# OBJECTION YOUR HONOR:

## UNDERSTANDING LITIGATION PERSPECTIVES

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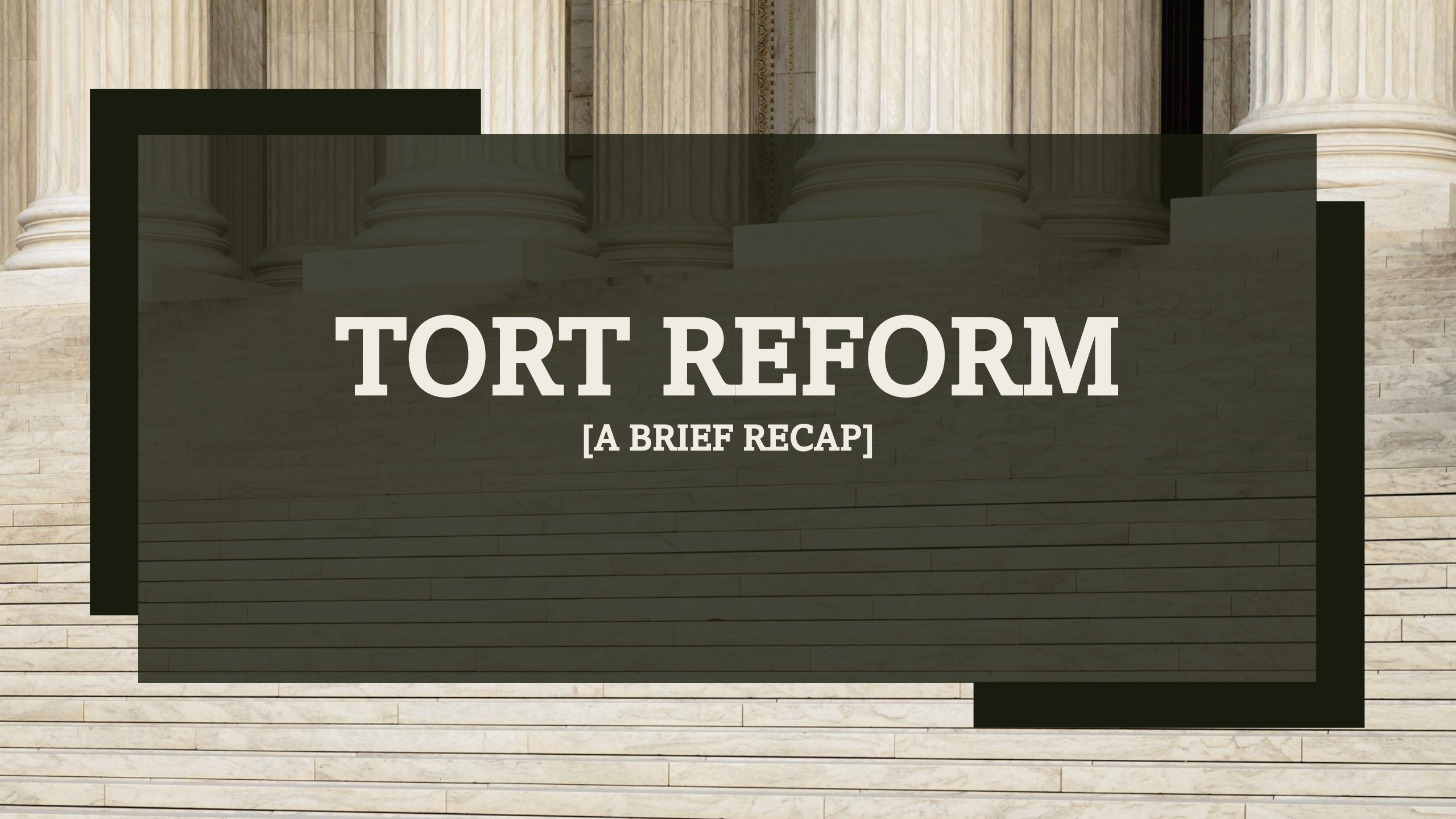
FEEL FREE TO
ASK QUESTIONS

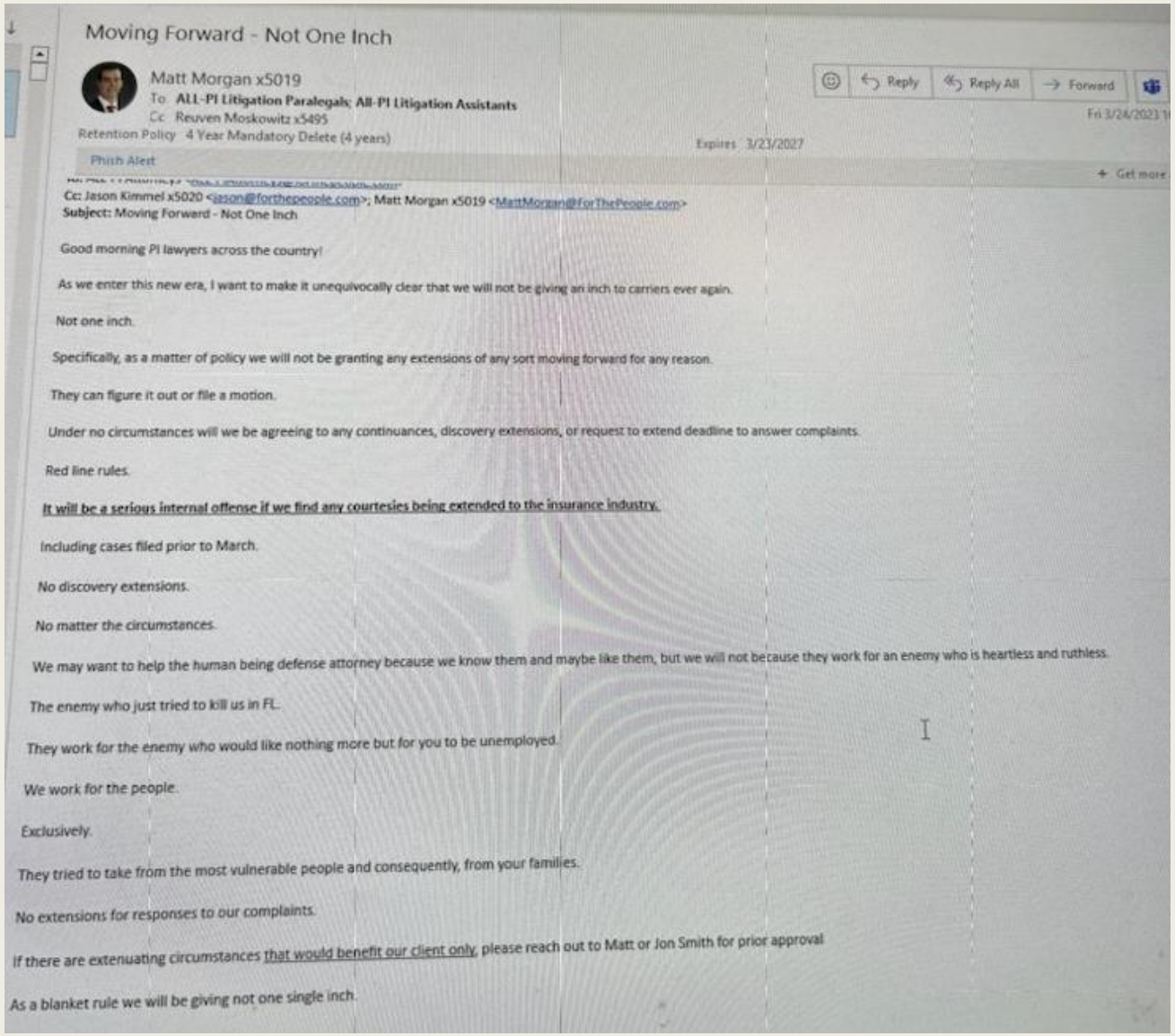

TORT REFORM
[A BRIEF RECAP]

# TORT REFORM

The *Worley* Decision….

# THOUGHTS ON TORT REFORM

[The E-Mail]:



Moving Forward - Not One Inch

Matt Morgan x5019
To: ALL-PI Litigation Paralegals; All-PI Litigation Assistants
Cc: Reuven Moskowitz x5495
Retention Policy: 4 Year Mandatory Delete (4 years) Expires: 3/23/2027
Phish Alert

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Cc: Jason Kimmel x5020 <jason@forthepeople.com>; Matt Morgan x5019 <MattMorgan@ForThePeople.com>
Subject: Moving Forward - Not One Inch

Good morning PI lawyers across the country!

As we enter this new era, I want to make it unequivocally clear that we will not be giving an inch to carriers ever again.

Not one inch.

Specifically, as a matter of policy we will not be granting any extensions of any sort moving forward for any reason.

They can figure it out or file a motion.

Under no circumstances will we be agreeing to any continuances, discovery extensions, or request to extend deadline to answer complaints.

Red line rules.

**It will be a serious internal offense if we find any courtesies being extended to the insurance industry.**

Including cases filed prior to March.

No discovery extensions.

No matter the circumstances.

We may want to help the human being defense attorney because we know them and maybe like them, but we will not because they work for an enemy who is heartless and ruthless.

The enemy who just tried to kill us in FL.

They work for the enemy who would like nothing more but for you to be unemployed.

We work for the people.

Exclusively.

They tried to take from the most vulnerable people and consequently, from your families.

No extensions for responses to our complaints.

If there are extenuating circumstances that would benefit our client only, please reach out to Matt or Jon Smith for prior approval

As a blanket rule we will be giving not one single inch.

# MODIFIED COMPARATIVE NEGLIGENCE

- Florida was a pure comparative fault state
- Florida is now a modified-comparative fault state:

  **Explanation:** Plaintiff is found **more than 50%** at fault, the Plaintiff recovers **nothing**.

- 50% is **NOT** enough. The jury's comparative negligence verdict must be 51+%

# MODIFIED COMPARATIVE NEGLIGENCE

- **Perspectives/Viewpoints:**
  - *Plaintiff's Attorney v. Defense Attorney*
- Expected impact on future cases?
- Will this be the end of sidewalk trip-and-falls?
- Leveraging at mediation?
- Thoughts?

# STATUTE OF LIMITATIONS

- For Negligence causes of action *accruing* after March 24, 2023:

## 2 YEARS

- **Fla. Stat. 95.031:** A cause of action accrues when the last element constituting the cause of action occurs.

# ADMISSIBILITY OF MEDICAL EVIDENCE

- The admissibility of evidence at trial of **past medical treatment** is limited to the "amount actually paid, regardless of the source of payment."

  (1) If health insurance → The amount insurer is obligated to pay the healthcare provider;

  (2) If health insurance, but treats under LOP→ The amount which insurer is obligated to pay the healthcare provider;

  (3) If no health insurance, or has coverage through Medicare/Medicaid → 120% of Medicare rate, otherwise 170% of the Medicaid rate;

  (4) If medical bill transferred to 3rd party (debt collector) → amount 3rd party paid for the debt; and

  (5) Any evidence disclosed related to the letter of protection.

# ADMISSIBILITY OF MEDICAL EVIDENCE

- **Future medical damages:** Evidence offered to prove damages for any future medical treatment or services shall include, but is not limited to:

  (1) If health insurance → The amount future expenses could be satisfied if submitted to insurer + claimants expected out of pocket costs (co-pays);

  (2) If no health insurance, or coverage through Medicare/Medicaid → 120% of Medicare rate, otherwise 170% of the Medicaid rate (in effect at time of trial);

  (3) Any evidence of reasonable future amounts to be billed to the claimant for medically necessary treatment or medically necessary services.

# ADMISSIBILITY OF MEDICAL EVIDENCE

- **Letters of Protection:** In a personal injury action or wrongful death action, as a condition precedent to asserting any claim for medical expenses for treatment rendered, the claimant must disclose:

  (1) A copy of the letter of protection;

  (2) Itemized billing/coding information;

  (3) Information about any third party for which the provider sold the accounts receivable;

  (4) Whether the claimant has health care coverage/ identifying information; and

  (5) Whether the claimant was referred for treatment under a letter of protection and, if so, the identity of the person who made the referral.

  - If the referral is made by the claimant's attorney, disclosure of the referral is permitted, **as evidence at trial**

# ADMISSIBILITY OF MEDICAL EVIDENCE

- **Perspectives/Viewpoints:**
  - *Plaintiff's Attorney v. Defense Attorney*
- Expected impact on future cases?
- Will this be the end of LOP doctors?
  - *Will LOP-focused medical practices go out of business?*
- Effect on run-away verdicts?
- Need for additional experts?
- Leveraging at mediation?
- Thoughts?

# QUICK NOTE:

# FIGHTING MEDICAL DAMAGES PRE-TORT REFORM

**Outline of the Argument:**

- Plaintiff had healthcare coverage but opted not to use it, instead he/she operated under an LOP
- If Plaintiff had used his/her healthcare coverage, the amount of damages would have been reduced to the applicable reimbursement rate of the private insurer/Medicare/Medicaid
- By not using his/her coverage, Plaintiff failed to mitigate damages and should not be entitled to board the full amount of these damages
- Instead: Boardable expenses should be limited to the applicable reimbursement rate
- Public policy favors this outcome!

**Secondary Argument:**

- Plaintiff has not proven bills are due; outstanding; have not been written off, and/or have not been sold to a Third-Party debt collector
- Remember – this is Plaintiff's burden!

# PROPERTY OWNERS –

# PRESUMPTION AGAINST LIABILITY

- HB 837 creates a presumption against liability for owners and operators of multifamily residential property in cases based on criminal acts upon the premises by third parties.
- The presumption applies to such owners who implement certain security features, including security cameras at points of entry and exit; lighting in common areas and parking lots; a one-inch deadbolt in each dwelling unit door; window locks; locked gates around pool areas; and sometimes a peephole (when window not available).
- The legislation also creates a new statutory section replacing joint and several liabilities with comparative negligence in certain negligent security matters against property owners.

# ATTORNEYS FEES

- HB 837 changes to how attorneys' fees are calculated and awarded by the court.
- Specifically, "[i]n any action in which attorney fees are determined or awarded by the court, there is a strong presumption that a lodestar fee is sufficient and reasonable."
- Additionally, HB 837 repeals many of the statutes that provide for one-way attorney's fees in actions involving insurers.

# BAD FAITH

- HB 837 creates Florida Statute § 624.155 (4)(b), under which the insured, claimant, and representatives of the insured or claimant have a duty to act in good faith in furnishing information regarding the claim, in making demands of the insurer, in setting deadlines, and in attempting to settle the claim.

- Under the new standard, mere negligence is insufficient to show bad faith against an insurer.


DIFFERING
PERSPECTIVES

# Plaintiff's Attorney v. Defense Attorney

- Considerations/Arguments made by Plaintiffs & Defendants when evaluating a case:
  - *Overreliance on open & obvious doctrine?*
  - *Overreliance on actual/constructive notice (or lack thereof)?*
  - *Likelihood MSJ is granted?*
  - *Demographics of certain jurisdictions?*
  - *Juries are made up ***of your peers*** ← who likes the government?*
  - *Jurors' knowledge that carrier is involved*

- Policy/Reputation for Settling v. Not Settling Cases
  - *Let's go to trial!*

- Do Plaintiffs & Defendants ever agree?
  - *Just doing our jobs*

# CASE EXAMPLES

# THE BUMP AHEAD SIGN…

# THE BUMP AHEAD SIGN…

## FACTS:

- Defendant placed a large “Bump Ahead” sign on a sidewalk, in an active construction zone
- The sign is 4’ x 4’. Bright orange and reflective.
- The weather was sunny and bright
- Plaintiff, riding her bicycle and traveling 2-3 mph, clipped the edge of the sign with her handlebars and fell, sustaining a serious head injury, requiring treatment in an iron lung
- At the time of the incident, her husband (riding a larger-sized bicycle) had already safely navigated around the sign without issue

### TESTIMONY IN THE CASE:

> **Q:** [D]id the sign fall over when your wife hit it?
>
> **A:** No, it did not. It wasn’t -- it wasn’t a violent hit, you know. It’s not like she crashed into the sign. It’s that right tip of the sign grabbed her left handle grip and just flipped her bike over. It was one of those freak accidents where she went on her head first.

# THE BUMP AHEAD SIGN…


**WHO IS AT FAULT?**

# THE BUMP AHEAD SIGN…

**OUTCOME:**

**As outcome of MSJ, the court ruled:**

In viewing the record evidence in the light most favorable to the Plaintiff … while the subject "Bump Ahead" sign was in-an-of-itself an open and obvious condition, the following material facts remain in dispute; facts which prevent this Court from granting the relief requested:

- Whether the portion of the sidewalk unimpeded by the subject sign constitutes an open and obvious condition;
- Whether Defendant(s) failure to close the sidewalk breached a duty to maintain the premises in a reasonably safe condition; and
- Whether the subject sign should have been pole mounted.

Court: Judge Orfinger out of Volusia County

# TAKE AWAYS


QUESTIONS?

# THANK YOU


| | |
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