job for the preceding 6 years. Roberts testified that

Plaintiff's hope of making more than minimum wage in the future was not good. Roberts opined that the most Plaintiff could make would be about \$16,000 per year, totaling a loss of \$60,000 per year. He stated that Plaintiff's past loss wages of \$462,000 and loss of future wages of \$177,000 equaled a total of \$639,000. Plaintiff testified that he had planned to work until age 70.

Defendant's orthopedic surgeon agreed that Plaintiff required a total shoulder replacement and attributed the injury to the subject accident. He also testified that if Plaintiff had followed doctors' orders and completed physical therapy, or alternatively, had the necessary surgery years earlier, he could have returned to his job as a truck driver within 6 months. Defense filed a Proposal for Settlement for \$350,000 ten months prior to trial.

Plaintiff's counsel asked the Jury to award \$36,104 in past medical damages, \$50,000 in future medical damages, \$462,000 in past wage losses, \$177,000 in future diminished earning capacity. Lastly, Plaintiff asked the Jury to award \$1.5 million in past pain and suffering and \$99,000 in future pain and suffering. A grand total of \$2.32 million.

Defense argued reasonable compensation was around \$120,000 and the Jury agreed.

**Verdict—\$160,000**



Lee A. Kantor



Dale R. Hightower

## TAMPA BAY OFFICE EXPANDS DUE TO PLANKEY AND SCANIO'S REPUTATION FOR SUCCESS

The Tampa Bay office has seen its biggest growth in firm history under the leadership of Partner Scott Plankey and Division Leader Michael Scanio. Ever since this dynamic duo teamed up two years ago, our new assignments and business partners have doubled in Tampa. This is a direct result of their growing reputation as a couple of the toughest defense attorneys in the state. Their incredible multimedia mediation presentations and settlements caused three Fortune 400 companies to dismiss their existing law firms and transfer all of their cases to Scott and Michael! Tampa Bay is now our hottest office in the state. Congratulations team!

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## SON OF MAHI DICK'S REVENGE

As you will recall from the prior issue of our newsletter, Partner Dan Novigrod slayed the feared Mahi Dick while fishing off Bimini. Little did we know that the son of Mahi Dick witnessed his father's death and swore revenge on the boat who had caught his dad. Every day "Junior" risked his own life by rising up from the depths to look for the hull of the *Good Ole Daze*, jam a fishing net into its propellers, then leap into its cockpit to kill his father's assassins.

Finally, in early May of 2017, he spotted the tell tale prop wash of the *Good Ole Daze*...filled with Doritos chips, half eaten sandwiches, and upchuck.

"Junior" swam toward the transom of the sport fishing rig, hoping to get a glimpse of the bastard who killed his dad. Alas, he saw one of the companions of his dad's killer, a big bearded guy watching ballyhoo baits skipping above the prop wash.

So "Junior" calculated his best chance was to attack hairy-face with a high speed torpedo leap. Dale Hightower had no idea he was being targeted by a revenge seeking fish as he held the gaff in the cockpit, daydreaming about catching a massive blue marlin.

Suddenly and without warning, a blue green flash appeared out of the corner of his eye. In a purely instinctive reflex, Hightower swung his gaff around to shield his face from the blur.

At the same time the fish hurled his square head to bludgeon the side of Hightower's head—the point of the gaff swung around and pierced the fish's mouth (*see photo*).

Combining disaster averted with a tasty treat for dinner, the whole crew celebrated the day's events with beer and fish fingers at sunset back at the Bimini Big Game Club.

**"HE HATE ME!"**

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**H I G H T O W E R L A W . N E T**

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