Real Property and Business Litigation Report
Volume II, Issue 1
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Erickson v. Erickson, --- So.2d ----, 2008 WL 5411659 (Fla. 1st DCA 2008).
A trial court always retains jurisdiction to modify its orders, and this power is especially broad when the court is dealing with an order containing an equitable remedy.

Parker v. James, --- So.2d ----, 2008 WL 5411982 (Fla. 2d DCA 2008).
Interrogatories can only be served on parties, and an order permitting service of interrogatories on a non-party is reachable by certiorari.

Kramer v. Von Mitschke-Collande, --- So.2d ----, 2008 WL 5412008 (Fla. 3rd DCA 2008).
A foreign judgment may be domesticated in Florida under the Uniform Out-of-country Foreign Money Judgment Recognition Act, even though the foreign judgment is subject to appeal or is pending on appeal. The partial final judgment in question met the requirement that it be final, conclusive and capable of being enforced.

Collins v. Monroe County, --- So.2d ----, 2008 WL 5412010 (Fla. 3d DCA 2008).
The Monroe County growth ordinance, which provides for outright purchases of land rendered valueless by regulation which constitutes a *per se* taking, or for development rights in the case of as applied takings, did not amount to a *per se* facial taking, and the actions of the Monroe County Board of County Commissioners constituted as applied takings for the properties in question. As suit for inverse condemnation was filed two years after the action of the Monroe Commission's actions, the lawsuit was not barred by the four year statute of limitations for inverse condemnation actions.

SPS Corp. v. Kinder Builders, Inc., --- So.2d ----, 2008 WL 5412078 (Fla. 3d DCA 2008).
Fact finding pursuant to a Fla. R. Civ. P. 1.540(b) (2) motion does not contemplate nor permit fact-finding beyond that necessary to determine the 1.540 issues, including issues such as privity or fault.

Shands v. City of Marathon, --- So.2d ----, 2008 WL 5412069 (Fla. 3d DCA 2008).

Land use dispute arising from Monroe County, with a good discussion of facial and as applied takings:

"Only two relatively narrow regulatory actions are deemed to be categorical, facial takings-those involving physical invasion of property (not the case here), or, as is the issue in this case, those resulting in a total regulatory taking. A facial, or categorical, taking occurs when the mere enactment of the regulation precludes all development, and constitutes a taking of *all* economically beneficial use of a party's land. The standard of proof for a facial taking is whether the regulation has resulted in deprivation of all economic use. Deprivation of economic value is limited to "the extraordinary circumstance where there is no productive or economically beneficial use of the land" permitted. 'The categorical rule of *no* use would not apply if the diminution in value were 95% rather than 100%.' Thus, if the land use regulations provide a mechanism by which a landowner can obtain a variance or transferrable development rights, then the regulations do not deny the landowner of *all* economically viable use of property and there is no facial taking. ('Anything less than a complete elimination of value or a total loss ... would require the kind of analysis applied in Penn Central.'). (citations omitted)

"In an as-applied taking claim, the landowner challenges the specific impact of the regulation on a particular property. The standard of proof for an as-applied taking is whether there has been a *substantial* deprivation of economic use or reasonable investment-backed expectations. This requires a 'fact-intensive inquiry of impact of the regulation on the economic viability of the landowner's property by analyzing permissible uses before and after enactment of the regulation.' [w]here a regulation places limitations on land that fall short of eliminating all economically beneficial use, a taking nonetheless may have occurred, depending on a complex of factors including the regulation's economic effect on the landowner, the extent to which the regulation interferes with reasonable investment-backed expectations, and the character of the government action." (citations omitted)

Hemispherx Biopharma, Inc. v. Johannesburg Consol. Investments, --- F.3d ----, 2008 WL 5391198 (11th Cir. 2008).

The Eleventh Circuit, as a matter of first impression in the Eleventh Circuit, held that a party claiming to have been defrauded in violation of section 13(d) (3) of the Exchange Act must at least have a beneficial interest in the affected stock. The Eleventh Circuit additionally held the action was subject to litigation and not arbitration despite an "arising out of" arbitration provision, holding the arbitration provision did not contemplate the present action.

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St. Johns River Water Management Dist. v. Koontz, --- So.2d ----, 2009 WL 47009 (Fla. 5th DCA 2009).
The Fifth District held the water management district's decision to require off-site mitigation improperly applied an "exaction" ("[D]evelopment exactions may be defined as contributions to a governmental entity imposed as a condition precedent to approving the developer's project. Usually, exactions are imposed prior to the issuance of a building permit or zoning/subdivision approval ... [and] may take the form of: (1) mandatory dedications of land for roads, schools or parks, as a condition to plat approval, (3) water or sewage connection fees, and (4) impact fees."). Using the *Nollan* and *Dolan* tests, the court held the actions were improper: "In *Nollan,* with respect to discretionary decisions to issue permits, the Supreme Court held that the government could impose a condition on the issuance of the permit without effecting a taking requiring just compensation if the condition 'serves the same governmental purpose as the developmental ban.' This test is referred to as the 'essential nexus' test. In *Dolan,* the Court added the requirement that, for such a condition to be constitutional there must also be a 'rough proportionality' between the condition and the impact of the proposed development."

Breakstone v. Breakstone Homes, Inc., --- So.2d ----, 2009 WL 30258 (Fla. 3d DCA 2009).
Claim of breach of fiduciary duty is an arbitrable claim under an arbitration provision that states: "*[a]ny* controversy or claim *arising out of or relating to this Agreement or a breach hereof* shall be finally settled by arbitration...." (Emphasis provided).

Department of Revenue v. Pinellas VP, LLC, --- So.2d ----, 2009 WL 32417 (Fla. 2d DCA 2009).
A transfer of real estate between two different business entities where the real property was encumbered by a mortgage was a taxable event requiring payment of documentary stamp taxes, even if the two business entities shared one corporate director/member.

Schauer v. Morse Operations, Inc., --- So.2d ----, 2009 WL 18674 (Fla. 4th DCA 2009).
Dispute between purchaser of automobile and dealership, wherein purchaser alleged various statutory violations, including of the Florida Consumer Collection Practices Act (Fla. Stat. sec. 559.72(7) ("In collecting consumer debts, no person shall . . .(7) Willfully communicate with the debtor or any member of her or his family with such frequency as can reasonably be expected to harass the debtor or her or his family, or willfully engage in other conduct which can reasonably be expected to abuse or harass the debtor or any member of her or his family[.]") The Fourth District held that seven calls over several months during the daytime and which calls were discontinued when the purchaser advised he was retaining a lawyer did not constitute a violation of the statute.

M I Industries USA Inc. v. Attorneys' Title Ins. Fund, Inc., --- So.2d ----, 2009 WL 18692 (Fla. 3d DCA 2009).

Third District held that an injunction prohibiting a party from dissipating assets or freezing bank accounts in an action for money damages is error.

Town Realty of West Florida, Inc. v. Demarais, --- So.2d ----, 2009 WL 18703 (Fla. 4th DCA 2009).

Contract condition stating that contract would be "void" if signed copy was not delivered by certain date was waived when buyers participated in acts in support of the contract after the delivery date of the contract.

Fischer-Gaeta-Cromwell, Inc. v. Oakwood Street Enterprises, LLC, --- So.2d ----, 2009 WL 18707 (Fla. 4th DCA 2009).

Provision in condominium documents stating that realty company would have the "exclusive right to sell" units at the project did not rise to the level of an "exclusive right of sale" entitling realty company to commission no matter who sold the property.

Khatib v. Wyatt, --- So.2d ----, 2009 WL 18714 (Fla. 2009).

Trial court has no jurisdiction to deal with settlement funds arising out of a settlement agreement when the court entered final judgment on the settlement agreement and did not retain jurisdiction to enforce its terms.

Corvette Country, Inc. v. Leonardo, --- So.2d ----, 2009 WL 18717 (Fla. 4th DCA 2009).

A trial court may correct clerical errors in judgments at any time, but may not *sua sponte* correct errors in a judgment which affects the substance of the judgment more than 10 days after issuance of the judgment.

Rosenberg v. Gould, --- F.3d ----, 2009 WL 50721 (11th. Cir. 2009).

A complaint does not meet "the heightened standard for pleading scienter, under section 10(b) of the Securities Exchange Act, 15 U.S.C. § 78j(b), when the complaint alleges that a chief executive officer who had granted backdated options in 2000 and 2001 later signed security filings and made other statements that minimally overstated earnings between 2004 and 2006."

Kawasaki Kisen Kaisha, Ltd. v. All City Used Auto Parts, Inc., Slip Copy, 2009 WL 22411 (11th Cir. 2009).

Attorneys' fees are generally to be awarded in statutory interpleader actions. While fees are generally not awarded in admiralty actions, the Eleventh Circuit reversed the trial court on the issue of whether this was an admiralty action.

In re Mathews, Slip Copy, 2009 WL 19339 (11th Cir. 2009).

The Eleventh Circuit applied the Florida Supreme Court presumption of *Beal Bank* and held that stock was owned by the entireties (and thus outside the bankruptcy estate) when the stock was listed as being owned by husband and wife and no satisfactory evidence was produced that the stock was not owned by the entireties.

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Maynard v. Florida Bd. of Educ. ex rel. University of South Florida, --- So.2d ----, 2009 WL 103152 (Fla. 2d DCA 2009).
The State of Florida or a state agency may not file a suit for malicious prosecution. Additionally, the Second District ruled that standing, even if never raised as an affirmative defense, can be raised as an issue on appeal even if raised only in a motion for new trial in the trial court. Question certified as to timeliness of raising standing.

Central Motor Co. v. Shaw, --- So.2d ----, 2009 WL 77985 (Fla. 3d DCA 2009).
Plaintiff filed suit against car dealership and finance company for various claims. Car dealership filed a proposal for settlement directed to Plaintiff, which proposal was not accepted. The finance company later settled with Plaintiff for a monetary sum; dealership did not contribute to the settlement. Dismissals were filed against both dealership and finance company as a result of the settlement. On these facts, dealership filed a motion for attorneys' fees and costs against Plaintiff, claiming that it was a prevailing party whose proposal for settlement was not accepted. The Third District disagreed, stating that such a tactic violated the intent of the offer of judgment statute. Judge Schwartz dissented, stating the majority was applying an equitable standard to the statute when no equitable standard was provided in the statute and the statute provided for an award of attorneys' fees in this case.

Ponzi v. SunTrust Mortg., Inc., --- So.2d ----, 2009 WL 78017 (Fla. 4th DCA 2009).
The Fourth District applied the summary affirmance rule (Fla. R. App. Proc. 9.315(a)) and held that the personal inconvenience and difficulty that would be caused by the issuance of a certificate of title in a mortgage foreclosure action are not grounds for delaying the issuance of a certificate of title.

Miami-Dade County v. Professional Law Enforcement Ass'n, --- So.2d ----, 2009 WL 78047 (Fla. 3d DCA 2009).
Flight logs of county pilots are not "public records" in that they are the personal property of the pilots.

Diamond Regal Development, Inc. v. Matinnaz Const., Inc., --- So.2d ----, 2009 WL 56033 (Fla. 1st DCA 2009).
Dispute over a construction contract where the trial court excluded proposed expert testimony by an unsuccessful bidder on the contract. The First District reversed, holding that involvement in the facts underlying a case or a witness's perceived bias do not exclude a party from being called as an expert witness; those are facts which can be used to argue the expert's credibility or prejudice which the trier of fact will ultimately determine.

In re Baron's Stores, Inc., Slip Copy, 2009 WL 97558 (11th Cir. 2009).
Attorneys who worked on bankruptcy case did not perpetrate a fraud on the court (i.e., "an unconscionable plan or scheme which is designed to improperly influence the court in its decision....") as the attorneys' actions did not vitiate the court's ability to reach an impartial decision.

Koch Business Holdings, LLC v. Amoco Pipeline Holding Co., --- F.3d ----, 2009 WL 78019 (11th Cir. 2009).
GAAP accounting rules cannot be used to define or explain the clear terms of a contract which uses the word "accrual" when the contract is clear and unambiguous on its face.

Levine v. World Financial Network Nat. Bank, --- F.3d ----, 2009 WL 56886 (11th Cir. 2009).
It was not unreasonable under the Fair Credit Reporting Act for a former creditor to sell a consumer's credit information to a crediting report to an agency after the consumer closed his account.

Freyre v. Tin Wai Hui DMD, P.A., Slip Copy, 2009 WL 89283 (S.D. Fla. 2009).
Settlement under the Fair Labor Standards Act that provides full compensation due the employee does not need to be reviewed by the court to determine whether it is "fair and reasonable" to the employee.

Hennis v. City Tropics Bistro, Inc., --- So.2d ----, 2009 WL 151105 (Fla. 5th DCA 2009).
Fabre and Fla. Stat. § 768.81 (apportionment amongst joint tortfeasors) do not apply to intentional torts.

Kenniasty v. Bionetics Corp., --- So.2d ----, 2009 WL 151135 (Fla. 5th DCA 2009).
The "safe harbor" requirement of Fla. Stat. § 57.105 applies to a case which was filed before the statute was amended but in which the motion for attorneys' fees was filed after the "safe harbor" provision was inserted.

Cedar Mountain Estates, LLC v. Loan One, LLC, --- So.2d ----, 2009 WL 151215 (Fla. 5th DCA 2009).
Amendment to a pleading should not be allowed only when allowing the amendment would prejudice the opposing party, the privilege to amend has been abused, or amendment would be futile. It is improper to deny amendment because the proposed amendment lacks indicia of reliability.

McMillan/Miami, LLC v. Krystal Capital Managers, LLC, --- So.2d ----, 2009 WL 128648 (Fla. 3d DCA 2009).
Attorneys' fees may be awarded for the wrongful filing of a *lis pendens* even if no *lis pendens* bond is posted, i.e., the posting of a *lis pendens* bond is not a prerequisite under *S & T Builders* to an award of attorneys' fees.

Rosenberg v. Gaballa, --- So.2d ----, 2009 WL 129611 (Fla. 4th DCA 2009).
The adoption of attorneys' fees penalties under Fla. Stat. § 57.105 did not eliminate the inherent authority of a trial court to sanction counsel under *Moakley v. Smallwood*, 826 So.2d 221 (Fla.2002).

Haddock v. Carmody, --- So.2d ----, 2009 WL 129762 (Fla. 1st DCA 2009).
Fla. Stat. § 196.0161 (which eliminates the homestead exemption for tax purposes if the entire dwelling is rented) is constitutional.

Wilchombe v. TeeVee Toons, Inc., --- F.3d ----, 2009 WL 129714 (11th Cir. 2009).
Party created rap song for another party without a written contract or agreement for use of the song. Creating party then sued for breach of fiduciary duty and copyright infringement when the song was used without permission. Creating party did not plead revocation of license to use the song the Eleventh Circuit held:

> A nonexclusive license to use copyrighted material may be granted orally or implied from conduct. *See id.*; *Jacob Maxwell, Inc. v. Veeck*, 110 F.3d 749, 752 (11th Cir.1997). Because there is no transfer of ownership, as with an exclusive license, a nonexclusive license need not be in writing. *See Korman*, 182 F.3d at 1293-94; *Jacob Maxwell*, 110 F.3d at 752. An

> implied nonexclusive license is created when one party creates a work at another party's request and hands it over, intending that the other party copy and distribute it. *See* *Jacob Maxwell,* 110 F.3d at 752 (nonexclusive license created when songwriter created song at baseball team's request and handed a master tape over, intending that the baseball team play the song at its games). In determining whether an implied license exists, a court should look at objective factors evincing the party's intent, including deposition testimony and whether the copyrighted material was delivered "without warning that its further use would constitute copyright infringement."

Steed v. EverHome Mortg. Co., Slip Copy, 2009 WL 139507 (11th Cir. 2009).
Borrower sued lender for violations of the Fair Credit Reporting Act, the Fair Housing Act, fraud, negligence and defamation. The Eleventh Circuit held that under the facts of this case, no defamation would lie because the borrower failed to prove the negative credit information delivered to the credit agency was false and that borrower's "reverse redlining" claim (practice of extending credit on unfair terms because of race and geographic areas) would not stand because borrower did not show unfair or predatory lending practices combined with a) intentionally targeting on the basis of race **or** b) a disparate impact on the basis of race.

U.S. v. Handy, Slip Copy, 2009 WL 151103 (M.D. Fla. 2009).
Use of a peer to peer computer network for child pornography when the offender did make the offending files available for upload does not rise to the level of distributing child pornography over the Internet.

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Gessa ex rel. Falatek v. Manor Care of Florida, Inc., --- So.2d ----, 2009 WL 211933 (Fla. 2d DCA 2009).
Arbitration provision is enforceable despite lack of severance clause to excise out offending section; case law supports severance of unenforceable provisions even in the absence of a severability provision.

Arthur v. Smith, --- So.2d ----, 2009 WL 212056 (Fla. 1st DCA 2009).
Appeal dismissed as the result of the issues on appeal being inextricably intertwined with counterclaim that remained pending in the trial court.

Hays v. Lawrence, --- So.2d ----, 2009 WL 211048 (Fla. 5th DCA 2009).
Florida Rule of Civil Procedure 1.525 applies to motions for attorneys' fees in probate adversary probate proceedings generally and specifically to requests for attorneys' fees under Fla. Stat. § 733.106 (2) (2007).

Amerus Life Ins. Co. v. Lait, --- So.2d ----, 2009 WL 196356 (Fla. 2009).
A motion for attorneys' fees does not need to be filed to comply with Florida Rule of Civil Procedure 1.525 when the final judgment contains a finding that one party was the prevailing party, i.e., when entitlement has already been established.

Hialeah Automotive, LLC v. Basulto, --- So.2d ----, 2009 WL 187584 (Fla. 3d DCA 2009).
Decision regarding whether car purchase dispute had to be referred to arbitration. The Third District employed the Fourth District's analytical framework of *Blankfeld v. Richmond Health Care, Inc.*, 902 So.2d 296, 297-99 (Fla. 4th DCA 2005) (en banc) (courts must determine whether "(1) whether the arbitration clause is void as a matter of law because it defeats the remedial purpose of the applicable statute, or (2) whether the arbitration clause is unconscionable") and held that portions of the arbitration agreement were unenforceable.

Browning v. Angelfish Swim School, Inc., --- So.2d ----, 2009 WL 187694 (Fla. 3d DCA 2009).
Order certifying class representatives affirmed in part and reversed in part with an opportunity for the putative class representatives to establish in the trial court they are able to fund the litigation seeking a refund for all Florida corporate entities that paid a penalty for the late filing of an annual return (a potential $300 million claim).

Saleeby v. Rocky Elson Const., Inc., 3 So.3d 1078 (Fla. 2009).
Admission of evidence of settlement in violation of Fla. Stat. § 90.408 is reversible error.

Crawford v. Metropolitan Government of Nashville and Davidson County, Tennessee, --- S.Ct. ----, 2009 WL 160424 (2009).
By answering questions during employer's investigation of coworker's complaints, worker "opposed" discrimination in the workplace such that the worker fell within the anti-retaliation provision of Title VII.

Acosta v. Campbell, 2009 WL 190089 (11th Cir. 2009).

Expanding on its prior precedent of *Vega v. McKay*, 351 F.3d 1334 (11th Cir.2003) (initial foreclosure summons and complaint is not an "initial communication" under §1692g which triggers the notice requirements under the Fair Debt Collection Procedures Act), the Eleventh Circuit ruled that communication between attorneys for creditors in a foreclosure case cannot constitute a "communication" under § 1692c (b).

Gregory v. First Title Of America, Inc., --- F.3d ----, 2009 WL 175155 (11th Cir. 2009).
Reviewing the "primary duty" of a "marketing director" of a title company, the Eleventh Circuit held that the employee fell within the "outside salesperson" exemption to the Fair Labor Standards Act.

Hap v. Toll Jupiter Ltd. Partnership,Slip Copy, 2009 WL 187938 (S.D. Fla. 2009).
Suit for rescission of purchase contract of residential property claiming violations of the Interstate Land Sales Act (ILSA), the Florida Land Sales Practices Act (LSPA) and the Florida Unfair and Deceptive Practices Act (FDUPTA). The district court ruled that repeal of the LSPA, a purely statutory right, has the effect as if the statute never existed. The district court also ruled that the sales contract was exempt from ILSA based on a unconditional promise to build within two (2) years, and that the required condominium disclosure was substantially similar to the statutory requirement and thus met the requirement of Fla. Stat. § 720.401.

Santidrian v. Landmark Custom Ranches, Inc., Slip Copy, 2009 WL 210668 (S.D. Fla. 2009).
Suit based on violations of Interstate Land Sales Act with an additional demand seeking an "equitable lien" on the deposit. The district court ruled that where there are adequate legal remedies, such as those in this case, an equitable lien to preserve a deposit is improper.

In re Whitehead, --- B.R. ----, 2009 WL 162690 (Bkrtcy. S.D. Fla. 2009).

Judge Olsen ruled that the filing of a *lis pendens* outside the preference period constituted a "transfer of property" pursuant to Bankruptcy Code § 547 (e) (1) such that the party recording the *lis pendens* gains a higher priority over the hypothetical bona fide purchaser under bankruptcy law.

Disimone v. LDG South II, LLC, Slip Copy, 2009 WL 210711 (M.D. Fla. 2009).
The District Court ruled the following paragraph obligated the developer to deliver a condominium unit within two (2) years, thus exempting the transaction under § 15 U.S.C. § 1702(a)(2) from the requirements to deliver a Property Report:

> SELLER hereby agrees to construct within the Unit one (1) Model Augusta single-family dwelling (the "Residence") substantially in accordance with SELLER's plans and specifications subject to the availability of labor and materials. The final certificate of occupancy from the applicable governmental authority shall be determinative with respect to completion of the Unit. SELLER presently intends to complete construction of all units and all improvements of the Condominium not later than October 31, 2012. However, for purposes of complying with land sales regulations, SELLER hereby advises that the Unit, as configured in SELLER's plans and specifications for the Condominium, shall be completed not later than two (2) years from the date PURCHASER signs this Agreement (provided, however, that such 2-year date for completion may be extended by reason of delays incurred by circumstances beyond SELLER's control, such as acts of God, or any other grounds cognizable in Florida contract law as impossibility or frustration of performance, including without limitation, delays occasioned by rain, wind and lightning storms). It is the intention of the parties that this sale qualify for the exemption provided by 15 U.S.C. Section 1702(a)(2), and nothing herein contained shall be construed or so operate as to any obligations of SELLER or rights of PURCHASER, in a manner which would render said exemption inapplicable.

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Marinich v. Special Edition Custom Homes, LLC, --- So.2d ----, 2009 WL 277082 (Fla. 2d DCA 2009).
Dispute arose over construction of a residence wherein the homeowners sought a declaratory judgment the construction contract was unenforceable as the result of the builder not having a qualifier, and the builder thus being an unlicensed contractor under Fla. Stat. § 489.128(1). The court granted the builder's motion for summary judgment on the declaratory judgment count, leaving various claims by the homeowners pending in the trial court. Homeowners took appeal of summary judgment and appellate court dismissed the appeal to avoid "piecemeal appeals" since the claims pending in the appellate court and those left remaining in the trial court were interrelated.

Miller v. Harris, --- So.2d ----, 2009 WL 277606 (Fla. 2d DCA 2009).
Order requiring the production of certain items from expert witness doctor quashed under the authority of Florida Rule of Civil Procedure 1.280(4), specifically those requests for the expert witness to review all of his files to determine the portion of the expert's practice that consisted of expert witness work (created extraordinary work and burden on expert) and to produce his calendar (would require the disclosure of the confidential information of third persons not associated with the litigation).

In re Advisory Opinion To Governor re Com'n of Elected Judge, --- So.2d ----, 2009 WL 248361 (Fla. 2009).
A suspended lawyer is a "member of the Bar," but a person must be a member of the Bar "in good standing" in order to qualify under Art. V, Sec, 8 of the Florida Constitution and be seated as a judge. Accordingly, a suspended member of The Florida Bar cannot be issued a commission as a circuit judge.

Mailloux v. Briella Townhomes, LLC, --- So.2d ----, 2009 WL 249113 (Fla. 4th DCA 2009).
A contract which promises to build a condominium within two (2) years subject to Acts of God, impossibility of performance and frustration of purpose meets the requirement of the Interstate Land Sales Act to deliver a unit within two (2) years. Additionally, the failure to provide the notice in a contract as required under Fla. Stat. § 689.261 that taxes may rise upon the purchase cannot be used to cancel the contract since the statute does not contain a private right of action.

Trumbull Ins. Co. v. Wolentarski, --- So.2d ----, 2009 WL 249203 (Fla. 3d DCA 2009).
Award of attorneys' fees in a PIP case reversed for various reasons, including that counsel seeking fees provided no contemporaneous time sheets or entries nor a written or oral reconstruction of the time spent on the file.

Key Largo Ocean Resort Co-Op, Inc. v. Monroe County, --- So.2d ----, 2009 WL 249248 (Fla. 3d DCA 2009).
A campsite was deemed a cooperative when a corporation owned the entire campsite, "owners" were sold shares in the corporation instead of real estate interests in specific campsites, and "owners" were given leases for their campsites. This determination was made notwithstanding the campsite and corporation never having filed for cooperative status with the state nor having complied with Chapter 719 (Cooperatives) of the Florida Statutes.

Kirkland v. City of Lakeland, --- So.2d ----, 2009 WL 284729 (Fla. 2d DCA 2009).
A broad delegation of eminent domain power may allow a local government to take land even if the land is outside the boundaries of the local government so long as the taking is related to a valid need of the local government.

Crescenze v. Bothe, --- So.2d ----, 2009 WL 284858 (Fla. 2d DCA 2009).
The two year statute of limitation found in Fla. Stat. § 733.710(1) applies to claims against an estate and not to actions to terminate a trust.

Equity Lifestyle Properties, Inc. v. Florida Mowing And Landscape Service, Inc., --- F.3d ---- (11th Cir. 2009)
A "costs plus" contract under Florida law is one where the party is entitled to a designated percentage over and above the party's costs. Additionally, invoices admitted into evidence under the business records exception met the fundamental requirement of the exception of trustworthiness: the invoices were made each night from daily reports, the creator of the invoices had first hand knowledge of the underlying information, the records were made for and kept in the ordinary course of business of the landscape company, and the creator of the invoices established his credibility and reputation for truthfulness.

Salazar v. Santa Barbara Townhomes of Homestead, Inc., 2009 WL 255660 (11th Cir. 2009).
Contract for purchase of condominium met the *Samara Development Corp. v. Marlow*, 556 So. 2d 1097 (Fla. 1990) (without the availability of both specific performance and damages, a two year promise to complete is illusory) test even though specific performance and damages was waived by the contract because a further provision of the contract stated the waiver of remedies was void if the unit was not completed within two (2) years.

In re Tanner Family, LLC, --- F.3d ----, 2009 WL 238262 (11th Cir. 2009).
A lease termination fee is a preference under bankruptcy law since the fee was paid "for or an account of an antecedent debt" as the debt, i.e., the obligation to pay the lease termination fee, arose at the time of the signing of the lease and was a debt antecedent to the filing of the bankruptcy.

Benchouchan v. VMM Enterprises, Inc., Slip Copy, 2009 WL 275189 (11th Cir. 2009).
Despite the arbitrator's finding that neither party prevailed, party in arbitration was entitled to an award of attorneys' fees under a "prevailing party" fee provision in that she successfully defended breach of contract and injunction claims in the arbitration action.

In re Seroquel Products Liability Litigation, Slip Copy, 2009 WL 260989 (M.D. Fla. 2009).
Magistrate judge, relying on United States Supreme Court precedent, ruled that a motion in limine should be granted only when the proffered evidence is not relevant on any ground. Additionally, Rule 403 is an extraordinary remedy that should be used only to exclude evidence that is being offered primarily for prejudicial value with little relevance to the issues.

Century Land Development, L.P. v. Weits, 2009 WL 252091 (S.D. Fla. 2009).
Purchaser of land sued his real estate agent and the agent's broker for various claims, including breach of fiduciary duty, negligence and constructive fraud. The district court held that the enactment of Fla. Stat. § 475.278 (broker is presumed to be a transaction broker where no written agreement of a single agent relationship has been executed) supplanted the former common law fiduciary duty with specific statutory duties and thus no breach of fiduciary duty claim existed. Likewise, professional negligence did not exist because a real estate agent is not a "professional" within the dictates of *Moransis v. Heathman*, 774 So. 2d 973 (Fla. 1999) ("professional" for purposes of four year statute of limitation only applies to those professions that require a four year degree as a pre-requisite) but ordinary negligence claims might exist against the agent. No vicarious liability existed against the broker for the actions of the agent due to the agent being an independent contractor, and no claim of constructive fraud existed because no confidential relationship existed between the plaintiff and the agent and broker.

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Spectrum Interiors, Inc. v. Exterior Walls, Inc., --- So.2d ----, 2009 WL 347745 (Fla. 5th DCA 2009).
Construction lien release which assigned away all claims before a certain date was clear and unambiguous on its face, and party was bound by the clear language of the release even though releasing party may have been due money for work done outside of the contract that it did not intend to release.

Mercury Ins. Co. of Florida v. Fonseca, --- So.2d ----, 2009 WL 321609 (Fla. 3d DCA 2009).
Dispute over whether a check mailed in response to a demand letter constituted acceptance of a settlement offer. The Third District held the circumstances constituted an offer to settle and binding acceptance of that offer, and that the request for a release in exchange for the settlement sums was not a new term that constituted a counteroffer.

Koslow v. Sanders, --- So.2d ----, 2009 WL 323337 (Fla. 2d DCA 2009).
Dispute over venue in an action seeking damages arising from a breach of contract real estate commissions, as well as an accounting and a declaration arising from the breach. The trial court applied the general venue rule for breaches of contracts to pay money, i.e., venue is proper where the creditor resides. The appellate court reversed, however, holding that the general rule only applies where there is a breach to pay a specified sum. The appellate court ruled the proper rule in this case was the venue rule for breaches of contract, i.e., venue is proper where the breach occurred and the breach occurred where the defaulting party failed to perform an act required under the contract.

Oldfield v. Pueblo de Bahia Loria, S.A., --- F.3d ----, 2009 WL 330221 (11th Cir. 2009).
Florida resident contracted to stay in Costa Rican resort after viewing Internet web pages of company. The Eleventh Circuit declined to apply the *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997) (jurisdiction cannot be based on "passive" websites), test, instead applying a flexible version of the Supreme Court's "relatedness standard" (the contact must relate to the injury). The Eleventh Circuit further held that long arm jurisdiction analysis requires a fact sensitive inquiry which hews "closely to the foreseeability and fundamental fairness principles forming the foundation upon which the specific jurisdiction doctrine rests."

U.S. v. 480.00 Acres of Land, More or Less, in County of Dade, State of Florida, --- F.3d ----, 2009 WL 323295 (11th Cir. 2009).
Condemnation proceedings in federal court wherein the Eleventh Circuit held that the district court determines whether governmental zoning or regulation had a "primary purpose" of depressing land values for condemnation purposes and that the "land commission" appointed pursuant to Fed. R. Civ. P. 71.1 did not violate the landowners' due process rights in this case.

Luigino's International, Inc. v. Miller, Slip Copy, 2009 WL 330861 (11th Cir. 2009). Economic Loss Rule case where plaintiff claimed the defendants (a corporation and its president) defrauded it into signing a lease when the defendant corporation did not own the real property purportedly being leased. The district court dismissed the fraud counts based on the fact that the purported fraud was contained within a term of the contract, i.e., the ability to deliver the leased premises. The Eleventh Circuit reversed as to the president of the corporation, holding that the president was not in privity with the contracting parties, and therefore claims against him were not barred by the Rule. The Eleventh Circuit also stated, without explanation, that the district court erred in dismissing the claims against the corporation based upon the Rule.

Internet Solutions Corp. v. Marshall, --- F.3d ----, 2009 WL 311301 (11th Cir. 2009). The Eleventh Circuit certified to the Florida Supreme Court the question of whether allegedly defamatory postings on a website outside of Florida that is accessible by Florida residents (but not necessarily targeted to Florida residents) causes "injury within Florida" sufficient to fall within the long-arm jurisdiction of Fla. Stat. § 48.193.

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Healthcare Staffing Solutions, Inc. v. Wilkinson, --- So.2d ----, 2009 WL 400369 (Fla. 1st DCA 2009).
Fabre requires a trial court, in the first instance, to apportion fault amongst all joint torteasors for purposes of the Joint Contribution Amongst Tortfeasors Act, Fla. Stat. § 768.31, without taking into account issues such as sovereign immunity or considering only those parties that contributed to a settlement outside of court.

Rensin v. State, --- So.2d ----, 2009 WL 400373 (Fla. 1st DCA 2009).
The corporate shield doctrine (corporate officers are not responsible for acts which primarily benefit the corporation and not themselves individually) applies in cases involving FDUPTA. Additionally, a party seeking long arm jurisdiction over a corporate officer must employ the *Venetian Salami* procedure and must demonstrate by affidavit or evidence the individual acts of the corporate officer before the court can hale the defendant into the jurisdiction.

Miller v. Preefer, --- So.2d ----, 2009 WL 383565 (Fla. 4th DCA 2009).
A provision constituting an illegal restraint of trade under Fla. Stat. § 542.33 was incorporated into a settlement agreement and the settlement agreement was adopted by the trial court in a final judgment. Thirteen years after the final judgment incorporating the illegal provision, one party sued seeking to remove the illegal provision and revise the final judgment accordingly. The court held that estoppel did not apply (estoppel cannot be used to support an illegal provision), but the judgment was merely voidable (not void) because of the illegal provision and a party cannot collaterally attack a voidable judgment more than 30 days after the final judgment.

Hebden v. Roy A. Kunnemann Const., Inc., --- So.2d ----, 2009 WL 383570 (Fla.4th DCA 2009).
Failure of a homeowner to comply with the construction dispute resolution procedures of Chapter 558 does not reduce or eliminate damages a homeowner may claim; failure to comply merely gives a right of abatement of the lawsuit until the procedure are complied with. Likewise, Chapter 558 does not mandate a resolution or penalties for not reaching a resolution; a homeowner is free to reject the resolution offered by the contractor.

Angelino v. Santa Barbara Enterprises, LLC, --- So.2d ----, 2009 WL 383607 (Fla. 3d DCA 2009).
Injunction and constructive trust imposed in corporate deadlock dispute. The district court held the injunction did not contain the requisite findings of fact and that a constructive trust failed to particularity what actions were prohibited.

Klein v. Meza, --- So.2d ----, 2009 WL 383617 (Fla. 3d DCA 2009).
Adverse possession can not arise out of a contract for deed or a landlord-tenant situation as neither situation is "adverse" to the owner for purposes of Fla. Stat. § 95.18. Likewise, payment of the property taxes on the property and being listed by the tax collector as the "owner" of the property have no effect on the fact that possessor the property is not "adverse" to the owner for purposes of Fla. Stat. § 95.18.

Herranz v. Siam, --- So.2d ----, 2009 WL 383621 (Fla. 3d DCA 2009).
A motion to strike a pleading as sham pursuant to Fla. R. Civ. P. 1.150 requires an evidentiary hearing.

Greenberg Traurig, P.A. v. Bresnahan, --- So.2d ----, 2009 WL 383622 (Fla. 4th DCA 2009).
Subpoena served on records custodian of law firm, and the district court held, without reasoning and under the facts of this case, that certain "internal housekeeping information and billing entries and fee amounts" were exempt from disclosure.

Defense Control USA, Inc. v. Atlantis Consultants Ltd. Corp., --- So.2d ----, 2009 WL 383626 (Fla. 3d DCA 2009).
Long-arm jurisdiction dispute. The district court ruled that "declarations" under federal law could be used in lieu of affidavits to satisfy the *Venetian Salami* requirements.

Stemerman, Lazarus, Simovitch, Billings, Finer & Ginsburg, M.D.'s P.A. v. Fuerst, --- So.2d ----, 2009 WL 383630 (Fla. 3d DCA 2009).
Certiorari does not lie to review an order denying a motion to dismiss based on a statute of limitations defense, even if the statute of limitations defense impacts a medical malpractice pre-suit requirement.

Moynet v. Courtois, --- So.2d ----, 2009 WL 383631 (Fla. 3d DCA 2009).
Buyers were assigned contract vendee's interest in condominium under construction for $87,000. The developer, however, declared bankruptcy and the bankruptcy court paid a portion of the $87,000 to Buyers, and Buyer sued for remainder under unjust enrichment and civil theft claims. The appellate court held that under the facts of the case, neither unjust enrichment nor civil theft claims would lie in that Buyers received what they bargained for: the contract vendee's interest in the un-built condominium.

City of St. Pete Beach v. Sowa, --- So.2d ----, 2009 WL 386920 (Fla. 3d DCA 2009).
Issuance or non-issuance of a building permit by a local government is not reviewable by certiorari as the issuance of a building permit is an executive decision and certiorari only lies to review quasi-judicial actions; the proper method to review executive or legislative actions is by suit in circuit court for declaratory or injunctive relief claiming the action is arbitrary, capricious, confiscatory, or violative of constitutional guarantees.

Ala v. Chesser, --- So.2d ----, 2009 WL 367769 (Fla. 1st DCA 2009).
Dispute arising out of purported oral agreement between owner of property and lender where lender purportedly agreed to cancel foreclosure sale in exchange for receiving deed from owner and lender agreeing to pay for property. Owner performed under the agreement by providing a quitclaim deed to lender, but lender reneged on payment and proceeded to foreclosure sale. Owner sued for unjust enrichment and cancellation of the foreclosure sale deed, and the lender defended on statute of frauds since the purported agreement to transfer property was oral. The appellate court held that the statute of frauds did not bar the action for unjust enrichment because the agreement was fully performed on one side, i.e., by the owner quitclaiming the property to the lender. The appellate court also held the owner could not collaterally attack the foreclosure judgment outside of applicable appellate periods, i.e., beyond the thirty days.

Evans v. McDonald, Slip Copy, 2009 WL 397472 (11th Cir. 2009).
Legal malpractice case where plaintiff did not offer expert testimony regarding the alleged negligence of the lawyer. The Eleventh Circuit held Florida law requires expert testimony to establish the standard of care and the corresponding breach of the standard unless the negligence is clearly obvious.

Nicholson v. Shafe, --- F.3d ----, 2009 WL 385579 (11th Cir. 2009).
The *Rooker-Feldman* doctrine (unsuccessful state court litigant may not re-litigate state court case in federal court) does not apply until state court proceedings have concluded.

Scott v. EFN Investments, LLC, Slip Copy, 2009 WL 368333 (11th Cir. 2009).
Purchaser of automobile signed a retail installment sales contract and separate agreement to arbitrate. Dispute arose over vehicle purchase, purchaser filed suit, and automobile dealer moved to compel arbitration. The Eleventh Circuit ruled that disputes whether to arbitrate are analyzed in a two-step process under *Klay v. All Defendants*, 389 F.3d 1191, 1200 (11th Cir.2004): whether the parties agreed to arbitrate the dispute, and if so, whether there are "legal constraints external to the parties' agreement" that forecloses arbitration. The Eleventh Circuit also ruled that a claim by the purchaser that it had rescinded the contract was not a "legal constraint external to the parties' agreement" that prohibited arbitration since the arbitrator, under federal law, determines whether there was an enforceable agreement to arbitrate.

Tambourine Comercio Internacional SA v. Solowsky, Slip Copy, 2009 WL 378644 (11th Cir. 2009).
A party does not have to trace the precise location of monies in order to state a claim for conversion, and an attorney may be held liable for civil theft for following instructions of his client regarding disbursement of certain monies when the attorney is on notice the monies may not belong to the client.

Morgan Stanley & Co., Inc. v. Solomon, Slip Copy, 2009 WL 413519 (S.D. Fla. 2009). Attorney who formerly worked for law firm that represented Morgan Stanley in securities arbitration not precluded from representing clients against Morgan Stanley as there was no violation of disciplinary rule 4-1.9.

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Trytek v. Gale Industries, Inc., --- So.2d ----, 2009 WL 465808 (Fla. 2009).
The party prevailing on the "significant issues" in the case is the party entitled to attorneys' fees under Fla. Stat. § 713.29 for construction lien claims, i.e., a lien claimant can recover some money under a lien claim and still not be the party that prevailed on most of the significant issues and thus not be entitled to attorneys' fees.

Butler v. Yusem, --- So.2d ----, 2009 WL 465826 (Fla. 2009).
Lack of justifiable reliance, not lack of due diligence, is the proper affirmative defense to claims for misrepresentation and breach of fiduciary duty.

Griem v. Becker, --- So.2d ----, 2009 WL 454517 (Fla. 3d DCA 2009).
Certificates of shares of a British Virgin Islands corporation are "securities" and not "instruments" under the U.C.C. Thus, local law, i.e., the law of the BVI, controls with regard to disposition of the shares.

Richard Road Estates, LLC v. Miami-Dade County Bd. of County Com'rs, --- So.2d ----, 2009 WL 454537 (Fla. 3d DCA 2009).
The failure of a county commission to re-zone a parcel for the same use as all surrounding parcels because the property provided a benefit to the county for stormwater retention constituted illegal "spot zoning."

Department Of Environmental Protection v. Landmark Enterprises, Inc., --- So.2d ----, 2009 WL 454567 (Fla. 2d DCA 2009).
The DEP may not be appointed a "receiver" pursuant to Fla. Stat. § 367.165; the DEP has no statutory authority to act as a receiver in this case.

Pacific Bell Telephone Co. v. Linkline Communications, Inc., --- S.Ct. ----, 2009 WL 454286 (2009).
The Supreme Court held that incumbent telephone companies did not violate the Sherman Antitrust Act by failing to provide access to their lines at reduced costs to Internet Service Providers competing with the incumbent telephone companies.

In re Baggett Bros. Farm Inc., Slip Copy, 2009 WL 454923 (11th Cir. 2009).
A proof of claim filed in bankruptcy will be presumed valid until the debtor objects with some factual basis to overcome the creditor's *prima facie* claim. A debtor can argue laches in response to a creditor's claim, but must prove not only that there was delay but also that the delay was prejudicial.

In re Leto, Slip Copy, 2009 WL 449135 (11th Cir. 2009).

Fraudulent transfers, for purposes of bankruptcy code, did not occur when debtor initially signed defective deeds (the deeds were missing subscribing witnesses) but when the corrective deeds (containing subscribing witnesses) were executed. Thus, the corrective deeds actually transferred property (the improper deeds did not), and since the corrective deeds were executed within one year of bankruptcy, the fraudulent transfer statute applies.

Liberty Seguaras, S.A. v. Nobel Cargo Systems, Inc., Slip Copy, 2009 WL 465044 (S.D. Fla. 2009).
The district court ruled that a bailment contract is subject to the Economic Loss Rule so that a party may not sue in negligence over mishandling of the bailment.

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Price v. Abate, --- So.2d ----, 2009 WL 559908 (Fla. 5th DCA 2009).
A prerequisite for proving a lost will under the Florida Probate Code is to establish that the will was executed in accordance with Fla. Stat. § 733.502, including the execution of the will by the testator and the witnesses in the presence of each other.

Olesh v. Greenberg, --- So.2d ----, 2009 WL 559921 (Fla. 5th DCA 2009).
Award of attorneys' fees entered after summary judgment may be vacated under Fla. R. Civ. P. 1.540(b) if the summary judgment is reversed on appeal.

Peach State Roofing, Inc. v. 2224 South Trail Corp., --- So.2d ----, 2009 WL 564212 (Fla. 2d DCA 2009).
A trial court must find an ambiguity in a contract sufficient to permit parol evidence before it can imply a term in a contract constituting the customary practice in an industry.

JEA v. Florida Power & Light Co., --- So.2d ----, 2009 WL 536856 (Fla. 1st DCA 2009).
Dispute over a contract term in a contract in which the First District held that summary judgment is appropriate when the resolution of a case depends solely on the interpretation of a written instrument and the legal effect to be drawn from it.

Thomas v. Bank Of New York As Trustee For Certificate Holders Cwabs, Inc., --- So.2d ---- , 2009 WL 528781 (Fla. 1st DCA 2009).
Filing of responsive pleadings in a mortgage foreclosure case without objecting to sufficiency of service of process waives the argument of insufficiency of service of process.

Boatarama, Inc. v. Gomes, --- So.2d ----, 2009 WL 529529 (Fla. 3d DCA 2009).
The Law of the Case Doctrine holds that questions of law that have been decided on appeal must govern throughout all subsequent stages of the case, including therein both issues that were implicitly as well as explicitly ruled upon.

Sitarik v. JFK Medical Center Ltd. Partnerships (JFK), --- So.2d ----, 2009 WL 529546 (Fla. 4th DCA 2009).
Employee of company was not individually bound by arbitration agreement as he was neither a signatory to nor an intended third party beneficiary of the contract.

Alvarado v. Snow White and the Seven Dwarfs, Inc., --- So.2d ----, 2009 WL 529576 (Fla. 3d DCA 2009).
A trial court order dismissing a case with prejudice for discovery violations must contain finding of fact with regard to the following questions:

1. whether the attorney's actions were willful, deliberate or contumacious (rather than an act of neglect of inexperience),
2. whether the attorney has been previously sanctioned,
3. whether the client was involved in the act of disobedience,
4. whether the delay prejudiced the opposing party through loss of evidence, undue expense, or in some other fashion,
5. whether the attorney offered a justifiable explanation for his conduct, and
6. whether the delay created significant problems of judicial administration.

Citigroup Realty, Inc. v. Valdes, --- So.2d ----, 2009 WL 529603 (Fla. 3d DCA 2009).
Review of a summary judgment in a dispute over payment of real estate sales commissions. The Third District reversed as there was a factual question whether the salesperson's actions fell into any of the three exceptions that prohibit payment of commissions after a salesperson has left employment (where the contract so provides, where service after the sale is part of the contract, and where the custom in the trade or industry is that commissions are not paid after termination).

Stock Development, LLC v. Ulrich, --- So.2d ----, 2009 WL 530589 (Fla. 2d DCA 2009).
An appellate court has limited power to review the granting of a motion to amend to allow punitive damages under Fla. Stat. § 768.72, i.e., review is limited to whether the trial court followed the procedural requirements of § 768.72.

Levy County v. Diamond, --- So.2d ----, 2009 WL 510737 (Fla. 1st DCA 2009).
The "home venue privilege" of a state agency (to be sued only in the circuit that houses the agency headquarters) can be waived by actions as well as by the statutory factors.

Summers v. Earth Island Institute, --- S.Ct. ----, 2009 WL 509325 (2009).
Deprivation of a procedural right *in vacuo*, i.e., deprivation of a procedural right without some concrete interest that is affected by the deprivation, does not confer standing. Accordingly, member of environmental organization did not have standing with regard to forest regulations based upon his possible future use of the forests.

Sahyers v. Prugh, Holliday & Karatinos, P.L., --- F.3d ----, 2009 WL 510963 (11th Cir. 2009).
Exercising its inherent power to discipline and sanctions attorneys, the Eleventh Circuit ruled that prevailing party in Fair Labor Standards Act litigation was not entitled to attorney's fees due to the unprofessional and uncivil behavior of the attorney for the plaintiff.

Florida Family Policy Council v. Freeman, --- F.3d ----, 2009 WL 565682 (11th Cir. 2009).

Florida Family Policy Council (FFPC) distributed questionnaires to judges seeking election which contained some questions arguably violative of the Canons of Judicial Ethics. FFPC filed suit claiming that Judicial Canon 3E(1) was unconstitutional and that prohibiting judges from answering the questionnaire chilled free speech. The Eleventh Circuit ruled that the federal courts did not have jurisdiction to entertain relief because its decision would not bind Florida courts and because Fla. Stat. § 38.10 was not a basis for the lawsuit and 38.10 (disqualification of judges) could still be employed to disqualify judges from pending cases.

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Cambas v. Department of Business and Professional Regulation, --- So.2d ----, 2009 WL 631978 (Fla. 5th DCA 2009).
Real estate licensee was stripped of his real estate license by the Florida Real Estate Commission after conviction of a crime involving moral turpitude, i.e., leaving the scene of an accident involving injury. The district court affirmed, holding that a formal administrative hearing is not necessary when there are no disputed issues of material fact (licensee had pled guilty to the crime), and that leaving the scene of an accident with injuries is, in fact, a crime of moral turpitude.

Latner v. Preusler & Associates, Inc., --- So.2d ----, 2009 WL 632082 (Fla. 5th DCA 2009).
Appellate court could not overturn apparently inconsistent verdict in construction dispute because both sides agreed to the verdict form and neither side objected to the inconsistent jury verdict within the applicable time.

Krueger v. Ponton, --- So.2d ----, 2009 WL 632087 (Fla. 5th DCA 2009).
Default judgment based on alleged non-cognizable cause of action is voidable but not void, and failure to challenge voidable judgment on direct appeal but instead challenging on basis of Rule 1.540(b) (4) requires the party prove the court was not legally organized, had no jurisdiction over the parties or the subject matter, or engaged in an illegal deprivation of due process and a right to be heard.

Liberty Transp., LLC v. Banyan Air Services, Inc., --- So.2d ----, 2009 WL 605374 (Fla. 4th DCA 2009).
Failing to award prejudgment interest before a judgment is appealed deprives the trial court of the ability to award prejudgment interest (unless the appellate court relinquishes jurisdiction to permit interest to be awarded).

Zupnik Haverland, L.L.C. v. Current Builders of Florida, Inc., --- So.2d ----, 2009 WL 605394 (Fla. 4th DCA 2009).
Work done pursuant to settlement agreement constituted "final furnishing" of work pursuant to contract and were not punchlist items, and thus met the test of *Aronson v. Keating*, 386 So. 2d 822 (Fla. 4th DCA 1980) (continuation of work requires work be done in good faith, within a reasonable time, in pursuance of the terms of the contract, and necessary to do a "finished job") extended time to file claim of construction lien.

Leavins v. Crystal, --- So.2d ----, 2009 WL 591782 (Fla. 1st DCA 2009).
A party must comply with the requirements of Fla. Stat. § 768.72 by filing a motion for leave to seek punitive damages before pleading punitive damages, and failure of a trial court to require this preliminary step is reviewable by certiorari.

Sonido, LLC v. Arcadia Enterprises, LLC, --- So.2d ----, 2009 WL 592717 (Fla. 1st DCA 2009).
Title dispute arising out of a real estate sale contract. The First District held that a disclaimer by the State of Florida to submerged lands granted under the Butler Act was nonetheless a title defect as the disclaimer contained a reversionary interest.

Northwest Florida Water Management Dist. v. Department of Community Affairs, --- So.2d ----, 2009 WL 593558 (Fla. 1st DCA 2009).
Resolving an apparent conflict between Florida Statutes Chapters 373 (water management districts) and 380 (land and water management), the First District held that water management districts, not the Florida Department of Community Affairs, controls the permitting of consumptive water usage in Florida.

Vaden v. Discover Bank, --- S.Ct. ----, 2009 WL 578636 (2009).
Abrogating its prior decisions, the Supreme Court held that a federal court may look through a petition to compel arbitration brought under the Federal Arbitration Act (FAA), and may examine the parties' underlying substantive controversy in order to determine whether petition is predicated on an action that arises under federal law, such that court has federal question jurisdiction over the petition. The court may not, however, review the counterclaim to make such a determination.

Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc., --- F.3d ----, 2009 WL 613603 (11th Cir. 2009).
Defendant had been monitoring other party's attorney-client confidential e-mails during litigation, and invoked the Fifth Amendment when questioned about same during his deposition. The district court struck the defenses and counterclaim for violating the attorney-client privilege, and the Eleventh Circuit held the district court had the inherent power to strike pleadings as a sanction and that striking defendant's pleadings did not violate the defendant's rights under the Fifth Amendment.

Corporate Management Advisors, Inc. v. Artjen Complexus, Inc., --- F.3d ----, 2009 WL 606455 (11th Cir. 2009).
Failure to allege citizenship in a removal petition is a procedural defect, and a district court is required to permit a party to cure a procedural defect rather than denying the petition outright.

Dyer v. Wal-Mart Stores, Inc., Slip Copy, 2009 WL 613119 (11th Cir. 2009).
In a case of first impression for the Eleventh Circuit, the court ruled that under Federal Rule of Civil Procedure 4(h) (2), "delivery" of a summons requires personal service. Service by mail is permitted under the rules only if the defendant agrees to waive personal service.

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St. Johns River Water Management Dist. v. Koontz, --- So.2d ----, 2009 WL 722016 (Fla. 5th DCA 2009).
The Fifth District Court of Appeal certified the following question to the Florida Supreme Court as a question of great public importance:

> WHERE A LANDOWNER CONCEDES THAT PERMIT DENIAL DID NOT DEPRIVE HIM OF ALL OR SUBSTANTIALLY ALL ECONOMICALLY VIABLE USE OF THE PROPERTY, DOES ARTICLE X, SECTION 6(A) OF THE FLORIDA CONSTITUTION RECOGNIZE AN EXACTION TAKING UNDER THE HOLDINGS OF *NOLLAN* AND *DOLAN* WHERE, INSTEAD OF A COMPELLED DEDICATION OF REAL PROPERTY TO PUBLIC USE, THE EXACTION IS A CONDITION FOR PERMIT APPROVAL THAT THE CIRCUIT COURT FINDS UNREASONABLE?

Citrus County v. Halls River Development, Inc., --- So.2d ----, 2009 WL 722053 (Fla. 5th DCA 2009).
Suit under the Bert Harris Act, Fla. Stat. § 70.001, by developer who was told by Citrus County staff that a particular project could be developed even though the particular project was inconsistent with the county's comprehensive plan. The Fifth District held a comprehensive plan controls over inconsistent zoning codes or land use plans, so the project could not be built. Moreover, the court held that while Bert Harris claims are generally viewed as "as applied" claims for purposes of the one year statute of limitations, i.e., the statute does not begin to run until there has been a denial of a development permit, the comprehensive plan's prohibition was so pervasive in this case that the one year statute began to run from the date of the adoption of the comprehensive plan, not from rejection of the proposed building action.

4 Corners Ins., Inc. v. Sun Publications of Florida Inc., --- So.2d ----, 2009 WL 723483 (Fla. 2d DCA 2009).
Suit for damages arising out a lease that was wrongfully terminated. The Second District states there are two methods of valuing lost profits: the "before and after" theory or the "yardstick" theory (used when the business does not have a track record to compare before and after. The "yardstick" theory of lost profits for wrongful eviction was sought to be used, and an affidavit was filed in support of same. The Second District ruled the "yardstick" affidavit in this case was sufficient to defeat a motion for summary judgment, even if tenant might not be able to prove its claims at trial.

Thompson v. Department of Health, Bd. of Medicine, --- So.2d ----, 2009 WL 724047 (Fla. 2d DCA 2009).
Award of attorneys' fees to doctor and against the Department of Health under the Florida Equal Access to Justice Act, Fla. Sta. § 57.111(4) (a), for the department initiating administrative proceedings against doctor without substantial justification.

PS Capital, LLC v. Palm Springs Town Homes, LLC, --- So.2d ----, 2009 WL 690623 (Fla. 3d DCA 2009).
Litigation arising out of failed real estate development. The Third District held the preservation of litigation rights and alleged equity by investors in the project did not permit the extraordinary remedies of intervention after judgment or stay of execution of final judgment (especially without bond).

National Equity Recovery Services, Inc. v. Midfirst Bank, --- So.2d ----, 2009 WL 690661 (Fla. 4th DCA 2009).
Dispute between a foreclosure sale surplus trustee who did not comply with the statute by timely recording its assignment and a court appointed surplus trustee, wherein the Fourth District held the trial judge did not abuse her discretion by splitting the statutory trustee's fees pursuant to Fla. Stat. §§ 45.031 – 45.034.

Carr v. Old Port Cove Property Owners Ass'n, Inc., --- So.2d ----, 2009 WL 690807 (Fla. 4th DCA 2009).
The declaratory judgment provision of the Administrative Procedures Act, Fla. Stat. § 120.565, is limited in its scope to how statutes or administrative rules apply to a petitioner and does not encompass nor allow determination of constitutional questions.

Cano v. Hyundai Motor America, Inc., --- So.2d ----, 2009 WL 690875 (Fla. 4th DCA 2009).
The proposal for settlement statute establishes a bright line for proposals, and a joint proposal for settlement is impermissible under Fla. Stat. § 768.79 even if the claims of the joint plaintiffs are identical.

Certain Underwriters at Lloyd's, London v. Gibraltar Budget Plan, Inc., --- So.2d ---, 2009 WL 690975 (Fla. 4th DCA 2009).
Lloyd's of London is not an entity but an administrative body, and the failure to designate the underwriter at Lloyd's and the policy they underwrote requires dismissal of Lloyd's from suit.

Hingson v. MMI of Florida, Inc., --- So.2d ----, 2009 WL 691161 (Fla. 2d DCA 2009).
The party who prevails on the significant issues in litigation is the prevailing party for purposes of attorneys' fees, and *Lashkajani v. Lashkajani,* 911 So.2d 1154 (Fla.2005) cannot be used to provide fees to a party prevailing on a contract claim (but not the other claims) when the party prevailing on contract claims did not prevail on the significant issues, even if the contract has an attorneys' fees provision.

JP Morgan Chase v. New Millennial, LC, --- So.2d ----, 2009 WL 691187 (Fla. 2d DCA 2009).
Failure to record an assignment of mortgage pursuant to Fla. Stat. § 701.02 does not impair the mortgage nor its enforceability; failure to record the assignment merely affects priorities among creditors. Moreover, an oral estoppel regarding liens of record does not satisfy Fla. Stat. § 701.04.

Trotta v. Lighthouse Point Land Co., LLC, Slip Copy, 2009 WL 661907 (11th Cir. 2009).
Based on its prior precedent in *Pugliese v. Pukka Dev., Inc.,* 550 F.3d 1299 (11th Cir.2008), the Eleventh Circuit held that if any lease or sale of a lot is exempt from ILSA under § 1702, then it also exempt from revocation under § 1703(d).

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West Bend Mut. Ins. Co. v. Higgins, --- So.3d ----, 2009 WL 790145 (Fla. 5th 2009).
There is no exception to the attorney-client privilege in first party insurance lawsuits under Fla. Stat. § 624.155.

Heine v. Parent Const., Inc., --- So.3d ----, 2009 WL 763534 (Fla. 4th DCA 2009).
The Economic Waste Doctrine (damages for the diminution in value is appropriate when the cost to repair defective construction is excessive) applies even when there is an intentional breach and the following language does not rise to the level of an agreement to correct defective construction: "Contractor shall promptly correct Work ... failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion, and whether or not fabricated, installed or completed" and that "[t]he Contractor shall bear costs of correcting such rejected Work...."

Republic Credit Corp. I v. Upshaw, --- So.3d ----, 2009 WL 763546 (Fla. 4th DCA 2009).
The proceeds from the sale of real property from state that does not recognize tenancy by the entireties cannot be protected from the claims of creditors by placing the proceeds into Florida entireties property.

Beta Drywall Acquisition, LLC v. Mintz & Fraade, P.C., --- So.3d ----, 2009 WL 763550 (Fla. 4th DCA 2009).
New York lawyers who performed legal work in New York for the acquisition of Florida drywall company and were sued for malpractice in Florida had sufficient contacts with Florida to satisfy constitutional long-arm jurisdiction concerns.

First Home View Corp. v. Guggino, --- So.3d ----, 2009 WL 763551 (Fla. 3d DCA 2009).
Dispute over personal jurisdiction in mortgage foreclosure case. The lender hired a private investigator to find the mortgagor, and the investigator found two homes for mortgagor but lender was unable to serve mortgagor at those addresses. The lender further searched the mortgagor's credit information and employment, the motor vehicle department, corrections department, post office and telephone company as well as speaking with mortgagor's neighbors but was unable to serve mortgagor. Upon this record, the court held that the affidavit of diligent search was proper and constructive service was proper.

All Seasons Condominium Ass'n, Inc. v. Busca, --- So.3d ----, 2009 WL 763574 (Fla. 3d DCA 2009).
The appointment of a receiver in a condominium owner's suit against the association for failure to properly maintain and repair condominium elements reversed where the basis for appointment of the receiver not one of the cognizable bases for appointment of a receiver (i.e., fraud, self-dealing or waste of a secured asset).

Carrington Place of St. Pete, LLC v. Estate of Milo ex rel. Brito, --- So.3d ----, 2009 WL 763607 (Fla. 2d DCA 2009).
Absent an extremely broad grant or specific authority in a power of attorney, an attorney-in-fact cannot agree to arbitration provision contained in a nursing home contract.

King ex rel. Estate of King v. Cessna Aircraft Co., --- F.3d ----, 2009 WL 793014 (11th Cir. 2009).
An order denying a motion to dismiss for forum *non conveniens* is not a final appealable order, and pendent appellate jurisdiction should only be exercised in rare circumstances.

Benjamin v. BWIA Airlines, Slip Copy, 2009 WL 783353 (S.D. Fla. 2009).
The Confrontation Clause does not apply to nor protect litigants in civil proceedings.

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Colonial Bank, N.A. v. Taylor Morrison Services, Inc., --- So.3d ----, 2009 WL 873531 (Fla. 5th DCA 2009).
An injunction is an extraordinary remedy which is to be used sparingly, and a party opposing disbursement under a standby letter of credit must demonstrate a clear legal right to halting disbursement of the letter of credit.

Roberson v. Kitchen, --- So.3d ----, 2009 WL 873538 (Fla. 5th DCA 2009).
Dispute over easement between neighbors. The Fifth District affirmed the trial court which held easement holder's rights were subject to limitation for reasonable and customary use.

Adams Homes of Northwest Florida, Inc. v. Crafill, --- So.3d ----, 2009 WL 873540 (Fla. 5th DCA 2009).
Materialmen on a construction site are not "statutory employees" for workers compensation purposes and responsible parties are not immune from suit by materialmen based on workers compensation immunity.

Ashtead Group PLC v. Rentokil Initial PLC, --- So.3d ----, 2009 WL 875528 (Fla. 2d DCA 2009).
"Vouching in" for third party indemnity purposes not permitted when no express or implied right of indemnity exists, and a contractual obligation of first party to indemnify second party does not reciprocate the right of indemnity so that second party is required to indemnify the first party. Additionally, "vouching in" for indemnity purposes requires the party requesting the "vouching in" fairly represent the party allegedly vouched in.

Cunningham v. MBNA America Bank, N.A., --- So.3d ----, 2009 WL 875691 (Fla. 2d DCA 2009).
Dismissal of certain claims on appeal in dispute over credit card debt. Pursuant to the card agreement, the dispute was arbitrated by lender with the knowledge but without the participation of the alleged borrower. Lender instituted proceedings to confirm arbitration award, and borrower filed counterclaims alleging violations of the Fair Debt Collection Practices Act (FDCPA), the Florida Consumer Collection Practices Act (CCPA), and claims for defamation, negligence, and abuse of process. The trial court dismissed the counterclaims. On appeal, the Second District held the FDCPA and CCPA claims were mandatory counterclaims, inextricably intertwined with the litigation remaining in the trial court and thus prematurely appeal. However, the appeal of the permissive counterclaims was permitted to proceed as those claims were not intertwined with issues remaining in the trial court.

Hickman v. Barclay's Intern. Realty, Inc., --- So.3d ----, 2009 WL 838240 (Fla. 4th DCA 2009).
Unless the evidence is unequivocal as to lack of agency, a homeowner who hires a party to assist with renovations may be liable for the acts of the agent as to third parties. Accordingly, summary judgment was reversed.

Singleton v. Realty Land Investments, Inc., --- So.3d ----, 2009 WL 818995 (Fla. 1st DCA 2009).
A "final judgment" which establishes liability but not damages is not appealable because it is not a final order. Additionally, the 2000 amendment to Florida Rule of Appellate Procedure 9.130(a)(3)(C)(iv) eliminated the ability to appeal a non-final order which established liability without establishing damages.

114 Penn Plaza LLC v. Pyett, --- S.Ct. ----, 2009 WL 838159 (2009).
Agreement to arbitrate employment disputes under a collective bargaining agreement upheld; there is no right to court in lieu of arbitration for ADEA (Age Discrimination in Employment Act) claims.

Lane v. XYZ Venture Partners, L.L.C., Slip Copy, 2009 WL 822475 (11th Cir. 2009).
Dispute over long-arm personal jurisdiction of corporate officers of defendant. The Eleventh Circuit held that filing a motion before contesting jurisdiction does not waive the defense of lack of personal jurisdiction so long as the first Rule 12 motion or responsive pleading raises the lack of personal jurisdiction defense, and that corporate officers of foreign companies are not subject to jurisdiction in Florida under Fla. Stat. § 48.193(1) (commission of torts within the state) so long as the corporate officers were not in Florida when the torts were allegedly committed.

Sieber v. Havana Harry's II, Inc., --- F.Supp.2d ----, 2009 WL 819488 (S.D. Fla. 2009).
The clarification act to the Fair and Accurate Transactions Credit Act (credit card numbers on receipts must be truncated) is constitutional, and no claim exists for intentional violation of the Act when expiration date on receipt was not redacted.

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Lackner v. Central Florida Investments, Inc., --- So.3d ----, 2009 WL 937008 (Fla. 5th DCA 2009).
A company publishes a defamatory statement about an employee when it utters the defamation to someone other than a managerial employee.

McKenna v. Camino Real Village Ass'n, Inc., --- So.3d ----, 2009 WL 928422 (Fla. 4th DCA 2009).
A trial court retains jurisdiction and may proceed with all matters while a non-final order is on appeal so long as the trial court does not enter orders which dispose of the case during appellate review of the non-final order.

Villa Maria Nursing and Rehabilitation Center, Inc. v. South Broward Hospital District, --- So.3d ----, 2009 WL 928461 (Fla. 4th DCA 2009).
A third party claim for equitable subrogation has a different statute of limitations than a medical malpractice claim, thus a claim for subrogation may lie even though the statute of limitations on a malpractice claim may have expired.

BDO Seidman, LLP v. Banco Espirito Santo Intern., Ltd., --- So.3d ----, 2009 WL 928484 (Fla. 3d DCA 2009).
A motion to seal public records, including an appendix to an appeal, must comply with the standards set forth in *Barron v. Florida Freedom Newspapers, Inc.,* 531 So.2d 113, 118 (Fla.1988), specifically:

1. There must be recognition of the strong presumption in favor of open court proceedings and records,
2. The burden of proof is on any party seeking closure of proceedings or records, and the public and media have standing to object,
3. Closure of records should occur only a) to comply with established public policy set forth in the constitution, statutes, rules, or case law; (b) to protect trade secrets; (c) to protect a compelling governmental interest [e.g., national security; confidential informants]; (d) to obtain evidence to properly determine legal issues in a case; (e) to avoid substantial injury to innocent third parties [e.g., to protect young witnesses from offensive testimony; to protect children in a divorce]; or (f) t o avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed.
4. The trial court must make a finding that no reasonable alternative to closure exists, and must use the least restrictive closure method, and
5. The burden to justify closure continues on movant throughout the process, including appellate processes.

General Impact Glass & Windows Corp. v. Rollac Shutter of Texas, Inc., --- So.3d ----, 2009 WL 928519 (Fla. 3d DCA 2009).
Order compelling arbitration reversed where it was clear orders placed for goods did not contain written agreement to arbitrate, and the only references to arbitration were contained in the manufacturer's website and product catalogue (neither of which were used to order goods in this case).

Curcio v. Sovereign Healthcare of Boynton Beach L.L.C., --- So.3d ----, 2009 WL 928534 (Fla. 4th DCA 2009).
A trial court must conduct an evidentiary hearing under Fla. Stat. § 682.03(1) to determine whether to compel arbitration when grounds are raised as to the making of an agreement containing an arbitration provision.

In re Estate of Trollinger, --- So.3d ----, 2009 WL 928578 (Fla. 2d DCA 2009).
The customary pleading rule that a party is not required to elect remedies prior to judgment was statutorily amended in the nursing home context as result of Fla. Stat. § 400.023(1) (claimant must choose either survival damages pursuant to Fla. Stat. § 46.021 or wrongful death damages pursuant to Fla. Stat. § 768.21).

Wood v. Bluestone, --- So.3d ----, 2009 WL 928606 (Fla. 4th DCA 2009).
Appeal of an order denying transfer based on *forum non conveniens*. The Fourth District declined to adopt the Third District's abuse of discretion/de novo standard for reviewing rulings on *forum non conveniens*, and chose to apply a pure abuse of discretion standard under *Kinney Sys., Inc. v. Continental Ins. Co.,* 674 So.2d 86 (Fla.1996). The trial court was further compelled to conduct an analysis under *Kinney*.

Harris v. Mexican Specialty Foods, Inc., --- F.3d ----, 2009 WL 944201 (11th Cir. 2009).
The Fair Credit Reporting Act is neither unconstitutionally vague nor excessive on its face.

Picard v. Credit Solutions, Inc., --- F.3d ----, 2009 WL 902145 (11th Cir. 2009).
Federal statutory claims are arbitrable unless Congress has indicated a desire they not be arbitrable. Accordingly, claims under the Consumer Repair Organizations Act are arbitrable since Congress did not indicate non-arbitrability of such claims.

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Krause v. Textron Financial Corp., --- So.3d ----, 2009 WL 1025406 (Fla. 2d DCA 2009).
Adversary suit was brought against bankrupt company with two counts, one of which was a "core" bankruptcy issue and a second count, a state law claim, which was not a "core" issue and which was found to not involve the bankruptcy estate. Suit was filed in state court over the state law claim and the company defended on statute of limitations. The Second District held the federal tolling provisions did not apply to the second count since the bankruptcy court did not have jurisdiction over that claim.

Leach v. Salehpour, --- So.3d ----, 2009 WL 1025807 (Fla. 2d DCA 2009).
A trial court cannot correct a mistake of law (i.e., reverse a prior decision) through the use of Rule 1.540; a correction of law can only be made through Rule 1.530 or by appellate reversal.

Bosem v. Musa Holdings, Inc., --- So.3d ----, 2009 WL 996314 (Fla. 4th DCA 2009).
Lost profits, or "price erosion damages," are typically not "fixed" nor an "amount certain," and if not fixed and certain, cannot support an award of prejudgment interest.

Premier Lab Supply, Inc. v. Chemplex Industries, Inc., --- So.3d ----, 2009 WL 996317 (Fla. 4th DCA 2009).
Appeal of trade secret dispute wherein the Fourth District held that a trade secret is a formula, pattern, compilation, program, device, method, technique or process that derives economic value from not being disclosed and is the subject of reasonable efforts to not be disclosed. If the trade secret is a process, then a claimant must also show:

> a) the process is a secret, (b) the extent to which the information is known outside of the owner's business, (c) the extent to which it is known by employees and others involved in the owner's business, (d) the extent of measures taken by the owner to guard the secrecy of the information, (e) the value of the information to the owner and to his competitors, (f) the amount of effort or money expended by the owner in developing the information, and (g) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Spatz v. Embassy Home Care, Inc., --- So.3d ----, 2009 WL 996328 (Fla. 4th DCA 2009).
A trial court is bound by the pleadings in considering a motion for summary judgment, and does not have to permit amendment of the pleadings to avoid summary judgment when the position sought to be adopted by the non-movant is contrary to a position taken in prior sworn testimony.

Ordziejeski v. Freudenberg, --- So.3d ----, 2009 WL 996344 (Fla. 4th DCA 2009).
Any error that may have occurred by the trial court entering partial summary judgment was cured by the jury considering and ruling on the same issues as considered by the trial court on summary judgment.

Salamon v. Anesthesia Pain Care Consultants, Inc., --- So.3d ----, 2009 WL 996347 (Fla. 4th DCA 2009).
Appeal of an order of injunction in an employment dispute. The Fourth District held that review of injunctions are subject to two standards of review: abuse of discretion for the factual findings and *de novo* for the conclusions of law in the injunction.

Infolink Group, Inc. v. Kurzweg, --- So.3d ----, 2009 WL 996348 (Fla. 3d DCA 2009).
The Third District joined the Fourth District in holding that no appeal is possible from an order confirming or vacating an arbitration award; only from a final judgment re same notwithstanding Fla. Stat. § 682.20 (1) (c) ("An appeal may be taken from . . . an order confirming or denying confirmation of an award.")

Baratta v. Bradford Elec., Inc., --- So.3d ----, 2009 WL 996352 (Fla. 4th DCA 2009).
Plaintiff's counsel requested and received a twenty day extension to consider a proposal for settlement under Fla. R. Civ. Proc. 1.442 and Fla. Stat. § 768.79. Plaintiff accepted the offer within the twenty day extension period, but then attempted to renege claiming the rule and statute dictated all offers not accepted within thirty (30) days were automatically rejected. The Fourth District rejected this argument, stating that neither the rule nor the statute prohibit an offeree from accepting an offer outside the time frames, and that there was an offer and acceptance in this case.

Nikolits v. Verizon Wireless Personal Communications L.P., --- So.3d ----, 2009 WL 996356 (Fla. 4th DCA 2009).
Dispute over taxation of business personal property where the Fourth District held that "computer software," as defined by Chapter 192, is intangible personal property and not capable of being taxed by local governments. The Fourth District further held that computer software was capable of being taxed by the state.

Mastaler v. Hollywood Ocean Group, L.L.C., --- So.3d ----, 2009 WL 996382 (Fla. 4th DCA 2009).
Dispute under Fla. Stat. § 718.503 over cancellation of a condominium purchase contract, i.e., whether the proposed change to the planned condominium was sufficiently material and adverse to permit the purchaser to cancel. The Fourth District held the addition of nine (9) cabanas to the pool area, at a price of $225,000 each, was both adverse (it hindered the purchaser's possible use of the pool area) and material (the cabanas took up space, affected the aesthetic of the pool area, and required the payment of $225,000 in order to use the cabanas).

Shiver v. Wharton, --- So.3d ----, 2009 WL 996385 (Fla. 4th DCA 2009).
Under bankruptcy law and with regard to orders arising from litigation in non-bankruptcy proceedings which require or permit a response within a certain period of time, a party has until the later of the conclusion of the time period applicable to the order or thirty days from the date relief from stay is granted to act in order to avoid statutes of limitation or time frames imposed by rules. Accordingly and if the time period has exceeded one year, a party has thirty days from the date stay relief is granted, not one year, to timely file a motion under Fla. R. Civ. Proc. 1.540 to vacate a judgment.

Neighborhood Health Partnership, Inc. v. Merkle, --- So.3d ----, 2009 WL 996406 (Fla. 4th DCA 2009).
The Fourth District reviewed the *Southern Bell Telephone and Telegraph Company v. Deason*, 632 So.2d 1377 (Fla.1994), decision and held *Deason* does not stand for the proposition that documents requested by a regulatory authority are automatically entitled to work product privilege. Specifically, the Fourth District held that those documents in *Deason* entitled to work product privilege had the following characteristics:

A. they were created by the corporation's lawyer for litigation already taking place; or,

B. they were created at the direction of the corporation's lawyer for the litigation already taking place; and

C. they were not created and used initially in ordinary business activities.

Treasure Coast Tractor Service, Inc. v. JAC General Const., Inc., --- So.3d ----, 2009 WL 996412 (Fla. 4th DCA 2009).
The general rule with regard to debtor-creditor relationships that venue lies where the creditor resides can be overcome by substantial, competent evidence that a prior course of dealing between the parties provided for a different place of payment.

Drake v. Walton County, --- So.3d ----, 2009 WL 981218 (Fla. 1st DCA 2009).
Re-direction of water flow over property of appellant, even if to alleviate possible flooding on other property, constitutes a taking in that it constitutes a "permanent or continuous physical invasion of Appellant's property, rendering it useless and permanently depriving Appellant of the beneficial enjoyment of her property."

Redland Co., Inc. v. Bank of America Corp., Slip Copy, 2009 WL 975542 (11TH Cir. 2009).
Employee of account holder embezzled from account holder and account holder brought breach of presentment warranty claim, under Fla. Stat. § 673.4171, against bank into which the embezzled checks were deposited The Eleventh Circuit held that account holders have a duty under Florida law to examine their own accounts (e.g., Fla. Stat. § 674.406) to determine whether there is embezzlement, and bringing a claim as a breach of a presentment warranty does not excuse this duty.

Lopez v. ML #3, LLC, --- F.Supp.2d ----, 2009 WL 997015 (N. D. Fla. 2009.

Purchaser of car sought rescission of purchase contract and claimed automobile dealership assisted him in falsifying his credit application in violation of the Credit Repair Organizations Act, 15 U.S.C. § 1679 *et. seq.*(the Act holds, in relevant part, that "no person" shall falsify credit information). Despite the language regarding "no person," the district court held the intent of Congress was for the Act to apply to credit repair organizations and not all persons who deal with credit.

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Anchor Towing, Inc. v. Florida Dept. of Transp., --- So.3d ----, 2009 WL 1066049 (Fla. 3d DCA 2009).
A copy of a motion seeking attorney's fees served 21 days prior to filing the motion is statutorily required; a letter threatening attorneys' fees is not sufficient under the statute.

Tubbs v. Hudec, --- So.3d ----, 2009 WL 1066297 (Fla. 2d DCA 2009).
Arbitration provision speaking to and contained within the indemnification provisions of a contract applies only to indemnification claims, and not to first party claims for amounts due under contractual promissory notes.

Hall, Lamb & Hall, P.A. v. Sherlon Investments Corp., --- So.3d ----, 2009 WL 1066516 (Fla. 3d DCA 2009).
Former client of law firm and its representative (a disbarred former representative) were jointly and severally liable for paying settlement funds without satisfying a filed charging lien owed to law firm.

Cummings v. State Farm Mut. Auto. Ins. Co., Slip Copy, 2009 WL 1067958 (11th Circ. 2009).
Complaints under the federal Declaratory Judgments Act that do not allege an actual injury or damage do not confer jurisdiction on the district court under the Act.

Prescott v. Florida, Slip Copy, 2009 WL 1059631 (11th Cir. 2009).
Suit for taking of property by state government where the district court dismissed the complaint for failure to state a cause of action. The Eleventh Circuit affirmed on various grounds. First, the court held Takings Clause claims are not ripe until the landowner has pursued all available state remedies, including a reverse condemnation claim. Second, the court held procedural due process claims that fail to allege the state's post-deprivation remedies were inadequate do not state a cause of action. Likewise, the substantive due process claim was dismissed because federal substantive due process law does not protect state created property rights, especially if the property right is already protected by the Takings Clause. Finally, the Equal Protection Clause claim was dismissed because the landowners did not allege similarly situated landowners had been treated differently.

Sea Byte, Inc. v. Hudson Marine Management Services, Inc., --- F.3d ----, 2009 WL 1044702 (11th Cir. 2009).
The Eleventh Circuit applied Florida law and held that quantum meruit damages cannot be awarded if a valid contract exists, but the contract had been validly terminated so quantum meruit was appropriate in this case.

In re Davis, --- B.R. ----, 2009 WL 1080019 (Bkrtcy. M.D. Fla. 2009).
Bankruptcy judge Williamson ruled that 11 U.S.C. § 522 (o) does not prohibit the transfer of property into an exempt category under tenancy by the entireties. Moreover, a fraudulent transfer into property owned as tenancy by the entireties does not destroy the entireties property under Chapter 726 (Fraudulent Conveyances Act) even though it may have destroyed the tenancy at common law.

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Stanley v. Delta Connection Academy, Inc., --- So.3d ----, 2009 WL 1159195 (Fla. 5th DCA 2009).
Writ of certiorari issued to stop bifurcation of trial where the court ordered the damages portion of the trial be conducted prior to the liability portion of the trial.

Giacalone v. Helen Ellis Memorial Hosp. Foundation, Inc., --- So.3d ----, 2009 WL 1162856 (Fla. 2d DCA 2009).
Certiorari will lie to reverse an order denying discovery when the requested discovery is relevant or reasonably calculated to lead to the discovery of admissible evidence and the lack of the evidence effectively eviscerates the claim or defense; such a denial of discovery effectively eviscerates a party's case and is not remediable on plenary appeal.

Heartland Organics, Inc. v. MC Developments, LLC, --- So.3d ----, 2009 WL 1153510 (Fla. 1st DCA 2009).
The "joint residency rule" of *Enfinger v. Baxley*, 96 So.2d 538 (Fla.1957) (where there are joint defendants with venue in several counties, venue is proper in the county where all defendants reside), is not an exception to the general venue statute, Fla. Stat. § 47.011, which holds a plaintiff may elect venue where the cause of action accrued. Conflict certified with the Fourth District's ruling in *Sinclair Fund, Inc. v. Burton*, 623 So.2d 587 (Fla. 4th DCA 1993).

Taylor v. Vitetta, --- So.3d ----, 2009 WL 1139234 (Fla. 4thDCA 2009).
Appeal on order denying motion to vacate defaults. The Fourth District held that reasonable confusion surrounding the parties' obligations may excuse, under some circumstances, delay in seeking a vacation of the default, and the relevant time period for seeking vacation of defaults begins to run not from date of default but from date the party learned of the default.

Allenby & Associates, Inc. v. Crown "St. Vincent" Ltd., --- So.3d ----, 2009 WL 1139244 (Fla. 4th DCA 2009).
A broker, including a yacht broker, is entitled to a commission when an affirmative act of the broker brings the buyer and seller together, and (unless the broker is excluded from the negotiations) the continuous acts of the broker results in buyer and seller consummating a sale.

Foreclosure Freesearch, Inc. v. Sullivan, --- So.3d ----, 2009 WL 1139252 (Fla. 4th DCA 2009).
Parties sought to stop the statutory minority share appraisal process (Fla. Stat. § 607.1302(1)(d)) by obtaining an injunction, claiming the appraisal process would deprive them of their shares and their ability to bring derivative actions. The Third District reversed the grant of injunction, stating a necessary element for an injunction did not exist because movants had an adequate remedy at law through the appraisal process. Additionally, shareholders who allege fraud, misrepresentation or other inequitable acts may be entitled to equitable remedies beyond the appraisal process.

Casa Inv. Co., Inc. v. Nestor, --- So.3d ----, 2009 WL 1139329 (Fla. 3d DCA 2009).
An oral motion for summary judgment cannot be entertained because Florida Rule of Civil Procedure 1.510 requires a motion for summary judgment be "served" at least twenty (20) days before the hearing thereof, and an oral motion cannot be "served."

W.R. Huff Asset Management Co., L.L.C. v. Kohlberg, Kravis, Roberts & Co., L.P.,--- F.3d ----, 2009 WL 1148026 (11th Cir. 2009).
Orders of remand to state court are not appealable unless there are present special circumstances, specifically, there exist separate orders which lead to remand (but are not themselves orders of remand) and the order of remand has a conclusive effect upon the state court litigation.

Novoneuron Inc. v. Addiction Research Institute, Inc., Slip Copy, 2009 WL 1132344 (11th Cir. 2009).
The doctrine of unilateral mistake is available in those cases where a party is seeking rescission of the contract, and the settlement agreement in this case, which did not expressly deal with the situation of non-U.S. patents, was ambiguous on its face.

Investorhub.com, Inc. v. Zecevic, Slip Copy, 2009 WL 1140039 (S.D. Fla. 2009).
Diversity of jurisdiction is based on citizenship and not residence, and complaint originally filed in federal court must clearly show on its face the federal court has acquired jurisdiction through diversity of citizenship. Unlike cases removed from state court, there is no procedural mechanism in 28 U.S.C. § 1332 to cure insufficient allegations of diversity of citizenship in cases originally filed in federal court.

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Juega v. Davidson, --- So.3d ----, 2009 WL 1211645 (Fla. 3d DCA 2009).
Florida's real party in interest rule, Florida Rule of Civil Procedure 1.210 (a), is permissive only, and suit may be brought by the plaintiff or someone on behalf of the plaintiff.

Media General Operations, Inc. v. State, --- So.3d ----, 2009 WL 1211809 (Fla. 2d DCA 2009).
There is no requirement to release an electronic recording of court proceedings in its native electronic format, and the recording may instead be released as a transcription in that a "court record" per Florida Rule of Judicial Administration 2.535(c) only includes the relevant portions of the trial or proceeding and not the miscellaneous portions that may be electronically recorded but are not part of the proceedings.

Lorillard Tobacco Co. v. French, --- So.3d ----, 2009 WL 1211959 (Fla. 3d DCA 2009).
A successful proposal for settlement accrues prejudgment interest on attorneys' fees awardable from the date the proposal becomes successful, i.e., the qualifying conditions for the proposal are met through judgment, not the date the attorneys' fees award is reduced to judgment.

Meruelo v. Mark Andrew of Palm Beaches, Ltd., --- So.3d ----, 2009 WL 1212051 (Fla. 4th DCA 2009).
The Fourth District held the following clause did not imply a duty on a buyer to seek and obtain approval for additional saleable square footage: "[i]n the event Buyer is able to obtain approval to construct a total of 600,000 square feet or more of air conditioned saleable square feet of space, Buyer will pay to Seller an additional Five Million Dollars." Likewise, the language of the clause did not create an express duty to seek approval for additional square footage so the implied duty of good faith performance of contracts, which only applies to express contractual terms, was not implicated.

M I Industries USA Inc. v. Attorneys' Title Ins. Fund, Inc., --- So.3d ----, 2009 WL 1212073 (Fla. 4th DCA 2009).
The Fourth District certified the following question to the Florida Supreme Court as being of great public importance:

> INCIDENT TO AN ACTION AT LAW, MAY A TRIAL COURT ISSUE AN INJUNCTION TO FREEZE ASSETS OF A DEFENDANT, WHERE THE PLAINTIFF HAS DEMONSTRATED: (1) THE DEFENDANT WILL TRANSFER, DISSIPATE, OR HIDE HIS/HER ASSETS SO AS TO RENDER A TRIAL JUDGMENT UNENFORCEABLE; (2) A CLEAR LEGAL RIGHT TO THE RELIEF REQUESTED; (3) A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS; AND (4) A TEMPORARY INJUNCTION WILL SERVE THE PUBLIC INTEREST?

AXA Equitable Life Ins. Co. v. Gelpi, --- So.3d ----, 2009 WL 1212089 (Fla. 3d DCA 2009).

The Third District held, as a matter of law, the following language released AXA from all possible claims, including suits in a foreign jurisdiction:

> In consideration of the payment described above, and for other good and valuable consideration, Employee hereby releases and forever discharges, and by this instrument releases and forever discharges, AXA Equitable from all debts, obligations, promises, covenants, agreements, contracts, endorsements, bonds, controversies, suits, actions, causes of action, judgments, damages, expenses, claims or demands, in law or in equity, which Employee ever had, now has, or which may arise in the future, regarding any matter arising on or before the date of Employee's execution of this Agreement, including but not limited to all claims (whether known or unknown) regarding Employee's employment with or termination of employment from AXA Equitable, any contract (express or implied), any claim for equitable relief or recovery of punitive, compensatory, or other damages, or monies, attorneys' fees, any tort, and all claims for alleged discrimination based upon age, race, color, sex, sexual orientation, marital status, religion, national origin, handicap, disability, or retaliation, including any claim, asserted or unasserted, which could arise under Title VII of the Civil Rights Act of 1964; the Equal Pay Act of 1983; the Age Discrimination in Employment Act of 1967; the Americans With Disabilities Act of 1990; the Civil Rights Act of 1866, 42 U.S.C. § 1981; the Employee Retirement Income Security Act of 1974; the Family and Medical Leave Act of 1993; the Civil Rights Act of 1991; the Worker Adjustment and Retraining Notification Act of 1988; the Sarbanes-Oxley Act; the Florida Civil Human Rights Act of 1992; the Florida AIDS Act Equal Pay Law; the Florida Whistleblower Protection Act; the Florida Wage Discrimination Law; the Florida Sickle Cell Trait Discrimination Law; the Florida Genetic Testing in Employment Law; the Florida Smoking Rights Law; the New York State Human Rights Law; the New York City Human Rights Law; and any other federal, state or local laws, rules or regulations, whether equal employment opportunity laws, rules or regulations or otherwise, or any right under any AXA Equitable retirement, welfare, or AXA Financial stock plans . .
>
> [P]ursuant to and as a part of Employee's release and discharge of AXA Equitable, as set forth herein, Employee agrees, not inconsistent with EEOC Enforcement Guidance on Non-Waivable Employee Rights Under EEOC-Enforced-Statutes dated April 11, 1997, and to the fullest extent permitted by law, not to sue or file a charge, complaint, grievance or demand for arbitration against AXA Equitable in any forum or assist or otherwise participate willingly or voluntarily in any claim, arbitration, suit, action, investigation or other proceeding of any kind which relates to any matter that involves AXA Equitable, and that occurred up to and including the date of Employee's execution of this Agreement....

Sitarik v. JFK Medical Center Ltd. Partnership, --- So.3d ----, 2009 WL 1212113 (Fla. 4th DCA 2009).
A party who filed two motions to dismiss, an answer and affirmative defenses, notices of taking deposition and later participated in discovery waived the right to insist upon arbitration of the dispute according to the arbitration provision in the contract.

Ferdie v. Isaacson, --- So.3d ----, 2009 WL 1212147 (Fla. 4th DCA 2009).
In order to award Fla. Stat. § 57.105 fee sanctions, a trial court must make an express finding, after conducting a hearing, that a claim was frivolous and that the attorney was not acting in good faith based on representations of the client. Thus, a proceeding in which a law firm was not given notice and did not participate in a hearing vitiates the award against the law firm. Likewise, § 57.105 does not provide for an award of costs.

Tettamanti v. Anonima, --- So.3d ----, 2009 WL 1212156 (Fla. 3d DCA 2009).
The stay provisions of the Uniform Out-of-Country Foreign Money Judgment Recognition Act, Fla. Stat. § 55.607, apply only to stays pending appeal of the judgment in the foreign country. Once the judgment is conclusive in the foreign country and enforcement is sought in Florida, stays of Florida judgments seeking enforcement of the out of country judgment are subject to the rules generally regarding stays pending appeal. Accordingly, appellants must post a bond under Fla. Rule of Appellate Procedure 9.130(b) (1).

Diana Reiss, Ph.D. v. Ocean World, S.A., --- So.3d ----, 2009 WL 1212167 (Fla. 4th DCA 2009).
Dispute over long arm jurisdiction in a breach of contract case where the contract was not to be performed in Florida nor was payment to be delivered in Florida. Under these facts, the Fourth District held Florida courts do not have jurisdiction under Fla. Stat. § 48.193, the Florida Long Arm statute. Likewise, communications such as e-mails delivered to Florida do not in of themselves confer jurisdiction on Florida courts unless the communications themselves constituted a tort committed within Florida.

Trustees of Columbia University In City of New York v. Ocean World, S.A., --- So.3d ----, 2009 WL 1212229 (Fla. 4th DCA 2009).
Dispute where long-arm jurisdiction was sought over an out of state university. The Fourth District held long-arm jurisdiction was not acquired over the university in that the actions of the university did not subject it to general long arm jurisdiction under Fla. Stat. § 48.193(2). Specifically, the court held alumni associations in Florida do not subject foreign universities to jurisdiction, and neither did the university's long distance learning program in this case in that the activity was incidental and isolated, i.e., only two students were participating in the program. Likewise, there was no evidence of pervasive property ownership to demonstrate the university was availing itself of Florida. Finally, the fact the university may have filed lawsuits to enforce foreign judgments against debtors did not constitute sufficient litigation activity within the state for Florida to acquire long arm jurisdiction.

McCarroll v. Van Dyk, --- So.3d ----, 2009 WL 1212246 (Fla. 4th DCA 2009).
The debtor-creditor venue rule (venue lies where payment is due to the creditor) can be overcome by evidence demonstrating the parties engaged in a course of conduct contrary to the debtor being paid where the debt was due, e.g., being paid at the address of creditor instead of the debtor. Additionally, the rule does not apply in the context of debts arising from an employment relationship.

United Auto. Ins. Co. v. County Line Chiropractic Center, --- So.3d ----, 2009 WL 1212253 (Fla. 4th DCA 2009).
Florida Rule of Appellate Procedure 9.410 requires a court give at least ten days notice before imposing a sanction, including dismissal of an appeal. Additionally, dismissal of an appeal is an extreme measure to be applied only in cases of extreme, willful misconduct, or intentional disregard of appellate rules rising to the level of inexcusable neglect.

Labry v. Whitney Nat. Bank, --- So.3d ----, 2009 WL 1175314 (Fla. 1st DCA 2009).
The First District held that a guaranty which requires payment be made in Florida does not, in and of itself, create sufficient minimum contacts to satisfy Fla. Stat. § 48.193. The result may be different, however, when the debt obligation is secured by property in Florida.

Carlsbad Technology, Inc. v. HIF Bio, Inc., --- S.Ct. ----, 2009 WL 1174837 (2009).
Remand of a removed case back to state court after a district court has declined supplemental jurisdiction over state law claims does not deprive a circuit court of jurisdiction to review the remand order.

Burlington Northern and Santa Fe Ry. Co. v. U.S., --- S.Ct. ----, 2009 WL 1174849 (2009).
While the "arranger provision" of CERCLA imposes environmental liability on a party who enters into a transaction for the sole purpose of discarding hazardous materials that are no longer useful, the provision does not impose liability on a manufacturer who merely manufactured a new and useful product that a purchaser later disposed of in a manner that led to contamination.

Arthur Andersen LLP v. Carlisle, --- S.Ct. ----, 2009 WL 1174853 (2009).
The Federal Arbitration Act (FAA) provides a right to immediate appeal of an order denying stay of court proceedings so that arbitration may be conducted, and a circuit court is not to review the underlying merits in determining whether it has jurisdiction over an appeal of an order denying stay. Non-parties to arbitration agreements are likewise entitled to this benefit of the FAA if the non-party is entitled to enforce the arbitration provision pursuant to traditional state law principles such as assumption, piercing the corporate veil, alter ego, incorporation by reference, third-party beneficiary theories, waiver and estoppel.

FDIC as Receiver for Ameribank, Inc. v. Bristol Home Mortg. Lending, LLC, Slip Copy, 2009 WL 1259184 (S.D. Fla. 2009).

A district court lacks jurisdiction over any claims against a receiver or conservator of a failed institution unless the exhaustion requirement of applying to the receiver is first met.

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A. Duda and Sons, Inc. v. St. Johns River Water Management Dist., --- So.3d ----, 2009 WL 1346132 (Fla. 5th DCA 2009).
A landowner has the right to construct canals, culverts and other projects that divert surface waters without obtaining a permit from the applicable water management district so long as the use is "predominantly" for agricultural purposes.

Roberson v. Kitchen, --- So.3d ----, 2009 WL 1346138 (Fla. 5th DCA 2009).
An easement which reads "together with an Easement for Ingress and Egress described as follows: The East 50 feet of the West 183 feet of the North 203.8 feet and also the South 50 feet of the North 253.8 of the East 80.645 feet of the West 213.645 feet of said Lot 76" is both descriptive and substantive, i.e., providing a right of ingress and egress.

Andries v. Royal Caribbean Cruises, Ltd., --- So.3d ----, 2009 WL 1310987 (Fla. 3d DCA 2009).
Applying *Marsh v. Valyou*, 977 So.2d 543 (Fla. 2007) (experts opining on "widely accepted" principles may offer "pure opinion" testimony while experts opining on "new or novel" principles must provide "sufficient indicia of reliability" for their opinions to meet the *Frye* test), the Third District held the scientific principles put forth by Plaintiff's and Defendant's experts are both widely accepted principles, and the grant of summary judgment reversed and trial on the merits ordered.

Zoldan v. Zohlman, --- So.3d ----, 2009 WL 1310995 (Fla. 3d DCA 2009).
Valuation of a limited partnership is to be at fair market value (FMV) when the instruments in question called for a FMV valuation, and there was no dispute as to the dollar amount of the FMV.

Marbella Park Homeowners Ass'n v. My Lawn Service, Inc., --- So.3d ----, 2009 WL 1312517 (Fla. 3d DCA 2009).
Expectation damages in a contract are "lost profit" damages, and non-breaching party is typically entitled to an evidentiary hearing to determine the amount of costs and expenses of performing the contract so as to arrive at the "lost profit" damage figure.

Harris Specialty Chemicals, Inc. v. Azul, --- So.3d ----, 2009 WL 1312549 (Fla. 3d DCA 2009).
A proposal for settlement is not void because it fails to include all claims pending in an action or all parties to the action.

Foxfire Properties, LLC v. Foxfire Owners Ass'n, Inc., --- So.3d ----, 2009 WL 1260021 (Fla. 2d DCA 2009).
Restrictive covenants for golf club community did not expressly state that entity was required to keep a golf course in operation, nor that the golf course had to be operating in order for parties to be entitled to arbitration as a dispute resolution mechanism. Thus, purchasing entity did not have to keep golf course open pending resolution of the dispute, and arbitration is available.

In re Chira, --- F.3d ----, 2009 WL 1351761 (11th Cir. 2009).
A bankruptcy court seeking to approve a settlement under Rule of Bankruptcy Procedure 9019(a) must consider the (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises, i.e., the factors set forth in *In re Justice Oaks II, Ltd.*, 898 F.2d 1544, 1549 (11th Cir.1990) .

Great American Ins. Co. v. Baddley And Mauro, LLC, Slip Copy, 2009 WL 1316094 (11th Cir. 2009).
Malpractice insurance carrier is not required to defend law firm which deducted its outstanding attorneys' fees from settlement funds due client without client approval because the actions alleged against the law firm, i.e., self-dealing and taking client money without authority, are not the rendering of "professional services" as defined by the policy of insurance.

Country Inns & Suites by Carlson, Inc. v. Interstate Properties, LLC, Slip Copy, 2009 WL 1298401 (11th Cir. 2009).
A liquidated damages provision in an executory contract whose term and actual damages are decreasing over time is enforceable despite the fact the liquidated damage amount does not account for the reduction of actual damages as the contract term diminishes over time.

Geico Cas. Co. v. Arce, Slip Copy, 2009 WL 1298404 (11th Cir. 2009).
Intentional infliction of emotional distress and civil conspiracy claims in a bad faith action against an insurer are barred by Florida's Economic Loss Rule.

Murray v. Playmaker Services, LLC, Slip Copy, 2009 WL 1291769 (11th Cir. 2009).
28 U.S.C. § 1927 (vexatious litigation statute) sanctions imposed against counsel and her client in Fair Labor Standards Act case.

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Robinson v. Shackelford, --- So.3d ----, 2009 WL 1423412 (Fla. 5th DCA 2009).
If excusable neglect or good cause is shown, a trial court has no discretion and must extend the time to serve a complaint.

Nack Holdings, LLC v. Kalb, --- So.3d ----, 2009 WL 1393324 (Fla. 3d DCA 2009).
A paid judgment cannot be used as a collateral mortgage vehicle by failing to satisfy the judgment of record pursuant to Fla. Stat. § 701.04 and using the unsatisfied judgment as a collateral "mortgage" for a new loan.

MacIntyre, ex rel. Wedrall Trust v. Wedell, --- So.3d ----, 2009 WL 1393375 (Fla. 4th DCA 2009).
A settlor's revocation of a revocable trust during her lifetime cannot be challenged on the ground the revocation was the subject of undue influence.

Westgate Tabernacle, Inc. v. Palm Beach County, --- So.3d ----, 2009 WL 1393429 (Fla. 4th DCA 2009).
A house of religious worship is not subject to an inordinate burden on the exercise of religious worship as the result of the cost of applying for and complying with special land use permitting requirements.

Cardelles v. Catholic Health Services, Inc., --- So.3d ----, 2009 WL 1393474 (Fla. 4th DCA 2009).
If a *forum non conveniens* challenge is raised, the movant must demonstrate, either through affidavits or a clear showing on the face of the complaint, the need for transfer due to the convenience of the parties or the interests of justice.

Monroe County Code Enforcement v. Carter, --- So.3d ----, 2009 WL 1393689 (Fla. 3d DCA 2009).
A notice of code violation issued by a local government need not comply with the pleading requirements set forth in Part II of Chapter 162, i.e., the notice of violation need not state the date and time the civil infraction was committed.

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Lackner v. Central Florida Investments, Inc., --- So.3d ----, 2009 WL 1490692 (Fla. 5th DCA 2009).
General magistrates, even with the consent of the parties, may not preside over civil jury trials in the absence of authorizing legislation or rule of court.

Westminster Community Care Services, Inc. v. Mikesell, --- So.3d ----, 2009 WL 1490826 (Fla. 5th DCA 2009).
A new trial on both damages and liability is required when additur is necessary to correct an insufficient jury verdict and the issue of liability was contested by both parties.

Florida Eye Clinic, P.A. v. Gmach, --- So.3d ----, 2009 WL 1490838 (Fla. 5th DCA 2009).
The Patient's Right to Know of Adverse Medical Incidents law, Article X, Section 25 of the Florida Constitution, does not eliminate attorney-client and work product privileges.

Florida Home Builders Ass'n, Inc. v. City Of Tallahassee, --- So.3d ----, 2009 WL 1492614 (Fla. 1st DCA 2009).
A trade association's right to bring an action on behalf of its members depends upon the association demonstrating that a substantial number of its members will be affected by the subject of the lawsuit (a proposed municipal ordinance in this case).

In re Amendments to Florida Rules of Civil Procedure - Management of Cases Involving Complex Litigation, 2009 WL 1473978 (Fla. 2009).
The Florida Supreme Court adopted new Rule of Civil Procedure 1.201, Complex Litigation, effective immediately. The text reads:

> RULE 1.201. COMPLEX LITIGATION
> (a) Complex Litigation Defined. At any time after all defendants have been served, and an appearance has been entered in response to the complaint by each party or a default entered, any party, or the court on its own motion, may move to declare an action complex. However, any party may move to designate an action complex before all defendants have been served subject to a showing to the court why service has not been made on all defendants. The court shall convene a hearing to determine whether the action requires the use of complex litigation procedures and enter an order within 10 days of the conclusion of the hearing.
> (1) A "complex action" is one that is likely to involve complicated legal or case management issues and that may require extensive judicial management to expedite the action, keep costs reasonable, or promote judicial efficiency.
> (2) In deciding whether an action is complex, the court must consider whether the action is likely to involve:

(A) numerous pretrial motions raising difficult or novel legal issues or legal issues that are inextricably intertwined that will be time-consuming to resolve;
(B) management of a large number of separately represented parties;
(C) coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court;
(D) pretrial management of a large number of witnesses or a substantial amount of documentary evidence;
(E) substantial time required to complete the trial;
(F) management at trial of a large number of experts, witnesses, attorneys, or exhibits;
(G) substantial post-judgment judicial supervision; and
(H) any other analytical factors identified by the court or a party that tend to complicate comparable actions and which are likely to arise in the context of the instant action.
(3) If all of the parties, pro se or through counsel, sign and file with the clerk of the court a written stipulation to the fact that an action is complex and identifying the factors in (2)(A) through (2)(H) above that apply, the court shall enter an order designating the action as complex without a hearing.
(b) Initial Case Management Report and Conference . The court shall hold an initial case management conference within 60 days from the date of the order declaring the action complex.
(1) At least 20 days prior to the date of the initial case management conference, attorneys for the parties as well as any parties appearing pro se shall confer and prepare a joint statement, which shall be filed with the clerk of the court no later than 14 days before the conference, outlining a discovery plan and stating:
(A) a brief factual statement of the action, which includes the claims and defenses;
(B) a brief statement on the theory of damages by any party seeking affirmative relief;
(C) the likelihood of settlement;
(D) the likelihood of appearance in the action of additional parties and identification of any non-parties to whom any of the parties will seek to allocate fault;
(E) the proposed limits on the time: (i) to join other parties and to amend the pleadings, (ii) to file and hear motions, (iii) to identify any non-parties whose identity is known, or otherwise describe as specifically as practicable any non-parties whose identity is not known, (iv) to disclose expert witnesses, and (v) to complete discovery;
(F) the names of the attorneys responsible for handling the action;
(G) the necessity for a protective order to facilitate discovery;
(H) proposals for the formulation and simplification of issues, including the elimination of frivolous claims or defenses, and the number and timing of motions for summary judgment or partial summary judgment;

(I) the possibility of obtaining admissions of fact and voluntary exchange of documents and electronically stored information, stipulations regarding authenticity of documents, electronically stored information, and the need for advance rulings from the court on admissibility of evidence;
(J) suggestions on the advisability and timing of referring matters to a magistrate, master, other neutral, or mediation;
(K) a preliminary estimate of the time required for trial;
(L) requested date or dates for conferences before trial, a final pretrial conference, and trial;
(M) a description of pertinent documents and a list of fact witnesses the parties believe to be relevant;
(N) number of experts and fields of expertise; and
(O) any other information that might be helpful to the court in setting further conferences and the trial date.
(2) Lead trial counsel and a client representative shall attend the initial case management conference.
(3) Notwithstanding rule 1.440, at the initial case management conference, the court will set the trial date or dates no sooner than 6 months and no later than 24 months from the date of the conference unless good cause is shown for an earlier or later setting. The trial date or dates shall be on a docket having sufficient time within which to try the action and, when feasible, for a date or dates certain. The trial date shall be set after consultation with counsel and in the presence of all clients or authorized client representatives. The court shall, no later than 2 months prior to the date scheduled for jury selection, arrange for a sufficient number of available jurors. Continuance of the trial of a complex action should rarely be granted and then only upon good cause shown.
(c) The Case Management Order. The case management order shall address each matter set forth under rule 1.200(a) and set the action for a pretrial conference and trial. The case management order also shall specify the following:
(1) Dates by which all parties shall name their expert witnesses and provide the expert information required by rule 1.280(b)(4). If a party has named an expert witness in a field in which any other parties have not identified experts, the other parties may name experts in that field within 30 days thereafter. No additional experts may be named unless good cause is shown.
(2) Not more than 10 days after the date set for naming experts, the parties shall meet and schedule dates for deposition of experts and all other witnesses not yet deposed. At the time of the meeting each party is responsible for having secured three confirmed dates for its expert witnesses. In the event the parties cannot agree on a discovery deposition schedule, the court, upon motion, shall set the schedule. Any party may file the completed discovery deposition schedule agreed upon or entered by the court. Once filed, the deposition dates in the schedule shall not be altered without consent of all parties or upon order of the court. Failure to

comply with the discovery schedule may result in sanctions in accordance with rule 1.380.
(3) Dates by which all parties are to complete all other discovery.
(4) The court shall schedule periodic case management conferences and hearings on lengthy motions at reasonable intervals based on the particular needs of the action. The attorneys for the parties as well as any parties appearing pro se shall confer no later than 15 days prior to each case management conference or hearing. They shall notify the court at least 10 days prior to any case management conference or hearing if the parties stipulate that a case management conference or hearing time is unnecessary. Failure to timely notify the court that a case management conference or hearing time is unnecessary may result in sanctions.
(5) The case management order may include a briefing schedule setting forth a time period within which to file briefs or memoranda, responses, and reply briefs or memoranda, prior to the court considering such matters.
(6) A deadline for conducting alternative dispute resolution.
(d) Final Case Management Conference. The court shall schedule a final case management conference not less than 90 days prior to the date the case is set for trial. At least 10 days prior to the final case management conference the parties shall confer to prepare a case status report, which shall be filed with the clerk of the court either prior to or at the time of the final case management conference. The status report shall contain in separately numbered paragraphs:
(1) A list of all pending motions requiring action by the court and the date those motions are set for hearing.
(2) Any change regarding the estimated trial time.
(3) The names of the attorneys who will try the case.
(4) A list of the names and addresses of all non-expert witnesses (including impeachment and rebuttal witnesses) intended to be called at trial. However, impeachment or rebuttal witnesses not identified in the case status report may be allowed to testify if the need for their testimony could not have been reasonably foreseen at the time the case status report was prepared.
(5) A list of all exhibits intended to be offered at trial.
(6) Certification that copies of witness and exhibit lists will be filed with the clerk of the court at least 48 hours prior to the date and time of the final case management conference.
(7) A deadline for the filing of amended lists of witnesses and exhibits, which amendments shall be allowed only upon motion and for good cause shown.
(8) Any other matters which could impact the timely and effective trial of the action.

Conrad v. Young, --- So.3d ----, 2009 WL 1456720 (Fla. 4th DCA 2009).
Claim for removal of obstructions on an easement does not accrue until owner of servient tenement refuses a request to remove the obstruction.

DFC Homes of Florida v. Lawrence, 8 So.3d 1281 (Fla. 4th DCA 2009).
Real estate vendor did not waive right to arbitration by participating in deposition, making offers to settle lawsuit, responding to interrogatories, filing a motion to dismiss for lack of prosecution and participating in mediation after purchaser filed demand for arbitration.

Bland v. Green Acres Group, L.L.C., 12 So.3d 822 (Fla. 4th DCA 2009).
Filing an answer to a complaint without demanding the matter should be referred to arbitration waives the right to arbitrate; arbitration is like a forum selection clause in that it does not deprive one court of jurisdiction.

Bellon v. Acosta, 10 So.3d 1165 (Fla. 3d DCA 2009).
Under the following clause of the 2007 Florida Association of Realtors form contract, the failure of buyers to provide either evidence of financing or a notice stating they were unable to obtain financing results in forfeiture of the buyers' deposit:

(b) Buyer will apply for new ... conventional ... financing ... at the prevailing interest rate and loan costs based on Buyer's creditworthiness (the "Financing") within *10* days from Effective Date (5 days if left blank) and provide Seller with either a written Financing commitment or approval letter ("Commitment") or written notice that Buyer is unable to obtain a Commitment within *20* days from Effective Date (the earlier of 30 days after the Effective Date or 5 days prior to Closing Date if left blank) ("Commitment Period"). Buyer will keep Seller and Broker fully informed about loan application status, progress and Commitment issues and authorizes the mortgage broker and lender to disclose all such information to Seller and Broker. If, after using diligence and good faith, Buyer is unable to provide the Commitment and provides Seller with written notice that Buyer is unable to obtain a Commitment within the Commitment Period, either party may cancel this Contract and Buyer's deposit will be refunded. Buyer's failure to provide Seller with written notice that Buyer is unable to obtain a Commitment within the Commitment Period will result in forfeiture of Buyer's deposit(s). Once Buyer provides the Commitment to Seller, the financing contingency is waived and Seller will be entitled to retain the deposits if the transaction does not close by the Closing Date unless (1) the Property appraises below the purchase price and either the parties cannot agree on a new purchase price or Buyer elects not to proceed, (2) the property related conditions of the Commitment have not been met (except when such conditions are waived by other provisions of this Contract), or (3) another provision of this Contract provides for cancellation.

Kosoy Kendall Associates, LLC v. Los Latinos Restaurant Inc., 10 So.3d 1168 (Fla. 3d DCA 2009).
The failure of a tenant to timely deposit rent into the court registry under Fla. Stat. § 83.232 and pursuant to court order absolutely entitles a landlord to an immediate writ of possession, notwithstanding the tenant later deposited the money into the court registry.

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New Port Richey Medical Investors, LLC v. Stern ex rel. Petscher, 14 So.3d 1084 (Fla. 2d DCA 2009).
Failure to include all details regarding agreement to arbitrate not fatal to arbitration agreement as the Florida Arbitration Code provides procedure for arbitration.

Montgomery v. Larmoyeux, 14 So.3d 1067 (Fla. 4 DCA 2009).
Fla. Stat. § 57.105 is strictly construed and failure to comply with 21 day "safe harbor" requirement of statute vitiates award of attorneys' fees.

Palm Beach County Environmental Coalition v. Florida Dept. of Environmental Protection, 14 So.3d 1076 (Fla. 4th DCA 2009).
Environmental group that used wildlife refuge and homeowner who lived 2.5 miles from proposed utility project both had sufficient standing, for administrative hearing purposes, to contest proceedings to grant utility right to develop.

Beckley v. Best Restorations, Inc., 13 So.3d 125 (Fla. 4th DCA 2009).
Substitute service through mailbox is not permissible unless the public records demonstrate only address discoverable for defendant was the mailbox at which she was served.

Mt. Nebo Missionary Baptist Church v. Glee, 14 So.3d 1080 (Fla. 1st DCA 2009).
Trial court did not have jurisdiction over church where church was an unincorporated association and individual members of the church were not on notice.

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Pierce Hardy Ltd. Partnership v. Harrison Bros. Contracting, LLC, 13 So.3d 175 (Fla. 5th DCA 2009).
Filing of verified motion two days after learning of default final judgment established due diligence.

Hollifield v. Renew & Co., Inc., 18 So.3d 616 (Fla. 1st DCA 2009).
Trial court lacked authority to re-issue non-final judgment so as to give prospective appellant the right to appeal decisions when trial counsel missed the appellate filing date when the error for not filing the appeal occurred exclusively within the office of prospective appellant's counsel.

Walker v. River City Logistics Inc., 14 So.3d 1122 (Fla. 1st DCA 2009).
Barring an argument that waiver was inadvertent, the disclosure of attorney client privileged documents by claimant to his public defender waived the attorney client privilege in workers' compensation proceedings.

Geary v. Butzel Long, P.C., 13 So.3d 149 (Fla. 4th DCA 2009).
Trial court must make a finding that personal representative engaged in wrongful conduct, bad faith or frivolousness before assessing a portion of attorneys' fees incurred by the estate against the personal representative of the estate.

Witt v. La Gorce Country Club, Inc., --- So.3d ----, 2009 WL 1606437 (Fla. 3d DCA 2009).
Negligence action against a professional exists independent of, and is not limited by, a contract and any contractual provisions which limit liability.

Kenniasty v. Bionetics Corp., 10 So.3d 1183 (Fla. 5th DCA 2009).
The "safe harbor" provisions of Fla. Stat. § 57.105 apply to claims for attorneys' fees made after the effective date of the statute. Likewise, a letter is not a "motion" within the meaning of the statute.

Lake Forest Master Community Ass'n, Inc. v. Orlando Lake Forest Joint Venture, 10 So.3d 1187 (Fla. 5th DCA 2009).
Association was not required to re-notice meeting convened to discuss legal action if meeting was properly adjourned.

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Rivera v. Hammer Head Constr. & Development Corp., 14 So.3d 1190 (Fla. 5th DCA 2009).
Homeowner's failure to deny with specificity allegation by contractor of compliance with conditions precedent waived the homeowner's defense of contractor's failure to provide contractor's affidavit at least five (5) days prior to commencing suit.

Curci Village Condominium Ass'n, Inc. v. Maria, 14 So.3d 1175 (Fla. 4th DCA 2009).
Condominium association president's statement that he "did not see a problem" with unit owner's proposed modifications does not necessarily bind the association and does not waive the condominium's declaration that exterior alterations could only be made with prior written consent.

Wendt v. La Costa Beach Resort Condominium Ass'n, Inc., 14 So.3d 1179 (Fla. 4th DCA 2009).
Association directors not entitled to indemnification when they breached their fiduciary duties; conflict certified with First District.

Makes & Models Magazine, Inc. v. Web Offset Printing Co., Inc., 13 So.3d 178 (Fla. 2d DCA 2009).
Service of application for default is required when counsel knows defaulting party is represented by counsel and intends to defend case.

Frazier v. Dreyfuss, 14 So.3d 1183 (Fla. 4th DCA 2009).
Party entitled to award of attorneys' fees when suit is dismissed for failure to arbitrate.

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Plaza Court, L.P. v. Baker-Chaput, 17 So.3d 720 (Fla. 5th DCA 2009).
Preconstruction contract contained a force majeure clause that was broader than Florida's impossibility of performance defense, and contract therefore did not contain an unconditional promise to build within two (2) years and was subject to the provisions of the Interstate Land Sales Act.

Hickman v. Barclay's Intern. Realty, Inc., 16 So.3d 154 (Fla. 4th DCA 2009).
No cause of action exists for negligent "swearing out" warrant for arrest, and such does not support an action for malicious prosecution.

Tomac of Florida, Inc. v. Gunn's Quality Glass & Mirror, Inc., 17 So.3d 320 (Fla. 4th DCA 2009).
Presumption arises that payment is to be made at creditor's place of business when contract is silent on the issue; the presumption can be overcome only when debtor present sufficient evidence of a clear, lengthy and uninterrupted course of conduct that payment was to be made in some other fashion.

Arvelo v. Park Finance of Broward, Inc., 15 So.3d 660 (Fla. 3d DCA 2009).
Cause of action for deficiency on personal property finance agreement accrued on date of default on finance agreement; the statute of limitations was not tolled during time creditor sought sale of the collateral.

Eastern Atlantic Realty and Inv. Inc. v. GSOMR LLC, 14 So.3d 1215 (Fla. 3d DCA 2009).
Broker was not entitled to a commission for sale on right of first refusal when broker introduced a third party which triggered the right of first refusal; seller did not agree to pay broker when broker found any buyer ready, willing and able to purchase the property.

Golden v. Woodward, 15 So.3d 664 (Fla. 1st DCA 2009).
Vendor's lien may be imposed by estate on purchasers of real property, and the merger doctrine does not operate to extinguish those contractual provisions which demonstrate the consideration to be paid for property.

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Pleus v. Crist, --- So.3d ----, 2009 WL 1884805 (Fla. 2009).
Article V, Section 11(CC) of the Florida Constitution requires a governor to appoint a judge from the list of nominees submitted to the Governor within sixty (60) days of the receipt of the list of nominees. The decision specifically excludes situations where fraud or impropriety may exist in the nomination process.

Cooper v. Marriott Intern., Inc., --- So.3d ----, 2009 WL 1872441 (Fla. 4th DCA 2009).
There is no requirement to plead entitlement to attorneys' fees under Stockman v. Downs, 573 So. 2d 835 (Fla. 1991) for fees incurred during court ordered, non-binding arbitration pursuant to Fla. Stat. § 44.103.

Gomez v. Village of Pinecrest, --- So.3d ----, 2009 WL 1872476 (Fla. 3d DCA 2009).
The Third District ruled that forfeiture of property used in the commission of a crime under the Florida Contraband Forfeiture Act, Fla. Stat. § 932.702, does not require the law enforcement agency prove the owner knew, or should have known upon reasonable inquiry, that the property was being or to be used in the commission of a crime.

Fox v. Madsen, --- So.3d ----, 2009 WL 1872524 (Fla. 4th DCA 2009).
An action for a mandatory injunction is the proper method of enforcing restrictive covenants and thus a five year statute of limitations (not one year statute of limitation for specific performance) applies.

Allstate Property & Cas. Ins. Co. v. Lewis, --- So.3d ----, 2009 WL 1856231 (Fla. 1st DCA 2009).
The Binger v. King Pest Control, 401 So. 2d 1310 (Fla. 1981), analysis should be conducted when undisclosed testimony prejudices the opposing party, i.e., the opposing party is surprised in fact. The court has discretion to fashion a remedy, but must conduct a hearing regarding same.

Boone v. Pelican Real Estate & Development Co., Inc., --- So.3d ----, 2009 WL 1856551 (Fla. 1st DCA 2009).
"Procuring cause" determines the right of entitlement to a sale commission between the procuring agent and the owner, not between the procuring agent and the principal, i.e., the broker. The issue of entitlement between a procuring agent and a sale broker is determined upon contract principles.

Cuomo v. Clearing House Ass'n, L.L.C., --- S.Ct. ----, 2009 WL 1835148 (U.S. 2009).
National Bank Act can not be used to bar a state, including the attorney general of a state, to enforce its laws through subpoena or otherwise.

Thomas v. Carnival Corp., --- F.3d ----, 2009 WL 1874098 (11th Cir. 2009).
Courts should compel parties to arbitrate, unless United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards does not apply for some reason, provided the jurisdictional requirements are met, i.e., there is an agreement in writing, the agreement provides for arbitration in a country that is a signatory to the Convention, the agreement arises out of commercial dealings, and one party to the agreement is not a U.S. citizen (or the commercial dealings have some relationship to a foreign country).

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Morton v. Attorneys' Title Ins. Fund, Inc., --- So.3d ----, 2009 WL 1975901 (Fla. 2d DCA 2009).
The "survey exception" to coverage under a title insurance policy does not automatically relieve a title insurer from liability for an easement if the easement was recorded in the public records when the policy's exclusion applied to "easements or claims of easement not shown by the public records."

System Components Corp. v. Florida Dept. of Transp., --- So.3d ----, 2009 WL 1955233 (Fla. 2009).
Business damages arising from the partial taking of a business are measured by the "probable" financial impact "reasonably" suffered as the result of the taking; business damages awards are not to be a "windfalls."

Palm Beach County Health Care Dist. v. Professional Medical Educ., Inc., --- So.3d ----, 2009 WL 1940443 (Fla. 4th DCA 2009).
Claim for tortious interference in a business relationship involving a supervisor in charge of training for county government medical personnel and a provider of medical training. The Fourth District held that county executives are entitled to immunity for their actions to the same degree enjoyed by members of the legislative and judicial branches, and that no claim for tortuous interference lies when a defendant is not a stranger to the contract, and has either a supervisory capacity with regard to the contract or a financial interest in how the contract is performed.

Schulte v. Angus, --- So.3d ----, 2009 WL 1940486 (Fla. 3d DCA 2009).
Disqualification of opposing counsel based on disciplinary Rule 4-1.7 can only be applied to current (and not former) clients.

Alioto-Alexander v. Toll Bros., Inc., --- So.3d ----, 2009 WL 1940508 (Fla. 4th DCA 2009).
Having more than one defendant does not require that all defendants join in a proposal for settlement, and the proposal from one defendant alone does not render the proposal a "joint offer" for settlement.

Shlishey The Best, Inc. v. Citifinancial Equity Services, Inc., --- So.3d ----, 2009 WL 1940759 (Fla. 2d DCA 2009).
A successful bidder at a foreclosure sale has sufficient interest in the process and sufficient standing so that any post-sale procedures must necessarily allow the successful bidder an opportunity to participate.

Lanning v. Pilcher, --- So.3d ----, 2009 WL 1941210 (Fla. 1st DCA 2009).
The "Save Our Homes" amendment to the Florida Constitution does not violate the Equal Protection Clause.

Lawrence v. Goldberg, --- F.3d ----, 2009 WL 1974755 (11th Cir. 2009).
The Eleventh Circuit applied the *Barton* doctrine and held that a bankruptcy debtor must apply for leave of court to bring actions against the bankruptcy trustee or other bankruptcy officers.

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Alachua Land Investors, LLC v. City of Gainesville, --- So.3d ----, 2009 WL 2060112 (Fla. 1st DCA 2009).
A trial court may uphold a local government's quasi-judicial decision regarding land use, even if the local government did not set forth findings of fact in support of its conclusion, so long as the first reviewing court can ascertain that competent, substantial evidence exists to support the local government decision.

A. Duda and Sons, Inc. v. St. Johns River Water Management Dist., --- So.3d ----, 2009 WL 2067373 (5th DCA 2009).
Interpreting Fla. Stat. § 373.460(2), the Fifth District held a water management district may not force an agricultural enterprise to obtain surface water management use permits so long as the trapping, alteration or use of the surface water is "predominantly" for agricultural purposes.

In re Amendments to Florida Rules of Judicial Administration and Florida Rules of Appellate Procedure, --- So.3d ----, 2009 WL 2045399 (Fla. 2009).
Recorded court proceedings must be delivered without alteration or change; parties who are tape recorded in court are on notice that confidential or personal information may be disclosed in the unadulterated recordings.

Lloyds Underwriters v. Netterstrom, --- So.3d ----, 2009 WL 2048915 (Fla. 1st DCA 2009).
Florida laws prohibiting the arbitration of insurance disputes only apply as to United States insurance contracts and not international insurance contracts, so arbitration ordered under the Federal Arbitration Act.

Vos, B.V. v. Payen, --- So.3d ----, 2009 WL 2031021 (Fla. 3d DCA 2009).
Where the incident in question did not occur in Florida, a foreign defendant's *de minimus* contacts with Florida do not satisfy the long-arm requirements of Fla. Stat. § 48.193 even if the defendant may have used banks in Florida.

Stevens v. Tarpon Bay Moorings Homeowners Ass'n Inc., --- So.3d ----, 2009 WL 2031285 (Fla. 4th DCA 2009).
Individual homeowners, and not just the homeowners association, must be joined in a lawsuit which directly affects their individual rights with regard to property.

Hayim Real Estate Holdings, LLC v. Action Watercraft Intern. Inc., --- So.3d ----, 2009 WL 2032368 (Fla. 3d DCA 2009).
Summary judgment for seller of commercial real property reversed even though the contract was "as is" with an inspection period and buyer did not cancel as the result of its inspections (which missed the alleged defect).

Moustakis v. City of Fort Lauderdale, Slip Copy, 2009 WL 2004183 (11th Cir. 2009).
A fine of $150 per day for municipal code violations is not so excessive as to be in violation of the Florida and United States Constitutions because it lies within the range of permissible fines established by the Florida Legislature, notwithstanding the total fine exceeded $800,000 by the time of filing of the lien.

Andrade v. Royal Caribbean Cruises, Ltd.,Slip Copy, 2009 WL 2045686 (S.D. Fla. 2009).
Section 205 of the New York Convention permits removal at any time before trial, so removal proper even though the parties litigated for five months in state court prior to the Notice of Removal being filed.

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Labati v. University of Miami, 16 So.3d 886 (Fla. 3d DCA 2009).
Summary judgment against former basketball coach proper when university bought out remaining term of coach's contract and university produced non-discriminatory reasons for firing.

Parisi v. Miranda, 15 So.3d 816 (Fla. 4th DCA 2009).
Jury verdict reversed as against the manifest weight of the evidence where shareholder's agreement contemplated valuation of shares on date of termination of shareholder and shareholder's expert valued on a different date, i.e., the last day of the year in which shareholder was terminated.

Mercer v. Kanowsky, 15 So.3d 814 (Fla. 4th DCA 2009).
Award of attorneys' fees to beneficiary reversed as beneficiary did not request her attorneys' fees in objection to accounting and only requested fees in closing argument.

Lewis v. Nical of Palm Beach, Inc., --- So.3d ----, 2009 WL 2168815 (Fla. 4th DCA 2009).
Pro se litigants not entitled to value of "paralegal labor" for work they did themselves when trial court not shown the "paralegal labor" was required by trial counsel and how the "paralegal work" reduced the amount of work to be done by trial counsel.

Hilb Rogal & Hobbs of Florida, Inc. v. Grimmel, 16 So.3d 167 (Fla. 4th DCA 2009).
Hearing required on party's exception to magistrate's report prior to trial court approving and ratifying report.

Open Permit Services of Florida, Inc. v. Curtiss, 15 So.3d 822 (Fla. 3d DCA 2009).
Real estate sales contract provides that seller "may" restore improvements prior to closing, or if it chose not to do so, buyer was obligated to take property "as is," and that seller to deliver marketable title. Buyer accordingly was not entitled to replacement of fixtures lost prior to closing, but was entitled to discharge of taxes and liens incurred by seller prior to closing.

Depelisi v. Wishner, 15 So.3d 808 (Fla. 4th DCA 2009).
Affidavit by trial counsel that he did not receive notices of hearing does not automatically overcome presumption of certificate of service that demonstrates service, but evidentiary hearing required to resolve factual dispute created by affidavits.

Murphy v. Bay Colony Property Owners Ass'n, 12 So.3d 924 (Fla. 2d DCA 2009). Homeowner entitled to declaratory action when she stated she entered into agreement with association to build boat dock and the agreement ran with land; a party is only required to demonstrate it is entitled to a declaration and that it is in doubt as to its rights in order to proceed on a cause of action for declaratory relief (it is not required to prove it will necessarily be successful in its action).

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TECO Barge Line, Inc. v. Hagan, --- So.3d ----, 2009 WL 2341631 (Fla. 2d DCA 2009).
Forum selection clause entered into after injury and in consideration of continued benefits was not ambiguous when it referred to two possible courts but did not specify which court.

Crown Custom Homes, Inc. v. Sabatino, 18 So.3d 738 (Fla. 2d DCA 2009).
Dispute over attorneys' fees where the prevailing party did not win on all counts. The trial court held the issues were inextricably intertwined, and awarded attorneys fees to the homeowners (Sabatinos). On appeal, the appellate court reversed in that expert witness's opinion that the claims were "inextricably intertwined" lacked factual foundation, and trial court did not set forth the basis for "inextricably intertwined" in its order awarding fees.

Mortellaro & Sinadinos, PLLC v. Countrywide Home Loans, 14 So.3d 278 (Fla. 1st DCA 2009).
Order vacating previous order requiring disbursement of foreclosure sale proceeds is not a final order, so a motion for rehearing filed directed to order vacating previous order was not a motion which tolled the time for filing an appeal. Accordingly, appeal was required to be filed thirty (30) days from order vacating prior order and not from denial of motion for rehearing.

Strategic Empowerment for Economic Development, Inc. v. South Dade Realty, Inc., 14 So.3d 260 (Fla. 3d DCA 2009).
Lis pendens cannot be used to reach the proceeds of a real estate closing that is yet to occur; compliance with the requirements of a preliminary injunction is required if that is the intended effect of the lis pendens.

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Chastain v. Cunningham Law Group, P.A., --- So.3d ----, 2009 WL 2408178 (Fla. 2d DCA 2009).
Disbarred attorney who was working on a contract basis as paralegal for law firm was entitled to quantum meruit for work performed, even if the disbarred attorney ceased work before the underlying contingency cases on which he was working came to fruition. *Faro v. Romani*, 641 So. 2d 69 (Fla. 1994) (attorney who withdraws from contingency case before the fulfillment of the contingency forfeits all right to compensation), is not applicable to facts of this case.

Redington Grand, LLP v. Level 10 Properties, LLC, --- So.3d ----, 2009 WL 2408334 (Fla. 2d DCA 2009).
Contracts are subject to rescission for lack of mutuality of obligation, but not for lack of mutuality of remedy. Thus, a real estate sales contract that gave the developer different remedies than given to purchasers was enforceable as an "[o]bligation pertains to the consideration while remedy pertains to the means of enforcement."

Pinnacle Floor Covering, Inc. v. Department of Transp., --- So.3d ----, 2009 WL 2408338 (Fla. 2d DCA 2009).
Claim for business damages arising out of a condemnation proceeding where the business owner did not prevail on the claim for business damages but was awarded expert witness fees. The Second District reversed, holding that Fla. Stat. § 73.091(1) only permits an award of expert witness fees when the business owner prevails on its business damages claim.

Lynch v. Solid Waste Haulers Florida, LLC, --- So.3d ----, 2009 WL 2392988 (Fla. 1st DCA 2009).
Whether a party has waived the right to arbitration by participation in litigation depends on the totality of the circumstances, and the right was not waived under the facts of this case despite one defendant filing an answer and another filing a motion to dismiss prior to either defendant filing a motion to compel arbitration.

Greenberg v. Big Cypress Realty, Inc., --- So.3d ----, 2009 WL 2382309 (Fla. 4th DCA 2009).
Johnson v. Davis claims can be asserted against real estate brokers, but only for residential transactions. Trial court dismissal against brokers reversed because the dismissed complaint did not explicitly state whether it was a residential transaction.

Lake Charleston Maintenance Ass'n, Inc. v. Farrell, --- So.3d ----, 2009 WL 2382315 (Fla. 4th DCA 2009).
A homeowners' association does not need to prove in its case in chief that its Development Review Board (architectural review committee) was properly constituted and formed in order to enforce its rulings.

McCarthy v. Estate of Krohn, --- So.3d ----, 2009 WL 2382349 (Fla. 4th DCA 2009).
Prejudgment interest is awardable on a discharged law firm's quantum meruit claim.

Frost v. Regions Bank, --- So.3d ----, 2009 WL 2382368 (Fla. 4th DCA 2009).
Lender's failure to negate, either through facts or law, borrower's affirmative defense of failure to give proper notice requires reversal of summary judgment in favor of lender.

Terra Firma Holdings v. Fairwinds Credit Union, --- So.3d ----, 2009 WL 2382414 (Fla. 2d DCA 2009).
Grant of summary judgment on basis not set forth in pleadings is improper.

Prestige Valet, Inc. v. Mendel, --- So.3d ----, 2009 WL 2382528 (Fla. 2d DCA 2009).
Setting aside a co-defendant's settlement agreement as a condition precedent to setting aside a different co-defendant's settlement agreement is error when the settlement agreements are independent of each other.

Yeatman v. D.R. Horton, Inc., --- F.3d ----, 2009 WL 2357092 (11th Cir. 2009).
Real estate purchase agreement which offered purchasers closing costs discount if purchasers used seller's affiliated mortgage lender did not violate R.E.S.P.A. as using affiliated company was not a condition of contract.

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TRG Night Hawk Ltd. v. Registry Development Corp., --- So.3d ----, 2009 WL 2448002 (Fla. 2d DCA 2009).
Party cannot bring negligent misrepresentation and FDUTPA claims upon issues that are dealt with in a contract.

Developers Of Solamar, LLC v. Weinhauer, --- So.3d ----, 2009 WL 2448018 (Fla. 2d DCA 2009).
Real estate sales contract which gave developer of condominiums an option to rescind if it did not submit the entire project to condominium did not lack mutuality of obligation upon developer submitting entire project to condominium as it could not be withdrawn at that point. The contract was also not void for lack of mutuality of remedy in that buyer was entitled to its remedies upon developer's "willful" breach of the contract. Previous Second District cases on these issues were distinguished.

Bonilla v. Yale Mortg. Corp., --- So.3d ----, 2009 WL 2448142 (Fla. 3d DCA 2009).
Summary judgment of foreclosure and order denying motion for rehearing reversed when pro bono counsel for borrower who appeared at last moment was not given opportunity to fully present borrower's defenses and there appeared to be valid defenses to foreclosure, including usury.

KeyBank Nat. Ass'n v. Knuth Ltd., --- So.3d ----, 2009 WL 2448160 (Fla. 3d DCA 2009).
Order denying motion for appointment of receiver reversed where there was substantial likelihood the mortgagee would prevail on the merits as borrower was in default and had not shown meritorious defenses, and rents were not being paid over to the mortgagee despite there being in place an assignment of rents.

BDO Seidman, LLP v. Banco Espirito Santo Intern., Ltd., --- So.3d ----, 2009 WL 2448178 (Fla. 3d DCA 2009).
The posting of a supersedeas bond precludes discovery in aid of execution, but the posting of a bond pursuant to Fla. Stat. § 45.045(1) (party may obtain stay of enforcement for judgment in excess of $50 million by posting supersedeas bond of $50 million) allows judgment creditor to conduct limited discovery in aid of execution to see if assets in excess of $50 million bond are being dissipated.

Williams v. Cadlerock Joint Venture LP, --- So.3d ----, 2009 WL 2448377 (Fla. 4th DCA 2009).
The failure to seek Fla. Stat. § 57.105 fees in a prior appeal does not prohibit a party from seeking such fees in the trial court for further actions after remand of the appellate case.

Save On Cleaners Of Pembroke II Inc. v. Verde Pines City Center Plaza LLC, --- So.3d ----, 2009 WL 2448382 (Fla. 4th DCA 2009).
The failure to plead claim for attorneys' fees is not fatal to an award of attorneys fees if, despite *Stockman v. Downs*, 573 So. 2d 835 (Fla. 1991) (party must plead claim for attorneys' fees), party made clear its intention to seek attorneys' fees and opposing party acquiesced in the claim.

Keyes Co. v. Spencer, --- So.3d ----, 2009 WL 2448405 (Fla. 4th DCA 2009).
Error for trial court to allow prevailing party in arbitration to seek modification of final judgment to award attorneys' fees when prevailing party had three opportunities to seek modification or clarification of the arbitration award and failed to do so during the required time period. Additionally, prejudgment interest was due on arbitration award from date of award forward as the arbitration award liquidated the amount due claimant.

Peart v. Shippie, Slip Copy, 2009 WL 2435211 (11th Cir. 2009).
The Fair Credit Reporting Act bars prohibits credit reporting agencies from providing false information, but there is no private cause of action for violation of this provision. Additionally, consumer reporting agencies are only required to institute "reasonable procedures to assure the maximum accuracy of each credit report."

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Manorcare Health Services, Inc. v. Stiehl, --- So.3d ----, 2009 WL 2568264 (Fla. 2d DCA 2009).
The Second District held that notwithstanding provision in contract containing arbitration agreement that any portions of contract found void could not be severed and contract had to be cancelled, that the offending provision could, in fact, be severed. As a result, the contract was not void as against public policy.

Valenzuela v. GlobeGround North America, LLC, --- So.3d ----, 2009 WL 2513875 (Fla. 3d DCA 2009).
The Third District succinctly set forth employment law principles in affirming a summary judgment, holding that "[i]n order to establish a prima facie case of disparate treatment based on gender discrimination, a plaintiff must prove that: (1) the employee is a member of a protected class; (2) the employee was qualified for her position; (3) the employee suffered an adverse employment action; and (4) similarly situated employees outside the employee's protected class were treated more favorably." Furthermore, the presumption can be removed by the employer offering a legitimate, non-pretextual, non-discriminatory reason for termination of the employee.

Petersen v. Whitson, --- So.3d ----, 2009 WL 2514164 (Fla. 2d DCA 2009).
Once a Florida courts enters a judgment against a judgment debtor, the Florida courts have continuing jurisdiction over the judgment debtor for purposes of an action to renew the judgment even if the judgment debtor moves to another state after entry of the original judgment.

River Bridge Corp. v. American Somax Ventures, --- So.3d ----, 2009 WL 2516922 (Fla. 4th DCA 2009).
Appellate decision regarding determination of "lost profits" arising from a breach of contract case where the Fourth District held lost profits are determined by the "before and after" or "yardstick" methods, the "yardstick" method being more applicable to the situation where the business does not have an extensive track record. That portion of the final judgment containing an element of lost profits based on the "yardstick" method reversed to the extent Plaintiff's expert did not sufficiently establish Plaintiff was in the same position as the other businesses used as the "yardstick."

Toll Jupiter L.P. v. Motto, --- So.3d ----, 2009 WL 2516941 (Fla. 4th DCA 2009).
Failure of meeting of the minds with regard to contract which contained an arbitration provision, so arbitration cannot be compelled.

N & D Holding, Inc. v. Town of Davie, --- So.3d ----, 2009 WL 2517060 (Fla. 4th DCA 2009).
The test for determining whether a declaratory judgment action can withstand a motion to dismiss is not whether plaintiff will succeed in obtaining a declaration of rights but whether plaintiff is entitled to a declaration at all.

Krenkel v. Kerzner Intern. Hotels Ltd., --- F.3d ----, 2009 WL 2513645 (11th Cir. 2009).
Forum selection clause is presumptively valid unless party can show it was procured by fraud or overreaching, party will be deprived of its day in court, chosen law would deprive party of remedy, or enforcement contravenes public policy. In determining whether clause was obtained by fraud or overreaching, courts examine whether party had reasonable opportunity to apprise clause based on its physical characteristics and ability to become meaningfully informed of the contents of the clause.

Big Top Koolers, Inc. v. Circus-Man Snacks, Inc., Slip Copy, 2009 WL 2501960 (11th Cir. 2009).
In order to file a late appeal, a party must establish it did not receive notice under Federal Rule of Civil Procedure 77(d) within 21 days of entry of the order or judgment, that it filed the motion for late appeal within 180 days of the entry of the order or judgment or within 7 days of receipt of the Rule 77(d) notice (whichever is earlier), and that no party would be prejudiced by permitting a late appeal.

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City of Tampa v. Companioni, --- So.3d ----, 2009 WL 2634080 (Fla. 2d DCA 2009).
A party whose trial objections are sustained must move for mistrial in order to preserve the objections for appellate review. It is not necessary, however, to move for mistrial as prerequisite for moving for new trial.

Dean v. Mulhall, --- So.3d ----, 2009 WL 2601630 (Fla. 4th DCA 2009).
A party who does not sign a settlement agreement arising out of mediation is not bound by the settlement agreement despite all counsel having signed the agreement.

Comcast Of Florida, L.P. v. L'Ambiance Beach Condominium Ass'n, Inc., --- So.3d ----, 2009 WL 2601635 (Fla. 4th DCA 2009).
A contract entered into by developer to provide cable television services to all members of condominium is a contract that provides for "operation, maintenance or management of a condominium association" and thus can be cancelled pursuant to Fla. Stat. § 718.302 upon turnover of the condominium/association by the developer.

205 Jacksonville, LLC v. A-Affordable Air, LLC, --- So.3d ----, 2009 WL 2601850 (Fla. 3d DCA 2009).
A general denial is a sufficient "meritorious defense" to vacate a clerk's default, but not sufficient to vacate a final judgment of default. Additionally, counsel failing to properly note the date by which to file an answer can constitute the necessary element of "excusable neglect" to vacate a default.

Nicaragua Trader Corp. v. Alejo Florida Properties, LLC, --- So.3d ----, 2009 WL 2601865 (Fla. 3d DCA 2009).
Dismissal of a an appeal for failure to timely file appellate brief is subject to Florida Rule of Appellate Procedure 9.410, which provides an appellate party must be given at least 10 days notice of the risk of sanctions prior to sanctions being imposed.

Hearn Properties, Inc. v. Cruce, --- So.3d ----, 2009 WL 2602317 (Fla. 1st DCA 2009).
In boundary dispute where one party claimed boundary by acquiescence, the First District held the location of a fence, by itself, is insufficient to establish a dispute or uncertainty as to location of the boundary.

Dees v. Kidney Group, LLC, --- So.3d ----, 2009 WL 2602250 (Fla. 2d DCA 2009).
Party in dispute over dissolution of LLC was entitled to discovery of non-party clients of opposing LLC members when doing so would not result in "annoyance, embarrassment, oppression or undue burden or expense." Additionally, not allowing discovery would result in material harm to party seeking discovery.

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Blanton v. Baltuskouis, --- So.3d ----, 2009 WL 2762646 (Fla. 4th DCA 2009).
Party, merely by his failure to attend trial, is not deemed to have automatically consented to amendment of pleadings at trial to conform to the evidence submitted at trial.

DeFalco v. City of Hallandale Beach, --- So.3d ----, 2009 WL 2762679 (Fla. 4th DCA 2009)
By statute, a mobile home park owner that evicts residents under Fla. Stat. § 723.061 (change in zoning or use of mobile home park) need not provide adequate alternate housing for the displaced residents as required by Fla. Stat. § 713.083. Additionally, Fla. Stat. § 723.061 applies even when a municipality is the owner of the mobile home park.

Jupiter Ocean and Racquet Club Condominium Ass'n, Inc. v. Courtside Properties of Palm Beach, LLC, --- So.3d ----, 2009 WL 2762686 (Fla. 4th DCA 2009).
Fla. Stat. § 718.302 (an association, after turnover from the developer, may cancel leases entered into by the developer prior to turnover) cannot be applied retroactively, i.e., the statute cannot be applied if the lease was entered into before the passage of the statute.

Natural Answers, Inc. v. Carlton Fields, P.A., --- So.3d ----, 2009 WL 2762735 (Fla. 3d DCA 2009).
Transactional attorneys did not commit malpractice by failing to obtain signatures on contract documents when litigation revealed there was only an agreement to agree, not an enforceable contract, between the parties.

Hull v. Lending House, Inc., --- So.3d ----, 2009 WL 2762821 (Fla. 3d DCA 2009).
Substitute service permissible when the record revealed the process server made several attempts to serve the defendant at the property and the property was not easily accessible from the street.

Clauro Enterprises, Inc. v. Aragon Galiano Holdings, LLC, --- So.3d ----, 2009 WL 2762841 (Fla. 3d DCA 2009).
Service on a party through a private mailbox under Fla. Stat. § 48.031(6) is strictly construed and the party seeking to uphold private mailbox service must demonstrate both that the private mailbox was the only address discoverable through public records for the party to be served and that it was actually the mailbox of the party to be served.

Romano v. Mechaia Investments, LLC, --- So.3d ----, 2009 WL 2764130 (Fla. 3d DCA 2009).
The filing of an appeal by one party does not deprive a trial court of jurisdiction to hear a timely filed motion for rehearing by another party.

Wayne Frier Home Center of Pensacola, Inc. v. Cadlerock Joint Venture, L.P., --- So.3d ----, 2009 WL 2777094 (Fla. 1st DCA 2009).

The switching of mobile homes and serial numbers of the mobile homes in sales contracts sufficient egregious conduct to allow aggrieved party to plead punitive damages.

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Abis v. Tudin, D.V.M., P.A., --- So.3d ----, 2009 WL 2901236 (Fla. 2d DCA 2009)
A post incident release, unlike a pre-incident waiver of liability, need not list the specific acts of negligence being released in order to be binding. Likewise, unnamed third parties need not be specifically listed to be released in a post incident release so long as the release indicates an intention to release the third parties.

Nucci v. Simmons, --- So.3d ----, 2009 WL 2901295 (Fla. 3d DCA 2009)
The deposition of opposing counsel may be ordered when opposing counsel is only a material (and not a necessary) witness to the underlying litigation. While permitting the deposition of opposing counsel is fraught with issues, such should be permitted in order to determine whether a motion to disqualify opposing counsel should be granted. Order denying disqualification of opposing counsel because he is merely a material, and not necessary witness, upheld.

4UOrtho, LLC v. Practice Partners, Inc., --- So.3d ----, 2009 WL 2871562 (Fla. 4th DCA 2009)
Dispute over restrictive covenants wherein the Fourth District held proponent of a restrictive covenant must set forth a legitimate business interest in order to be entitled to injunction If it does so, the burden shifts to the opponent to demonstrate how the covenant is overbroad or otherwise not reasonably necessary. The Fourth District also found the following to be legitimate business interests that will support an injunction: substantial relationships with existing or prospective clients, trade secrets and/or confidential business information, and investment in providing employees with specialized training. A portion of the trial court decision was reversed, however, in that "prospective clients" was not defined by the trial court.

Turchin v. Turchin, --- So.3d ----, 2009 WL 2871564 (Fla. 4th DCA 2009).
Property titled in names of both spouses (even though purchased by only one spouse) is subject to a presumption of a gift to the non-purchasing spouse, but the presumption can be overcome by a valid prenuptial agreement.

Wells Fargo Bank, N.A. v. Lupica, --- So.3d ----, 2009 WL 2900714 (Fla. 5th DCA 2009).
It is improper and confusing for a trial judge to deny a motion by stamping the word "denied" on a copy of the motion and signing the copy of the motion. Appeal from this "order" dismissed as it appears no final order was ever rendered by the trial court which gave the appellate court jurisdiction.

Danow v. Borack, Slip Copy, 2009 WL 2883469 (11th Cir. 2009).
Judgment against attorney for violation of the Fair Debt Collection Practices Act's "cease and desist contact with debtor" requirements upheld on appeal despite improper closing argument as the improper argument was not "plainly unwarranted and clearly injurious."

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Unnerstall v. Designerick, Inc., --- So.3d ----, 2009 WL 2971869 (Fla. 2d DCA 2009).
Fla. Stat. § 713.21(4) (an affected landowner may file a complaint demanding a lienor show cause within 20 days why their lien should not be discharged) is strictly construed, and lienor who filed response showing cause why its breach of contract and equitable (but not lien foreclosure) claims should not be discharged waived its right to proceed on its lien foreclosure claim. Additionally, the proper method to appeal a trial court's denial of discharge of lien is by mandamus and not certiorari.

Rappaport v. Mercantile Bank, --- So.3d ----, 2009 WL 2972474 (Fla. 2d DCA 2009).
Lender instituted collection procedures against borrower and sought financial information from borrower's spouse, a non-signatory to the loan or guarantee documents. The Second District, based on the right of privacy found in the Florida Constitution, Art. I, Sec. 23, found lender was not entitled to such discovery. Likewise, lender was not entitled to financial discovery based upon a possible fraudulent conveyance to the non-debtor spouse because it neither alleged a cause of action for nor facts constituting a fraudulent conveyance.

Killearn Homes Ass'n, Inc. v. Visconti Family Ltd. Partnership, --- So.3d ----, 2009 WL 2959663 (Fla. 1st DCA 2009).
Dispute over whether billboard constituted a "building" under restrictive covenants wherein both sides claimed the definition of the word "building" was unambiguous but ascribed different meanings to the word. The fact both sides gave different meanings tot the same word rendered the word ambiguous and prevented summary judgment. Likewise, the trial court erred by reviewing items outside sources (the City of Tallahassee Land Code in this case) to interpret the meaning of the word rather than first reviewing the restrictive covenants themselves.

Banco Indus. De Venezuela, C.A. v. de Saad, --- So.3d ----, 2009 WL 2949276 (Fla. 3d DCA 2009).
Fla. Stat. § 607.0850 (indemnification of corporate officers, directors, employees and agents) does not require a "finding of innocence" from criminal charges in order to be entitled to indemnification; the statute merely requires the corporate official have been prosecuted "by reason of the fact he or she was a director, officer, employee, or agent of the corporation" and that the he or she was "successful on the merits *or otherwise*" (emphasis supplied) in the action for which indemnification is sought. Accordingly, a corporate official whose conviction for money laundering was dismissed on a motion for judgment of acquittal and subsequently pled to a different charge was entitled to indemnification.

Bauer v. DILIB, Inc., --- So.3d ----, 2009 WL 2949296 (Fla. 4th DCA 2009).
A third party, even though it intentionally assists in the violation of a restrictive employment covenant by hiring an employee covered by a restrictive covenant, is not liable for attorneys' fees and costs to the former employer under Fla. Stat. § 542.335(1)(k). The conduct of the employer in hiring a restricted employee does not grant a trial court equitable power to award attorneys' fees. Likewise, the employer defended without challenging the enforceability of the restrictive covenant so fees were not awardable under the statute itself because fees are awardable only when the restrictive covenant is "challenged" and the second employer did not challenge the restrictive covenant. Finally, the law requires § 542.335(1)(k) be strictly construed. Conflict certified with *Sun Group Enterprises v. DeWitte*, 890 So. 2d 410 (Fla. 5th DCA 2004) (appellate attorneys' fees awarded against third party employer).

Westgate Miami Beach, Ltd. v. Newport Operating Corp., --- So.3d ----, 2009 WL 2949297 (Fla. 3rd DCA 2009).
The Third District asked the Florida Supreme Court to revisit the rule that reservation of jurisdiction to determine prejudgment interest precludes a judgment from becoming a final judgment and certified the following questions as being of great public importance:

WHERE THERE HAS BEEN AN AGREEMENT ON, OR NO OBJECTION TO, A RESERVATION OF JURISDICTION TO AWARD PREJUDGMENT INTEREST, SHOULD THE RESERVATION BE UPHELD IN ORDER TO PREVENT AN INJUSTICE NOTWITHSTANDING THE RULE IN *MCGURN V. SCOTT*, 596 So.2d 1042 (Fla.1992)?

WHERE A JUDGMENT CONTAINS A RESERVATION OF JURISDICTION TO AWARD PREJUDGMENT INTEREST, SHOULD THE APPEAL OF SUCH A JUDGMENT BE TREATED AS A PREMATURE APPEAL UNDER FLORIDA RULE OF APPELLATE PROCEDURE 9.100(*I*), OR MUST THE APPEAL BE TREATED AS ACCOMPLISHING A WAIVER OF PREJUDGMENT INTEREST PURSUANT TO *MCGURN V. SCOTT*, 596 So.2d 1042 (Fla.1992)?

WHETHER A TRIAL COURT SHOULD BE ALLOWED TO RESERVE JURISDICTION TO AWARD PREJUDGMENT INTEREST POST-APPEAL AS IT CAN WITH ATTORNEYS' FEES AND COSTS?

City of Key West Tree Com'n v. Havlicek, --- So.3d ----, 2009 WL 2949310 (Fla. 3d DCA 2009).
A circuit court has no jurisdiction to review an oral order of a local government magistrate, and the time frames for appellate review of local government action run from the date of rendition of a written order.

Infante v. Vantage Plus Corp., --- So.3d ----, 2009 WL 2950363 (Fla. 3d DCA 2009).
So long as the complaint tracks Fla. Stat. § 812.014(1), the criminal theft statute, there is no need to allege "felonious intent" in order to state a cause of action for civil theft. Likewise, it is not necessary to allege "criminal intent" to plead civil theft if the criminality of the conduct is apparent from the facts alleged in the complaint.

Bezalel v. Innovative Operators, LLC, Slip Copy, 2009 WL 2972210 (11th Cir. 2009).
The failure to request a limiting instruction under Federal Rule of Evidence 105 (evidence admitted over objection as to one party when it is properly admitted as to another party) waives the right to complain on appeal that the evidence should not have been introduced.

Valpak Direct Marketing Systems, Inc. v. Maschino, Slip Copy, 2009 WL 2942716 (11th Cir. 2009).
No error in trial court refusing to permit amendment of answer and affirmative defenses after the time period set forth in the scheduling order to amend pleadings, even though not allowing amendment permitted summary judgment to be taken against defendant.

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Tropical Jewelers Inc. v. Bank of America, N.A., --- So.3d ----, 2009 WL 3013497 (Fla. 3d DCA 2009).
Secured lender sold collateral after judgment and sought deficiency against commercial borrowers. The Third District affirmed the finding of the sale not being conducted in a commercially reasonable manner as required under Fla. Stat. § 679.507 (2) as the auctioneer could not state why some items were not inventoried or sold, the lack of the auctioneer's experience in selling goods and inventory of this kind, and the lack of adequate publicity in advance of the sale.

Mitchell v. Beach Club of Hallandale Condominium Ass'n, Inc., --- So.3d ----, 2009 WL 3018126 (Fla. 4th DCA 2009).
Condominium unit owner sought injunction against condominium association imposing special assessment, and the circuit court dismissed petition for lack of jurisdiction on the basis the amount in controversy (the unit owner's individual $4,000 assessment) was not within the jurisdiction limits of the court. The Fourth District reversed, stating that injunctions are not subject to jurisdictional limits, the injunction sought may have been titled "temporary" but the grant would have had the effect of being a permanent injunction, and that the granting of injunctions against levying assessments is not a matter that must be submitted to arbitration under Fla. Stat. § 718.1255 (1)(b), (4) (a).

Pro-Med Clinical Systems, L.L.C. v. Utopia Provider Systems, Inc., --- So.3d ----, 2009 WL 3018144 (Fla. 4th DCA 2009).
Claimant's suit in federal court seeking damages for copyright infringement, breach of fiduciary duty and breach of contract of the license agreement was dismissed upon defendant's motion because claimant's product did not meet the technical requirements of copyrightable subject matter and that other state court claims would predominate over the federal copyright claim. Claimant then filed suit in state court for essentially the same claims minus the copyright claim, i.e., breach of the licensing agreement and breach of fiduciary duty. The defendant again moved to dismiss, this time on the basis the claims amounted to an action for copyright infringement. The Fourth District found the claims to be common law, state created or contractual claims, and that such claims did arise out of the Copyright Act.

Home Devco/Tivoli Isles LLC v. Silver, --- So.3d ----, 2009 WL 3018146 (Fla. 4th DCA 2009).
Suit for return of deposit for failure to deliver a property report as required by the Interstate Land Sales Act (ILSA) where the seller defended on the basis it had unconditionally agreed to deliver the improved property within two years and was thus exempt from ILSA. Seller argued it was bound to deliver the improvements despite exceptions contained in the contract, i.e., that the following contract provision did not render seller's performance illusory:

> Notwithstanding the foregoing or any other provision contained in this Agreement, the Seller agrees that it is unconditionally obligated to complete and to deliver the Residence to buyer no later than twenty-four (24) months from the date of the execution of this Agreement, however, said twenty-four (24) month period shall be extended by any time lost to Seller as a result of delays caused by *acts of God, acts of governmental authority, flood, hurricane, strikes, labor conditions beyond Seller's control, or any other similar causes not within Seller's control.* (emphasis supplied)

The Fourth District reviewed the clause under an "impossibility of performance" standard under general Florida contract law to determine whether the contractual provision rendered performance illusory, and found the clause too broad and the contract illusory, especially the portion "or any other similar causes not within Seller's control." The Fourth District also reviewed case law from other state and federal courts which discuss the "impossibility of performance" standard for illusory promises under ILSA.

Selepro, Inc. v. Church, --- So.3d ----, 2009 WL 3018149 (Fla. 4th DCA 2009).
Foreign corporation was active and current and in good standing in its foreign jurisdiction when it filed suit, but was later administratively dissolved by the foreign jurisdiction. Defendants moved for summary judgment, relying on Fla. Stat. § 607.1501 (foreign corporation may not conduct business in Florida unless it obtains a certificate of authority from the Department of State). The Fourth District ruled that Fla. Stat. § 607.1421 (3) allows a corporation to wind up its affairs, and a foreign dissolved corporation is not "transacting business" in this state but is instead winding up its affairs when it is merely prosecuting a lawsuit to conclusion.

San Francisco Residence Club, Inc. v. 7027 Old Madison Pike, --- F.3d ----, 2009 WL 2998935 (11th Cir. 2009).
Clerk of court disbursed funds in court registry to non-party over objection of one property owner. On appeal, the Eleventh Circuit held a court has no jurisdiction over and no power to compel a non-party to return funds in dispute.

Mena v. McArthur Dairy, LLC, Slip Copy, 2009 WL 3004009 (11th Cir. 2009).
The "motor carrier exception" to the overtime pay requirements of the Fair Labor Standards Act applies to dairy business which operated vehicles which were subject to jurisdiction of the Secretary of Transportation and which delivered goods in interstate commerce. The court found goods were delivered in interstate commerce even though Plaintiff did not travel nor drive interstate because the goods the dairy company sold were delivered to the dairy company's Miami operation from out of state and were not modified once they arrived, and the goods themselves were then placed into interstate commerce by the dairy company.

Hawn v. Shoreline Towers Phase 1 Condominium Association, Inc., Slip Copy, 2009 WL 3004036 (11th Cir. 2009).
Unit owner in condominium association brought claims under the Florida (Fla. Stat. § 760.23) and federal (42 U.S.C. §3604) fair housing acts for failure of the condominium association, which had a "no dogs" rule, to allow a service animal (the owner's pet dog "Booster") in his unit. An additional claim for intentional infliction of emotional distress was premised on violations of the fair housing acts. The Eleventh Circuit found Florida's fair housing act to be identical in language to the federal act, and applied the same standards to both. On review, the court found Plaintiff did not prove he sufficiently communicated the nature of his handicap under the fair housing acts to the condominium association so that the association could propose a reasonable accommodation and found for the association. The intentional infliction claim failed since it was based upon the rejected fair housing acts.

In re Lentek Intern., Inc., Slip Copy, 2009 WL 3004043 (11th Cir. 2009).
The Eleventh Circuit affirmed a bankruptcy court ruling holding that in order to form an attorney-client relationship under Florida law, there must be both consultation and a reasonable subjective belief by the client that the attorney is representing her. In doing so, the Eleventh Circuit rejected the bankruptcy trustee's argument that Florida law only requires the providing of attorney services in order to form an attorney-client relationship.

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Commercial Interiors Corp. of Boca Raton v. Pinkerton & Laws, Inc., --- So.3d ----, 2009 WL 3149098 (Fla. 5th DCA 2009).
Unless there is a challenge to the arbitration provision itself, *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006), directs the arbitrator in the first instance determine the validity, legality or illegality of the contract containing the arbitration provision. A review of the arbitrator's decision on that point by a court is merely to determine whether any of the five grounds set forth by Fla. Stat. § 682.13 for vacating an arbitration award (corruption or fraud, evident partiality, the arbitrator exceeded her powers, the arbitrator refused to postpone the hearing upon good cause being shown, and there was no agreement to arbitrate) exist and a trial court may not overturn an arbitrator's decision merely because the arbitrator's decision was wrong on the law.

A. Duda And Sons, Inc. v. St. Johns River Water Management Dist., --- So.3d ----, 2009 WL 3149282 (Fla. 5th DCA 2009).
While valid agricultural uses are exempt from water permitting requirements, those agricultural uses which impact wetlands must still meet permitting requirements as a result of the Warren S. Henderson Wetlands Protection Act, chapter 84-79, Laws of Florida, now codified at sections 403.927(2) & (4)(a), Florida Statutes.

Swan Landing Development, LLC v. Florida Capital Bank, N.A., --- So.3d ---- 2009 WL 3151307 (Fla. 2d DCA 2009).
Promissory note and guaranty contained mandatory arbitration provisions but the mortgage did not. Under these facts, the Second District held the mortgage must be foreclosed in equity in a court while the note and guaranty were to be enforced in arbitration.

Stetson Management Co., Inc. v. Fiddler's Elbow, Inc., --- So.3d ----, 2009 WL 3151351 (Fla. 2d DCA 2009).
A trial court cannot stay the entry of a default and immediate possession of the leased property under Fla. Stat. § 83.232 even if the trial court believes good cause has been shown for the entry of a stay.

National Collegiate Athletic Ass'n v. Associated Press, --- So.3d ----, 2009 WL 3128743 (Fla. 1st DCA 2009).
While records of the NCAA are typically not subject to public review and disclosure, those NCAA records reviewed and examined by a state agency (Florida State University in this case) become "public records" of the State of Florida subject to public disclosure because the records were "received" by state agency. The records were "received' under Florida's public record law even though the NCAA did not transmit the records to the state agency but merely allowed lawyers for the state agency to view the NCAA records on a password protected website.

In re Amendments to Florida Rules of Civil Procedure, --- So.3d ----, 2009 WL 3132900 (Fla. 2009).

In order to effectuate the 2009 statutory changes to Fla. Stat. § 48.23 (lis pendens), the official form for a lis pendens found at Florida Rule of Civil Procedure 1.918 is amended immediately to read as follows:

FORM 1.918.LIS PENDENS

NOTICE OF LIS PENDENS

TO DEFENDANT(S) ....., AND ALL OTHERS WHOM IT MAY CONCERN:

YOU ARE NOTIFIED OF THE FOLLOWING:

(a) The plaintiff has instituted *of the institution of* this action *by the plaintiff* against you seeking ("to foreclose a mortgage *on*

(b) The plaintiff(s) in this action is/are:

(1) .....

(2) .....;

(c) The date of the institution of this action is .....

OR: the date on the clerk's electronic receipt for the action's filing is .....

OR: the case number of the action is as shown in the caption.

(d) The property that is the subject matter of this action is in ..... County, Florida, and is described as follows:

(legal description of property)

DATED on .....

____

Attorney for .....

.....

.....

Address

Florida Bar No. .....

NOTE: This form is not to be recorded without the clerk's case number.

Committee Notes

2009 Amendment. This form was substantially rewritten due to the amendments to section 48.23, Florida Statutes (2009). Section 48.23 provides that the notice must contain the names of all of the parties, the name of the court in which the action is instituted, a description of the property involved or affected, a description of the relief sought as to the property, and one of the following: the date of the institution of the action, the date of the clerk's electronic receipt, or the case number. If the case number is used to satisfy the requirements of section 48.23, it should be inserted in the case caption of the notice.

Challenger Inv. Group, LC v. Jones, --- So.3d ----, 2009 WL 3100997 (Fla. 3d DCA 2009).
The issuer of a satisfaction of a judgment typically cannot revisit the satisfaction pursuant to Florida Rule of Civil Procedure 1.540 as the issuance of a satisfaction is a bar to plaintiff seeking further relief. But the recipient of a satisfaction is permitted to move to alter or amend the underlying judgment and satisfaction pursuant to Rule 1.540.

Republic Federal Bank, N.A. v. Doyle, --- So.3d ----, 2009 WL 3102130 (Fla. 3d DCA 2009).
Although a trial court has discretion to grant continuances and postponements, the postponement of a foreclosure sale based upon "benevolence and compassion" is not a recognized legal ground for postponing a foreclosure sale and is not within the sound discretion of the trial court.

Saralegui v. Sacher, Zelman, Van Sant Paul, Beily, Hartman & Waldman, P.A., --- So.3d ----, 2009 WL 3103301 (Fla. 3d DCA 2009).
Law firm was not responsible for fraudulent actions of one of its former attorneys when it did not know of, approve or ratify the actions of the attorney.

Glenn Wright Homes (Delray) LLC v. Lowy, --- So.3d ----, 2009 WL 3103849 (Fla. 4th DCA 2009).
The Fourth District, sitting *en banc*, ruled that Fla. Stat. § 201.08(1) does not require documentary stamps be affixed to an unsecured promissory note before the note is enforceable, receding from *Rappaport v. Hollywood Beach Resort Condominium Assn,* 905 So.2d 1024 (Fla. 4th DCA 2005), and *Bonfiglio v. Banker's Trust Co. of California,* 944 So.2d 1087 (Fla. 4th DCA 2006), and certifying conflict with the Fifth and Third Districts on this issue.

Tarik, Inc. v. NNN Acquisitions, Inc., --- So.3d ----, 2009 WL 3109943 (Fla. 4th DCA 2009).
An order granting summary judgment in a real estate dispute, even though it may grant possession to one party, is not a final judgment determining possession sufficient to permit an interlocutory appeal pursuant to Florida Rule of Appellate Procedure 9.130 (a)(3)(c)(ii).

E.I. Dupont de Nemours and Co., Inc. v. Aquamar S.A., --- So.3d ----, 2009 WL 3110062 (Fla. 4th DCA 2009).
An attorneys' campaign contributions within the legal limits to the re-election campaign of a judge are not the basis for disqualification of a judge pursuant to Florida Statute § 38.10.

Stein v. Paradigm Mirasol, LLC, --- F.3d ----, 2009 WL 3110819 (11th Circ. 2009).
The Eleventh Circuit interpreted the Interstate Land Sales Act such that the sales contract did not impermissibly limit remedies, even though the contract contained a limitation of remedies clause, because the purchasers could have sought specific performance to require the developer to construct within two years or damages for the profit if the developer sold the property to another person. Likewise, the Eleventh Circuit rejected the contention that any force majeure clause that extends beyond Florida recognized legal impossibility is unenforceable, rejecting state law cases which hold that excuses beyond impossibility of performance are not permissible, e.g., *Devco Dev. Corp. v. Hooker Homes, Inc.*, 518 So.2d 922, 923 (Fla. 2d DCA 1987) (excessive rain); *Camacho Enters., Inc. v. Better Constr., Inc.*, 343 So.2d 1296, 1297 (Fla. 3d DCA 1977) (heart attack).

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Rice v. NITV, LLC, --- So.3d ----, 2009 WL 3232482 (Fla. 2d DCA 2009).
Even though it is not specifically set forth in Florida Rule of Civil Procedure 1.510 (c), a trial court has discretion to continue a summary judgment hearing.

Rocky Creek Retirement Properties, Inc. v. Estate of Fox, --- So.3d ----, 2009 WL 3232756 (Fla. 2d DCA 2009).
A party is bound by the contract they signed, even if they did not read nor understand it, so long as no excuse for enforcement (e.g., fraud in the inducement) exists.

1445 Washington Ltd. Partnership v. Lemontang, --- So.3d ----, 2009 WL 3189164 (Fla. 3d DCA 2009).
A default admits liquidated damages, but not unliquidated damages such as attorneys fees.

Husky Rose, Inc. v. Allstate Ins. Co., --- So.3d ----, 2009 WL 3189181 (Fla. 4th DCA 2009).
Dispute over whether landlord waived requirement that tenant carry insurance for the benefit of the landlord, and the Fourth District found the following provision of the lease was not an "anti-waiver" provision such that landlord could not argue that tenant could not raise the issue of waiver:

> WAIVER: The waiver of Landlord of any breach of any term, condition, or covenant herein contained shall not be a waiver of such term, condition, covenant, or any subsequent breach of the same or any other term, condition, or covenant herein contained.

Moreover, the Fourth District held that waiver is established by proving that one party has a right, benefit, privilege, or advantage that can be waived, that the party has actual or constructive notice of the right, and an intention to waive the right. Additionally, contracts may be modified by oral agreement of the parties even when the contract prohibits oral modification if it would assist a fraud to not enforce the oral modification or where the parties acted in accordance with the modification.

Azanza v. Private Funding Group, Inc., --- So.3d ----, 2009 WL 3189329 (Fla. 4th DCA 2009).
Failure to object to not providing 20 days notice before the summary judgment hearing pursuant to Florida Rule of Civil Procedure 1.510 (c) waives the right to object later.

Liebel v. Nationwide Ins. Co. of Florida, --- So.3d ----, 2009 WL 3189332 (Fla. 4th DCA 2009).
An "all risks" homeowners' insurance policy does not cover earth movement caused by a ruptured water line underneath the foundation, but does cover the cost of repairing the defective water line.

Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co. Inc., --- So.3d ----, 2009 WL 3189343 (Fla. 4th DCA 2009).
In order to vacate a judgment for fraud on the court, a party must prove extrinsic fraud on the court (conduct which prevents a party from trying an issue before the court) and that the fraud caused prejudice to the movant.

Shell v. Foulkes, --- So.3d ----, 2009 WL 3189348 (Fla. 4th DCA 2009).
A circuit court sitting in its appellate capacity has no jurisdiction to entertain appeals to vacate defaults (not default final judgments) but has jurisdiction to review final judgments of eviction.

O'Barry v. Ocean World, S.A., --- So.3d ----, 2009 WL 3189438 (Fla. 4th DCA 2009).
Discovery of personal financial information prior to judgment not permitted unless the allegations against the party demonstrate the party gained financially as the result of the alleged wrong.

New White Linen, Inc. v. Commercial Laundry Equipment Co., Inc., --- So.3d ----, 2009 WL 3189489 (Fla. 4th DCA 2009).
Order awarding attorneys' fees must set forth the time expended, the hourly rate and other factors. The failure to do so is not harmless error unless a transcript of the hearing for attorneys' fees exists which allows an appellate court to determine those issues.

Dougherty ex rel. Eisenberg v. City of Miami, --- So.3d ----, 2009 WL 3190382 (Fla. 3d DCA 2009).
Second-tier certiorari review is limited to determining whether the circuit court applied the correct law and afforded procedural due process unless the ruling under review would result in "manifest injustice" as set forth by *Strazzulla v. Hendrick*, 177 So.2d 1 (Fla.1965).

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Morris v. Florida Agricultural and Mechanical University, --- So.3d ----, 2009 WL 3316922 (Fla. 5th DCA 2009).
College of Law that is part of the state university system is subject to the Florida Administrative Procedures Act, and thus law student cannot be expelled without compliance with the Florida A.P.A.

Roberts v. Stidham, --- So.3d ----, 2009 WL 3316923 (Fla. 5th DCA 2009).
Ten attempts to serve a defendant constitutes "good cause" to extend the time the 120 day time limit to serve defendants under Florida Rule of Civil Procedure 1.070 (j). The Rule is meant to be a case management tool, and is not to be interpreted as a method to deprive litigants of their day in court so courts have no discretion and must grant extensions when plaintiffs show "good cause" for enlarging the time to serve defendants.

Crown Custom Homes, Inc. v. Sabatino, --- So.3d ----, 2009 WL 3320196 (Fla. 2d DCA 2009).
A trial court that makes a ruling in an attorneys' fee award that different legal theories embodied in different counts are so intertwined that they cannot be unwound must set forth a factual finding supporting that ruling. *Trytek v. Gale Industries, Inc.*, 3 So.3d 1194 (Fla.2009) (the party that prevails on the "significant issues" in the litigation is the prevailing party for awards of attorney's fees under the Construction Lien chapter of the Florida Statutes), applies for the purposes of determining whether the homeowner, who lost on all issues except one, is the prevailing party for purposes of awarding fees and costs.

In re Amendments To Florida Rules of Civil Procedure - Management of Cases Involving Complex Litigation, --- So.3d ----, 2009 WL 3296237 (Fla. 2009).
The following amendments to the Civil Cover Sheet and the Final Disposition Form become effective January 1, 2010:

Form 1.997 Civil Cover Sheet

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form shall be filed by the plaintiff or petitioner for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to Florida Statutes section 25.075. (See instructions for completion).

I. CASE STYLE

(Name of Court)

Plaintiff

Case #:

Judge:

vs.

Defendant

II. TYPE OF CASE (If the case fits more than one type of case, select the most definitive category.) If the most descriptive label is a subcategory (is indented under a broader category), place an x in both the main category and subcategory boxes.

[ ] Condominium	[ ] Nonhomestead residential foreclosure $50,001-$249,999
[ ] Contracts and indebtedness	
[ ] Eminent domain	[ ] Nonhomestead residential foreclosure $250,000 or more
[ ] Auto negligence	
[ ] Negligence-other	[ ]Other real property actions $0-$50,000
[ ] Business governance	
[ ] Business torts	[ ]Other real

	property actions $50,001- $249,999
[ ] Environmental/Toxic tort	
[ ] Third party indemnification	[ ]Other real property actions $250,000 or more
[ ] Construction defect	
[ ] Mass tort	[ ] Professional malpractice
[ ] Negligent security	Malpractice-business
[ ] Nursing home negligence	Malpractice-medical
[ ] Premises liability-commercial	Malpractice-other professional
[ ] Premises liability-residential	[ ] Other
[ ] Products liability	[ ] Antitrust/Trade regulation
[ ] Real property/Mortgage foreclosure	[ ] Business transactions
[ ] Commercial foreclosure $0- $50,000	[ ] Constitutional challenge-statute or ordinance
[ ] Commercial foreclosure $50,001-	[ ] Constitutional challenge-

	proposed amendment
$249,999	[ ] Corporate trusts
[ ] Commercial foreclosure $250,000 or more	[ ] Discrimination-employment or other
[ ] Homestead residential foreclosure $0-$50,000	[ ] Insurance claims
[ ] Homestead residential foreclosure $50,001-$249,999	[ ] Intellectual property
	[ ] Libel/Slander
[ ] Homestead residential foreclosure $250,000 or more	[ ] Shareholder derivative action
	[ ] Securities litigation
[ ] Nonhomestead residential foreclosure $0-$50,000	[ ] Trade secrets
	[ ] Trust litigation

III. REMEDIES SOUGHT (check all that apply):

[ ] monetary;

[ ] nonmonetary declaratory or injunctive relief;

[ ] punitive

IV. NUMBER OF CAUSES OF ACTION: [ ]

(specify)_____

V. IS THIS CASE A CLASS ACTION LAWSUIT?

[ ] yes

[ ] no

VI. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?

[ ] no

[ ] yes If "yes", list all related cases by name, case number, and court.

_____

VII. IS JURY TRIAL DEMANDED IN COMPLAINT?

[ ] yes

[ ] no

_____

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief.

Signature_____ Fla. Bar # _____

_____

Attorney or party (Bar # if attorney)

_____

(type or print name) Date

FORM 1.997. INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET

Plaintiff must file this cover sheet with first paperwork filed in the action or proceeding (except small claims cases or other county court cases, probate, or family cases). Domestic and juvenile cases should be accompanied by a completed Florida Family Law Rules of Procedure Form 12.928, Cover Sheet for Family Court Cases. Failure to file a civil cover sheet in any civil case other than those excepted above may result in sanctions.

I. Case Style. Enter the name of the court, the appropriate case number assigned at the time of filing of the original complaint or petition, the name of the judge assigned (if applicable), and the name (last, first, middle initial) of plaintiff(s) and defendant(s).

II. Type of Case. Place an "X" in the appropriate box. If the cause fits more than one type of case, select the most definitive. If the most definitive label is a subcategory

(indented under a broader category label, place an "X" in the category and subcategory boxes. Definitions of the cases are provided below in the order they appear on the form.

(A) Condominium-all civil lawsuits pursuant to Chapter 718, Florida Statutes, in which a condominium association is a party.

(B) Contracts and indebtedness-all contract actions relating to promissory notes and other debts, including those arising from the sale of goods, but excluding contract disputes involving condominium associations.

(C) Eminent domain-all matters relating to the taking of private property for public use, including inverse condemnation by state agencies, political subdivisions, or public service corporations.

(D) Auto negligence-all matters arising out of a party's allegedly negligent operation of a motor vehicle.

(E) Negligence-other-all actions sounding in negligence, including statutory claims for relief on account of death or injury, that are not included in other main categories.

(F) Business governance-all matters relating to the management, administration, or control of a company.

(G) Business torts-all matters relating to liability for economic loss allegedly caused by interference with economic or business relationships.

(H) Environmental/Toxic tort-all matters relating to claims that violations of environmental regulatory provisions or exposure to a chemical caused injury or disease.

(I) Third party indemnification-all matters relating to liability transferred to a third party in a financial relationship.

(J) Construction defect-all civil lawsuits in which damage or injury was allegedly caused by defects in the construction of a structure.

(K) Mass tort-all matters relating to a civil action involving numerous plaintiffs against one or more defendants.

(L) Negligent security-all matters involving injury to a person or property allegedly resulting from insufficient security.

(M) Nursing home negligence-all matters involving injury to a nursing home resident resulting from negligence of nursing home staff or facilities.

(N) Premises liability-commercial-all matters involving injury to a person or property allegedly resulting from a defect on the premises of a commercial property.

(O) Premises liability-residential-all matters involving injury to a person or property allegedly resulting from a defect on the premises of a residential property.

(P) Products liability-all matters involving injury to a person or property allegedly resulting from the manufacture or sale of a defective product or from a failure to warn.

(Q) Real property/Mortgage foreclosure-all matters relating to the possession, title, or boundaries of real property. All matters involving foreclosures or sales of real property, including foreclosures associated with condominium associations or condominium units.

(R) Commercial foreclosure-all matters relating to the termination of a business owner's interest in commercial property by a lender to gain title or force a sale to satisfy the unpaid debt secured by the property. Check the category that includes the estimate of the amount in controversy of the claim (section 28.241, Florida Statutes).

(S) Homestead residential foreclosure-all matters relating to the termination of a residential property owner's interest by a lender to gain title or force a sale to satisfy the unpaid debt secured by the property where the property has been granted a homestead exemption. Check the category that includes the estimate of the amount in controversy of the claim (section 28.241, Florida Statutes).

(T) Nonhomestead residential foreclosure-all matters relating to the termination of a residential property owner's interest by a lender to gain title or force a sale to satisfy the unpaid debt secured by the property where the property has not been granted a homestead exemption. Check the category that includes the estimate of the amount in controversy of the claim (section 28.241, Florida Statutes).

(U) Other real property actions-all matters relating to land, land improvements, or property rights not involving commercial or residential foreclosure. Check the category that includes the estimate of the amount in controversy of the claim (section 28.241, Florida Statutes).

(V) Professional malpractice-all professional malpractice lawsuits.

(W) Malpractice-business-all matters relating to a business's or business person's failure to exercise the degree of care and skill that someone in the same line of work would use under similar circumstances.

(X) Malpractice-medical-all matters relating to a doctor's failure to exercise the degree of care and skill that a physician or surgeon of the same medical specialty would use under similar circumstances.

(Y) Malpractice-other professional-all matters relating to negligence of those other than medical or business professionals.

(Z) Other-all civil matters not included in other categories.

(AA) Antitrust/Trade regulation-all matters relating to unfair methods of competition or unfair or deceptive business acts or practices.

(AB) Business transactions-all matters relating to actions that affect financial or economic interests.

(AC) Constitutional challenge-statute or ordinance-a challenge to a statute or ordinance, citing a violation of the Florida Constitution.

(AD) Constitutional challenge-proposed amendment-a challenge to a legislatively initiated proposed constitutional amendment, but excluding challenges to a citizen-initiated proposed constitutional amendment because the Florida Supreme Court has direct jurisdiction of such challenges.

(AE) Corporate trusts-all matters relating to the business activities of financial services companies or banks acting in a fiduciary capacity for investors.

(AF) Discrimination-employment or other-all matters relating to discrimination, including employment, sex, race, age, handicap, harassment, retaliation, or wages

(AG) Insurance claims-all matters relating to claims filed with an insurance company.

(AH) Intellectual property-all matters relating to intangible rights protecting commercially valuable products of the human intellect.

(AI) Libel/Slander-all matters relating to written, visual, oral, or aural defamation of character.

(AJ) Shareholder derivative action-all matters relating to actions by a corporation's shareholders to protect and benefit all shareholders against corporate management for improper management.

(AK) Securities litigation-all matters relating to the financial interest or instruments of a company or corporation.

(AL) Trade secrets-all matters relating to a formula, process, device, or other business information that is kept confidential to maintain an advantage over competitors.

(AM) Trust litigation-all civil matters involving guardianships, estates, or trusts and not appropriately filed in probate proceedings.

III. Remedies Sought. Place an "X" in the appropriate box. If more than one remedy is sought in the complaint or petition, check all that apply.

IV. Number of Causes of Action. If the complaint or petition alleges more than one cause of action, note the number and the name of the cause of action.

V. Class Action. Place an "X" in the appropriate box.

VI. Related Cases. Place an "X" in the appropriate box.

VII. Is Jury Trial Demanded In Complaint? Check the appropriate box to indicate whether a jury trial is being demanded in the complaint

ATTORNEY OR PARTY SIGNATURE. Sign the civil cover sheet. Print legibly the name of the person signing the civil cover sheet. Attorneys must include a Florida Bar number. Insert the date the civil cover sheet is signed. Signature is a certification that the filer has provided accurate information on the civil cover sheet.

FORM 1.998. FINAL DISPOSITION FORM

This form shall be filed by the prevailing party for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to Florida Statutes section 25.075. (See instructions on the reverse of the form.)

I. CASE STYLE

(Name of Court)_____

Plaintiff

_____

Case #:_____

Judge:

_____

vs.

Defendant

_____

II. MEANS OF FINAL DISPOSITION (Place an "x" in one box for major category and one subcategory, if applicable, only)

[ ] Dismissed Before Hearing

[ ] Dismissed Pursuant to Settlement-Before Hearing

[ ] Dismissed Pursuant to Mediated Settlement-Before Hearing

[ ] Other-Before Hearing

[ ] Dismissed After Hearing

[ ] Dismissed Pursuant to Settlement-After Hearing

[ ] Dismissed Pursuant to Mediated Settlement-After Hearing

[ ] Other After Hearing-After Hearing

[ ] Disposed by Default

[ ] Disposed by Judge

[ ] Disposed by Non-jury Trial

[ ] Disposed by Jury Trial

[ ]

[ ]

[ ] Other

_____

DATE _____ _____

SIGNATURE OF ATTORNEY FOR PREVAILING PARTY

INSTRUCTIONS FOR ATTORNEYS
COMPLETING FINAL

DISPOSITION FORM

I. Case Style. Enter the name of the court, the appropriate case number assigned at the time of filing of the original complaint or petition, the name of the judge assigned to the case and the names (last, first, middle initial) of plaintiff(s) and defendant(s).

II. Means of Final Disposition. Place an "x" in the appropriate major category box and in the appropriate subcategory box, if applicable. The following are the definitions of the disposition categories.

(A) Dismissed Before Hearing-the case is settled, voluntarily dismissed, or otherwise disposed of before a hearing is held;

(B) Dismissal Pursuant to Settlement-Before Hearing-the case is voluntarily dismissed by the plaintiff after a settlement is reached without mediation before a hearing is held;

(C) Dismissal Pursuant to Mediated Settlement-Before Hearing-the case is voluntarily dismissed by the plaintiff after a settlement is reached with mediation before a hearing is held;

*8 (D) Other-Before Hearing-the case is dismissed before hearing in an action that does not fall into one of the other disposition categories listed on this form.

(E) Dismissed After Hearing-the case is dismissed by a judge, voluntarily dismissed, or settled after a hearing is held;

(F) Dismissal Pursuant to Settlement-After Hearing-the case is voluntarily dismissed by the plaintiff after a settlement is reached without mediation after a hearing is held;

(G) Dismissal Pursuant to Mediated Settlement-After Hearing-the case is voluntarily dismissed by the plaintiff after a settlement is reached with mediation after a hearing is held;

(H) Other-After Hearing-the case is dismissed after hearing in an action that does not fall into one of the other disposition categories listed on this form.

(I) Disposed by Default-a defendant chooses not to or fails to contest the plaintiff's allegations and a judgment against the defendant is entered by the court;

(J) Disposed by Judge-a judgment or disposition is reached by the judge in a case that is not dismissed and in which no trial has been held. Includes stipulations by the

parties, conditional judgments, summary judgment after hearing, and any matter in which a judgment is entered excluding cases disposed of by default as in category (I) above;

(K) Disposed by Non-Jury Trial-the case is disposed as a result of a contested trial in which there is no jury and in which the judge determines both the issues of fact and law in the case;

(L) Disposed by Jury Trial-the case is disposed as a result of a jury trial (consider the beginning of a jury trial to be when the jurors and alternates are selected and sworn);

(M) Other-the case is consolidated, submitted to arbitration or mediation, transferred, or otherwise disposed of by other means not listed in categories (A) through (L).

In re Amendments To Florida Rules of Appellate Procedure 9.142 And 9.200, --- So.3d ----, 2009 WL 296242 (Fla. 2009).
Florida Rule of Appellate Procedure 9.200, The Record, is amended immediately to read as follows:
RULE 9.200. THE RECORD
(a) Contents.
(1) Except as otherwise designated by the parties, the record shall consist of the original documents, all exhibits that are not physical evidence, and any transcript(s) of proceedings filed in the lower tribunal, except summonses, praecipes, subpoenas, returns, notices of hearing or of taking deposition, depositions, and other discovery. In criminal cases, when any exhibit, including physical evidence, is to be included in the record, the clerk of the lower tribunal shall not, unless ordered by the court, transmit the original and, if capable of reproduction, shall transmit a copy, including but not limited to copies of any tapes, CDs, DVDs, or similar electronically recorded evidence. The record shall also include a progress docket.
(2)-(4) [No change]
(b)-(g) [No change]

Bishop v. Courtney, --- So.3d ----, 2009 WL 3270830 (Fla. 2d DCA 2009).
Statement in a recorded plat for a subdivision that an area next to a marina was a "parking area" did not create an implied easement such that owners in the subdivision could dock their boats in the "parking area," even though the "parking area" was adjacent to the boat basin. In order for an easement to be implied, there must be representations in the plat that would lead to reasonable inferences, instead of speculation, that the developers intended an easement.

L.A.D. Property Ventures, Inc. v. First Bank, --- So.3d ----, 2009 WL 3270846 (Fla. 2d DCA 2009).
A deficiency proceeding after a mortgage foreclosure is merely a continuation of the foreclosure proceedings, and if the deficiency proceedings are initiated by motion after foreclosure judgment and sale, the defendants who were served in the foreclosure proceedings do not need to be re-served with process in the deficiency proceedings.

Village of Doral Place Ass'n, Inc. v. Ru4Real, Inc., --- So.3d ----, 2009 WL 3271164 (Fla. 3d DCA 2009).
Condominium common elements cannot be sold at a tax deed sale as doing so violates Florida Statute § 718.107 (condominium units own shares of the common elements and the common elements cannot be sold except appurtenant to the sale of units).

State Farm Florida Ins. Co. v. Seville Place Condominium Ass'n, Inc., --- So.3d ----, 2009 WL 3271300 (Fla. 3d DCA 2009).
A bad faith claim arising out of a hurricane coverage dispute may proceed where liability has been determined and the appraisal has been approved by the court, notwithstanding that the appraisal is on appeal.

National Financial Services, LLC v. Mahan, --- So.3d ----, 2009 WL 3271332 (Fla. 3d DCA 2009).
Arbitration provision contained within money market account agreement was not procedurally unconscionable in that it was a short and simple paragraph and the account holder was not in duress (he had nothing invested or at risk with the financial services company) when he signed the agreement. Finally, the account holder was a sophisticated businessman who presumably understood the arbitration provision.

Suarez v. Edgehill, --- So.3d ----, 2009 WL 3271350 (Fla. 3d DCA 2009).
Florida Statute § 45.032 (1) (a) abrogates the common law, and creates a rebuttable presumption that the "owner of record" for purposes of disbursing surplus proceeds from a foreclosure sale is the owner at the time of the filing of the lis pendens and not at the time of foreclosure sale.

Sacred Family Investments, Inc. v. Doral Supermarket, Inc., --- So.3d ----, 2009 WL 3271875 (Fla. 3d DCA 2009).
Tenant, who held a lease stating landlord could not construct buildings in tenant's parking lot without written permission, was not prohibited by estoppel or waiver from enforcing the lease provision (i.e., that tenant waited too long to object when he should have known of the project commencing) merely because the construction project was approved at city public hearings and preliminary site work predated the actual construction by several months.

GLK, L.P. v. Four Seasons Hotel Ltd., --- So.3d ----, 2009 WL 3272190 (Fla. 3d DCA 2009).
A claim for violation of Chapter 517 of the Florida Statutes must be brought within two years of the sale of the security otherwise it is barred by the Statute of Limitations, and the delayed discovery doctrine does not apply to the sale of unregistered securities. Thus, claimant is barred from bringing claim against seller of condominium units on the basis the sale of the units was the sale of securities.

Edwards v. Niagara Credit Solutions, Inc., --- F.3d ----, 2009 WL 3273300 (11th Cir. 2009).
Debt collector was not entitled to raise the "bona fide error" defense of the Fair Debt Collection Practices Act when it claimed it violated one section of the Act in an attempt to avoid violating a different section of the Act by not revealing its identity and the purpose of the call (as required by the Act) when leaving voice mail messages because it claimed it did not want to violate the Act's prohibition against communicating the existence of a debt to a third party.

Miller v. Anheuser Busch, Inc., Slip Copy, 2009 WL 3262023 (11th Cir. 2009).
Florida's single publication rule applies to Fla. Stat. § 540.08 (misappropriation of a likeness for commercial purposes), but does not apply until the cause of action accrues. Since the complainant had signed a release for commercial use of her likeness that applied to some (but not all) of the instances of uses, the single publication rule did not apply until her likeness was used without permission.

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Ramos v. Florida Power & Light Co., --- So.3d ----, 2009 WL 3364872 (Fla. 3d DCA 2009).
The Public Service Commission's findings regarding whether FPL customer engaged in meter tampering are not *res judicata* with regard to customer's claims against FPL for wrongful turning off of electricity as the PSC's determination of meter tampering is outside the PSC's jurisdiction. Moreover, the claims of the customer are not barred by the Economic Loss Rule since the customer's claims are "independent of any contractual breach."

Whitney v. A Aventura Chiropractic Care Center, Inc., --- So.3d ----, 2009 WL 3364888 (Fla. 3d DCA 2009).
The Third District affirmed a trial court order denying a motion filed in 2007 to vacate a 1993 judgment, and stated:

> The cautionary message to parties who have been sued and then elect to proceed without legal representation is this: keep a watchful eye on the case, whether by inspecting the court file or checking the on-line docket. The fact that a self-represented person does not receive further mailings regarding the case does not itself protect her or him from an adverse judgment, because certificates of service by counsel are presumptively valid. Ignoring a lawsuit after service of the original complaint (and absent dismissal with prejudice of all claims) is the legal equivalent of ignoring the dashboard signal for "no brakes" in a rapidly-moving automobile.

Florida Dept. of Environmental Protection v. West, --- So.3d ----, 2009 WL 3364925 (Fla. 3d DCA 2009).
Even though the Department of Environmental Protection indicated interest in taking the landowners' property as early as 1982, no actual taking occurred until 2004. Based on these facts, the trial court properly instructed the jury on damages arising from the pre-condemnation actions of D.E.P. in creating "condemnation blight" on the property from 1982 even though there was no actual taking in 1982.

Ford Motor Co. v. Hall-Edwards, --- So.3d ----, 2009 WL 3364937 (3d DCA 2009).
Attempted offensive use of Fla. Stat. § 69.081, the Florida Sunshine in Litigation Act, to label Ford Explorers a "public hazard" under the Act. The Third District held the purpose of the Act is defensive (i.e., it prevents confidentiality orders being entered to hide public hazards unless the Act's requirements are met) and is not meant to be used to label particular products "public hazards."

Turgman v. MM World Entertainment, LLC, --- So.3d ----, 2009 WL 3364968 (Fla. 3d DCA 2009).
A listing agreement can be drafted so that the broker is entitled to commission when it merely produces a buyer, ready, willing and able to purchase, but the following clause is subject to ambiguity whether it intended this result: "*[i]n case of transaction will be realized between Prospective Seller and Prospective Purchaser,* Agent will be entitled and shall receive a commission of 4% from the total amount of the Purchase Agreement by the Prospective Seller." The default rule under law is that the broker is entitlted to a commission merely by producing a ready, willing and able buyer, so restating the default rule further magnifies the ambiguity and calls into question what the parties intended.

Haven Center, Inc. v. Meruelo, --- So.3d ----, 2009 WL 3364980 (Fla. 3d DCA 2009).
Adjudication of compulsory counterclaims is not appealable until the main claims arising out of the same contract, transactions and occurrences as the counterclaim have been adjudicated.

Terra-Adi Intern. Bayshore, LLC v. Georgarious, --- So.3d ----, 2009 WL 3365493 (Fla. 3d DCA 2009).
An order holding or releasing a purchase money deposit is entitled to non-final appeal under Florida Rule of Appellate Procedure 9.130 (a)(3)(C)(ii) (non-final appeals for orders determining possession of property), and that portion of the deposit to which a party is entitled under any circumstances, i.e.,, even if it is later determined that party defaulted, is to be released immediately as a court cannot hold assets in anticipation of a judgment.

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Cohen v. Cooper, --- So.3d ----, 2009 WL 3446369 (Fla. 4th DCA 2009).
In a medical malpractice case, the Fourth District held determination of the beginning of the running of a statute of limitation, i.e., timeliness of the action, is a question for the fact finder. The court did not limit its holding to negligence cases.

AVVA-BC, LLC v. Amiel, --- So.3d ----, 2009 WL 3446475 (Fla. 3d DCA 2009).
Rescission of a contract will not be granted absent fraud, mistake or undue influence. Likewise, rescission will not be granted if a party discovers a misrepresentation and fails to immediately act upon it, and ordinarily will not be granted as to promises of future performance unless the promise to be performed in the future is a dependent covenant.

Quality Roof Services, Inc. v. Intervest Nat. Bank, --- So.3d ----, 2009 WL 3446476 (Fla. 4th DCA 2009).
Parties do not have to be in privity of contract in order for foreclosure defendant to allege unclean hands, and a foreclosure defendant may raise an affirmative defense without regard to the possible futility of raising the affirmative defense.

Skylake Ins. Agency, Inc. v. NMB Plaza, LLC, --- So.3d ----, 2009 WL 3446494 (Fla. 3d DCA 2009).
Corporations and LLCs have to comply with the two witness requirement of Fla. Stat. § 689.01 when disposing of real estate despite the catch-all language in the statute section. A long term lease which does not comply with § 689.01 is not enforceable as a lease, but may be enforceable as a contract (i.e., a breach of contract suit may be brought on the lease/contract) so long as the lease/contract complies with Fla. Stat. § 725.01.

American Engineering and Development Corp. v. Town of Highland Beach, --- So.3d --- -, 2009 WL 3446532 (Fla. 4th DCA 2009).
A bidder for a public construction project that does not meet the project bid requirements may be the lowest but is not necessarily the lowest "qualified and responsive bidder," and thus the project does not need to be awarded to that bidder pursuant to Fla. Stat. § 255.20 (1) (d).

Johnson, Pope, Bokor, Ruppel & Burns, LLP v. Forier, --- So.3d ----, 2009 WL 3447240 (Fla. 2d DCA 2009).
A trial court must conduct an evidentiary hearing if it finds there is a dispute whether the parties entered into an agreement to arbitrate their disputes.

LoCascio v. Sharpe, --- So.3d ----, 2009 WL 3448111 (Fla. 3d DCA 2009).
The "Slayer Statute," Fla. Stat. § 732.802 (spouse who kills another spouse is presumed as a matter of law to have predeceased the deceased spouse so that the murdering spouse cannot inherit from the murdered spouse) operates so that the former marital residence is presumed to have been held as tenants in common, and does not otherwise operate to forfeit all of the murdering spouse's assets to the family of the murdered spouse.

In re Lawrence, --- B.R. ----, 2009 WL 3486063 (Bankr. M.D. Fla. 2009).
Violation of the statutory fiduciary duties of a managing member of a LLC does not give rise, without more, to facts supporting non-dischargeability pursuant to 11 U.S.C. § 523 (a) (4).

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Estate of Perez v. Life Care Centers of America, Inc., --- So.3d ----, 2009 WL 3672048 (Fla. 5th DCA 2009).

The Fifth District held a party seeking to invalidate an arbitration provision on the basis of unconscionabilty must establish both procedural and substantive unconscionability, and explained its analysis of procedural unconscionability:

> To determine whether a contract is procedurally unconscionable, a court must look to the manner in which the contract was entered into and consider factors such as "whether the complaining party had a realistic opportunity to bargain regarding the terms of the contract or whether the terms were merely presented on a 'take-it-or-leave-it' basis; and whether he or she had a reasonable opportunity to understand the terms of the contract." *Id.* A party to a contract is not '"permitted to avoid the consequences of a contract freely entered into simply because he or she elected not to read and understand its terms before executing it, or because, in retrospect, the bargain turns out to be disadvantageous." (citations omitted)

The inability of the arbitrator designated in the agreement to serve also is not a basis for invalidation of the arbitration agreement as Florida Statute § 682.04 provides a method for selecting an alternate arbitrator, i.e., the court upon application of either party may select an alternate arbitrator when a designated arbitrator declines or is not able to serve.

Nationwide Mut. Fire Ins. Co. v. Voigt, --- So.3d ----, 2009 WL 3673081 (Fla. 2d DCA 2009).

An award of sanctions against a plaintiff pursuant to Florida Statute § 57.105 should offset and reduce an award of damages to a plaintiff.

State Farm Florida Ins. Co. v. Nichols, --- So.3d ----, 2009 WL 3674569 (Fla. 5th DCA 2009).

The insurance policy language, and not the statute, controls when insurance payments are to be made for repairs necessitated by a sinkhole. Insurer must make payments under the policy when homeowners have not yet contracted for the repairs even though the statute requires homeowner to contract for repairs before insurer must make payment.

Larson & Larson, P.A. v. TSE Industries, Inc., --- So.3d ----, 2009 WL 3644163 (Fla. 2009).
The Florida Supreme Court upheld the decision of the Fourth District in *Integrated Broadcast Services, Inc. v. Mitchel*, 931 So.2d 1073 (Fla. 4th DCA 2006), and reversed the decision of the Second District in *TSE Industries, Inc. v. Larson & Larson, P.A.*, 987 So.2d 687 (Fla. 2d DCA 2008), and held a cause of action for legal malpractice does not accrue and the statute of limitations does not begin to run until motions for sanctions arising out of the underlying trial are resolved.

Kaplan v. Divosta Homes, L.P., --- So.3d ----, 2009 WL 3615585 (Fla. 2d DCA 2009).
Homeowner sought disqualification of opposing counsel, but the Second District held no conflict of interest exists and opposing counsel will not be disqualified when opposing counsel's law partner was the attorney for the personal representative in an estate in which homeowner was a beneficiary.

Canale v. Rubin, --- So.3d ----, 2009 WL 361576 (Fla. 2d DCA 2009).
Jurisdiction of Florida courts over a foreign defendant can be based on either the general jurisdiction [Florida Statute § 48.193(2)] or specific jurisdiction [Florida Statute § 48.191 (1)] portions of the Long Arm statute. General jurisdiction requires more contacts than specific jurisdiction, and has to be used only when defendant's contacts are unrelated to the cause of action being sued upon. If specific long arm jurisdiction is sought to be established based on telephone conversations, then "connexity" between the conversations and the cause of action must be established, i.e., the telephone conversations must be connected to the cause of action alleged in the complaint.

Reimbursement Recovery, Inc. v. Indian River Memorial Hosp., Inc., --- So.3d ----, 2009 WL 3617645 (Fla. 4th DCA 2009).
Award of prejudgment interest for outstanding monthly invoices sustained even though the parties recognized the invoices were estimates and were subject to later adjustment.

Hitchcock v. Proudfoot Consulting Co., --- So.3d ----, 2009 WL 3618086 (Fla. 4th DCA 2009).
Deposition witness may refuse, based on the Fifth Amendment privilege against self-incrimination, to answer questions which might incriminate witness of unauthorized practice of law.

Specialized Transp. Of Tampa Bay, Inc. v. Nestle Waters North America, Inc., Slip Copy, 2009 WL 3601606 (11th Cir. 2009).
Applying Florida law, the Eleventh Circuit held whether the parties intended to enter into a binding oral agreement or merely had an (unenforceable) "agreement to agree," as well as the length and scope of the oral agreement, was a jury decision. Also applying Florida law, the court further held that no demand for payment is necessary to award prejudgment interest where there is a due date and fixed sum due on an agreement.

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St. Johns Inv. Management Co. v. Albaneze, --- So.3d ----, 2009 WL 3786426 (Fla. 1st DCA 2009).
Employee entered into an employment agreement for a definite term, but stayed with the employer two years beyond the term of the employment contract. A dispute arose over whether the non-compete provisions ended two years after the end of the contract term or two years after the employee left the employer. The Fifth District noted the different termination provisions in the employment were separated by a semicolon, found the semicolon indicated an intent for different periods of time, and held the following language extended the non-compete provisions of the employment contract beyond its term and to two years after employee left the employer:

> [The Restriction Period] shall mean: in the event Employee is employed by Employer throughout the Term, [the period shall be] twenty-four (24) months *following the date Employee resigns* ... or Employee is *terminated* by Employer; provided, however, that the provisions of subsection 5(c)(ii) *shall terminate at the expiration date of the Term.* (emphasis supplied)

Candansk, LLC v. Estate of Hicks ex rel. Brownridge, --- So.3d ----, 2009 WL 3787192 (Fla. 2d DCA 2009).
A power of attorney that grants the attorney-in-fact the power to deal with claims and property includes the power to agree to arbitrate claims since claims are "property"; the power to agree to arbitration need not be specifically mentioned in the power of attorney in order for the arbitration provision signed by the attorney-in-fact to be enforceable.

Jaylene, Inc. v. Steuer ex rel. Paradise, --- So.3d ----, 2009 WL 3787239 (Fla. 2d DCA 2009),
The Second District re-affirmed its position that arbitrators determine, in the first instance, whether arbitration provisions are unenforceable if the arbitration contract terms limit remedies. The Second District noted this position is in conflict with the First, Fourth and Fifth Districts, all of which hold the trial court first determines whether the arbitration provision is unenforceable as the result of limitation of remedies.

WCI Communities, Inc. v. Stafford, --- So.3d ----, 2009 WL 3787552 (Fla. 2d DCA 2009).
The Second District reversed a grant of summary judgment for failure of movant to establish the absence of any genuine fact, and in doing so, adopted the Fourth District's interpretation Florida Statute § 718.503 rescission rights must be viewed from an objective standard when determining the materiality of the change.

Alto Const. Co., Inc. v. Flagler Const. Equipment, LLC, --- So.3d ----, 2009 WL 3788058 (Fla. 2d DCA 2009).
An attorney called to testify by an adverse party is not automatically disqualified; the trial court must determine whether the attorney's testimony will be adverse to her client, and if so, then the attorney will be disqualified from acting as trial counsel. An attorney called to testify by their own client is disqualified from acting as trial counsel.

Cohn v. Grand Condominium Ass'n, Inc., --- So.3d ----, 2009 WL 3763031 (Fla. 3d DCA 2009).
Fla. Stat. § 718.404 (residents of mixed used condominiums are entitled to vote for a majority of the seats on the governing board) unconstitutional as an impairment of contract when applied to a condominium that was in operation prior to the adoption of § 718.404.

General Asphalt Co., Inc. v. Bob's Barricades, Inc., --- So.3d ----, 2009 WL 3763748 (Fla. 3d DCA 2009).
A third party has no general duty to indemnify a defendant if the plaintiff does not allege and claim vicarious liability against the defendant based on the actions or omissions of the third party.

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In re Amendments to Rules Regulating The Florida Bar - Rule 4-7.6, Computer Accessed Communications, --- So.3d ----, 2009 WL 3853150 (Fla. 2009).
With the exception of prior approval by the Florida Bar, attorney websites are subject to the same rules as all other attorney advertising.

Palm Beach Polo Holdings, Inc. v. Equestrian Club Estates Property Owners Ass'n, Inc., --- So.3d ----, 2009 WL 3837010 (Fla. 4th DCA 2009).
The proposal for settlement statute, Fla. Stat. § 768.79, does not apply to claims that are not for damages. A court will review a claim to determine whether it is, in effect, a claim for damages even if not denominated as such, e.g., a claim for declaratory relief that actually seeks the payment of a real estate sales commission is entitled to application of the statute section.

Alliant Ins. Services, Inc. v. Riemer Ins. Group, --- So.3d ----, 2009 WL 3837212 (Fla. 4th DCA 2009).
The party claiming a privilege with regard to documents is entitled to an *in camera* inspection of the documents in controversy to determine whether they are subject to the privilege.

Coastal Community Bank v. Jones, --- So.3d ----, 2009 WL 3817889 (Fla. 1st DCA 2009).
Florida Statute § 687.06 ("it shall not be necessary for the court to adjudge an attorney's fee, provided in any note or other instrument of writing, to be reasonable and just, when such fee does not exceed 10 percent of the principal sum named in said note, or other instrument in writing") merely eliminates the issue of whether an attorneys' fee less than ten percent of the principal amount of the instrument is reasonable; the party seeking fees must still prove entitlement to fees and that it paid or is obligated for the fees.

Chemrock Corp. v. Tampa Elec. Co., --- So.3d ----, 2009 WL 3817896 (Fla. 1st DCA 2009).
The First District ruled the only way to avoid dismissal for lack of prosecution under Rule 1.420 (e) when ten months have elapsed without record activity is to do one of three things during the sixty day period that follows the ten months: obtain a stay from the trial court, demonstrate "good cause" why the action should not be dismissed, or re-commence prosecution of the case toward conclusion; merely filing any paper that does not qualify as one these three is not sufficient to avoid dismissal. The First District certified conflict with the Second and Third Districts, both of which have ruled that any paper filed during the sixty day period is sufficient to avoid dismissal.

Real Property and Business Litigation Report
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November 28, 2009

Raphael v. Silverman, --- So.3d ----, 2009 WL 4060915 (Fla. 4th DCA 2009).
By virtue of Florida Statutes §§ 687.0831 (1) and 687.0384 (1), condominium association directors are immune from liability absent fraud, criminal activity, self-dealing, or unjust enrichment. Directors voting to achieve a personal benefit, such as improving the view from their units by removing dividers existing from the original construction, are not engaging in "self dealing" which subjects directors to liability.

CRC 1803, LLC v. North Carillon, LLC, --- So.3d ----, 2009 WL 4060926 (Fla. 3d DCA 2009).
Failure to file a claim for revocation under 15 U.S.C. § 1703 (a)(1)(B), Interstate Land Sales Act, within two years after signing the contract for purchase of real estate is a basis for dismissal of the lawsuit and not merely dismissal of the complaint. Moreover, seeking return of a contract deposit is not seeking "damages" for purposes of the Interstate Land Sales Act.

Lincks v. Keenan, --- So.3d ----, 2009 WL 4060983 (Fla. 4th DCA 2009).
A court may dismiss a complaint even if a default has been entered against a defendant because a default only admits well-pleaded allegations.

Celistics, LLC v. Gonzalez, --- So.3d ----, 2009 WL 4061009 (Fla. 3d DCA 2009).
The Third District aligned itself with the Fourth District in ruling that forum selection clauses do not need to contain "magic words" of exclusivity in order to be effective if the language indicates an intent to have a particular forum serve as the exclusive jurisdiction for resolution of disputes.

Dorcely v. State of Florida Dept. of Business and Professional Regulation, --- So.3d ----, 2009 WL 4061078 (Fla. 4th DCA 2009).
The Fourth District ruled a claim for compensation under the Florida Real Estate Recovery Fund, Fla. Stat. § 474.482 et seq., must be made within two years of the act giving rise to the claim or its discovery using due diligence, not two years from date of final judgment finding a real estate licensee responsible for a compensable loss, which ruling adopts the statutory change made to Fla. Stat. § 475.483 (1)(c).

Auto-Owners Ins. Co. v. Governor of Florida, --- So.3d ----, 2009 WL 4061282 (Fla. 4th DCA 2009).
While Florida Rule of Appellate Procedure 9.110 broadens appellate jurisdiction in probate cases to include orders which "finally determine a right or obligation of an interested person" under the Florida Probate Code, it does not expand the scope of jurisdiction of appellate courts to the point where a non-final order on a motion to dismiss confers jurisdiction on an appellate court.

Real Property and Business Litigation Report
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December 5, 2009

Winter Park Imports, Inc. v. JM Family Enterprises, --- So.3d ----, 2009 WL 4403198 (Fla. 5th DCA 2009).
Under the Florida (Motor Vehicle) Dealer Act, a manufacturer is prohibited from owning dealerships but a distributor is prohibited only from owning dealerships which sell vehicles in its same "line-make," i.e., the same brand or trade name it distributes. In an appeal from the Ninth Circuit business court, the Fifth District held distributor of Toyota motor vehicles was not a "manufacturer," and is not prohibited from owning a Lexus dealership as Toyotas and Lexuses are not the same "line-make."

Nine Island Avenue Condominium Ass'n, Inc. v. Siegel, --- So.3d ----, 2009 WL 4281272 (Fla. 3d DCA 2009).
The denial by a trial court of a temporary injunction to enter a condominium unit while non-binding arbitration pursuant to the Condominium Act, Fla. Stat. § 718.1255, was pending does not constitute the end of litigation, and award of attorneys' fees based on denial of the injunction was premature.

Haven Center, Inc. v. Meruelo, --- So.3d ----, 2009 WL 4281275 (Fla. 3d DCA 2009).
Adding words of finality, i.e., "go hence without day," to a summary judgment that adjudicates a compulsory counterclaim but does not adjudicate the main claim does not change the rule that a case may not be appealed until the case is final, i.e., when all claims have been disposed. Appeal is dismissed without prejudice.

U.S. Bank Nat. Ass'n v. Tadmore, --- So.3d ----, 2009 WL 4281301 (Fla. 3d DCA 2009).
Mortgagee accused of intentionally not foreclosing a delinquent mortgage cannot be compelled to pay assessments on condominium unit before it forecloses; mortgagee can only be compelled to pay as required pursuant to Fla. Stat. § 718.116 (1)(b) (foreclosing mortgagee required to pay lesser of assessments for six months before mortgagee took title or one percent of original mortgage debt).

Greenfield v. Northcutt, --- So.3d ----, 2009 WL 4281384 (Fla. 3d DCA 2009).
A successor judge shall not be disqualified on the motion of the same party who disqualified a prior judge unless the successor judge rules he or she cannot be fair or impartial.

Mutchnik, Inc. Const. v. Dimmerman, --- So.3d ----, 2009 WL 4282645 (Fla. 3d DCA 2009).
Judgment for homeowners reversed because trial court based its decision on an unpled affirmative defense, i.e., failure of contractor to obtain a building permit.

Meyer v. Meyer, --- So.3d ----, 2009 WL 4282646 (Fla. 2d DCA 2009).
The doctrine of equitable estoppel is not subject to the tolling statute, Fla. Stat. § 95.051, and one year statute of limitations for specific performance actions cannot be applied to bar an action when a party is subject to equitable estoppel. However, the doctrine of equitable estoppel cannot sustain a complaint as it is a defensive doctrine, not a cause of action.

Floridian Community Bank, Inc. v. Bloom, --- So.3d ----, 2009 WL 4282903 (Fla. 4th DCA 2009).
Actions for breach of loan extension agreement, breach of covenant of good faith and fair dealing, novation and rescission of loan extension agreement are compulsory counterclaims arising out a mortgage foreclosure action, are subject to the "local action rule," and must be brought in the same county where the mortgage foreclosure action is pending.

Charlotte Development Partners, LLC v. Tricom Pictures & Productions, Inc., --- So.3d ----, 2009 WL 4282939 (Fla. 4th DCA 2009).
A cash bond is not an account, general intangible, deposit account, or financial asset under the Florida Uniform Commercial Code for purposes of a UCC-1 Financing Statement. Likewise, a security interest in "money" is perfected under the U.C.C. by possession and not by filing a Financing Statement. In a priorities battle for a cash bond, a judgment creditor who perfected its judgment prevails over a party who filed a Financing Statement for accounts, general intangibles, deposit accounts and financial assets and does not have possession of the cash bond.

Byrd v. BT Foods, Inc., --- So.3d ----, 2009 WL 4282945 (Fla. 4th DCA 2009).
In a case of first impression in Florida, the Fourth District ruled that "no reasonable cause" determination letters are not admissible in discrimination suits due to the risk their prejudice outweighs their probative value.

Florida Ins. Guar. Ass'n, Inc. v. Shadow Wood Condominium Ass'n, --- So.3d ----, 2009 WL 4283083 (Fla. 4th DCA 2009).
The failure of the insurer which was taken over by FIGA to inform the insured of the mediation process (as required by statute) precludes the right of FIGA to compel the insured to submit to a loss appraisal process.

Abu-Ghazaleh v. Chaul, --- So.3d ----, 2009 WL 4283085 (Fla. 3d DCA 2009).
Individuals who were not named plaintiffs in suit were nonetheless "parties" for purposes of attorneys' fees awards under Fla. Stat. §§ 57.105 (meritless litigation), 768.79 (proposal for settlement) and 772.11 (civil theft) as individuals actively participated in litigation as the result of a litigation agreement which provided the individuals were entitled to 18% of any award, had the power to choose counsel, make litigation decisions and control the ultimate decision to settle or not settle the case.

Capitol Environmental Services, Inc. v. Earth Tech, Inc., --- So.3d ----, 2009 WL 4110848 (Fla. 1st DCA 2009).
Party which failed to include its general contractor as an additional insured on its insurance policy is liable under breach of contract for the actual damages suffered by the general contractor, together with attorneys' fees in defending a personal injury claim and bringing a third party declaratory action, and prejudgment interest for its damages. Such damages are forseeable and within the contemplation of the parties when entering into the contract requiring the listing of contractor as additional insured.

In re Coady, --- F.3d ----, 2009 WL 4342514 (11TH Cir. 2009).
Bankruptcy debtor who moved into his wife's house, drove a car leased in wife's name, had his country club and golf memberships paid by his wife, had the ability to write checks on his wife's business accounts for personal expenses, and received no income despite working for wife's businesses for over ten years properly denied discharge pursuant to Bankruptcy Code 11 U.S.C. §727 (a)(2)(A) (discharge will be denied for debtor who transfers, removes, mutilates, or conceals property of the estate) in that he transferred the fruits of his labor to his wife. The Eleventh Circuit found the debtor's "equitable interests" in his wife's businesses to be the property of estate he diverted from creditors.

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PMI Mortg. Ins. Co. v. Kahn, --- So.3d ----, 2009 WL 4639638 (Fla. 3d DCA 2009).
Judgment creditor seeking proceedings supplementary pursuant to Fla. Stat. § 56.29 (11) can be charged for the initial cost of the magistrate; the statutory requirement that the defendant pay for costs is accomplished by later shifting the costs to the defendant.

Fernwoods Condominium Ass'n #2, Inc. v. Alonso, --- So.3d ----, 2009 WL 4639650 (Fla. 3d DCA 2009).
A trial judge may reduce earlier oral rulings to writing even when a motion to disqualify is pending so long as the oral rulings were made before the motion to disqualify was filed and reducing the oral ruling to a signed order is ministerial.

Citimortgage, Inc. v. Henry, --- So.3d ----, 2009 WL 4640674 (Fla. 2d DCA 2009).
A prior mortgagee whose title appears superior to the foreclosing (and apparently second) mortgagee cannot be forced to try the issue of the priority of titles in the mortgage foreclosure action brought by the foreclosing mortgagee.

Warfel v. Universal Ins. Co. of North America, --- So.3d ----, 2009 WL 4640882 (Fla. 2d DCA 2009).
The evidentiary burden imposed on a homeowner seeking insurance coverage for sinkhole damages pursuant to Fla. Stat. § 627.7073 (1) is a "vanishing" or "bursting bubble" presumption pursuant to Fla. Stat. §§ 90.302 and 90.303 and not a shifting of the evidentiary burden of proof presumption pursuant to Fla. Stat. § 90.304.

Karten v. Woltin, --- So.3d ----, 2009 WL 4641717 (Fla. 4th DCA 2009).
The Fourth District declined to adopt the Delaware standard for determining derivative versus direct claims (i.e. who suffered the alleged harm and who would have the benefit of any recovery), and re-affirmed its prior holding that a shareholder must bring a derivative claim against a corporation "unless there is a special duty between the wrongdoer and the shareholder, and the shareholder has suffered an injury separate and distinct from that suffered by other shareholders." Accordingly, lost opportunities to make money, mismanagement, breach of fiduciary duty, and similar claims are derivative claims required to be brought pursuant to Fla. Stat. § 607.07401.

Ballenisles Country Club, Inc. v. Dexter Realty, --- So.3d ----, 2009 WL 4641809 (Fla. 4th DCA 2009).
Arbitration provisions fall into one of two broad categories: those meant to resolve all disputes through arbitration in lieu of litigation ("complete alternative" provisions) and those meant to have arbitration serve as quick method of resolving issues during contractual performance while the parties work toward a contractual goal. The second category often permits litigation instead of arbitration at the end of contract performance, but the language of the arbitration agreement in this case clearly reflected a "complete alternative" form of arbitration was intended by the parties.

Karayiannakis v. Nikolits, --- So.3d ----, 2009 WL 4641820 (Fla. 4th DCA 2009).
The language of the Florida Constitution that all property "contiguous" to a homestead is entitled to homestead tax reduction does not mean commercial use apartments contiguous to a homeowner's homestead apartment unit must be given homestead tax treatment if the units are used for commercial and not homestead purposes.

McMillan v. Shively, --- So.3d ----, 2009 WL 4591074 (Fla. 1st DCA 2009).
A contract implied in fact that arises after breach of an express contract may serve as the basis for a specific performance claim even though specific performance of the express contract is barred by the statute of limitations.

Mohawk Industries, Inc. v. Carpenter, --- S.Ct. ----, 2009 WL 4573276 (2009).
"Disclosure orders" (orders requiring counsel to disclose privileged communications or information) are not entitled to immediate appeal under the Collateral Orders doctrine. The Court stated its decision did not create a chill because it did not think trial courts were "under-enforcing" the privilege, and because any error by a trial court could be corrected at the appellate level by a writ of prohibition directed to the trial judge.

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Houser v. County of Volusia, --- So.3d ----, 2009 WL 4874471 (Fla. 5th DCA 2009).
Trial court's dismissal of lawsuit for dilatory and contumacious actions without setting forth findings of fact demonstrating the dilatory and contumacious behavior reversed; findings of fact required by *Kozel v. Ostendorf*, 629 So.2d 817 (Fla.1993).

Eppinger v. Sealy, --- So.3d ----, 2009 WL 4874786 (Fla. 5th DCA 2009).
Financial services broker is not required to arbitrate her claims for breach of a marital settlement agreement ("M.S.A.") through FINRA even though the M.S.A. referred to her continuing to be employed and paid by the brokerage; there is an insufficient nexus between activities as a broker (which call for FINRA arbitration) and breach of the M.S.A.

Associated Receivables Funding of Florida, Inc. v. Moecker, --- So.3d ----, 2009 WL 4874788 (Fla. 5th DCA 2009).
Proceedings in a corporate assignment for benefit of creditors ("ABC"), which proceedings do not invoke jurisdiction against a non-party (i.e., the individual owner of the corporation), cannot bind creditors of the non-party as creditors of the non-party are not on notice the ABC proceedings apply to the individual. The issue of notice deals with the jurisdictional notice instituting the ABC, so a later motion and order including the individual in the ABC do not provide notice as to bind creditors of the individual.

Citizens Property Ins. Corp. v. Garfinkel, --- So.3d ----, 2009 WL 4874789 (Fla. 5th DCA 2009).
Citizens Property Insurance is not an "authorized insurer" as set forth by Fla. Stat. § 624.401 yet it is authorized to issue insurance policies in Florida, so the logical implication is the Florida Legislature intended to create Citizens as a state agency which is provided with sovereign immunity, including immunity from bad faith claims.

Aikin v. WCI Communities, Inc., --- So.3d ----, 2009 WL 4877708 (Fla. 2d DCA 2009).
Contract for sale of condominium does not violate the Interstate Land Sales Act's two year requirement of completion of construction for non-exempt properties when the contract contains a *force majeure* clause which excuses timely completion "by reason of delays incurred by circumstances beyond Seller's control, such as acts of God, or any other grounds cognizable in Florida contract law as impossibility or frustration of performance, including, without limitation, delays occasioned by rain, wind and lightning storms." Likewise, contractual provisions providing for notice and cure, limiting remedies, and requiring a 65% project presale threshold requirement be met before the contract becomes effective do not make the two year construction requirement illusory.

Saad Homes, Inc. v. Rivero, --- So.3d ----, 2009 WL 4824748 (Fla. 3d DCA 2009).
Venue for suit for breach of construction contract lies in the county where the construction project lies.

Strax Rejuvenation and Aesthetics Institute, Inc. v. Shield, --- So.3d ----, 2009 WL 4827051 (Fla. 4th DCA 2009).
The clerk's date stamp on a notice of appeal is conclusive as the jurisdictional date pursuant to Florida Rule of Appellate Procedure 1.080 (e), and prior cases permitting variance from this rule are superseded by the 1984 rule amendment.

M & H Profit, Inc. v. City of Panama City, --- So.3d ----, 2009 WL 4756147 (Fla. 1st DCA 2009).
The Bert Harris Act, Fla. Stat. § 70.001, provides compensation only for "as applied" and not "facial" takings due to government regulation which "inordinately burdens" property, so the mere passage of a development restricting ordinance is not a violation of the Act. The First District further held that "until an actual development plan is submitted, a court cannot determine whether government action has 'inordinately burdened' property . . ."

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Premier Real Estate Holdings, LLC v. Butch, --- So.3d ----, 2009 WL 4927861 (Fla. 4th DCA 2009).
An arbitration provision which contains a blank space and fails to designate an arbitration organization or the "rules" under which disputes will be arbitrated is not void fro vagueness in that Fla. Stat. § 682.04 of the Florida Arbitration Code provides a method for designating arbitration procedures when the arbitration provision does not.

Banner Supply Co. v. Harrell, --- So.3d ----, 2009 WL 4927912 (Fla. 3d DCA 2009).
Sixty-day abatement provided for under the Controlling Litigation in Construction Act (Fla. Stat. § 558.001 et seq.) not required when construction supply company files motion to abate after the sixty day period has run.

Florida Power & Light Co. v. Feo, --- So.3d ----, 2009 WL 4927938 (Fla. 3d DCA 2009).
Florida Power & Light is specifically excluded from liability under the FDUTPA by the language of the Act itself.

Franklin v. Regions Bank, --- So.3d ----, 2009 WL 4927976 (Fla. 4th DCA 2009).
Mortgage assignees are permitted, in the discretion of the court, to intervene in foreclosure proceedings post judgment to pursue a deficiency against the mortgagors.

Nova Southeastern University, Inc. v. Jacobson, --- So.3d ----, 2009 WL 4928032 (Fla. 4th DCA 2009).
The *General Motors v. McGee*, 837 so. 2d 1010 (Fla. 4th DCA 2002), test to determine whether there has been an inadvertent waiver of the attorney-client privilege requires examination of the 1) the reasonableness of the precautions taken to prevent inadvertent disclosure; 2) the number of inadvertent disclosures; 3) the extent of the disclosure; 4) the delay in measures taken to rectify the inadvertent disclosures; and 5) whether overriding interests of justice will be served by relieving the party of its error. A delay in holding a hearing to determine whether there has been waiver is not a factor which prejudices the party seeking protection.

Sutton v. Monroe County, --- So.3d ----, 2009 WL 4928219 (Fla. 3d DCA 2009).
Cause of action for inverse condemnation due to governmental regulation becomes ripe, under *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City,* 473 U.S. 172, 186 (1985), upon affirmance on administrative appeal of building permit denial, and statute of limitations applies to bar claim even though local government engages in further review of the issue under its Beneficial Use Determination (BUD) program.

United Real Estate Ventures, Inc. v. Village of Key Biscayne, --- So.3d ----, 2009 WL 4928356 (Fla. 3d DCA 2009).
President Nixon's use of the helipad on his property on Key Biscayne was previously permitted because the Supremacy Clause of the United States Constitution insulated the use from code enforcement issues; the right to use the helipad under the Supremacy Clause does not continue after the federal government conveys the property to a non-governmental party.

Hess Corp. v. Grillasca, --- So.3d ----, 2009 WL 4931668 (Fla. 2d DCA 2009).
Class action status not permitted for Hess gasoline customers who had $75 pre-authorization holds placed on their bank accounts when using debit cards to buy gasoline because individual claim issues predominate over class issues as not all accounts had holds placed, not all class members sustained damages, individual issues of fraud cannot be tried as a class, and injunctive or declaratory relief is not appropriate to the class as a whole.

Sarasota Estate & Jewelry Buyers, Inc. v. Joseph Gad, Inc., --- So.3d ----, 2009 WL 4931673 (Fla. 2d DCA 2009).
Settlement agreement that provides for prejudgment interest "at the highest rate permitted by law" without providing a method for determining the interest amount due creates an unliquidated sum, and a hearing is required to determine the prejudgment interest amount.

Puig v. PADC Marketing, LLC, --- So.3d ----, 2009 WL 4932893 (Fla. 3d DCA 2009).
The automatic stay imposed by 11 U.S.C. § 362 when one defendant files bankruptcy applies only to the defendant that declares bankruptcy, and does not stay the action against the non-bankrupt co-defendants. It is likewise error to abate the action against all defendants until determination of the bankruptcy unless there are "unusual circumstances," e.g., the bankrupt and non-bankrupt defendants are so similar or identical that a judgment against the non-bankrupt defendant would be, in effect, a judgment against the bankrupt.

Johnson v. Gulf County, --- So.3d ----, 2009 WL 4912595 (Fla. 1st DCA 2009).
The clearing and filling of wetlands is "development" within the language of the Gulf County Comprehensive Plan, and a development order is required to clear and fill wetlands notwithstanding the developer receives letters from D.E.P. and the Army Corps of Engineers stating the wetlands are "non-jurisdictional," i.e., not subject to the jurisdiction of D.E.P. and the Corps.

Mack v. Perri, --- So.3d ----, 2009 WL 4912602 (Fla. 1st DCA 2009).
Fla. Stat. § 733.710 (1) sets forth an absolute two year time limit to file claims in estates, which time period is not subject to enlargement or waiver. Moreover, the three month time period under Fla. Stat. § 733.702 (1) is measured from the first publication of the notice to creditors, not any subsequent notices.

Sly v. McKeithen, --- So.3d ----, 2009 WL 4912609 (Fla. 1st DCA 2009).
A trial court should normally exercise its discretion to allow additional time to serve defendants under Florida Rule of Civil Procedure 1.070 (j) when the statute of limitations has run and the practical effect of a dismissal without prejudice is, because of the statute of limitation, a dismissal with prejudice.

In re Baker, --- F.3d ----, 2009 WL 4912122 (11th Cir. 2009).
A profit sharing or Keogh plan does not have to comply with E.R.I.S.A. in order to be entitled to exemption from claims of creditors pursuant to Fla. Stat. § 222.21 (2)(a)(1).