**TERRY’S TAKES**

**Your Weekly Florida Federal and State Appellate Caselaw Update for Personal Injury Lawyers**

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(SPECIAL NOTE: If anyone feels the need to turn “Terry’s Takes” into a drinking game, you could probably have a lot of fun taking a shot every time I wrote the word “presumably” in this week’s case summaries. Rather than edit all the incidents of “presumably” out, I’ll just say, “Cheers!” For our teetotaler friends, there’s no need to feel left out. Just hop on your left leg or something every time you read a “presumably.”).

**Eleventh Circuit**

Arrington et al v. Burger King Worldwide, Inc. et al—J. Rosenbaum. This is a Sherman Act case. (NOTE: Whereas most plaintiffs’ attorneys might think of antirust as an area where the government cracks down on private anti-competitive behavior, 15 U.S. Code § 15 allows plaintiffs injured by violations of the act to recover “threefold the damages by him sustained” along with costs and attorney’s fees). Apparently in a whimsical mood, Judge Rosenbaum began this opinion—which had nothing to do with football—as follows:

No self-respecting Dolphins fan would ever buy a Jets or Patriots hat (at least not for herself). And Jets and Patriots fans are pretty unlikely to purchase Dolphins garb (though they are missing the boat on that one). Put simply, the teams of the National Football League (“NFL”) compete against each other not only on the field, but also in the sale of their intellectual property. So when the 32 teams of the NFL got together and formed National Football League Properties (“Properties”) to grant an exclusive license to Reebok International Ltd. to sell all teams’ intellectual property, the Supreme Court concluded that they and Properties undertook “concerted action” for purposes of Section 1 of the Sherman Act.

In that 2010 case, the Supreme Court concluded that the exclusive-licensing decision of the teams and Properties amounted to “concerted action” that satisfied the first condition of Section 1 of the Sherman Act. The instant case involved something just as American as football: hamburger restaurants. Roughly 99% of Burger King (“BK”) restaurants are owned by franchisees that are not agents or employees of Burger King. Despite this, until 2018, BK required a “No-Hire Agreement” that prevents one BK location from poaching the employees of another BK location, but the 20-year franchise agreements entered into prior to that 2018 date still contain them and will presumably be enforced as late as 2038 unless they are found illegal. Departing BK employees can’t work at another BK for six months. The class action properly alleged that this was a “concerted action” under the Sherman Act. The Southern District of Florida held that BK was one big franchise and could not engage in concerted action with itself. The Eleventh Circuit disagreed. The BK restaurants are independent franchises that compete with one another. Interestingly, out of the 7,000 BK restaurants in the USA, only about 50 are owned by the BK corporation as opposed to franchise members—and all of them are in the Miami area. The plaintiffs in the case were all employees of BJ franchise restaurants between 2010 and 2018. They alleged that the no-poaching rule denied them higher wages at competing BK restaurants, and the rule was an unreasonable restraint on trade. The Court examined all of the ways in which BK enterprises are independent from the corporation particularly with regard to hiring and employment practices and the fact that restaurants are not guaranteed an exclusive territory and are warned that other franchisees can open up nearby BK locations to compete with a given franchise. The court did not decide whether the restraint on trade was “unreasonable,” leaving that question open on remand, but it did hold that there was a concerted action in restraint of trade and reversed the dismissal and remanded the case for further proceedings.

Peden et al v. Stephens et al—C.J. William Pryor. JUST WHEN I THOUGHT IT WAS OUT, THEY PULL ME BACK IN! Peden, a sheriff’s department employee, had an affair with the wife of a county administrator. The mistress then allegedly conducted a smear campaign against Peden’s wife, and when the affair ended, she expanded the smear campaign (anonymous letters to friends and members of their church) to include Mr. Peden, too. The sheriff’s department fired Peden, and a local prosecutor declined to prosecute the wife for harassment. Peden suspected that the county administrator was involved in his firing, and he and his wife sued the mistress, the county administrator, and other county officials. He and his wife sued under 42 U.S.C. § 1983 and § 1985, alleging a deprivation of due process rights, equal protection, conspiracy to deprive them of constitutional rights, defamation, and intentional infliction of emotional distress. Prior to the summary judgment hearing, the Pedens withdrew the § 1985 conspiracy claims, though the Eleventh Circuit questioned whether the withdrawal of the claims was valid absent seeking permission to amend the pleadings under Rule 15(a)(2), Fed. R. Civ. P. The district court granted the officials summary judgment and then certified the judgment as a partial final judgment even though the defamation count against the mistress survived summary judgment. Every defendant but the mistress asked for an order under Rule 54(b), Fed. R. Civ. P., for partial final judgment to end their involvement with the case. That rule governs judgment on multiple claims or parties, and it provides that when an action presents more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is “no just reason for delay.” Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties’ rights and liabilities. The district court found that all claims against everyone but the mistress had been resolved and that the COVID-19 pandemic meant that the case could remain pending for a long time, so it was equitable to end the litigation for all of the other defendants. To certify an order as a partial final judgment, the court must determine that it is truly final (that there is no judicial labor left on an individual claim) and that it is a judgment (a decision on a claim for relief). The district court also has to determine that there is no just reason for delaying the partial judgment as immediately appealable taking into account the policy against piecemeal appeals and balancing the pressing need for a litigant to have early and separate judgment. The Eleventh Circuit sidestepped the question of whether the order was final (after hinting that it was improper to dismiss some counts without at 15(a)(2) motion seeking permission to do so), holding that the lower court abused its direction in finding that there was no just reason for delay in certifying the decision as final and immediately appealable. Application of Rule 54(b) requires the court to presume there is no just reason to grant partial final judgment. Rule 54(b) is supposed to limit partial final judgment, not grant it to any party with clean hands. The Eleventh Circuit examined a case that properly applied Rule 54(b) to streamline litigation, avoid risk of duplicative discovery in four similar cases, and avoid the possibility of duplicative trials, noting that it was proper to grant partial final judgment in that case. The Eleventh Circuit distinguished the case, however, saying the only real concern by the trial court here was the COVID-19 pandemic causing the case to drag on. Unlike a case where protracted litigation could actually affect a party’s right to recover, the facts in the case showed that the only thing that would be caused by delay would be *inconvenience*—having to wait for the case to finish before any appeal could be taken. After announcing that the district court erred in granting partial final judgment, the actual holding of the case was that the appeal was dismissed for lack of jurisdiction (because there was not yet a final judgment due to the pending claim against the mistress).

Robinson et al v. Sauls et al.—J. Jill Pryor. This is a 1983 action alleging excessive force by police who shot Jamarion Robinson and killed him while attempting to arrest him. There was video of the shooting. The case involved deputy United States Marshals and police officers. When the task force came to arrest Robinson, he confronted them with a gun that he apparently fired up to three times, though no officers were hit. The task force fired about 100 shots back at him, and 43 bullets or fragments were found in his body. The short version is that the district court granted summary judgment on the officers’ claims of qualified immunity on the basis that deadly force is justified against a violent criminal resisting arrest by using a gun against police. The Eleventh Circuit affirmed most of that order, but it reversed in part. After Robinson fell and looked unresponsive, the officers detonated a “flashbang” grenade near him to see if he moved. When he did not react to the grenade, the police also sent in a robot to obtain a view of Robinson and verify that he had dropped his gun, which he had. They approached him and handcuffed him. He died at the scene. Citing the landmark 1971 Supreme Court case, Bivens, Robinson’s mother sued alleging Fourth Amendment and excessive force claims. The officers claimed qualified immunity. The district court granted summary judgment, finding that qualified immunity applied to bar the claims. There was a dispute of fact, however, as to whether two officers armed with rifles that had a “burst” setting shot Robinson after he became unresponsive. They said they did not, but video (with audio) taken by a neighbor from outside of the apartment clearly had sounds (and showed an officer reacting) to the sound of the flashbang grenade which was then **followed** by sounds of weapons fire of a “burst” of ammunition. Under Tennessee v. Garner, a 1985 Supreme Court case, the question was whether the officer who used deadly force: (1) had “probable cause to believe that the suspect pose[d] a threat of serious physical harm, either to the officer or to others,” or that the suspect had “committed a crime involving the infliction or threatened infliction of serious physical harm[;]” (2) reasonably believed that the use of deadly force was “necessary to prevent escape[;]” and (3) had given some warning about the possible use of deadly force, if feasible. After Robinson did not react to the flashbang grenade, he was clearly unconscious. Shooting an unconscious suspect would be clearly unlawful in the mind of any reasonable officer. Thus, the case was reversed in part and remanded for further proceedings.

**Supreme Court of Florida**

 The Supreme Court of Florida issued no cases of note, but did make a rule change (case SC21-1601) to Rule 2.240 intended to make it easier for the court to determine the need for additional judges in a given jurisdiction.

**Second DCA**

Hosner v. State of Florida—Just in case you need this quote for something, this *per curiam* August 31, 2022, 2nd DCA opinion cites Githler v. Grande, 289 So. 3d 533, 539 (Fla. 2d DCA 2019) for the proposition that “**if it looks like a duck and quacks like a duck, we don't have to ask if it's a pig**." (NOTE: The quote was applied to the question of whether promissory notes were securities within the meaning of section 517.021(18), but the language can probably be applied to a million different situations, and it certainly deserves to pop up in at least one motion or brief in every lawyer’s career, right?).

Shavers v. Shavers-Per Curiam. This family law opinion is possibly applicable to all sort of civil cases where a mediation resolves some-but not all-pending issues. So beware…you may be stuck with a mediation order on temporary matters at least until a final order is entered with respect to the entire case. In Shavers, a temporary support order was in place pending a final order of dissolution. The parties apparently attended mediation and reached an agreement that the parties wrote down and signed, but it only resolved some of the pending issues. The parties disputed the meaning and extent of the agreement. One of the parties moved to set aside the mediation agreement, and the court denied that motion. That party attempted to appeal, and guess what? The Second DCA held that the order denying the motion to set aside the mediation agreement was a non-final, non-appealable order. It didn’t modify the temporary support order. While orders on timesharing are appealable and the order denying the motion to set aside the mediation agreement showed that the parties came to an agreement on timesharing, the court had not yet evaluated the arguments. The fact that the order denying a motion to set aside the mediation agreement has the effect of forcing the movant to abide by the mediation agreement until there is a final dissolution order apparently doesn’t matter. The order did not invalidate a marital settlement agreement or meet any other qualification for an appealable nonfinal order. So they are stuck with that mediation agreement until there is a final order.

**Third DCA**

Cardenas et al v. White Pine Insurance Company, etc.—J. Emas. More guidance on the new summary judgment standard! When the courts say judges have to explain their reasons for summary judgment rulings, they are apparently really going to hold judges’ feet to the fire. This was a breach of contract action in regard to whether a windstorm—Hurricane Irma—truly caused the damage to a home which would trigger coverage under the homeowners’ insurance policy. The homeowner relied on the affidavit of a roofer with four decades of experience who opined that Hurricane Irma blew so hard that it cracked the walls of the home which later allowed water intrusion. The roofer lacked engineering credentials. The insurance company’s expert was a qualified engineer who opined that the cracked walls were not due to high winds; they resulted from an improperly sealed skylight and the house settling, a finding that would defeat coverage. The trial court granted the insurance company summary judgment, and the sole basis for summary judgment was the finding that the plaintiff’s non-engineer roofer’s affidavit was “insufficient to create a genuine issue of material fact as to whether the force of wind from Hurricane Irma created an opening in the roof of the exterior of the property that allowed water to enter the interior.” On appeal, however, the Third DCA held that this order was not sufficiently detailed. The new summary judgment rule under Rule 1.510 borrows heavily from federal Rule 56, but one important distinction is that, unlike the federal rule, Florida’s rule requires that the court “shall” state on the record its reasons for granting or denying summary judgment. The above quotation from the summary judgment order was **insufficient** to meet the requirement of stating the court’s reasons. It was merely conclusory statement. Reversed and remanded for further proceedings.

CFLP Partnership, LLC v. Diamond Blue International, Inc., etc, et al—J. Logue. Caveat emptor. This is a brief summary to remind us of the elements of unjust enrichment. The appellant was the second of two LLCs set up by the same individuals. Diamond Blue, the appellee, invested $2 million in LLC #1, a management company. The day after the investment, LLC #1 transferred the $2 million to LLC #2 (which, again, had the same owners) in exchange for an adjustment in its ownership interest of LLC #2. LLC #1 issued promissory notes to Diamond Blue, but failed to repay them (perhaps because the transfer of the money drained LLC #1 of sufficient assets to repay the money). Presumably because Diamond Blue could no longer get its money back from LLC #1, it sued LLC #2 for unjust enrichment. While both LCCs had the same owners, Diamond Blue failed to properly allege the necessary facts and law to pierce the corporate veil. Nevertheless, the trial court granted summary judgment, ordering LLC #2 to repay Diamond Blue. “The elements of a cause of action for unjust enrichment are: (1) plaintiff has conferred benefit on the defendant, who has knowledge thereof; (2) defendant voluntarily accepts and retains the benefit conferred; and (3) the circumstances are such that it would be inequitable for the defendant to retain the benefit without paying the value thereof to the plaintiff. The Florida Supreme Court has further stated that “to prevail on an unjust enrichment claim, the plaintiff must directly confer a benefit to the defendant.” Noting that it was in conflict with some federal decisions, but being guided by the Supreme Court of Florida’s requirement of a “direct” benefit, the 3d DCA held that there was no “direct” benefit from the investors to LLC #2 in this case. Even though this was some shifty stuff going on—moving the money from LLC #1 to LLC #2 which presumably drained the assets from LLC #1 necessary to repay the promissory notes—because the two LLCs had to be treated like separate corporations, the $2 million investment in LLC #1 was not a “direct” benefit to LLC #2, and an unjust enrichment claim against LLC #2 had to fail. LLC #2’s appeal challenging the summary judgment in Diamond Blue’s favor was granted. Summary judgment was reversed, and the case was remanded. (NOTE: Presumably the remand is for an order of dismissal based on citations in the case. Whether it can be dismissed with leave to amend the proper elements to pierce the corporate veil is not addressed in the opinion. It is possible that the opinion, which includes extended discussion on piercing the corporate veil, can be used as a road map for amending the complaint).

Diogenes Santana v. State of Florida—Per Curiam. The case was essentially a citation PCA, but the citations and parentheticals are three pages long—long enough that they may as well have written an opinion. From the parentheticals, it appears that Diogenes Santanta (who wins for coolest name of the week) challenged denial of his motion *in limine* that sought to preclude evidence that he was silent at a time when he ought to have responded to an accusation. The DCA reminded us that even though a declarant is available as a witness, section 90.803(18)(b) allows admission of a statement by that party where the party manifested an adoption or belief in its truth. The DCA also cited authority approving admissions “by silence” when the circumstances show that a reasonable person would protest the statement if it were untrue. That rule only applies when the context in which the statement was made was so accusatory in nature that the defendant’s silence may be inferred to have been an assent to its truth. The test is that: (1) the statement must have been heard by the party claimed to have acquiesced; (2) the statement must have been understood by him; (3) the subject matter of the statement is within the knowledge of the person; (4) there were no physical or emotional impediments to the person responding; (5) the personal make-up of the speaker or his relationship to the party or event are not such as to make it unreasonable to expect a denial; (6) the statement itself must be such as would, if untrue, call for a denial under the circumstances. Thus, it appears that Mr. Santana’s silence will be held against him when he failed to speak up after being accused of something. (NOTE: The same hearsay rules are, of course, applicable in civil cases. For instance, if a party was accused of causing a motor vehicle accident and then says nothing in response to the accusation, presumably that could be admitted under the same rule).

Impulsora de Productos Sustentables, S.A.P.I. de C.V. v. Garcia, et al.—J. Gordo. THREE STRIKES AND YOU’RE OUT! PROBABLY. Impulsora sued Garcia for conversion, but Garcia succeeded in getting an amended complaint dismissed for failure to state a claim. While Impulsora requested leave to again amend the complaint, the trial judge dismissed the complaint with prejudice. Rule 1.190(a) provides that leave to amend shall be given freely when justice so requires, and case law holds that refusal to allow an amendment is an abuse of discretion unless the amendment would prejudice the opposing party, the privilege to amend has been abused, or amendment would be futile. The trial court failed to find that any of the three bases for denying a right to amend were present. Notably, the DCA cited caselaw that stated that generally “three ineffective attempts to state the same cause of action or defense are enough,” and the “liberality in permitting amendments decreases as the action progresses and as the number of amended pleading increases.” The case also cited an opinion finding abuse of discretion in denying leaving to amend after only two chances and seeking a third. Thus, the 3d DCA appears to be hinting at something close to a firm rule: three strikes and you’re out. As Impulsora only has two strikes, they will get another chance. Reversed and remanded. Play ball!

Rodriguez v. US Bank Trust NA, et al.—Per Curiam. The Third DCA trotted out the rarely-cited Rule 9.315(a), which states that after service of an initial brief, the court may summarily affirm the order to be reviewed if the court finds that no preliminary basis for reversal has been demonstrated. In other words, a brief can be so bad, you just lose instantly. The appeal was from a non-final order, Rodriguez represented herself, and the Bank did not even file an answer before the DCA affirmed. Youch.

Metnick v. Right of the Dot, LCC—J. Hendon. This case is only summarized as a reminder that service of process by publication under section 49.011 is not a proper method for service in an action seeking monetary damages for an alleged breach of contract. The facts of the dispute are unimportant for personal injury practitioners. What is important is that after numerous failed attempts by the plaintiff to personally serve Metnick, plaintiff filed an affidavit of non-service, set forth its attempts to service Metnick, and the sought and obtained an order from the trial court permitting plaintiff to serve Metnick by publication, mail, and e-mail. They did so, but Metnick still failed to answer the complaint, and a default judgment was entered. Metnick filed a motion to vacate the default judgment, arguing that service of process by publication was so flawed that the default judgment against him was void for lack of personal jurisdiction. The trial court denied the motion, and Metnick appealed. The 3d DCA agreed with Metnick. There are 15 types of action under section 49.011 where you can serve by process, but breach of contract for money damages is not one of them. Service by publication only confers *in rem* or *quasi in rem* jurisdiction, while *in personam* jurisdiction is required for a personal money judgment. Reversed and remanded.

Miami Dade College v. Nader + Museu I, LLLP—J. Logue. This case serves as a reminder of how public records requests work. You’re entitled to an estimate of the costs of fulfilling the request. Nader, the party seeking the records, sought information about a public-private solicitation for development of property owned by Miami Dade College (“MDC”). The request was apparently broad, and MDC asked Nader to narrow it down. MDC did not conduct any records search or provide an estimate of the anticipated costs of producing the public records requested. Rather than haggling over the scope of the search, Nader filed a “Complaint for Mandamus and Declaratory Relief,” alleging that MDC failed to provide the requested records or respond. MDC hired outside counsel to defend against the petition for writ of mandamus, and it also ultimately produced the records, but MDC never provided an estimate for the cost of discovery or an invoice or demanded payment prior to producing the records. The trial court granted Nader’s request for a writ of mandamus, and MDC then provided the records and billed Nader over $220,000 for the public records production under section 119.07(4), the relevant public records request statute, which allows a “service charge” that includes attorneys’ fees and costs for preparing the response to the records request. Both MDC’s own internal rules and the statute, however, required that the person seeking the public records be provided an estimate **before** the records search—and the amount has to be prepaid **before** the search is conducted. The entity providing the documents cannot surprise someone seeking public records with an exorbitant bill unless they prepaid and had notice before obligating themselves to pay for the documents. MDC cried foul because the lower court had entered an order mandating them to turn over the records, so they thought that this allowed them to skip the step of providing the estimate. Failure to provide the estimate or invoice before or after the writ of mandamus, however, was fatal to the claim for fees and costs. If MDC wanted to challenge the writ of mandamus by the trial court to provide the records without obtaining prepayment of an estimated cost, they should have done that before producing the documents. Now it's too late. So Nader will have his records for free.

Novick v. Mango’s Tropical Café, LLC—J. Hendon. This is the latest in a long string of recent cases where DCAs are certifying conflict on the question of whether to review denial of a motion to dismiss via a petition for a writ of certiorari. The Third DCA found lack of jurisdiction, certifying conflict with the Second DCA.

**Fourth DCA**

Citizens Property Insurance Company v. Ultimate Restoration, LCC—Per Curiam. This is a citation PCA that reminds us, in a parenthetical, that an appellate court cannot consider issues raised for the first time in a motion for rehearing in the trial court.

National Claims Funding Company, LLC v. Security First Insurance Company—J. Gross. In 2019, the Florida legislature cracked down on assignment of benefits. Section 627.7152 requires that assignees provide a copy of the assignment of benefits to the insurer within 3 business days of assignment, and it also requires that the AOB contain a written, itemized, per-unit cost estimate of the services to be performed by the assignee. The statute provides that assignments that do not comply with the subsection are invalid and unenforceable. The next subsection, subsection (3), however, provides that when an assignee fails to timely deliver the assignment agreement, the burden is on the assignee to show that the insurer was not prejudiced by the delay. Evaluating the prejudice is a necessary component of the dismissal equation. The DCA was unwilling to let the “invalid and unenforceable” language trump the following subsection about showing a lack of prejudice. In dismissing the complaint, the trial court erred. Rule 1.120(c), Fla. R. Civ. P. allows a complaint to simply aver that all conditions precedent have been performed or have occurred, and that averment shifts the burden of proof to a defendant to show that conditions precedent have not been performed. Nothing on the face of the amended complaint showed that the insurance company was prejudiced by the failure to send the AOB within three days. To dismiss a complaint, no facts can be at issue. The question of prejudice is more appropriate for the summary judgment stage. Reversed and remanded.

Universal Property & Casualty Insurance Company v. Gurreoero et al—J. Conner. The insurer issued a proposal for settlement (“PFS”) to the insureds. The trial court altered the original PFS without consent of the insurance company and then, after the time to accept a PFS had already passed, the trial court allowed the insureds to accept the PFS and ordered the insurance company to comply with the PFS. The insurance company appealed, and the insureds confessed error. It was error for the trial judge to strike a condition from the PFS. When it did so, there was no offer by the party that could bind it. The DCA reversed and remanded with instruction to the trial judge to strike the paragraph of its order in which it altered the original PFS and also to vacate its later enforcement offer and conduct further proceedings.

**Fifth DCA**

K.C. Quality Care, LLC v. Direct General Insurance Company—J. Wallis. The trial court granted Direct General’s motion to dismiss by taking into account the existence of a default judgment from a separate case. That default judgment was not attached to the complaint or incorporated into it by reference. In a motion to dismiss, the trial court cannot go beyond the four corners of the complaint. Thus, the order granting dismissal was reversed and the case was remanded for further proceedings.

Proampac Holdings, Inc. v. RCBA Nutraceuticals, LLC—J. Sasso. RCBA is a Florida LLC that sells nutritional supplements in plastic zipper bags. The bags were allegedly defective. RCBA purchases the bags from Western Packaging, Inc. (“Western”), but RCBA alleged that Western outsourced the manufacture of the bags to ProAmpac Holdings. ProAmpac was actually the parent company of PolyFirst, which is the company that Western contracted with. After amending its complaint several times, RCBA ended up suing both PolyFirst and its parent company, ProAmpac, alleging that ProAmpac was a Delaware corporation doing business in Florida. RCBA alleged that Western and PolyFirst entered into an agreement to defraud RCBA and that ProAmpac joined into that agreement when it purchased PolyFirst. ProAmpac moved to dismiss for a lack of personal jurisdiction and also on the grounds of forum *non conveniens*. The two-part test to determine whether a Florida state court has long-arm jurisdiction over a nonresident is: (1) whether “the complaint alleges sufficient jurisdictional facts” to bring the action within the ambit of section 48.193, Florida Statutes, Florida’s long-arm statute; and (2) whether sufficient “minimum contacts” are demonstrated to satisfy due process requirements. There are two sub-categories under the long-arm statute: 1) specific jurisdiction or 2) general jurisdiction. (NOTE: The way to keep these straight is that specific jurisdiction involves some sort of specific act that triggers jurisdiction, whereas general jurisdiction means that the non-resident has such a presence in Florida that he/she/it could generally be considered present in the state). Alleging that a foreign corporation “does business” in Florida is insufficient to trigger specific jurisdiction. ProAmpac shipped the bags to New York and Texas. Western had Florida contacts, but not ProAmpac. No tort occurred in Florida. The statutory reference to injuries caused in Florida means physical injury or damage to physical property, not mere economic damage. Thus, there was no specific jurisdiction. In regard to general jurisdiction, RCBA had to show that ProAmpac engaged in substantial and not isolated activity in Florida, but the company had no business in Florida. The DCA also shot down the argument that ProAmpac waived its right to challenge jurisdiction. The acts that RCBA saw as causing a wavier were taken in response to a third-party subpoena for documents before ProAmpac was added as a party. Because RCBA failed to show a statutory basis for long-arm jurisdiction over the Delaware corporation, the court did not need to address prong two or the forum *non conveniens* argument. The order denying the motion to dismiss for lack of jurisdiction was reversed.