UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO.: 15-81298-CV-MARRA-MATTHEWMAN

JULIAN BIVINS, as Personal Representative
of the ancillary Estate of Oliver Wilson Bivins,

Plaintiff,

vs.

CURTIS CAHALLONER ROGERS, JR.,
as former guardian, STEPHEN M. KELLY,
as successor guardian, BRIAN M. O'CONNELL,
ASHLEY N. CRISPIN, CIKLIN LUBITZ &
O'CONNELL, KEITH B. STEIN,
BEYS LISTON MOBARGHA & BERLAND, LLP
f/k/a BEYS STEIN MOBARGHA & BERLAND, LLP,
and LAW OFFICES OF KEITH B. STEIN, PLLC,
n/k/a STEIN LAW, PLLC,

Defendants.

_____/

PLAINTIFF'S MOTION FOR NEW TRIAL AS TO STEIN DEFENDANTS

Plaintiff, JULIAN BIVINS as Personal Representative of the ancillary Estate of Oliver Wilson Bivins ("the Estate"), by and through undersigned counsel, and pursuant to Federal Rule of Civil Procedure 59, hereby files its Motion for New Trial as to only Keith Stein, Beys Liston Mobargha & Berland, LLP f/k/a Beys Stein Mobargha & Berland, LLP, and Law Office of Keith B. Stein, PLLC n/k/a Stein Law, PLLC (collectively, the "Stein Defendants") and in support thereof provides the following Memorandum of Law.

MEMORANDUM OF LAW

I. Legal Standard

Rule 59, Federal Rules of Civil Procedure, provides that "[t]he court may, on motion, grant a new trial on all or some of the issues ... after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court." Fed. R. Civ. P. 59(a). "The motion for a new trial ... may raise questions of law arising out of alleged substantial errors in admission or rejection of evidence or instructions to the jury." *Montgomery Ward & Co. v. Duncan*, 311 U.S. 243, 251 (1940). As far as the motion for a new trial, the trial judge can grant a new trial if he believes the verdict is contrary to the weight of the evidence. *Id.* "A judge should grant a motion for a new trial when 'the verdict is against the clear weight of the evidence or will result in a miscarriage of justice, even though there may be substantial evidence which would prevent the direction of a verdict.'" *Lipphardt v. Durango Steakhouse of Brandon, Inc.*, 267 F.3d 1183, 1186 (11th Cir. 2001) (quoting *Hewitt v. B.F. Goodrich Co.*, 732 F.2d 1554, 1556 (11th Cir. 1984)). The decision as to whether to grant a new trial is committed to the discretion of the trial judge. *Lambert v. Fulton County. Ga.*, 253 F.3d 588, 595 (11th Cir. 2001).

Prior to assessing the evidence, we must consider the standard of harmless error to be applied in a civil case. In *Conway v. Chemical Leaman Tank Lines*, 525 F.2d 927, 929 n. 3 (5th Cir.1976), the Fifth Circuit ruled that in civil cases courts should apply the same standard as announced in *Kotteakos v. United States*, 328 U.S. 750, 66 S.Ct. 1239, 90 L.Ed. 1557 (1946), a criminal case. In that case, the Supreme Court wrote that if a court

> is sure that the error did not influence the jury, or had but very slight effect, the verdict and the judgment should stand, except perhaps where the departure is from a constitutional norm or a specific command of Congress.... *But if one cannot say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error, it is impossible to conclude that substantial rights were not affected.* [Emphasis added].

Id. at 764–65, 66 S.Ct. at 1248 (footnote omitted) (citation omitted); *See* e.g., *Aetna Cas. & Sur. Co. v. Gosdin*, 803 F.2d 1153, 1160 (11th Cir. 1986). To answer the foregoing question, the Eleventh Circuit looks to a number of factors, including the number of errors, the closeness of the factual disputes (i.e., the strength of the evidence on the issues affected by the error), and the prejudicial effect of the evidence at issue, whether counsel intentionally elicited the evidence, whether counsel focused on the evidence during the trial, and whether any cautionary or limiting instructions were given. *Gosdin*, 803 F.2d at 1160; *Nettles v. Electroluz Motor AB*, 784 F.2d 1574, 1581 (11th Cir. 1986); *U.S. Steel, LLC v. Tieco, Inc.* 261 F.3d 1275, 1288 (11th Cir. 2001) (improper admission of state judicial opinion required a new trial where opinion was used by one of the parties "throughout the trial" to help establish disputed facts and counsel told the jury in closing argument "to use the opinion to make credibility determinations").

II. Striking the Testimony of Irwin Gilbert Based on Lack of Qualification Constitutes an Abuse of Discretion.

A. The Court's July 26, 2017 Order.

On July 26, 2017, this Court entered an order striking the testimony of the Estate's expert, Irwin Gilbert (hereinafter "Gilbert"). Specifically, the Order provided:

> The Court finds that Mr. Gilbert does not have the qualifications by way of knowledge, education, training or experience to be able to provide testimony as an expert witness relative to the appropriate standard of care to which an attorney representing a professional guardian of an incapacitated ward would be required to adhere. [DE 374].

The Estate contends that the exclusion of Gilbert's testimony was made in error. Specifically, the Order is overbroad in its exclusion of Gilbert's testimony because the Order only addresses Gilbert's qualification to opine on the issue of the appropriate professional standard of care. The Order, however, is silent as to Gilbert's qualification to opine on the issue of fiduciary duty, which the Estate established during the *Daubert* hearing. Accordingly, Gilbert should have been, at the very least, permitted to testify on the issue of fiduciary duty.

Additionally, the Estate urges the Court for entry of an Order granting a new trial as to its finding that Gilbert did not possess the requisite qualification to opine on the appropriate standard of care concerning the conduct of the Defendants. The Estate contends that the Order

applied an overly-narrow standard to the qualifications required of an expert to be permitted to testify in the 11th Circuit.

B. Legal Authority Concerning Expert Qualification.

The qualification standard for expert testimony is "not stringent," and "so long as the expert is minimally qualified, objections to the level of the expert's expertise [go] to credibility and weight, not admissibility." *Banta Properties, Inc. v. Arch Specialty Ins. Co.*, 2011 WL 7118542 (S.D. Fla. Dec. 21, 2011) (quoting *Hendrix v. Evenflo Co.*, 225 F.R.D. 568, 585 (N.D. Fla. 2009)). "An expert is not necessarily unqualified simply because [his] experience does not precisely match the matter at hand," so long as the expert is "minimally qualified…" *Kirksey v. Schindler Elevator Corp.*, 101 Fed. R. Evid Serv. 600, 2016 WL 5213928, at *6 (S.D. Ala. 2016). Where an expert does have congruent experience, "[n]othing in this amendment is intended to suggest that experience alone ... may not provide a sufficient foundation for expert testimony." Fed. R. Evid. 702 Advisory Committee's note (2000 amends).

Determining whether a witness is qualified to testify as an expert "requires the trial court to examine the credentials of the proposed expert in light of the subject matter of the proposed testimony." *Jack v. Glaxo Wellcome, Inc.*, 239 F.Supp.2d 1308, 1314–16 (N.D.Ga.2002). *Rushing v. Kansas City S. Ry. Co.*, 185 F.3d 496, 507 n. 10 (5th Cir.1999); *see also Martinez v. Altec Indus., Inc.*, 2005 WL 1862677, *3 (M.D. Fla. 2005) (quoting *Rushing*, 185 F.3d at 507 ("As long as some reasonable indication of qualifications is adduced, ... qualifications become an issue for the trier of fact rather than for the court in its gate-keeping capacity."), *superseded by rule on other grounds as recognized in Mathis v. Exxon Corp.*, 302 F.3d 448, 459 n. 16 (5th Cir.2002)); *Falic v. Legg Mason Wood Walker, Inc.*, 03-80377-CIV, 2005 WL 5955704, at *1 (S.D. Fla. Jan. 10, 2005), *8 (S.D. Fla. Jan. 6, 2005) (Court does not exclude expert testimony merely because his testimony may be based primarily on his professional experience as a litigator.); *Anderson v. State*, ____ So. 3d ____, 2017 WL 930924 (Fla. March 9, 2017) (expert not required to be "certified" in a particular subspecialty in order to offer expert testimony.); *Valentin v. New York City*, No. 94 CV 391 (CLP), 1997 WL 33323099, at *25 (E.D.N.Y. Sept. 9, 1997) ("The fact that a proposed expert may not have the exact qualifications to fit the case does not mean the expert's testimony is automatically inadmissible.").

"Courts should resolve doubts regarding the usefulness of an expert's testimony in favor of admissibility." *Lord v. Nissan Motor Co.*, 2004 U.S. Dist. LEXIS 25409, at *13, No. 03-3218

(D.Minn. Dec. 13, 2004) (citing *Clark v. Hendrick*, 150 F.3d 912, 915 (8th Cir. 1998)). "In borderline questions, it is more appropriate for a judge to admit the evidence than to exclude it from the fact finder because '[v]igorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.'" *Tolliver v. Naor*, 2001 U.S. Dist. LEXIS 18267, at *7, No. 99-0586 (E.D. La. Nov. 1, 2001) (quoting *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. at 596 (1993)).

C. The Estate Established Irwin Gilbert's Qualification to Provide Expert Testimony on the Issues of Fiduciary Duty and Professional Negligence.

Gilbert is a pre-eminent attorney with over 35 years of experience with vast experience in legal malpractice and fiduciary duty cases, who published on the issue of fiduciary duties and who was instrumental in the formulation of the legal precedent establishing the legal duties in the case at hand. (July 25, 2017 Trial Transcript Vol. VI, [DE 390 at 263:18-25]). During the Court's *Daubert* hearing, the Estate elicited the following testimony from Gilbert establishing his qualification to opine on the issues of fiduciary duty and professional malpractice:

a. Perhaps not coincidentally, the issue of whether or not an attorney for a guardian actually owes that duty to the ward was a matter that I litigated and that involves the Saadeh cases, which I believe have been cited in your proceedings, and, in fact, made new law in the Fourth District Court of Appeals, making it clear that, in fact, an attorney... owes the same duty to the ward. It's not merely a duty of care, but there's a duty of loyalty, and a lawyer has to apply skill and must act in the best interest of the ward. (*Id*. at 264:9-17.)

b. Well, I suppose there are different ways to go about practicing law. The way I go about practicing law involves mastering a subject. And so in some law firms, an attorney may have 30 or 40 or 50 files. I believe I have eight, perhaps 10 active cases at one time, and it's sometimes even fewer than those […]

   I've litigated numerous will contest cases in Florida and in New York, cases that involve, in Florida what we refer to as the Carpenter factors. I've litigated to establish guardianships over objection. That would be in the Annie Owens White guardianship. I've represented the guardianship in that case for more than five years. I represent the professional guardian in the McFarlane guardianship, and have done so, I think, for more than four years. (*Id*. at 265:4-25.)

c. We were initially engaged by Mr. Saadeh because he was unhappy with his court-appointed lawyer in an involuntary guardianship proceeding, and he was induced to sign what was labeled as a revocable trust, which, in fact, was an irrevocable trust, because it wasn't revocable by him. We had to litigate against opposition to substitute for his court-appointed lawyer. We had to litigate to reinstitute the guardianship

proceedings, which technically had been concluded with a purported settlement order. We had to convince the Court to retreat from that order [...]

We were successful in getting summary judgment. Then had to litigate to get the property that had been taken from the ward back to him and then discovered that a substantial -- in the six figures -- legal fees were taken out of the trust to pay the lawyers that were fighting to maintain the trust. We had to litigate to recover those attorney's fees. In so doing, we had to master the subject matter, again, of what is for the benefit of the ward and for the benefit of the ward's guardianship estate […]

We had to master that subject in order to recover Mr. Saadeh's fees. And then these matters were all brought on appeal to the Fourth DCA. And, again, we had to drill even deeper into the subject matter and into the controlling law in order to see the trial judge's orders sustained. (*Id*. at 267:2-268:17.)

d. Q. Now, in -- in these efforts by you to put forth the arguments of your client all the way to the Fourth District Court of Appeals, with whom did the Fourth District Court of Appeals agree; with you, or with the probate estate specialist?

A. Well, in this instance, they adopted the legal arguments that we advanced in our briefs in both appeals. (*Id*. at 269:2-8.)

e. Q. Would you explain to the Court the Saadeh case that set forth the duty of lawyers in terms of whether they must act in the best interest of the ward, and it's in privity with the ward. Would you explain that ruling.

A. Well, that was Saadeh versus Connors. In that case, we filed a suit for damages against the attorneys that we say were responsible for causing Mr. Saadeh to incur significant legal fees attempting to end the guardianship and have the trust declared void ab initio, as well as to recover his property. The initial defendant, Connors, was the lawyer hired to draft the trust. This trust, as I said before, was labeled a revocable trust but was, in fact, irrevocable. We also sued the guardian, whose name was Deborah Barfield, and we sued the guardian's attorney, whose name was Collette Meyer. Ms. Meyer made a motion for summary judgment, arguing the absence of a duty to the ward, arguing that the ward was required to engage his own counsel under the guardianship statute, had to be represented independently, and arguing that, in fact, they were adverse toward one another, and so no duty could be owed. But we argued to the Court that since a guardian's primary duty was to benefit the ward and that the guardian owed a fiduciary duty to the ward, the attorney for the guardian likewise owed the same duties to the ward. In their decision, the Fourth DCA pointed out that the ward might, in fact, be the primary intended beneficiary of the services of the attorney and held that that was sufficient for privity purposes. And that was the first such decision reported in a Florida District Court of Appeals relating to the duty owed by a attorney for the guardian of a ward to the ward. (*Id*. at 269:22-271:3.)

f. Q. Would you tell the Court your involvement in the Annie Owens White case.

A. Ms. White suffers from very significant psychiatric problems and was acting in a very self-destructive, in fact, endangering her own life when she didn't take her medication. She needed a guardian. I was asked by the Legal Aid Society to represent Ms. White's sister, Catherine McGrath, and to obtain or to have a petition filed that would result in the creation of a guardianship, and I did that. Soon after, an attorney appeared seeking to have Ms. White declared restored to capacity, and so we had a fully litigated guardianship case with respect to whether or not the guardianship would be maintained. (*Id*. at 271:4-17.)

g. Q. And how long have you been attorney for Catherine McGrath as guardian?

A. I believe it's more than five years. I continue to represent the guardian. I assist the guardian in the preparation of the annual plan. In this case, I assist the guardian in the preparation of her annual report. Ms. White's sister, Catherine McGrath, is a wonderful lady, devoted to her sister, but I don't believe she was able to continue school past the seventh grade, so she needs some assistance, and we assist her every year. We routinely appear in the guardianship court for authorization for disbursements on her behalf. And, likewise, in the McFarlane case, I've been involved in that case more than four years and routinely appear in that Court in various petitions for authorization for the guardian. (*Id*. at 271:18-272:8.)

h. Q. Are you currently litigating a case Haas versus Nacenyager (phonetic)?[…]

A. This is one of the current legal malpractice cases that we're actively litigating. And, of course, at issue in the case is the attorney's duty to a client and whether it was breached.

Q. Have you served on any Florida Bar grievance committees for any length of time?

A. I served a full term on the 15th District grievance committee and served one year as chair. I also have served on I think a total now of eight or nine years on the Florida Client Security Fund and have been co-chair and then chair of that committee. That committee deals with attorney dishonesty and an attorney's failure to render valuable service and reimburses clients that are the victim of dishonest lawyers.

Q. Have you litigated breach of fiduciary duty cases for both plaintiffs and defendants?

A. I have, and that would be throughout the time I'm practicing law. (*Id*. at 273:15-274:11.)

i. Q. For the reasons you have just explained to the Court based upon your involvement as an attorney in the various matters we've discussed, is that why -- do you -- is that why you feel your practice does, indeed, involve complex probate and guardian litigation in both Florida and New York?

A. Yes. (*Id*. at 274:25-275:5.)

j. I have been involved in numerous guardianship cases, disputed will cases, disputed trust cases over the course of those 35 years. I did not commit to memory the names of all of the cases, nor did I go back and try to make a search of files with respect to the identity of those cases. (*Id*. at 286:7-11.)

k. A. I have litigated countless lawsuits involving New York real estate transactions, the title to property, the partition of property, and, in fact, have litigated whether or not a divisible marital interest remained in New York property.

l. Q Okay. But observer is not participants, and you were not the individual that was engaged in the refinancing of it, although you may have observed and looked into it, correct? Is that a fair statement?

A. Well, I had to make sure that the terms of the settlement were met and that the property would be free and clear of liens or any residual claim of interest by the other party. But other than that, I -- I don't do real estate transactions, but as a trial lawyer I sometimes have to clean up the mess that's created from one. (*Id*. at 308:10-19.)

Defendants challenged Gilbert's qualification contending that he was not qualified to render an expert opinion in the matter because Gilbert: (1) had not "represented a ward of Oliver Wilson Bivins, Sr.'s age with his mental or physical conditions" (*Id*. at 311:22-312:2); (2) had not advised a guardian as to how to balance the a ward's property interests in relation to the interests of their physical well-being (*Id.*); had not "finished a guardianship" (*Id*. at 312:21-25); that he was not familiar with the relevant standards of care in the community (no evidence was adduced during the *Daubert* hearing in support of this proposition) (*Id*. at 312-3-12); and that he was not a New York real estate attorney.

Defendants' position, adopted by the Order excluding his testimony, is not consistent with 11th Circuit law on the issue of qualification. Federal law requires merely that the proponent of the expert testimony establish the expert as "minimally qualified" as the qualification relates to the general subject of the proposed testimony. *Banta Properties, Inc. v. Arch Specialty Ins. Co.*, 2011 WL 7118542 (S.D. Fla. Dec. 21, 2011). Defendants were successful in narrowing the range of permissible qualifications to an attorney specializing in representing *professional* guardians overseeing guardianships of the *person and the property* simultaneously involving *elderly, dementia-diagnosed* wards from the beginning of the proceeding through the end of the

guardianship proceeding.[1] Yet, these various items of specialization do not bear on the issues of an attorney's negligence or an attorney's fiduciary duty.

As a result of Defendants' argument at the *Daubert* hearing, the Order excluding Gilbert's testimony provides that he was unqualified to opine on the standard of care of "an attorney representing a *professional* guardian of an incapacitated ward." (emphasis supplied) [DE 374]. Though the distinction between professional guardians and non-professional guardians was the subject of extensive argument by Defendants' counsel, at no point has there been any indication as to why this is a meaningful difference insofar as qualification to testify is concerned regarding the professional and fiduciary duties of the attorney. An attorney's duty of care, as it relates to services provided on behalf of an incapacitated ward[2] does not change depending on the qualifications of the guardian overseeing the ward. In fact, there is no Florida or 11th Circuit law standing for the proposition that an attorney's duty of care to a third party beneficiary of any kind is diminished based on the status of the client in privity with the attorney.

Moreover, the professional negligence at issue in the case relates to inadequate due diligence concerning property values and conflicts of interest. The opinions on these issues offered by Gilbert fall squarely within the gambit of his expertise as a lawyer with over 35 years of experience in litigating cases, settling those cases, performing due diligence associated with settlements, representing various parties with fiduciary obligations and representing third parties to whom he owed fiduciary obligations. An individual with experience predominantly representing guardians would not actually have the broad legal knowledge and experience of Gilbert who has practiced extensively in the areas of legal malpractice and fiduciary duty, who happens to have the added bonus of experience representing guardians. It appears illogical to narrowly construe *Daubert* to consider an individual with experience only in representing guardians to be in a better position to opine on the actual subject matter of the instant lawsuit, than one with vast knowledge derived from representing clients and litigation issues involving

[1] It is worth noting that the guardianship in question was not concluded because at the time of the trial, no guardian had been discharged.

[2] Irwin Gilbert is not only qualified to render an opinion concerning the standard of care and duty attorneys and guardians owe to a ward, he was lead counsel in the case that established Florida precedent on the issue. Gilbert was directly involved in the litigation and appeals of the Saadeh cases which actually define the standard of care owed by attorneys to incompetent wards in the State of Florida. *Saadeh v. Connors*, 166 So. 3d 959, 961 (Fla. 4th DCA 2015).

fiduciary matters, malpractice matters (on both sides of the table), real estate transactions, trust issues, and other practice areas as established by Gilbert's testimony. In short, any purported gaps asserted by the Defendants to exist in Gilbert's experience due to the lack of him being essentially recognized as a specialist dedicated solely to representing guardians, does not and should not bear on the opinions reached by Gilbert concerning fiduciary duty or professional malpractice. At most, such assertions should be the subject of cross-examination by the Defendants to attempt to impeach the weight that the jury gives to Gilbert's testimony.

Similarly, Defendants misplace their focus on Gilbert's lack of publication with a specific section regarding "fiduciary duties that guardians owe to wards." (July 25, 2017 Trial Transcript Vol. VI, [DE 390 at 290:2-5].) First, Defendants' inquiry does not actually address the fiduciary duty at issue in the case – an attorney's fiduciary duty to an incapacitated ward. Second, and more importantly, Gilbert provided unrebutted testimony that "[t]here are not two different worlds of fiduciary duty; there is only one." *Id*. at 290:2-13.[3]

Accordingly, the Order concerning Gilbert's qualification to testify on the issues of professional negligence and fiduciary duties did not properly apply 11th Circuit law by failing to analyze the qualification of the expert in relation to the opinions actually proffered. The Order relies improperly on an analytical scheme put forth by Defendants which demands that the expert have experience representing a guardian in a virtually identical situation and with specific experience concerning every possible issue in the case.

D. <u>The Court Did Not Apply the Same Qualification Standard to Defendant Keith Stein's Expert Edward Robbins.</u>

The Court did not exclude the testimony of Defendant, Keith Stein's (hereinafter "Stein") expert, Edward S. Robbins (hereinafter "Robbins"), permitting his expert to testify unrebutted as to professional negligence and breach of fiduciary duty. Robbins' testimony concerning Stein's

[3] "A personal representative is a fiduciary who shall observe the standards of care applicable to trustees." § 733.602(1), Fla. Stat. (2014); *see also* § 733.609(1), Fla. Stat. (2014) ("A personal representative's fiduciary duty is the same as the fiduciary duty of a trustee of an express trust, and a personal representative is liable to interested persons for damage or loss resulting from the breach of this duty."); *State v. Lahurd*, 632 So.2d 1101, 1104 (Fla. 4th DCA 1994) ("The personal representative, like a trustee, is a fiduciary in handling the estate for the beneficiaries. As such, he or she is to observe the standard of care in dealing with the estate as a prudent trustee exercises in dealing with property of the trust.") (citations omitted). A trustee is required to seek only reasonable fees for his or her services and the trustee's agents. *See* §§ 736.0105(1), (2)(b); 736.0801; 736.0802(1), (7)(b), (8), Fla. Stat. (2014).

fiduciary duties and standards of care was permitted at trial despite his testimony on voir dire that he had virtually no recent experience in representing guardians, and to the extent he had any recent guardianship experience, it was significantly less guardianship experience than Gilbert:

> Q. And you have only done one guardianship case down here but otherwise have essentially represented guardianships at closings, meaning you've done the real estate as whether it's any entity that you're doing the closing for, right?
>
> A. Correct. And I represented a ward in a matter in Dade County, as well.
>
> Q. You've authored no articles in guardianship matters, correct?
>
> A. I have not. (July 27, 2017 Trial Transcript Vol. VIII [DE 392 at 218:24-219-7].)

The Court's exclusion of Gilbert's testimony on qualification grounds and its allowance of the less qualified opinion from Robbins resulted in a defense verdict for Stein given the more technical nature of his negligence and breaches of fiduciary duty. This outcome resulted from the Estate's inability to challenge the acts of Stein concerning due diligence and fiduciary duty. Further, Stein's conduct was unfairly bolstered by his unrebutted expert. This ruling constitutes an error during the course of the trial adversely affecting the Estate's "substantial rights." *Ad-Vantage Tel. Directory Consultants, Inc. v. GTE Directories Corp.*, 37 F.3d 1460, 1465 (11th Cir. 1994). Based on the Court's rulings on the parties' experts, a new trial is warranted.

III. Abuse of Discretion to Exclude of the 67th Street Deeds from Evidence.

On July 19, 2017, this Court ruled that the Estate would not be permitted to enter into evidence Plaintiff's Proposed Exhibit 40, which was a composite of certified deeds for the 67th Street property reflecting Oliver Wilson Bivins, Sr.'s ownership of the property prior to his marriage to Lorna Bivins. The Court ruled as follows regarding the 67th Street deeds based upon a request by Defendants for imposition of a Fed. R. Civ. P. Rule 37 Sanction[4] for failure to timely disclose:

> THE COURT: Okay. But -- all right. Well, whether or not you're going to be able to use it as impeachment of their experts' opinions, I'll deal with that later, but I'm not going to let you use it in your case in chief. (July 19, 2017 Trial Transcript Vol. III [DE 387 at 190:14-17].)

[4] (*Id*. at 176:1-5.)

At the time of the Court's ruling and thereafter, Defendants had "opened the door" to the introduction of the evidence by attempting to take advantage of its exclusion. Defendants, throughout the course of the trial, relied upon the exclusion of evidence of Oliver Bivins' ownership of the 67th Street property to create a false impression that Oliver Bivins never owned the property, which is not permissible in the 11th Circuit. Further, the Court's exclusion of the 67th Street deeds was predicated upon a misapplication of Fed. R. Civ. P. Rule 37. Accordingly, a new trial is warranted.

A. Defendants Were Improperly Permitted to Take Advantage of the Exclusion of the 67th Street Deeds from Evidence to Create a False Impression in the Minds of the Jury.

If a party "opens the door" to a particular line of inquiry by making certain statements, then the other party may be allowed to offer rebuttal evidence to contradict those statements. *See, e.g., Wood v. Morbark Industries, Inc.*, 70 F.3d 1201, 1208 (11th Cir. 1995) (by offering testimony that its wood chipper had the safest length chute possible, defendant opened door for impeachment such that plaintiff should have been allowed to inquire why defendant modified that design after plaintiff's accident); *United States v. Jacoby*, 955 F.2d 1527, 1540 (11th Cir.1992) (where defendant testified at length about statements in magazine article that government had not been allowed to admit in its case-in-chief, defendant opened door to cross-examination about that article to refute or discredit defendant's direct testimony). The use of otherwise inadmissible evidence is permissible if it promotes the goal of truth-seeking by preventing a party from perverting the evidentiary rules "into a license to use perjury by way of a defense…" *James v. Illinois*, 493 U.S. 307, 313, 110 S. Ct. 648, 652, 107 L. Ed. 2d 676 (1990).

In this case, Defendants, in their opening statements, represented to the jury that Oliver Wilson Bivins, Sr. never had an interest in the 67th Street property:

a. Studley

i. The 67th Street property was owned by Lorna, and the 808 property was owned by Oliver and Lorna. (July 18, 2017 Trial Transcript Vol. II [DE 386 at 34:19-25].)

ii. The 67th Street property, that is only Lorna's property. That is a key point that you will see in this case. That is Lorna's property only, and it will always be found to be only Lorna's property. (*Id*. at 36:14-17.)

iii. The only thing that Lorna has is 67th, which was always in her name. (*Id*. at 42:10-11.)

b. Blaker

iv. Julian wants 67th Street. It's not his. It's not his father's. (*Id*. at 71:11-14.)

Defendants' representation to the jury that Oliver Wilson Bivins, Sr. did not own the 67th Street property was a knowing misrepresentation of the ownership of the property. It is clear that Defendants had reviewed the deed evidence from their Joint Motions *in Limine* which provided:

> In particular, it appears the Plaintiff is seeking to introduce a document, a title report, which was first produced May 31, 2017 and was ordered by the Plaintiff on May 16, 2017. This document was not timely produced and should not be admitted, particularly since no party or witness was able to review the same and provide information about the document before the close of discovery in this action. [DE 310].

Given Defendants' knowledge of the deed evidence and their success in excluding the deeds on the basis of non-disclosure, the testimony and argument put forth by Defendants concerning the ownership of 67th Street was improper. Further, Defendants took improper advantage of this ruling throughout the trial. (*See* e.g. July 19, 2017 Trial Transcript Vol. III [DE 387 at 171:6-22]; July 27, 2017 Trial Transcript Vol. VIII [DE 392 at 153:25-154:6]; July 28, 2017 Trial Transcript Vol. IX [DE 393 at 52:7-12].)

The facts of the instant case mirror, *Wood v. Morbark Industries, Inc.*, wherein the trial court granted defendant's motion *in limine* to exclude evidence of post-accident remedial changes to a wood chipper. 70 F.3d at 1208. Although defendant's cross-examination left an impression that no remedial modifications were done to the wood chipper, the trial court would not allow any contrary evidence. *Id.* The Court of Appeals, *reversed the judgment*, holding that the defendant took unfair advantage of the *in limine* ruling, and opened the door for rebuttal and impeachment testimony, thereby substantially affecting the rights of the Plaintiff. *Id.*

B. The Court Incorrectly Applied Fed. R. Civ. P. Rule 37.

Fed. R. Civ. P. Rule 37(c)(1) provides: "If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, *unless the failure was substantially justified or is harmless*." (emphasis supplied).

Here, Defendants conceded that the Estate did not obtain possession of the deed evidence until May 16, 2017. ([DE 310] and July 19, 2017 Trial Transcript Vol. III [DE 387 at 177:1-18].)

Defendants also admit that the Estate produced to Defendants the evidence in question on May 31, 2016. *Id*. Accordingly, the Court did not properly apply Rule 37, which only contemplates exclusion of evidence on the basis of violations of Rule 26(a) or (e). The Estate did not violate Rule 26(a) because at the time of its Rule 26 Disclosures, it was not in possession or control of the evidence. The Estate did not violate Rule 26(e) because it timely (within two weeks) supplemented its disclosure once it obtained the deed evidence.

Further, the Court conceded when assessing the issue, "I'm not saying that you necessarily were not diligent in discovering this…" (*Id*. at 188:1-189:14.) Thus, the Court's Rule 37 sanction was inappropriate because the Court acknowledged that the delay in production of the document was substantially justified. The Estate established substantial justification because the Estate, during the discovery period, had no reason to believe that the title of 67th Street would be at issue in light of the unrebutted testimony of Julian Bivins. (*Id*. at 178:1-13.)

Additionally, the Rule 37 sanction is improper because the public record of the deed was equally available to the Defendants from another source. *S.E.C. v. Samuel H. Sloan & Co.*, 369 F.Supp. 994, 995–96 (S.D.N.Y.1973) (Ward, D.J.) ("It is well established that discovery need not be required of documents of public record which are equally accessible to all parties."). Accordingly, to the extent the Estate did not have substantial justification for the delay in obtaining the deeds and producing them, the ready availability of the public records renders any failure harmless as contemplated by Rule 37.

The Court's exclusion of the 67th Street deeds constitutes an error during the course of the trial adversely affecting the Estate's "substantial rights." The exclusion of the deeds was based on an improper application of Rule 37 and resulted in the creation of a false impression regarding the ownership of the 67th Street property in the minds of the jury. The exclusion of this evidence may have resulted in a defense verdict on behalf of Stein because it did not allow the Estate to establish Stein's negligence in his negotiation of the New York Settlement. Thus, a new trial is warranted as outlined above.

IV. Substantial Error to Allow Prior Acts of Julian Bivins.

A. Defendants' Counsel's Characterization of Improper Acts of Julian Bivins.

On June 22, 2017, the Estate filed a Motion *in Limine* to Exclude Reference to Improper Character Evidence as to Julian Bivins and Julian Bivins' Acts in his Individual Capacity ("Motion *in Limine*") [DE 313]. On July 14, 2017, this Court entered an Order [DE 358] denying without prejudice the Motion *in Limine*. The Order further provided that "[a]cts of Julian Bivins may be mentioned. However, any evidence that falls under the rubric of 'character evidence' should not be mentioned unless the Court permits it after the evidence is proffered outside the presence of the jury." *Id.* The Estate reasserted the underlying arguments in the Motion *in Limine* at trial on July 17, 2017 [DE 385 at 52-75]. As to the issue of character-type evidence regarding Julian Bivins, individually, the Court ruled that:

> If they're going to attempt to argue or present in front of the jury any bad character-type evidence, if that's I think what you called it, they can't do it until they get my permission to do it outside the presence of the jury. So they need to come to me and say we want to present this, Judge, to the jury, either in opening or by way of evidence, and this is why we think we – this is why we think it's relevant and it should be presented, and I'll listen and decide whether it can or cannot. But they're not going to be able to do it, just stand up in opening tomorrow and say Mr. Bivins, you know, beat his wife or whatever. [DE 385 at 52:24-25 and 53:1-10].

Indeed, the Court asked Defendants' counsel on at least four occasions what the actions that occurred prior to Mr. Bivins having a guardian appointed for him had to do with the allegations of malpractice and breach of fiduciary duty. [DE 385 at 61-74]. The Court specifically questioned "[a]gain, I'm trying to understand from the defense perspective, what does – what does the initial reasons have to do with the alleged malpractice here, other than that's how you – other than that's how the guardianship got started, what does the malpractice have to do with what happened before to create the guardianship?" [DE 385 at 73:24-25 and 74:1-4].

Counsel for Stein represented to the Court that he had "no intent in getting up in opening, or getting up in the case in chief and, you know, saying Julian was, you know, a parade of horribles." [DE 385 at 69:7-9]. He further assured the Court that "[n]o one is suggesting that Mr. Bivins, Julian Bivins, committed any crime. No one is suggesting that Mr. Bivins committed

any fraud. No one is suggesting that Mr. Bivins, okay, is, you know, quote/unquote unclean hands and isn't entitled to any equitable kind of relief." [DE 385 at 70:5-9].

Notwithstanding the Court's earlier ruling, the Court then went on to state that it was "not going to put any limits on the attorneys for opening statements, and then I'm going to try and figure out what's at issue here. And then when the evidence is presented you can raise your objection." [DE 385 at 80:5-8]. Upon reflection, the next day before opening statements, the Court requested Defendants' counsel, in describing the history of the case and how it all got started, "to phrase the description in terms of there were transactions that took place that caused concern about the competency of Mr. Bivins, which led to the petition, without saying there were allegations of wrongdoing by Mr. Julian Bivins?" [DE 386 at 3:7-12]. Defense counsel agreed to phrase the history in that way. *Id.* at 3:13-19. Yet, immediately in opening statements, counsel for the CLO Defendants made the following statements about Mr. Julian Bivins:

> This is a case about the greed of Julian Bivins. In November of 2010, Julian Bivins improperly took very valuable oil and mineral rights from his father related to property in Texas. [DE 386 at 33:10-14].

The Estate objected to the foregoing improper comments by defense counsel regarding Julian Bivin's character, which objection was overruled [DE 386 at 33:15-20].

Counsel for Defendants continued to characterize Julian Bivins as being "greedy" and having committed improper acts in relation to his father's property with the following statements during opening:

> This is where the greed starts. November 12th, 2010, there are documents signed, powers of attorney, transfers of property. Texas, Oliver Wilson Bivins, Sr., transfers his property to Julian Bivins. [DE 386 at 37:2-5].
>
> What's going on is the guardian get authorization to go ahead and file suit in Texas to try to get these properties back that Julian now has. *Id.* at 39:16-18.
>
> He's got litigation going on Texas over the property that was improperly taken by Julian here back in November 2010. *Id.* at 40:11-12.
>
> So this is part of the greed. Julian Bivins takes the property for $5 million. That's 808 Lexington. So what's going on here with the settlement, this property goes to Julian, 5 million. He turns around after saying that and sells it for 9.75 million. *Id.* at 45:9-13.
>
> And the Julian says, I'll take it for five, and he goes and sells it for 9.75. The evidence will show that this is greed. *Id.* at 51:10-12.

In addition to objecting to defense counsel's improper remarks about the character of Julian Bivins, the Estate also moved for a mistrial after the opening statement of the CLO Defendants' counsel. [DE 386 at 52:17-23]. The Court denied the motion even before counsel for the Estate could state the basis for which he was seeking a mistrial. *Id.*

Despite the Court's earlier ruling requesting counsel, in describing the history of the case, to avoid saying there were allegations of wrongdoing by Mr. Julian Bivins, counsel for the Stein Defendants began his opening statement by describing Julian Bivins as Cain from the biblical story of Cain and Abel, who can't accept what his step-brother has [DE 386 at 60:15-23]. Counsel for the Stein Defendants proceeded to then tell the jury that "[w]hat happens then is Julian Bivins starts getting transferred from his father lots of stuff, 400,000 acres of gas rights, 400,000 acres of mineral rights, 400,000 acres of oil rights in the middle of Texas. . . . Julian gets what's known as a power of attorney. . . . . A power of attorney . . . . basically means that I get whatever you get, and I can do with it whatever I want…" *Id.* at 62:17-63:3; "you have to understand that Julian Bivins wants what's Oliver's, and that, what the story of this case is, Cain and Abel" *Id.* at 63:17-19; "[w]hat the evidence is gonna show is that Cain wants what's Abel's, and he can't get it from him, and so he's just looking at these lawyers." *Id.* at 74:14-16.

The Court permitted Defendants' counsel to question Mr. Julian Bivins on the stand about the transfers to him from his father that occurred prior to the establishment of the guardianship of his father [DE 390 at 227-228].

> Q: You had, in November of 2010, you had a mineral deed that was drafted, a warranty deed or a gift deed, and a power of attorney?
> A: I think that's correct.
> Q: And the deal was that you going to give your dad $700,000, and in return, he was going to sell you a hundred percent of the Texas minerals, reserving a 25 percent nonparticipating royalty for his lifetime, and then he was going to give you certain properties described in the gift deed?
> A: I was going to pay him 700,000 for the purchase side of that transaction.
> Q: And there was – but there was – well, you never gave him the $700,000, true?
> A: No, I didn't.

Defense counsel further questioned Mr. Bivins regarding a corrective deed he signed on behalf of his father after the guardianship proceeding had commenced without his father's consent. [DE 390 at 240-242]. Defendants' counsel then proceeded to advise the jury of the factual

allegations made against Julian Bivins in the Texas proceedings brought by his father's guardian to invalidate the transfers of property to Julian Bivins from his father. *Id.* at 257-259.

B. Estate's Substantial Rights Affected by Improper Characterizations of Julian Bivins.

The denial of the Estate's Motion *in Limine* to exclude references to improper character evidence as to Julian Bivins allowed Defendants' counsel to freely mischaracterize Julian Bivins in opening statements and question Mr. Julian Bivins on the stand about the transfers to him from his father that occurred prior to the establishment of the guardianship and the Texas lawsuit [DE 390 at 227-229 and 257-259]. This was a substantial error which swayed a judgment in favor of Stein and adversely affected the Estate's substantial rights.

Evidence of prior bad acts is improper character evidence under Fed. R. Evid. 404. The testimony elicited from Julian Bivins suggesting he improperly influenced his father in connection with the transfer of his assets and failed to pay adequate consideration for the properties is clearly a "wrong or other act" under the plain language of Fed. R. Evid. 404. Courts look at how much of an effect did the improperly admitted or excluded evidence have on the verdict. *Peat, Inc. v. Vanguard Research, Inc.*, 378 F.3d 1154, 1161 (11th Cir. 2004).

In this case, the evidence of the transactions between Julian Bivins and his father unfairly prejudiced the Estate based upon the factors set forth in *Aetna Cas. & Sur. Co. v. Gosdin*, 803 F.2d 1153, 1160 (11th Cir. 1986). It is clear from defense counsels' opening statement that Defendants clearly intended to present improper character evidence to the jury. In fact, there were at least four references to Mr. Bivins being "greedy" in the opening statements and several references to the fact the transfers were "improper." Although the Court ruled that Defendants required the Court's permission before Defendants could argue or present in front of the jury any bad character-type evidence regarding Julian Bivins, defense counsel elicited such evidence in the presence of the jury without any instructions from the Court to ignore the prejudicial evidence. As such, the Estate's substantial rights were affected and the judgment in favor of Stein could have been easily been swayed by the impermissible evidence.

V. Estate Entitled to Communications with Stein.

A. Communications with Stein Prior to October 2012.

Stein testified that he was not involved in the guardianship case until October, 2012. [DE 386 at 79:25-80:2]. Yet, Crispin provided conflicting testimony that her firm had communications with him earlier than that time. [DE 388 at 178:2-8]. Indeed, based upon

Ciklin Lubitz's billing statements (Exs. 58 and 186 at 11, 13, and 101), Mr. Stein was actually communicating with Mr. O'Connell and Ms. Crispin as early as July 16, July 26, July 30 and July 31, 2012. *Id.* Ms. Crispin confirmed that the billing statements accurately reflected communications she had with Stein on July 16, July 26, July 30, and July 31, 2012. [DE 389 at 111-113]. When Ms. Crispin was asked as to the substance of those communications, counsel objected on the basis of attorney/client privilege. *Id.* at 114:25-115:4. The Court erred in sustaining the objection and not requiring Ms. Crispin to testify as to the purpose of these communications. If Mr. Stein had not yet been retained by Rogers and/or Ciklin Lubitz until October, 2012 as testified, then those communications would not be the subject of any privilege.

It is also clear from the testimony of Ms. Crispin that she or her firm had the following communications with Mr. Stein prior to October, 2012: (1) communication on July 31, 2012 to which was attached an engagement letter from Mr. Stein in connection with the Bivins matter (*Id.* at 128:23-129:7); (2) communications on July 30, 2012 from Mr. Stein regarding fee language (*Id.* at 129:18-24); (3) exchange of information with Mr. Stein on July 26, 2012 regarding the New York buildings (*Id.* at 130:15-24); (4) e-mails on July 30, 2012 with Mr. Stein regarding the Bivins guardianship (*Id.* at 131:10-20); (5) several e-mails with Mr. Stein on August 30, 2012, regarding the Bivins matter (*Id.* at 131:21-132:4); (6) exchanges with Mr. Stein on August 24, 2012 (*Id.* at 132:5-7); (7) communications with Mr. Stein on September 18, 2012 (*Id.* at 132:22-25); (8) six separate communications with Mr. Stein on August 7, 2012 (*Id.* at 134:18-23); (9) six e-mails from Mr. Stein on July 17, 2012 (*Id.* at 135:6-10); (10) four separate phone communications with Mr. Stein on August 15, 2012 regarding Bivins (*Id.* at 135:15-18); (11) copied on e-mails from Mr. Stein on July 16, 2012 and July 19, 2012 (*Id.* at 136:11-21); and (12) e-mails with Mr. Stein on July 19, 2012 (*Id.* at 137:2-5). All of the foregoing communications referenced above were included on a privilege log that Ciklin Lubitz produced to the Estate in response to the Estate's request to produce and the communications identified therein were not produced to the Estate on the basis of privilege. [DE 389 at 126].

The Court should have required Crispin to testify as to the substance of these communication based upon Stein's position at trial that he was not counsel for Ciklin Lubitz or the guardian prior to October, 2012. As such, the Estate is entitled to a new trial because it was denied the ability to introduce evidence concerning those communications which would have

implicated negligence and breaches of fiduciary duty on the part of Stein in the default of the 808 Lexington Mortgage and other possible issues during that timeframe.

B. Denial of Discovery Motions Seeking Communications and Documents for Which Defendants Claimed Attorney-Client Privilege.

Additionally, the Estate is entitled to a new trial on the basis that it was denied the ability to obtain communications between the guardians and counsel retained by the guardians for the benefit of the Ward. The Estate filed multiple motions to compel seeking the foregoing communications. *See* [DE 112, 113, 116, 117, and 118].[5] Magistrate Judge William Matthewman entered Omnibus Orders on Discovery Motions on September 9, 2016, and September 16, 2016 denying the Estate's motions. *See* [DE 132 and 137]. This Court affirmed Judge Matthewman's September 9, 2016, and September 16, 2016, Orders as to the attorney-client privilege issue. *See* [DE 167].

The Estate also filed multiple motions to compel deposition responses [DE 205, 209, 210] and a motion to reopen discovery and renew motions to compel [DE 201]. On April 27, 2017, Magistrate Judge Matthewman entered an "Omnibus Order on Discovery Motions," which denied all of the Motions to Compel. *See* [DE 280]. The Magistrate Judge, without reviewing the purported work product, ruled that with respect to information sought which constitutes fact work-product, the Estate did not establish a substantial need for the information or establish that the Estate cannot, without undue hardship, obtain the substantial equivalent of the information by other means. *See* April 27, 2017 Omnibus Order [DE 280] at pg. 9. This Court affirmed Magistrate Judge Matthewman's April 27, 2017 Order. *See* [DE 319].

It is important to note that Fla. Stat. § 90.5021[6] only applies to the attorney-client privilege and not to work product privilege. As such, the line of cases following *Tripp v. Salkovitz*, 919 So.2d 716, 718-719 (Fla. 2d DCA 2006) are controlling and provide that the "privilege belongs to the Estate as the Ward's successor in interest." In *In re Fundamental Long Term Care, Inc.*, 489 B.R. 451 (M.D. Fla. 2013), the former counsel to a subsidiary in

[5] The Estate maintains and re-asserts the issues it raised in its motions concerning attorney-client and work product privileges.

[6] The Estate maintains and re-asserts its United States and Florida constitutional challenge to Fla. Stat. 90.5021 on due process grounds on the basis that the statute unfairly deprives a class (incapacitated wards) equal access to courts. The Estate also maintains and re-asserts that Fla. Stat.§ 90.5021 does not apply in federal diversity cases because it is procedural as opposed to substantive.

bankruptcy could not use the work product doctrine to deny the bankruptcy trustee, who was now the successor to the bankrupt subsidiary, access to litigation files. Florida law does not permit an attorney to refuse to turn over files to a client willing to pay for them. *Id.* at 473-474. As discussed in *In re Fundamental Long Term Care, Inc.*, although some courts have held that the work product privilege is held by both the client and the attorney, and either can assert the privilege, none of those decisions involve an attorney invoking the work product doctrine to refuse turning over his or her files to a client, the Ward (and the Estate standing in the shoes of the deceased Ward). *Id.* at 474. An attorney cannot withhold documents against their former client based upon the work product privilege. *Id.*

Moreover, the work product doctrine seeks to protect against work product generated in the pending litigation and not disclosure of work product generated in a previous case. *In re Fundamental Long Term Care, Inc.*, 489 B.R. at 475-476. The Estate was not seeking work product generated in this litigation, but rather, it sought the Defendant attorneys' files arising out of the guardianship proceedings. *See Id.*

At a minimum, the Court should have conducted an *in camera* review. *See generally Bridgewater v. Carnival Corp.,* 286 F.R.D. 636 (S.D. Fla. 2011)(citations omitted) (which indicates that affidavits as to underlying basis for the asserted privilege and *in camera* document review are typically necessary to determine the actual application of any claimed work product privilege). Thus, the Court should have, first and foremost, determined whether the withheld information was, in fact, privileged work product made in anticipation of litigation. *See generally Maplewood Partners, L.P. v. Indian Harbor Ins. Co.,* 295 F.R.D. 550 (S.D. Fla. 2013). Without the Court's examination of such alleged work product for a determination of its character, the Estate was practically foreclosed from meaningfully challenging Defendants' work product claims, in particular, claims that the communications between Stein and Ciklin Lubitz prior to October 2012 somehow constituted work product.

WHEREFORE based upon the above, JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, respectfully requests this Court grant Plaintiff's motion for new trial and such other relief as this Court deems just and proper.

RULE 7.1 CERTIFICATION

Pursuant to Local Rule 7.1, undersigned counsel attempted to confer in good faith with counsel for Stein Defendants; however, the undersigned was informed the Stein Defendants' office was closed due to Hurricane Irma. The undersigned then advised, via email, counsel for Stein Defendants of the intent to file this motion given the closure of their office.

Dated: September 8, 2017

Respectfully submitted,

/s/ J. Ronald Denman

THE BLEAKLEY BAVOL LAW FIRM
J. Ronald Denman, Esquire
Florida Bar No. 863475
15170 North Florida Avenue
Tampa, FL 33613
Telephone: (813) 221-3759
Facsimile: (813) 221-3198
E-mail: rdenman@bleakleybavol.com
Counsel for the Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the Clerk of Court using the CM/ECF system on September 8, 2017, and the foregoing document is being served this day on all counsel or parties of record, as noted below, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive Notices of Electronic Filing:

/s/ J. Ronald Denman
Attorney

Rachel Studley, Esq. &
Brandon J. Hechtman, Esq.
Wicker Smith O'Hara McCoy & Ford, P.A.
Northbridge Centre
515 N. Flagler Drive
West Palm Beach, FL 33486
RStudley@wickersmith.com
BHechtman@wickersmith.com

Jeffrey A. Blaker, Esq.
Alexandra J. Schultz, Esq.
Conroy, Simberg & Ganon
1801 Centrepark Drive East, Suite 200
West Palm Beach, FL 33401
eservicewbp@conroysimberg.com
jblaker@conroysimberg.com
kmelby@conroysimberg.com
aschultz@conroysimberg.com

Alan B. Rose, Esq.
L. Louis Mrachek, Esq.
MRACHEK, FITZGERALD, ROSE,
KONOPKA, THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, FL 33401
lmrachek@mrachek-law.com
arose@mrachek-law.com
mchandler@mrachek-law.com