

**THE WRONGFUL ACT DOCTRINE: A COMMON LAW
EXCEPTION TO THE AMERICAN RULE ON ENTITLEMENT TO
ATTORNEYS' FEES**

As much as attorneys and judges enjoy citing and applying bright-line rules of law, they relish the opportunity to carve out exceptions to them even more. In Florida, the prevailing party in a civil action is not entitled to an award of attorneys' fees unless the claim is predicated upon a contract or statute that authorizes the recovery of such attorneys' fees. This rule of law is often described by attorneys and judges as "well-settled," "axiomatic," or "hornbook law."¹

While this is undoubtedly an accurate recitation of Florida law, and it is certainly true that Florida follows the "American Rule" on entitlement to attorneys' fees, civil litigators should also be cognizant of a potent exception to this rule: the wrongful act doctrine.² The wrongful act doctrine is a judicially created equitable principle that permits the recovery of attorneys' fees when a defendant's acts or omissions cause another party to incur attorneys' fees in maintaining or defending a lawsuit with a third party.³ Stated differently, the doctrine permits "a plaintiff to recover third-party litigation expenses as special damages where the defendant's wrongful act caused the plaintiff to litigate with the third party."⁴

The name of this doctrine seems to add to its mystique and obscurity because it sounds, quite frankly, like fictional law. There is also a dearth of caselaw on the subject, particularly because the courts do not always refer to the doctrine by name. The 11th Circuit Court of Appeals recently examined the wrongful act doctrine and noted that the litigants failed to cite a single case from the Florida Supreme Court describing the doctrine. The 11th Circuit also commented that it had only mentioned the doctrine in one prior unpublished opinion in which the claim was eventually abandoned.⁵ These unimpressive facts led the 11th Circuit to "question how well-established the doctrine is in Florida."⁶

Despite its unfortunate name and limited caselaw on the subject, the wrongful act doctrine is a genuine, long-recognized exception to the rule on entitlement to attorneys' fees in Florida. With the ever-increasing costs of litigation, the legal community is well-aware that the specter of paying the opponent's attorneys' fees can drastically change the dynamics of a case. The ability to recoup attorneys' fees from the adverse party sometimes

enables clients with limited or no financial means to obtain legal representation. The existence of such claims also has the tendency to encourage parties to resolve their disputes amicably without going through the expensive, time-consuming, uncertain experience of trial. Therefore, the wrongful act doctrine can be a helpful tool for Florida litigators and their clients.

Origins and Definitions of the Doctrine

The wrongful act doctrine springs from the equitable principle that the tortfeasor or breaching party should be held liable for all of the damages naturally flowing from the misconduct or breach. Although lacking a catchy name, the principles of law supporting the wrongful act doctrine have long been a part of American jurisprudence, and, in fact, it was likely a legal doctrine inherited from England.

As early as 1874, the Illinois Supreme Court stated that a party may recover the damages naturally flowing from the wrongful acts of the defendants, including attorneys' fees and expenses incurred in litigation with third parties:

The rule, as found in the text-books, is, that whosoever does an illegal or wrongful act is answerable for all the consequences in the ordinary and natural course of events, though these consequences be directly brought about by the intervening agency of others, provided the intervening agents were set in motion by the primary wrong-doer; or, provided their acts, causing the damage, were the necessary or legal and natural consequence of the original wrongful act....

A case is referred to from 30 Law Journal, Queen's Bench, 137, *Dixon v. Fourcoy*, where it was held, if the natural result of a wrongful act, committed by a defendant, has been to plunge the plaintiff into a chancery suit, and thereby to cause him to incur costs and expenses, whatever may be the event of the suit, there is that conjunction of wrong and damage which will give the plaintiff good cause of action.⁷

In 1909, the Appellate Court of Appeals in Maryland, the highest court in that state, made a similar pronouncement of the wrongful act doctrine as an exception to the American Rule regarding the recovery of attorneys' fees:

[W]here the wrongful acts of the defendant have involved the plaintiff in

litigation with others, or placed him in such relations with others as make it necessary to incur expense to protect his interest, such costs and expense should be treated as the legal consequences of the original wrongful act.⁸

In 1954, the Iowa Supreme Court had an opportunity to discuss the wrongful act doctrine, which by that time was considered a “well-established exception” to the American Rule regarding the recovery of attorneys’ fees by the victorious litigant:

If A sues B, generally, as noted above, the successful party cannot recover his expenses of litigation such as lost time, attorney fees, and other special items other than court costs. But if through the tort of A, B is in good faith involved in litigation with C, the exception comes into play, and B may then recover the reasonable value of his expense for employment of counsel, and other proper items, from A.⁹

The underpinning for the wrongful act doctrine seems to be the desire to hold the wrongdoer responsible for the full consequences of the wrongful conduct, including reimbursement of attorneys’ fees expended in the litigation. Whether the cause of action sounds in contract or tort, the goal of civil litigation is premised upon the basic notion of placing the aggrieved party into a position where that party would have been but for the tort or breach committed by the wrongful party. Indeed, the Florida Supreme Court noted that in “certain causes of action, attorney fees historically have been considered part of litigation costs and the award of these costs is intended not only to discourage meritless claims, but also to make the prevailing plaintiff or defendant whole.”¹⁰ The wrongful act doctrine is designed to fulfill this equitable objective.

The Wrongful Act Doctrine in Florida

It is unclear when Florida courts first recognized the wrongful act doctrine, but the concept gained greater acceptance in this state during the late 1960s through the 1970s. In the case of *Milohnich v. First National Bank of Miami Springs*, 224 So. 2d 759 (Fla. 3d DCA 1969), *disapproved of on other grounds by Barnett Bank of West Florida v. Hooper*, 498 So. 2d 923 (Fla. 1986), a customer sued its former bank alleging that it had breached implied duties not to disclose confidential financial information to third parties. At the trial court level, the bank filed a motion to dismiss, arguing that the customer failed to sufficiently allege its damages flowing from the alleged breach. After the trial court granted the bank’s motion to dismiss, the

appellate court reversed and found that the customer had stated a valid cause of action. The appellate court cited to 25 C.J.S. Damages §50e, which provided “[W]here the breach of a contract has forced one of the contracting parties to maintain or defend an action against a third person, he is entitled to recover from the party breaching the contract attorney fees and any other expenses incurred in the prior litigation.”¹¹

In *Canadian Universal Insurance Co. v. Employers Surplus Lines Insurance Co.*, 325 So. 2d 29 (Fla. 3d DCA 1976), the plaintiffs sued a hospital, its primary insurer, and excess insurer arising out of brain injuries sustained by their infant daughter during birth. The excess insurer urged the primary insurer to accept the plaintiffs’ settlement offer of their combined policy limits. The primary insurer refused to settle, and the jury returned a verdict significantly in excess of the policy limits. Plaintiffs then filed a second action against the insurers alleging bad faith for refusing to settle within the policy limits. In that second action, the excess insurer sued the primary insurer for indemnity as a result of its bad-faith refusal to settle. On appeal, the court affirmed the recovery of attorneys’ fees by the excess insurer from the primary insurer and noted, “The general rule of law is that where the wrongful act of the defendant has involved the claimant in litigation with others or placed him (or her) in such relation with others as makes it necessary to incur expenses to protect his interest, such costs and expenses, including attorney’s fees, should be treated as the legal consequences of the original wrongful act and may be recovered as damages.”¹²

Requirements for the Doctrine

Application of the doctrine in Florida depends upon the existence of 1) some wrongful or tortious act by the defendant that 2) naturally and directly caused 3) the plaintiff to needlessly incur attorneys’ fees and costs maintaining or defending itself in litigation 4) with a third party. Some courts have also suggested that the aggrieved party seeking damages under the wrongful act doctrine must be “innocent” of any wrongdoing.¹³

The case of *Pony Express Courier Corp. of Florida v. Zimmer*, 475 So. 2d 1316 (Fla. 2d DCA 1985), serves as an apt example of the application of the wrongful act doctrine in Florida. In *Pony Express*, former employees and a competitor allegedly conspired to disrupt Pony Express’ business by disseminating false accusations of federal antitrust violations by Pony Express. These allegations triggered a federal grand jury investigation against Pony Express. On appeal, the court found that Pony Express was

entitled to recover from the defendants the fees and costs associated with defending “the threat of civil or criminal antitrust litigation flowing from the [defendants’] false accusations.”¹⁴

- *The Need for a “Wrongful” Act* — The wrongful act doctrine, like most narrowly carved exceptions, is not without its own pitfalls and traps for the unwary. The actions or omissions of the defendant must be genuinely “wrongful” for the doctrine to apply, and this nebulous concept suggests that the presence of good faith on the part of the defendant may preclude an award of attorneys’ fees. For example, in *Associated Electric and Gas Insurance Services, Ltd. v. Ranger Insurance Co.*, 560 So. 2d 242, 243 (Fla. 3d DCA 1990), the court refused to award attorneys’ fees to a primary insurance carrier against the excess carrier in a declaratory judgment action where the court found the excess insurer had “operated under the good faith belief that it was not required to provide coverage” for bodily injury and property damage claims.¹⁵

The “wrongful” act giving rise to the claim for attorneys’ fees could be criminal, fraudulent, or garden-variety tortious conduct. Florida courts have applied the wrongful act doctrine to a myriad of fact patterns and causes of action.¹⁶

- *Litigation with Third Parties* — One common misconception about the wrongful act doctrine is that a party can avail itself of the doctrine to recover attorneys’ fees incurred in a direct action against the party who perpetrated the wrongful conduct. However, application of the doctrine requires the existence of litigation with third parties. In *City of Tallahassee v. Blankenship & Lee*, 736 So. 2d 29 (Fla. 1st DCA 1999), a contractor submitted a bid to the city for a natural gas pipeline project and provided the city with documentation to pre-qualify for the project. Before the bids were opened, the city informed the contractor that it did not qualify because of lack of experience with the particular piping needed for the project. The contractor appealed the city’s decision using the city’s bid protest procedure. When the bid protest was rejected, the contractor filed suit. The trial court ruled in favor of the contractor and ordered the city to reimburse the contractor for its fees incurred during the bid protest. On appeal, the court reversed the award of attorneys’ fees to the contractor under the wrongful act doctrine because the suit did not “involve[] the claimant in litigation with others.”¹⁷

Some courts have suggested that the requirement of litigation with third parties, however, need not take place in separate litigation; rather, it may be possible for the doctrine to apply where the plaintiff, tortfeasor, and third party are all joined in one lawsuit. In *Reiterer v. Monteil*, 98 So. 3d 586, 588 (Fla. 2d DCA 2012), the defendants conveyed property to the plaintiff through a warranty deed. As part of the transaction, the plaintiff purchased title insurance. Upon learning of unpaid liens on the property, the plaintiff sued the title company, the Attorneys Title Insurance Fund, and the sellers for breach of warranty deed, damages, and attorneys' fees and costs in one lawsuit. Attorneys Title satisfied the liens and then filed a cross-claim against the sellers. In adopting the recommendation of a magistrate, the trial court found in favor of the plaintiff/buyer against the seller and awarded attorneys' fees and costs.

On appeal, the Second District Court of Appeal noted that "a covenantee may recover attorney's fees incurred in a suit to maintain or defend title against a third party occasioned by the covenantor's breach of covenant."¹⁸ Upon examining other cases in Florida, the court acknowledged that "a covenantee can recover attorney's fees for a quiet-title action against a third party even where that claim is joined in a lawsuit against the covenantor."¹⁹ Therefore, at least in the context of breach of warranty cases, Florida courts have held that a party may recover attorneys' fees under the wrongful act doctrine even though the breaching party and third party are joined in the same lawsuit.²⁰

- *Causation* — Attorneys' fees and costs are recoverable under the doctrine only to the extent they were incurred as a natural and direct result of the wrongful act of the defendant. Thus, the party seeking attorneys' fees must demonstrate a causal nexus between the wrongful act and the fees incurred. Fees that are unrelated to the wrongful act and are incurred in furthering the party's own self-interests are not recoverable under the wrongful act doctrine.²¹

- *Pleading Requirements* — In order to avoid unfair surprise and to comply with the general edicts of notice pleading, a party seeking fees under the wrongful act doctrine must specifically plead such damages. Failing to properly plead attorneys' fees under the wrongful act doctrine will result in a waiver of such claim because it is viewed as an element of special damages.²²

Legal practitioners should also be mindful of the fact that the wrongful act doctrine is not an independent cause of action; rather, it is a form of special damages that is dependent upon a sufficiently pled cause of action.²³

Thus, if the cause of action fails, the demand for attorneys' fees under the wrongful act doctrine also dies. The case of *Horowitz v. Laske*, 855 So. 2d 169 (Fla. 5th DCA 2003), illustrates this point. In *Horowitz*, a group of investors filed a class action lawsuit against a broker alleging that the broker promoted the sale of worthless notes in violation of securities laws. The broker, in turn, filed a third-party complaint against a Michigan attorney and his law firm alleging that the attorney negligently responded to regulatory inquiries and negligently drafted loan documents. On remand from the Florida Supreme Court, the appellate court found that the broker had not stated valid causes of action against the lawyer and his law firm. In addition to failing to properly plead a cause of action for legal malpractice, the broker also improperly included a separate cause of action for attorneys' fees under the wrongful act doctrine: "We conclude that this [the wrongful act doctrine] is a claim for damages, including special damages, for legal malpractice. Because Wendt has not alleged a factual basis for legal malpractice claim, as discussed above, count IX [wrongful act doctrine] also fails."²⁴

Recoverable Damages

If a party presents a timely request for damages under the doctrine and if the circumstances of the case otherwise meet the criteria for the wrongful act doctrine, the aggrieved party may recover attorneys' fees and other damages flowing from the wrongful conduct, which arose during litigation with third parties.²⁵ The wrongful act doctrine only authorizes attorneys' fees as an element of damages arising from the wrongful acts of a party that caused the party to incur unnecessary fees in litigation with a third party. The doctrine, however, does not permit recovery of attorneys' fees incurred during the prosecution of the claims against the wrongdoer.²⁶

Independent Expert Testimony as to Reasonableness of the Fees

The wrongful act doctrine has even spawned its own exception to "well-settled law" in Florida regarding proof of the reasonableness of attorneys' fees. Generally speaking, when a prevailing party seeks an award of attorneys' fees from the nonprevailing party, the amount of reasonable attorneys' fees to be awarded must be substantiated by expert testimony. However, in *Schwartz v. Bloch*, 88 So. 3d 1068 (Fla. 4th DCA 2012), the Fourth District Court of Appeal held that expert testimony corroborating the

reasonableness of the attorneys' fees was not required when the attorneys' fee claim was based upon the wrongful act doctrine. Following the reasoning of *Sea World of Florida, Inc. v. Ace American Insurance Cos.* 28 So. 3d 158 (Fla. 5th DCA 2010), the court in *Schwartz* found that expert testimony was not necessary because the wrongful act doctrine is, in and of itself, an element of compensatory damages. In reaching this conclusion, the court certified a potential conflict with *Seitlin & Co. v. Phoenix Insurance Co.*, 650 So. 2d 624 (Fla. 3d DCA 1994).

Unfortunately, the conflict remains unresolved. While the Florida Supreme Court granted review of both the *Sea World* and *Schwartz* cases, the appeals were dismissed a few months later after the parties submitted stipulations for dismissal.²⁷

Conclusion

The wrongful act doctrine is slowly gaining traction in this state, and the interpreting caselaw is evolving. Perhaps there will be another opportunity for the Florida Supreme Court to consider, clarify, and provide greater guidance to the lower courts, litigants, and legal community on the application of this still relatively obscure common law doctrine.

When considering the wrongful act doctrine, practitioners should be mindful to 1) analyze whether the wrongful acts of a party have caused the client to incur legal expenses in maintaining or defending litigation with third parties; 2) determine whether those fees and costs incurred could be considered causally related to the wrongful act; and if so, 3) specifically plead a claim for attorneys' fees and costs under the wrongful act doctrine as a form of special damages to the claim. Until the Florida Supreme Court renders an opinion as to whether independent, corroborating expert testimony is necessary to establish the reasonableness of attorneys' fees awarded pursuant to the wrongful act doctrine, it is advisable to continue retaining experts to opine on the subject of fees and to conduct evidentiary hearings on the reasonableness of the fee application.

¹ See, e.g., *Trytek v. Gale Indus., Inc.*, 3 So. 3d 1194, 1198 (Fla. 2009) ("It is well-settled that attorneys' fees can derive only from either a statutory basis or an agreement between the parties.").

² *Reiterer v. Monteil*, 98 So. 3d 586, 588 (Fla. 2d DCA 2012) (noting that

the wrongful act doctrine is “a narrow exception to the rule that attorney’s fees are recoverable only when authorized by statute or contract”); *Fla. Patient’s Compensation Fund v. Rowe*, 472 So. 2d 1145, 1148 (Fla. 1985) (“This state has recognized a limited exception to this general American Rule in situations involving inequitable conduct.”).

³ See *State Farm Fire & Cas. Co. v. Pritcher*, 546 So. 2d 1060, 1061 (Fla. 3d DCA 1989) (“Where a defendant has committed a wrong toward the plaintiff, and the wrongful act has caused the plaintiff to litigate with third persons, the wrongful act doctrine permits the plaintiff to recover, as an additional element of damages, plaintiff’s third party litigation expense.”).

⁴ *Winselmann v. Reynolds*, 690 So. 2d 1325, 1328 (Fla. 3d DCA 1997).

⁵ *Osorio v. State Farm Bank, F.S.B.*, 746 F.3d 1242 (11th Cir. 2014).

⁶ *Id.* at 1261.

⁷ *Philpot v. Taylor*, 75 Ill. 309, 310-11 (1874).

⁸ *McGaw v. Acker Merrall & Condit Co.*, 111 Md. 153, 73 A. 731, 734 (1909); see generally, C.T. Drechsler, Annotation, *Right to Recover as Damages Attorneys’ Fees Incurred in Earlier Litigation With a Third Person Because of Involvement Therein Through a Tortious Act of Present Adversary*, 45 A.L.R.2d 1183 (1956).

⁹ *Turner v. Zip Motors, Inc.*, 245 Iowa 1091, 1098 (1954).

¹⁰ *Fla. Patient’s Comp. Fund v. Rowe*, 472 So. 2d 1145, 1149 (Fla. 1985).

¹¹ *Milohnich*, 224 So. 2d at 762.

¹² *Canadian Universal Ins. Co.*, 325 So. 2d at 31 (citing *Milohnich*).

¹³ See, e.g., *Glance & Radcliffe, Inc. v. City of Live Oak*, 471 So. 2d 144, 145-46 (Fla. 1st DCA 1985) (emphasis added) (“That an *innocent party* drawn into litigation with a third party by the wrong of another party may be entitled to recover expenses, including attorney’s fees in defending that litigation, is well established.”).

¹⁴ *Pony Express*, 475 So. 2d at 1318.

¹⁵ See also *Osorio v. State Farm Bank, F.S.B.*, 746 F.3d 1242, 1261 (11th Cir. 2014) (noting that fees under the wrongful act doctrine could only be awarded if the defendant's conduct was indeed wrongful, which was an issue for the jury to decide).

¹⁶ See, e.g., *Winselmann v. Reynolds*, 690 So. 2d 1325, 1328 (Fla. 3d DCA 1997) (civil trespass to real property); *Canadian Universal Ins. Co. v. Employers Surplus Lines Ins. Co.*, 325 So. 2d 29, 31 (Fla. 3d DCA 1976) (bad-faith case by excess insurer against primary insurer); *Auto-Owners Ins. Co. v. Hooks*, 463 So. 2d 468, 477-78 (Fla. 1st DCA 1985) (wrongful replevin of an automobile); *De Pantosa Saenz v. Rigau & Rigau, P.A.*, 549 So. 2d 682, 685 (Fla. 2d DCA 1989) (rescission/fraud case against an attorney arising out of a real estate transaction); *Arling v. State*, 559 So. 2d 1274, 1275 (Fla. 2d DCA 1990) (criminal case involving a stolen wedding ring sold to a jewelry store); *Behar v. Jefferson Nat'l Bank at Sunny Isles*, 519 So. 2d 641, 643-44 (Fla. 3d DCA 1987) (trade secret/intentional interference with business relationships case); *Glance & Radcliffe, Inc. v. City of Live Oak*, 471 So. 2d 144, 145-46 (Fla. 1st DCA 1985) (suit on a construction performance bond); *Gunster, Yoakley & Stewart, P.A. v. McAdam*, 965 So. 2d 182, 183-84 (Fla. 4th DCA 2007) (wrongful appointment of a corporate fiduciary charged with administering an estate); *Regions Bank v. Kel Title Ins. Group, Inc.*, No. 3:12cv118-MCR-EMT, 2012 WL 5381510, at *4 (N.D. Fla. Nov. 1, 2012) (legal malpractice arising out of a real estate transaction).

¹⁷ *Blankenship & Lee*, 736 So. 2d at 30, (quoting *Northamerican Van Lines, Inc. v. Roper*, 429 So. 2d 750, 752 (Fla. 1st DCA 1983)); see also *Johnson Law Group v. Elimadebt USA, LLC*, No. 09-CV-81331, 2010 WL 2035284 at *8 (S.D. Fla. May 24, 2010) ("The wrongful act doctrine, however, only applies to costs of litigation with third parties, not subsequent litigation with the defendants who committed the wrongful act."); *CC-Aventura, Inc. v. Weitz Co., LLC*, No. 06-21598-CIV, 2008 WL 5143248 at *6 (S.D. Fla. Dec. 5, 2008) ("[T]he cases where attorney's fees were recovered under the wrongful act doctrine involved claims or defenses against third parties.") (numerous cases cited).

¹⁸ *Reiterer*, 98 So. 3d 586, 588.

¹⁹ *Id.* at 588-89 (quoting *Tibbetts v. Nichols*, 578 So. 2d 17, 19 (Fla. 1st DCA 1991)) (“Although this rule is typically applied to permit recovery when an attorney’s services are rendered in a separate action, it appears from our review of the pertinent authorities that the circumstance justifying such an award is the necessity of entering into litigation against a third party, and not whether the action is separate or part of the lawsuit against the covenantor.”).

²⁰ Despite finding that the wrongful act doctrine may apply where all of the parties were joined in one lawsuit, the court in *Reiterer* refused to award attorneys’ fees to the buyer because the buyer could not recover fees in the *direct* action against the tortfeasor without the existence of a contract or statute authorizing such fees. Moreover, the buyer could not recover fees against the title insurance companies because the title insurance companies did not claim any adverse interests in the property; rather, they were insurers of the buyer’s clear title.

²¹ *See Auto-Owners Ins. Co. v. Hooks*, 463 So. 2d 468, 478 (Fla. 1st DCA 1985) (party claiming attorneys’ fees under the wrongful act doctrine could only recover fees associated with defending a breach of title warranty claim brought by a third party and not for fees associated with pursuing its own claims for malicious prosecution and negligence); *Canon Latin Am., Inc. v. Lantech (C.R.) S.A.*, No. 08-21518-CIV, 2011 WL 240684 at *16 (S.D. Fla. Jan. 24, 2011) (where the wrongful conduct — alleged fraudulent transfer of assets — occurred after the filing of litigation, the court found that the wrongful conduct did not cause the plaintiff to become involved in litigation with third parties and refused to award attorneys’ fees under the wrongful act doctrine).

²² *See, e.g., Robbins v. McGrath*, 955 So. 2d 633 (Fla. 1st DCA 2007) (reversing the trial court’s award of attorneys’ fees because the claim for attorneys’ fees under the wrongful act doctrine was never pled); *see also* Fla. R. Civ. P. 1.120(g) (requiring all special damages to be pled with specificity).

²³ *Southland Constr., Inc. v. Greater Orlando Aviation*, 860 So. 2d 1031, 1038 n.4 (Fla. 5th DCA 2003) (“The wrongful act doctrine does not create a separate cause of action, however. It is simply an additional element of damage available where liability already exists.”).

²⁴ *Horowitz*, 855 So. 2d at 174.

²⁵ Restatement (Second) of Torts §914(2) (1979) (recognizing that recovery under the wrongful act doctrine may include “reasonable compensation for loss of time, attorney fees and other expenditures thereby suffered or incurred in the earlier action”).

²⁶ *See, e.g., Auto-Owners Ins. Co. v. Hooks*, 463 So. 2d 468, 477-78 (Fla. 1st DCA 1985) (“[R]easonable expenses incurred in the primary litigation created by the wrongful acts of another may be recoverable but the expenses incurred in litigation with the actual wrongdoer are not....”) (quoting *Warren v. McLouth Steel Corp.*, 314 N.W.2d 666 (Mich. Ct. App. 1981)); *see also Tew v. Chase Manhattan Bank, N.A.*, 728 F. Supp. 1551, 1561 (S.D. Fla. 1990) (“In a direct action by the wronged party against the defendant who caused involvement in the litigation with the third party, the American Rule applies.”).

²⁷ *Ace Am. Ins. Cos. v. Sea World of Fla., Inc.*, 53 So. 3d 1021 (Fla. 2011); *Bloch v. Schwartz*, 114 So. 3d 932 (Fla. 2013).