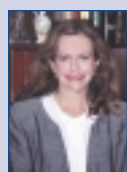




QUINTAIROS, McCUMBER, PRIETO, WOOD, BOYER & MAGER
ADVOCATES FOR THE NURSING HOME & LONG-TERM CARE INDUSTRY

Firm Names 2 New Partners

Quintairos McCumber Prieto Wood Boyer & Mager is pleased to announce that **Jane Thornton Mastrucci** and **Clemente J. Inclan** have been admitted as partners.



Mastrucci, who practices from the Miami office, is one of only a handful of

lawyers in Florida who specialize in nursing home administrative law.

Mastrucci first practiced law at her father's firm in 1978, and later was a senior partner at Thornton & Mastrucci. She is AV-rated in Martindale-Hubbell.

Mastrucci received a Bachelor of Arts Magna Cum Laude in 1975 from the University of Notre Dame, and earned a Juris Doctor from Notre Dame's Law School in 1978.

Inclan's areas of expertise are insurance defense, nursing home and medical malpractice litigation, and he practices from our Jacksonville office.

Inclan, a former Assistant State Attorney, is a graduate of Stetson University, where he received a Bachelor of Arts in 1988. He earned a Juris Doctor from the Florida State University College of Law in 1991. ♦

QMPW Attorneys Win Another Nursing Home Defense Verdict

The attorneys of Quintairos, McCumber, Prieto, Wood, Boyer & Mager have obtained a defense verdict in a nursing home trial in Tavares, Florida, following an eight-day trial.

The case, *Vazquez v. Avante* — a three-count complaint for violations of resident rights (Chapter 400), wrongful death and negligence — alleged that Plaintiff's decedent suffered a fractured hip which required an open reduction/internal fixation. The complaint also cited severe weight loss, dehydration, failure to inform the family of significant changes in the decedent's health, fraudulent documentation, under staffing, poor survey history, and death.



Andrew McCumber



Clemente Inclan



Thomas Valdez

Representing the plaintiff were Brian Thompson, Amy Quezon and Kim Kohn of Wilkes & McHugh. Defense counsel from QMPW were partners **Andrew R. McCumber** and **Clemente J. Inclan**, and **Thomas A. Valdez**, representing the defendants: Avante Group, Inc. and Avante of Leesburg, Inc., the nursing home.

Plaintiff's theory of the case was that "someone" made a

decision that the nursing home resident was to die, and that "someone" was the nursing home. Their case-in-chief began with the testimony of several disgruntled former employees, each of whom testified that the facility was understaffed, that they frequently observed residents lying in their own feces and urine, and that they were required to fill

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QMPW Changes Name, Adds 5th Office

Quintairos, McCumber, Prieto & Wood, P.A. has changed the firm's name to Quintairos, McCumber, Prieto, Wood, Boyer & Mager.

The name change reflects the addition of **Scott Mager**, an appellate and trial attorney, to the firm, while QMPW partner **Eric Boyer** of Miami has been added as a name partner.

Mager will manage a new Fort Lauderdale office, which brings the number of the firm's

fully staffed offices in Florida to five — Miami, Tampa, Jacksonville, Orlando and Fort Lauderdale. The 40-lawyer-firm specializes in nursing home defense, assisted living facility defense, hospital medical malpractice defense and insurance defense litigation.

"Scott Mager will direct the firm's expanded Appellate Group," explained QMPW managing partner **Hugh L. Wood, Jr.** "He brings to the

firm extensive experience at both the trial and appellate levels in matters involving nursing home and healthcare litigation, professional liability and insurance defense. Scott's significant victory in *Beverly v. Knowles* may be responsible for saving the nursing-home industry hundreds of millions of dollars in the future. ♦ (For a detailed biography of Scott Mager, please turn the page.)

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5102 West Laurel Street
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Tel: 813/287-1100

Jacksonville Office

One Independent Drive
Jacksonville, FL 32202
Tel: 904/354-5500

Orlando Office

8427 South Park Circle
Orlando, FL 32819
Tel: 407/903-9205

Ft. Lauderdale Office

One East Broward Blvd.
Fort Lauderdale, FL 33301
Tel: 954/763-2800

Introducing Scott Mager: Attorney At Law

Scott Mager, Esq. has joined Quintairos, McCumber, Prieto, Wood, Boyer & Mager as a senior partner, following 11 years as head of his own firm — Mager & Associates, P.A. in Fort Lauderdale.

A well-known AV-rated appellate and trial attorney, Mager recently represented the South American nation of Ecuador in a pesticide case with claims exceeding one billion dollars.

In addition to his extensive experience in civil/criminal appeals, complex litigation and trial litigation, the Fort Lauderdale-based lawyer has published over 200 case summaries and articles, and presented over 150 lectures, retreats and legal training seminars. He is listed in: *2000 Notable Men; Who's Who in Contemporary Achievement, Chief Advocate, Moot Court Society, National Moot Court, MBA Program Professor, Public Administration, Business Ethics and Business Law, New York Institute of Technology.*



Mager has authored over 200 articles and four books including *The Major Appellate Trial Notebook* which provides a quick reference collection of case explanations and accompanying citations designed for the trial lawyer's use before, during and after trial. He also wrote *The Mediation Book*, which provides sophisticated negotiation skills and has been used as the required text for training mediators. In *You Are the Best*, he wrote a motivational book that offers suggestions

on how to enhance personal and professional happiness and success. Currently, Mager is working on his appellate treatise to be completed and published next year.

A graduate of the University of Florida, where he received a Bachelor of Arts degree, Mager earned a Juris Doctor from the Nova Southeastern University Shepard Broad Law Center in 1988. He is a past president of the Alumni Association of Nova Law School, where he has taught numerous business law, criminal law, government law and civil litigation courses. He also has presented *Advanced Trial Advocacy for Experienced Trial Lawyers* for the National Institute for Trial Advocacy.

Mager is the recipient of the Eagle Talon Award For Dedicated Service to the Highest Ideals, given by The Academy of Florida Trial Lawyers. He also was honored with the NFL Community Quarterback philanthropist award for charitable service to the community.

Among the highlights of Mager's legal career are:

- ◆ Obtaining three favorable nursing home defense verdicts in separate week-long trials.
- ◆ Representation of the Florida Trial Lawyers on a number of successful appeals affecting Florida's families, including issues such as a citizen's right to protection from forced disclosure of confidential medical records.
- ◆ Representation of clients in a landmark case at the Florida Supreme Court in a pollution exclusion clause application. The result affected millions of policyholders of Commercial General Liability Policies.
- ◆ Representation of a major hamburger-chain franchisee in a legal malpractice/franchise litigation matter against a large law firm which was represented by three other law firms, not including the insurance counsel.
- ◆ Representation of a community of homeowners in one of the first major challenges in Florida involving the claim that power lines caused cancer, successfully blocking FPL's attempts to place towering transmission lines directly over and through the community's neighborhood and schools.

Mager has been active in various legal organizations. He has served on the Appellate Court Rules Committee, which crafts suggested changes for appellate rules, and has served for many years on the board of The Academy of Florida Trial Lawyers. He also was chair of the Appellate Practice and Amicus Curiae Section of the Academy, and for six years served as chair of the Continuing Legal Education and Publications (Appellate) Sections. ◆

Appeals Court Upholds Directed Verdict Obtained in 2001 by QMPW Attorneys

The District Court of Appeal of Florida, Second District, has upheld a trial judge's order on Dec. 21, 2001 granting a directed verdict for the defense in the case of *William Foster, as Personal Representative of the Estate of Donald C. Foster, v. Beverly Enterprises—Distribution Services, Inc.*, d/b/a and owners and operators of Manatee Health Care and Rehabilitation Center and Vantage Healthcare Corporation, d/b/a and owners and operators of Manatee Health Care and Rehabilitation Center.

The case was tried last year by QMPW partner's George F. Quintairos and Eric Boyer and Mike Howard of Gallagher & Howard, P.A. At the conclusion of the Plaintiff's case-in-chief, Defense counsel moved for a directed verdict on the basis that the Plaintiff failed to present sufficient evidence that the alleged negligence caused any injuries or damage to the decedent.

The Appeals Court opinion, filed on

October 16, 2002, upheld Manatee County Judge Janette Dunnigan's ruling granting the defense's motion for a directed verdict.

QMPW partner Scott A. Mager and associate Elaine J. LaFlamme, both of the firm's Fort Lauderdale office, handled the appeal before the District Court of Appeal, Second District.

The court wrote: "We agree with the trial court's conclusion that Foster did not meet his burden of establishing that negligence on the part of the Appellees was the proximate cause of injury to the decedent. Therefore, the directed verdict was proper. See *Gooding v. Univ. Hosp. Bldg., Inc.*, 445 So.2d 1015, 1018 (Fla.1984); *MacAlpine v. Martin*, 205 So.2d 347, 350 (Fla. 2d DCA 1967). As to the other issues raised on appeal, we affirm without comment."

Judge Silberman affirmed; Judges Stringer and Covington, JJ, concurred. Case No. 2D02-636 ◆

Partial Defense Verdict a 'Victory' for QMPW Client

A QMPW client has received a partial defense verdict in a nursing home trial in Tampa, following a four-day trial.

The case, *Johnson V. Brooksville Nursing Manor* — a three-count complaint for violations of resident rights (Chapter 400.023), wrongful death, general negligence and medical malpractice — alleged that Plaintiff's decedent suffered decubitus ulcers, weight loss, dehydration, urinary tract infections (UTI) and sepsis, and death.

Representing the plaintiff were Samuel Newman and Steve Haskins of Beltz & Ruth, P.A. Representing the defendant, Brooksville Nursing Manor, were defense counsel from QMPW **Andrew R. McCumber, Albert J. Ferrera and Kevin W. Richardson.**

Ms. Johnson was admitted to the nursing home with a history of CVA with left hemiplegia, dysphagia, acute gouty arthritis of the right knee, renal insufficiency, hypertension, congestive heart failure and atrial fibrillation, hyperuricemia, hypothyroidism, cholelithiasis, deep vein thrombosis, osteo arthritis, dementia, and a peg tube.

Plaintiff's theory of the case

was that the resident became severely dehydrated during her residency and that this severe dehydration was the primary cause of death. They relied almost exclusively on the elevated BUN levels that Ms. Johnson experienced in support of their contention that she was dehydrated as a result of volume depletion. They also criticized Defendant for failing to comply with a strict I&O order on admission.

The defense argued that the resident was chronically dehydrated prior to her admission, and that her BUN levels actually improved at the facility. The defense also presented testimony from Dr. Gary Lehman, who testified that the resident was suffering severe, end-stage cardiac problems, as well as a severe CVA, and that these conditions impacted her renal function. He further testified the chronic renal failure she suffered from was the result of poor perfusion to her kidneys and not volume depletion. The resident suffered colon problems that prevented her system from absorbing the fluids being administered by the faculty initially, which partly explained her elevated BUN levels.

Plaintiff also alleged that



Albert Ferrera



Kevin Richardson

the resident suffered a severe UTI and sepsis as a result of failure to provide adequate care and treatment, including improper care of the resident's catheter.

The defense presented testimony from Dr. Steward McIntyre, who testified that the resident was not septic, and that her infection was both mild and preventable, explaining that UTIs are unavoidable in patients with permanent Foley catheters. He further testified that the infection in question played no role in the resident's death.

Following three hours of deliberation, the jury found that the resident's rights had been violated, but determined that the nursing home was only 25% at fault, and found the Brooksville Regional Hospital

75% at fault.

The jury awarded the Plaintiff a total of \$115,000. The percentage of fault attributed to the nursing home (25%) reduced Brooksville Nursing Manor's payment amount to only \$28,900. ♦

Nursing Home Defense Verdict

Continued from front page
in blanks or holes in residents' charts in order to get paid. None of these witnesses was able to relate testimony to plaintiff's decedent as none recalled specifically knowing him.

Plaintiff's expert witnesses (nurse Michelle Camicia and internist Dr. Dean Nichols, both from California) chose isolated entries in the medical chart to support plaintiff's case theory, and further testified that the resident's life-ending heart attack was

caused by chronic episodes of aspiration, which resulted in a raging lung infection.

The defense presented testimony from two experts (cardiologist Dr. Martin Zenni and geriatrician Dr. George Wilson), both of whom testified that the resident's death was imminent upon his admission to the facility, and that the attending physician and nursing staff appropriately followed the patient's living will and DNR order.

Additionally, Dr. Zenni testified that the resident's

heart attack resulted from the normal progression of the disease processes, which included end-stage Alzheimer's and congestive heart failure.

At the close of Plaintiff's case-in-chief, the Court granted a directed verdict dismissing the parent corporation, Avante Group, Inc. from any liability, and further granted a directed verdict eliminating plaintiff's punitive damages claim. The case proceeded to verdict with the jury returning a complete defense verdict on all counts. ♦

QMPW Now 40 Lawyers Strong

The year 2002 has been a year of tremendous growth for our firm, and we recently broke the 40-lawyer mark.

We are pleased to welcome the following attorneys who have joined the firm in 2002:

Miami

Peter P. Sotolongo

Tampa

**Melissa L. Archer
David A. Johnson
David W. Nilsen**

Jacksonville

Matthew T. Roach

Orlando

**Tony Cifuentes
John P. Hutchins III
Christopher M. Jahnke**

Fort Lauderdale

**Lynn M. Bagley
John A. Brekka, Jr.
Robin N. Khanal
Elaine J. Laflamme
Scott Mager**

The hiring of an attorney is an important decision that should not be based solely upon advertisements. Before you decide, ask us to send you free written information about our qualifications and experience.
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ATTORNEYS AT LAW
QUINTAROS, MCCUMBER, PRIETO, WOOD, BOYER & MAGER



Prompt Action by Defense Counsel Averts Temporary Injunction

[The following report shows how prompt action by defense counsel helped a Jacksonville nursing home avert a Temporary Injunction sought by the Plaintiff. Since the lawsuit is still pending, we are unable to reveal the name of the nursing home client.]



On April 24, 2002, Judge Jean M. Johnson of the Fourth Judicial Circuit, denied Plaintiff's Emergency Motion for Temporary Injunction, in which the Plaintiff, who continued to reside at the nursing home at the time the Motion was filed, asked the Court to issue an injunction against the nursing home ordering the facility to follow her physician's orders in providing her care.

As part of her Motion, the Plaintiff alleged that the facility had not been providing medications and treatments to her in compliance with her physician's orders. Specifically, she alleged that the facility was failing to administer prescribed medications and ointments which were ordered following surgery to correct

corneal ulcers in both of her eyes. She alleged that if the facility was not forced by the Court to comply with her physician's orders, she would suffer irreparable injury which potentially included loss of sight and surgical removal of her eyes.

In support of the Motion, Plaintiff attached an affidavit obtained from her treating ophthalmologist, who testified that he had prescribed a number of medications for the Plaintiff in order to help her heal from surgery. Some of the many medications and ointments that were ordered were to be administered as frequently as once every hour, 24 hours per day.

While never having visited the Plaintiff at the nursing home and clearly having no personal knowledge of the facility's efforts to treat the Plaintiff, the ophthalmologist concluded that she was not being given her medications as ordered, based solely upon the fact that her eye condition deteriorated. Furthermore, the doctor testified that the Plaintiff would suffer irreparable injury to her

eyes if she did not receive the appropriate medications.

The Plaintiff also attached an affidavit from her daughter in support of her Emergency Motion. Despite opining that her mother was receiving sub-standard care, the daughter made no apparent attempts to remove her mother from the facility. Also, while possessing no medical training and admittedly not spending much time with her mother while she was at the nursing home, the daughter stated that her mother was not being given the medications for her eyes as prescribed.

Christopher J. Karpinski, an attorney in QMPW's Jacksonville office and counsel in the case, received Plaintiff's Emergency Motion at 10:45 a.m. on April 22, 2002, and an emergency hearing was scheduled within 24 hours. At the hearing, Karpinski moved to disqualify both of Plaintiff's supporting affidavits, based upon their lack of personal knowledge and failure to provide facts to support their asserted conclusions.

In addition to requesting



Christopher Karpinski

an injunction which would have ordered the facility to follow Claimant's physician's orders, opposing counsel requested attorneys' fees pursuant to Chapter 400.023 (2001), Florida Statutes. Although recent statutory revisions to Chapter 400 (Florida's resident rights statute) removed attorney's fees for civil actions against nursing homes, an exception was made in the law for actions in which a claimant requests an injunction or administrative relief.

After a day to consider the merits of the Motion, Judge Johnson issued an order denying the Motion. ♦