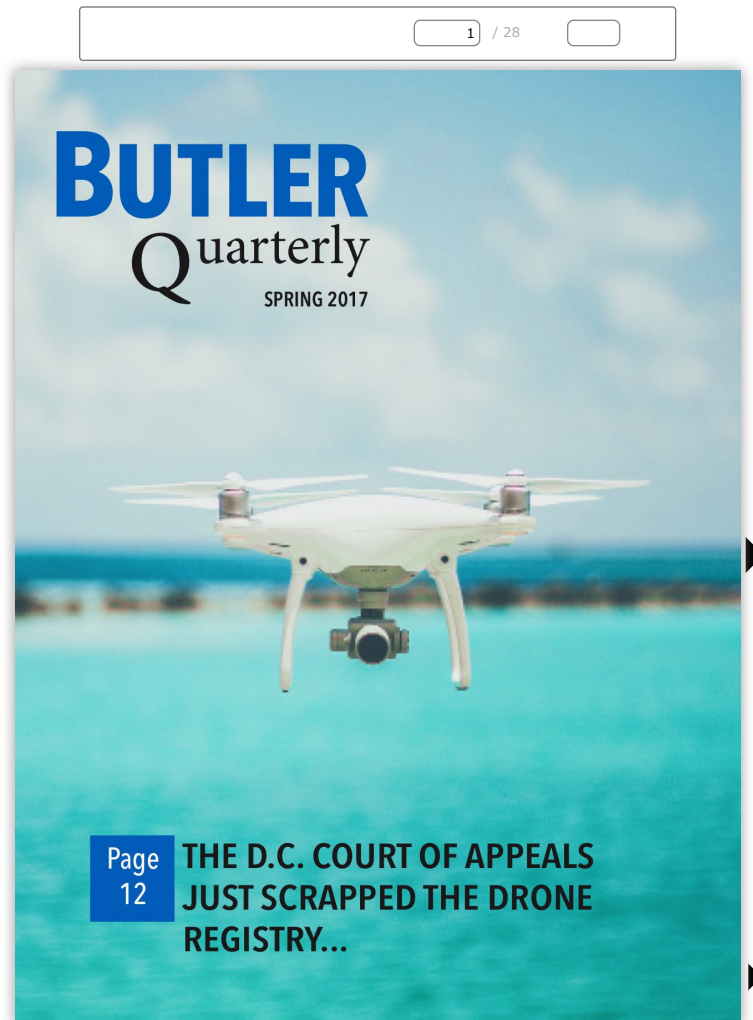


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LexisNexis Practice Guide: Florida Insurance Litigation provides the practitioner with immediate access to knowledge and strategy on every aspect of insurance practice in Florida. The publication concisely presents the terms, conditions and exclusions that govern coverage offered against the risks under each line of insurance. This approach provides a comprehensive exploration of key concepts, policy language and insight for litigation of common and esoteric disputes under those policies. Each chapter also provides task-oriented checklists, examples, strategic points, and cross-references to governing statutory and case law.

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Sun-Tzu is a well-recognized and oft-quoted Chinese general, military strategist and philosopher. He is also credited as the author of *The Art of War*.¹ While the title clearly identifies that book as having much to do with actual war, Sun-Tzu's philosophy translates to many different fields of application. One such field of application is the preparation for and litigation involved with a jury trial. Most specifically applicable is the Sun-Tzu quote that "every battle is won or lost before it's ever fought." Before your jury trial even begins, the actions that most impact the results obtained are the preparation of the jury instructions, the preparation of the pretrial stipulation, the preparation of motions in limine, and the intricacies involved in the jury selection process.

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Water loss lawsuits have spiked dramatically in Florida during the past few years. Insurers simply cannot resolve the unusually large differences in water damage estimates. Scope of estimated matching work usually explains the disparity. And litigation ensues over this hypothetical question: Can the water-damaged or tear out items be replaced and then matched to undamaged adjoining items; and if not, what is the proper scope of the matching work?

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What does reading literature have to do with the mission of DRI for Life? Some might suggest reading that we read mostly as pleasurable respite or for entertainment. That certainly is true in the cases of, say, mystery stories or romance novels. But I say reading real literature is more, and more essential to life, than that.

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Water boiler failures provide significant recovery opportunities. By understanding how these relatively simple systems work, one can realize that recovery potential and identify the probable failures modes, skillfully directing the recovery [investigation](#), and asserting the proper legal theories that afford recovery.

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How many of your subrogation claims have been closed because of the subrogation killing terms and conditions of a contract? A recent decision in the Eastern District of Pennsylvania, United States District Court found in favor of a subrogating insurance carrier and held that the terms and conditions barring recovery were both unlawfully drafted and unconscionable, thus allowing the subrogating carrier to move forward with its subrogation claim. *State Farm Fire & Cas. Co., a/s/o Sara Rivera v. Petroleum Heat & Power Co., Inc.*, 2016 WL 5816182 (E.D. Penn. October 5, 2016).

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Virtually every jurisdiction in the United States has a statute on the books that provides for prevailing-party attorney fees in favor of insureds when they are successful in coverage suits against insurers.

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Although we may not see the historic low temperatures associated with the polar vortex of 2014, the winter season always brings with it an influx of freeze-related claims. Notably, the involvement of Mother Nature does not automatically preclude a subrogation recovery, and these types of claims should be triaged promptly and efficiently in order to avoid overlooking subrogation potential.

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In the past few years, savvy defense lawyers have taken a more inquisitive approach on the valuation of subrogation damages across all lines of insurance. Gone are the days of assuming the damages must be right because no carrier wants to pay more than they should.

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An explosion is an extraordinary event that forever changes the psyche of those affected. The bigger the scale of the explosion, the bigger the challenges are to move forward and to develop viable recovery claims. It is a dilemma that requires sophisticated leadership and seasoned subrogation counsel, forensic consultants, and loss adjusters.

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OCTOBER 18, 2016 | [PUBLICATION](#) | FOLLOW UP ON ASSIGNMENT OF BENEFITS LITIGATION IN FLORIDA

In the summer of 2016, SLA published an article titled "Assignment of Benefit Litigation in Florida." The article was an introduction to the topic of assignments of benefits ("AOB") in Florida and how they are being used in insurance claims and litigation. Many readers asked for a follow up article that would provide some additional information and analysis on certain AOB topics. This article will spotlight four of those topics and give the reader some additional information and analysis on each of them.

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With each new claim we navigate a myriad of potential obstacles to recovery. As subrogation professionals, we work to quickly identify these issues and evaluate the best recovery strategy. In doing so, some obstacles may first appear insurmountable, but later give way to the ever diligent subrogation professional. One such obstacle is the concept of sovereign immunity.

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Hmm, a water loss claim. Lots of those lately. She looked further and saw it was actually two claims. Two water loss claims within one week of each other. One, a loss in the bathroom when a pipe underneath the sink burst and the other was a kitchen loss from a broken p-trap.

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Each year, wildland fires scorch millions of acres of brush and timber, damage tens of thousands of homes and commercial properties, cost federal and local governments billions of dollars in suppression efforts, and cost insurance companies hundreds of millions in property insurance proceeds.

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JUNE 27, 2016 | [PUBLICATION](#) | HISTORIC HOTEL, RESTAURANT & NIGHTCLUB FIRES PROVIDE COMMON THREADS FOR DEVELOPING SIGNIFICANT SUBROGATION RECOVERIES

Countless fires occur every year. They cause billions of dollars in property losses, and sometimes result in bodily injuries and deaths. Public assembly fires arising out of hotels, restaurants and nightclubs are prone to significant calamities, given the fire risks, types of use, occupancy, and human factors. While fires are frequently avoidable, the fires themselves would oft be smaller in scope "but for" the failures of fire suppression, detection and alarm systems; lack of effective containment; material flammability; and other failures. This article discusses the common thread of historic hotel, restaurant and nightclub fires—many of which are iconic.

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JUNE 24, 2016 | [PUBLICATION](#) | ASSIGNMENT OF BENEFITS LITIGATION IN FLORIDA

Over the past five years, first-party property insurers in Florida have been experiencing a wave of claims and lawsuits by contractors who obtain insurance rights from insureds through document called an assignment of benefits ("AOB"). This article is intended to introduce the reader to this topic and explain some of the challenges facing insurers in dealing with AOBs in Florida. The reader is welcome to contact the author to learn more.

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Generally speaking, the purpose of tort damages is to make an injured party whole and restore the injured party, as nearly as reasonably possible, to the position in which he or she would have held absent the injury. When dealing with damages sustained to real property, most jurisdictions provide that the cost to repair the property is the proper measure of damage so long as the cost to repair does not exceed the diminution in value, which is the difference between the fair market value immediately before and immediately after the damages are sustained.

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As one of the nation's most preeminent jurists put it, domestication of horses did not give rise to a "law of the horse," and the rise of the Internet era did not give rise to a "law of cyberspace."¹ Likewise, the proliferation of drones will not give rise to a new area of law called "drone law." What will happen instead is much more complex.

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The purpose of Good Faith/Bad Faith is to serve as a compendium of general information insurers may wish to use as part of the development of their own individual claims-handling procedures; however, Good Faith/Bad Faith neither sets forth any particular practice or policy as a recommendation or best practice nor does it represent a compilation of widely followed procedures.

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One of the most rapidly developing issues in Florida and in courts around the country is whether the attorney-client privilege can be relied on by an insurer in a third-party bad faith action. The attorney-client privilege is one of the oldest confidential communication privileges in Florida.

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ATS cases.' The court entered into uncharted and controversial territory' though, as it attempted to deal with a claim made by a group of Nigerian plaintiffs who alleged that "Dutch, British, and Nigerian corporations engaged in oil exploration and production aided and abetted the Nigerian government in committing violations of the law of nations" so as to promote their exploratory efforts.' In ultimately determining that corporate liability does not exist under the ATS,' the Second Circuit majority misconstrued its own precedent and that of other circuits, the Supreme Court's interpretation of the ATS in *Sosa v. Alvarez-Machain*,^o the principles and goals of international law, scholarly commentary, and the earliest available interpretations of the ATS. The plaintiffs sought review in the Supreme Court of the United States.

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Until a few years ago, the term "Most Favored Nation" was a phrase restricted primarily to the world of international trade. However, with the upsurge in both class action and mass tort lawsuits, Most Favored Nation clauses (MFN), are increasingly used as a tool to encourage settlement.

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Now is the time to stop talking and start acting! In the legal professionalism debate, many scholars hope, through their own unique contributions, to spark some universal epiphany that will initiate pervasive change. But a workable solution remains amorphous; the context of the problem is in constant flux and scholars feel the need to continually approach it in a "modernized" framework. Admittedly, unique perspective is an important tool for learning the intricacies of any problem, but incessantly approaching an old problem with fresh insight becomes tiresome and counterproductive. . . . especially when there is no evidence of change. If we continue to merely discuss professionalism, then we will remain mired in tautology disguised as intellectual insight.

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