



# WHEN A CLEAR AND UNAMBIGUOUS PRE-INJURY RELEASE IS NONETHELESS UNENFORCEABLE: THE EFFECT AND IMPLICATIONS OF THE FLORIDA SUPREME COURT'S DECISION IN *KIRTON V. FIELDS*

By Traci T. McKee

The Florida Supreme Court recently recognized a public policy exception to the general principle that pre-injury waivers of liability are enforceable if they are clear, unambiguous and unequivocal. In a case involving a minor injured while riding an all terrain vehicle at a commercial park, the court held that a pre-injury release was unenforceable. The decision did not directly address activities sponsored by public or school entities, leaving open the possibility of further litigation to clarify its scope. As this issue went to press, the Florida Legislature was considering legislation that would make pre-injury releases enforceable for both commercial and non-commercial entities.

A pre-injury release, also referred to as an exculpatory contract, is an agreement between two parties that serves to relieve one party from liability for that party's own negligence.<sup>1</sup> Exculpatory clauses are disfavored in Florida and, therefore, courts strictly construe the clauses against the party attempting to be relieved of liability.<sup>2</sup> Nonetheless, pre-injury releases are enforceable when the language of the release is clear, unambiguous, unequivocal, broad enough and specific enough to protect a party from liability for the party's own negligence, unless the release contravenes public policy.<sup>3</sup>

On December 11, 2008, in *Kirton v. Fields*, the Florida Supreme Court carved out a new public policy exception to the enforceability of pre-injury releases of liability.<sup>4</sup> In a case of first impression, the court held that, regardless of the language used in the release, a parent does not have authority to execute a pre-injury release on behalf of a minor child when the release involves participation in a commercial activity.<sup>5</sup>

The holding in *Kirton* raises the question: *if a parent does not have authority to execute a pre-injury release on behalf of a minor child, who does?* The answer to this question, in the context of a commercial activity, is that no one is authorized to execute a pre-injury release on behalf of a minor. In making this critical public policy decision, however, the Florida Supreme Court did not directly address the issue as to the enforceability of pre-injury releases for activities involving non-commercial entities. Thus, the *Kirton* decision leaves

open the possibility that activities sponsored by schools, governments, and non-commercial entities may be also left without this important protection.

## I. Factual and Procedural History

The Fourth District Court of Appeal summarized the facts of the underlying lawsuit in *Kirton* as follows:

Pursuant to a final judgment of dissolution of marriage, Bobby Jones was the primary residential parent for his fourteen year old son, Christopher. On May 10, 2003, the father took Christopher to Thunder Cross Motor Sports Park to ride his all terrain vehicle (ATV). To gain entry to the facility and be allowed to participate in riding the ATV, Bobby Jones, as Christopher's natural guardian, signed a release and waiver of liability, assumption of risk, and indemnity agreement. While attempting a particular jump, Christopher lost control of his ATV, causing himself to be ejected. Tragically, he hit the ground with the ATV landing on top of him. He got up, walked a short distance, then collapsed and died. Christopher's mother, Bette Jones, was unaware that the father was permitting their

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son to engage in this activity. She was also unaware that approximately one month prior to the accident causing Christopher's death, he had attempted the same jump, resulting in a fractured rib and mild concussion.<sup>6</sup>

Following Christopher's death, the personal representative of his estate filed a wrongful death lawsuit against the owners and operators of the Thunder Cross Motor Sports Park.<sup>7</sup> In response to the lawsuit, the defendants affirmatively alleged that the wrongful death action was barred by the pre-injury release signed by Christopher's father on his behalf. The trial court subsequently entered an order granting the defendants' motion for summary judgment, determining that the pre-injury release signed by Christopher's father on his behalf barred the wrongful death claim.<sup>8</sup>

On appeal, the Fourth District Court of Appeal reversed the trial court's order, holding that a parent could not bind a minor child's estate by the parent's execution of a pre-injury release.<sup>9</sup> The Fourth District identified an implicit conflict with the Fifth District Court of Appeal's opinion in *Lantz v. Iron Horse Saloon, Inc.*, which ruled that a pre-injury release signed by a child's parent barred the child's injury claim. Accordingly, the Fourth District certified conflict with the *Lantz* decision.<sup>10</sup> The Fourth District also certified the following question as one of great public importance: Whether a parent may bind a minor's estate by the pre-injury execution of a release.<sup>11</sup>

After the Fourth District's certification to the Florida Supreme Court in *Kirton*, the Fifth District Court of Appeal decided *Applegate v. Cable Water Ski, L.C.*, in which the Fifth District aligned itself with the Fourth District in *Fields v. Kirton*.<sup>12</sup> In doing so, the Fifth District also certified the following question as one of great public importance: whether a contract containing an exculpatory clause, signed by a parent on behalf

of her child, in favor of a commercial enterprise, is enforceable to defeat the child's action to recover for personal injuries sustained by the child as a result of the enterprise's negligence.<sup>13</sup> Notably, the Defendant in *Applegate* was also a commercial enterprise. Since a conflict between these districts no longer existed, the Florida Supreme Court accepted jurisdiction in *Kirton v. Fields* based upon the Fourth's District certification of the question of great public importance, which provided an alternate basis for jurisdiction.<sup>14</sup>

## II. Case Law Preceding *Kirton*

Although the issue in *Kirton* was one of first impression for the Florida Supreme Court, it was an issue that had previously been confronted by other Florida District Courts of Appeal, Florida's federal district courts, and numerous courts outside of Florida. The court considered these previous opinions, as well as the impact of these decisions, in ruling that a pre-injury release signed by a parent is unenforceable against a minor child.

The first reported decision in Florida determining the validity of a pre-injury release signed by a parent on behalf of a minor child was *Lantz v. Iron Horse Saloon, Inc.* As indicated above, the Fifth District ruled in that case that a pre-injury release signed by a parent was unambiguous and, thus, enforceable against the minor child; however, the opinion never addressed whether the parent had authority to enter into such a release on behalf of the child.<sup>15</sup>

Following *Lantz*, in 2003, the Fourth District Court of Appeal decided *Shea v. Global Travel Marketing, Inc.*, in which the father of a deceased minor child filed a wrongful death action against the commercial operator of a safari after his child was killed by wild animals during the safari.<sup>16</sup> The defendants moved to stay the action and compel arbitration based upon a contract signed by the child's mother, and the trial court granted

the defendants' motion.<sup>17</sup> On appeal, the Fourth District considered out-of-state authority and the distinction drawn between commercial activities and community or school-supported activities.<sup>18</sup> In doing so, the court reversed the decision of the trial court, ruling that the arbitration clause was unenforceable on public policy grounds.<sup>19</sup> However, in 2005 the Florida Supreme Court quashed the Fourth District's decision in *Shea* and held that a parent's agreement to arbitrate claims arising out of a commercial travel contract, on behalf of a minor child, was enforceable against the minor or minor's estate in a negligence action arising from the contract.<sup>20</sup> The court recognized and discussed the distinction between commercial activities and community or school-supported activities in the context of pre-injury releases, but determined that the distinction was arbitrary as applied to arbitration agreements.<sup>21</sup> In finding the arbitration agreement enforceable, the court stressed that its decision pertained solely to the issue of arbitration agreements and not to the validity of the pre-injury releases.<sup>22</sup>

Prior to the Florida Supreme Court's decision in *Shea*, the Third District Court of Appeal in *Gonzales v. City of Coral Gables* had held that a pre-injury release signed by a parent on behalf of her child barred the child's claim for injuries sustained in the Coral Gables Fire Rescue Explorer Program.<sup>23</sup> The Third District relied upon the distinction drawn by the Fourth District in *Shea* between commercial activities and community or school-supported activities.<sup>24</sup> Similarly, in *Krathen v. School Board of Monroe County*, the Third District held that a parent's execution of a pre-injury release on behalf of her minor daughter barred the daughter's claim for injuries sustained while participating on the high school cheerleading squad.<sup>25</sup> Again, the Third District identified the distinction between commercial and school-sponsored activities, and also found that it was within the parent's authority to make the decision to allow her daughter to partici-

pate in high school cheerleading.<sup>26</sup>

Two federal district court judges in the Southern District of Florida have also held that a parental release of liability was not enforceable against the minor when the release pertained to an activity run by a commercial entity.<sup>27</sup> In these strikingly similar cases, the minors were injured during excursions operated by Royal Caribbean Cruises.<sup>28</sup> After analyzing the Florida Supreme Court's decision in *Shea*, as well as out-of-state authority, both federal courts found that the pre-injury releases signed by the parents were unenforceable because the activity was sponsored by a commercial enterprise.<sup>29</sup>

In addition to discussing the previous Florida cases, the *Kirton* court identified multiple other state and federal court decisions that have found pre-injury releases signed by parents on behalf of their minor children unenforceable for injuries arising out of commercial activities.<sup>30</sup> In fact, the court identified that the only published decisions where such pre-injury releases were enforceable involved the child's participation in school or community-sponsored activities.<sup>31</sup> Thus, in holding the release unenforceable as to the commercial enterprise, the *Kirton* court acknowledged that it was aligning itself with the majority of other jurisdictions.

### III. The *Kirton* Majority, Concurring, and Dissenting Opinions

Justice Quince authored the majority opinion in *Kirton*, in which Justices Anstead, Pariente, and Lewis concurred. In addition, Justice Anstead specially concurred with an opinion and Justice Pariente concurred with an opinion. This left Justice Wells as the sole justice dissenting. Justices Canady and Polston did not participate in the opinion due to the timing of their appointments to the bench.

#### A. The Majority Opinion

The majority opinion identified public policy concerns as the primary basis for the court's decision that

a pre-injury release executed by a parent on behalf of a minor for participation in commercial activities is unenforceable against the minor or the minor's estate. In doing so, the majority balanced parental authority with the state's *parens patriae* authority. The majority first noted that the Fourteenth Amendment to the United States Constitution and the guarantee of privacy in Article I, Section 23 of the Florida Constitution both protect the rights of parents to make decisions regarding the care, custody, and control of their children.<sup>32</sup> Despite these protections, the majority pointed out that parental authority is not absolute, and the state as *parens patriae* may restrict parental authority in certain situations.<sup>33</sup>

The court determined there were no Florida statutes governing pre-injury releases and, in doing so, expressly rejected the defendants' argument that pre-injury releases fall within the purview of Section 744.301(2), Florida Statutes, which authorizes a parent to settle a minor child's claim for amounts up to \$15,000 without court approval.<sup>34</sup> The court then identified prior decisions, both in Florida and outside Florida, discussing the validity of a pre-injury release signed by a parent on behalf of a minor child. The court's discussion of the prior case law included decisions involving both commercial and non-commercial enterprises. The court, however, reasoned that cases involving non-commercial enterprises involved different policy considerations that those involving commercial enterprises and, therefore, declined to discuss whether such release would be enforceable as to non-commercial entities.

In balancing a parent's fundamental right to raise his or her child with the State's *parens patriae* authority, the court determined that, when a parent executes a pre-injury release on behalf of a minor child, the parent is not protecting the welfare of the child, but is instead protecting the interests of the enterprise running the activity.<sup>35</sup> Thus, the majority ruled that the state

must assert its power and protect the interests of the minor child.<sup>36</sup>

#### B. The Concurring Opinions

Justice Anstead specially concurred to emphasize that the majority's opinion was "narrowly directed at those commercial operators who wrongfully and negligently cause injury to a child but seek to be relieved of liability for their misconduct by securing a pre-activity release from the child's parent."<sup>37</sup> In expressly limiting the majority's holding to commercial enterprises, he noted that commercial entities are in a position to insure against these risks and to pass these costs onto the consumer in the price for participation in the activity.<sup>38</sup> On the other hand, Justice Pariente's concurring opinion not only emphasized that the majority holding was limited to commercial entities, but also highlighted several additional points.<sup>39</sup> First, she stated that there was no common law basis for a parent to compromise or settle a child's claim, or to waive certain substantive rights of a child without court approval.<sup>40</sup> Next, Justice Pariente reasoned that the release signed by the child's father was too broad as it covered *all negligent acts*, not just the acts that could be considered inherently dangerous.<sup>41</sup> She argued that there is a distinction between a parent's acceptance of risks inherent in their child's activities and those risks that are not inherent in the activity.<sup>42</sup> Thus, regardless of whether the activity provider is commercial or non-commercial, it appears that Justice Pariente did not believe that a blanket release of liability should absolve a provider of liability for all actions.<sup>43</sup>

#### C. The Dissent

Justice Wells authored the sole dissenting opinion in *Kirton*, criticizing the majority's decision finding the pre-injury release unenforceable when, at the time the release was signed, there was no statutory law or case law that declared such releases unenforceable.<sup>44</sup> Further, Justice Wells identified that the ma-

majority's opinion "creates many questions and provides few answers," primarily with the majority's distinction between commercial and community or school activities.<sup>45</sup> Justice Wells also recognized the critical importance of pre-injury releases to numerous school, government, and community sponsored activities, and recommended that the regulation of pre-injury releases should be done by the Florida Legislature.<sup>46</sup>

#### IV. Are "Non-Commercial Activities" Excluded from the *Kirton* Holding?

Although the holding in *Kirton* applies solely to commercial activities, the court's opinion nonetheless left unanswered the question of whether a parent has authority to execute a pre-injury release on behalf of a minor child involved in *non-commercial activities*. The opinion includes conflicting statements and discussions as to whether pre-injury releases executed by a parent on behalf of a minor child are enforceable in the non-commercial context. In a footnote at the beginning of the opinion, the court stated,

We answer the certified question as to pre-injury releases in commercial activities because this is what this case involves. Our decision in this case should not be read as limiting our reasoning only to pre-injury releases involving commercial activity; however, any discussion on pre-injury releases in noncommercial activities would be dicta and it is for that reason we do not discuss the broader question posed by the Fifth District.<sup>47</sup>

Nevertheless, the court went on to discuss and identify the distinctions between commercial enterprises and community or school sponsored

entities. After discussing the cases previously decided by other Florida, federal, and out-of-state courts, the court recognized:

[w]hile this particular case involves a commercial activity, we note that these jurisdictions that have upheld pre-injury releases have done so because community-run and school-sponsored type activities involve different policy considerations than those associated with commercial activities.<sup>48</sup>

Equally important in this regard are the concurring and dissenting opinions. Justices Anstead and Pariente both authored concurring opinions which emphasize that the majority's holding is narrowly directed at commercial enterprises.<sup>49</sup> At the very least, the *Kirton* opinion implies that releases executed by parents on behalf of their minor children for involvement in non-commercial activities are enforceable in Florida.<sup>50</sup> But, the next question then becomes: *what constitutes non-commercial activities, as opposed to commercial activities?*

The *Kirton* opinion explicitly recognizes the different policy considerations applicable to commercial enterprises versus "community-run and school-sponsored type activities."<sup>51</sup> However, the opinion fails to define what constitutes "community-run and school-sponsored type activities." Presumably, this definition includes high school athletics, band, or other extra-curricular activities, similar to *Krathen v. School Board of Monroe County*, where the court ruled that a minor child's lawsuit for injuries sustained while involved in high school cheerleading was barred by the parent's execution of a pre-injury release.<sup>52</sup>

However, the court's opinion opens the door to many possible questions where the answer is unclear. For example, what if a high school cheerleading team held a car wash on the weekend to raise funds

for competition; would this activity be covered by the definition? Would the definition of "community-run and school-sponsored type activities" include programs for children sponsored by local fire or police departments, similar that in to *Gonzales v. City of Coral Gables*, where the court found a pre-injury release enforceable against a minor child's claim for injuries sustained while participating in a program sponsored by the local fire department?<sup>53</sup> Arguably, these types of programs would fall squarely within the definition of "community-run" activities.

But, what about programs run by non-profit entities that perform functions of the state government, such as juvenile prevention, correctional, and treatment programs? It would seem that a non-profit entity that performs a function of the state would qualify as a community-run activity for purposes of pre-injury releases. Finally, do non-profit organizations such as the Boy Scouts, Girl Scouts, YMCA, or religious organizations qualify for this important protection?

Unfortunately, there are no straightforward answers; the *Kirton* opinion leaves the definition of "community-run and school-sponsored type activities" open for argument and, in all likelihood, contentious and costly litigation in the future. As explained by Justice Wells,

The importance of this issue cannot be overstated because it affects so many youth activities and involves so much monetary exposure. Bands, cheerleading squads, sports teams, church choirs, and other groups that often charge for their activities and performances will not know whether they are a commercial activity because of the fees and ticket sales. How can these groups carry on their activities that are so needed by

our youth if the groups face exposure to large damage claims either by paying defense costs or damages? Insuring against such claims is not a realistic answer for many activity providers because insurance costs deplete already very scarce resources.<sup>54</sup>

## Conclusion

The Florida Supreme Court's decision in *Kirton v. Fields* makes clear that no person has authority to execute a pre-injury release on behalf of a minor child for participation in a commercial activity. Arguably, the Court implied that pre-injury releases signed by a parent on behalf of a minor child are enforceable in the context of non-commercial activities or "community-run and school-sponsored type activities." However, the *Kirton* opinion left many unanswered questions as to which enterprises, if any, qualify for the critical protections afforded by pre-injury releases of liability. It is critical that the Florida courts or the Florida Legislature clearly establish the bounds and enforceability of pre-injury releases in order to give these enterprises in Florida proper notice as to whether they will be entitled to these protections.

Since the Florida Supreme Court declined to extend its holding to the validity of pre-injury releases executed on behalf of minors for non-commercial activities or to clearly define what activities will be considered non-commercial, the Florida Legislature should take this opportunity to enact legislation that clearly defines the bounds and enforceability of pre-injury releases executed by parents on behalf of their minor children. Accurately defining which enterprises may be afforded the protections of pre-injury releases is a matter of great public importance. In fact, the Florida Legislature has already taken the preliminary steps to address this important issue. In early 2009, representatives in both the Florida House and Senate

proposed bills explicitly authorizing a "natural guardian" to "waive and release, in advance, any claim or cause of action that would accrue to any of their minor children to the same extent that any adult may do so on his or her own behalf."<sup>55</sup> This proposed legislation amends Section 744.301, Florida Statutes, to authorize the natural guardian of a minor to waive and release any claim or cause of action that could accrue to any of their minor children to the same extent that an adult may do so on his own behalf.<sup>56</sup> If passed, this legislation authorizes parents to execute releases on behalf of their minor child for both commercial and non-commercial activities. Thus, the unanswered questions left by the *Kirton* opinion will no longer be of concern for pre-injury releases executed after the effective date of the legislation, since the amended statute will supersede *Kirton*.<sup>57</sup>

The importance of this proposed legislation cannot be understated. The Legislature is in a better position than the courts to clearly delineate which entities — commercial, non-commercial, or both — are entitled to the protections afforded by pre-injury releases. Without legislative action, it could take decades and exceedingly costly litigation for the courts to establish the limits of "community-run and school-sponsored type activities."

<sup>1</sup> *L. Luria & Son, Inc. for Use and Benefit of Fireman's Fund Ins. Co. v. Alarmtec Int'l. Corp.*, 384 So. 2d 947, 948 (Fla. 4th DCA 1980).

<sup>2</sup> *Theis v. J & J Racing Promotions*, 571 So. 2d 92, 94 (Fla. 2d DCA 1990); *Southworth & McGill, P.A. v. S. Bell Tel. & Tel. Co.*, 580 So. 2d 628, 634 (Fla. 1st DCA 1991).

<sup>3</sup> *L. Luria & Son, Inc.*, 384 So. 2d at 948; *Shaw v. Premier Health & Fitness Center, Inc.*, 937 So. 2d 1204, 1204 (Fla. 1st DCA 2006); *Theis*, 571 So. 2d at 94; *Southworth*, 580 So. 2d at 634 (holding that "[exculpatory] clauses are enforceable only where and to the extent that the intention to be relieved was made clear and unequivocal in the contract, and the wording must be so clear and understandable that an ordinary and knowledgeable party will know what he is contracting away."). For a party to be relieved from liability arising out of its own negligence, Florida courts require that the clause include explicit and clear language that the agreement "releases the party from liability for its own negligence." *Goyings v. Jack & Ruth Eckerd Foundation*, 403 So. 2d

1144 (Fla. 2d DCA 1981).

<sup>4</sup> *Id.* at 350.

<sup>5</sup> *Id.*

<sup>6</sup> *Fields v. Kirton*, 961 So. 2d 1127, 1128 (Fla. 4th DCA 2007).

<sup>7</sup> *Kirton*, 997 So. 2d 351.

<sup>8</sup> *Id.* at n.3.

<sup>9</sup> *Fields*, 961 So. 2d at 1130.

<sup>10</sup> *Id.* (citing conflict with *Lantz v. Iron Horse Saloon, Inc.*, 717 So. 2d 590 (Fla. 5th DCA 1998)). Notably, the sole inquiry in the *Lantz* decision was whether the language of the pre-injury release signed by the child's parent was clear and unambiguous. In holding that the release was unambiguous and thus barred the minor child's claims, the Fifth District never addressed, and, presumably the parties never argued, the issue of whether the parent had authority to execute a pre-injury release on behalf of the child. *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Applegate v. Cable Water Ski, L.C.*, 974 So. 2d 1112 (Fla. 5th DCA 2008). In *Applegate*, the parents of a minor child brought a personal injury action against the operators of a water ski camp following an injury sustained by the child while she was waterskiing at camp. In aligning itself with the Fourth District Court of Appeal in *Fields v. Kirton*, the Fifth District held that the pre-injury release executed by the child's parents was unenforceable on public policy grounds. *Id.* at 1114-1115.

<sup>13</sup> *Id.* at 1116.

<sup>14</sup> *Kirton*, 997 So. 2d 350 n.1.

<sup>15</sup> See generally *Lantz*, 717 So. 2d at 590.

<sup>16</sup> *Shea v. Global Travel Marketing, Inc.*, 870 So. 2d 20, 22 (Fla. 4th DCA 2003), *quashed*, 908 So. 2d 392 (Fla. 2005).

<sup>17</sup> *Id.* at 23.

<sup>18</sup> *Id.* at 23-25.

<sup>19</sup> *Id.* at 26.

<sup>20</sup> *Global Travel Marketing, Inc. v. Shea*, 908 So. 2d 392, 401 (Fla. 2005).

<sup>21</sup> *Id.* at 403-04 n.9.

<sup>22</sup> *Id.*

<sup>23</sup> 871 So. 2d 1067 (Fla. 3d DCA 2004).

<sup>24</sup> *Id.*

<sup>25</sup> 942 So. 2d 887, 890 (Fla. 3d DCA 2007).

<sup>26</sup> *Id.*

<sup>27</sup> *In re Royal Caribbean Cruises Ltd.*, 459 F. Supp. 2d 1275, 1279-80 (S.D. Fla. 2006) [hereinafter *In re Royal Caribbean II*]; *In re Royal Caribbean Cruises Ltd.*, 403 F. Supp. 2d 1168, 1172-73 (S.D. Fla. 2005) [hereinafter *In re Royal Caribbean I*].

<sup>28</sup> *In re Royal Caribbean II*, 459 F. Supp. 2d at 1276; *In re Royal Caribbean I*, 403 F. Supp. 2d at 1169.

<sup>29</sup> *In re Royal Caribbean II*, 459 F. Supp. 2d at 1279-81; *In re Royal Caribbean I*, 403 F. Supp. 2d at 1171-73.

<sup>30</sup> *Kirton*, 997 So. 2d at 356.

<sup>31</sup> *Id.* at 356-57.

<sup>32</sup> *Id.* at 352-53.

<sup>33</sup> *Id.* at 353.

<sup>34</sup> *Id.* at 353-54.

<sup>35</sup> *Id.* at 357-58.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 358.

<sup>38</sup> *Id.* (Anstead, J. specially concurring).

<sup>39</sup> *Id.* at 360-62..

<sup>40</sup> *Id.* at 360.

<sup>41</sup> *Id.* at 360-62.

<sup>42</sup> *Id.* at 361.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 362-65.

<sup>45</sup> *Id.* at 362.

<sup>46</sup> *Id.* at 363.

<sup>47</sup> *Id.* at 350 n.2.

<sup>48</sup> *Id.* at 357.

<sup>49</sup> *Id.* at 358-62.

<sup>50</sup> However, it will likely take another opinion by the Florida Supreme Court to decisively rule on the issue in the context of non-commercial activities, unless the Legislature steps in first and enacts a statute governing parental pre-injury releases of liability.

<sup>51</sup> *Kirton*, 9976 So. 2d at 357.

<sup>52</sup> 972 So. 2d at 888-90.

<sup>53</sup> 871 So. 2d at 1067-68.

<sup>54</sup> *Kirton*, 997 So. 2d at 363.

<sup>55</sup> Fla. Senate Bill 886 (2009); Fla. House Bill 363 (2009).

<sup>56</sup> *Id.*

<sup>57</sup> The Senate Bill proposes an effective date of July 1, 2009 while the House Bill does not yet contain an effective date. Of course, for pre-injury releases signed before the effective date of the legislation, defendants will be required to confront the issues inherent in the *Kirton* decision.

## — ELECTION NOTICE —

The election of Officers and Board of Directors of the Florida Defense Lawyers Association will take place as part of the Association's Annual Meeting at Doral Golf Resort & Spa on Saturday, August 8, 2009, beginning at 8:00 am.

Nominations are being accepted for the positions of the Officers of the Association and Members of the Board of Directors. The chair of the Nominating Committee is FDLA Immediate Past President, Michael J. Corso.

If any member has an interest in serving as an Officer or Member of the Board of Directors, or would like to nominate any other member of FDLA for a position, please contact Michael Corso or the FDLA office.

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