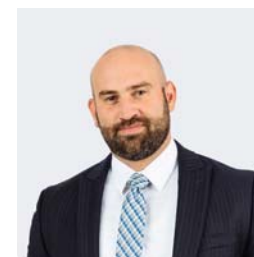


Florida Tort Reform | 2023



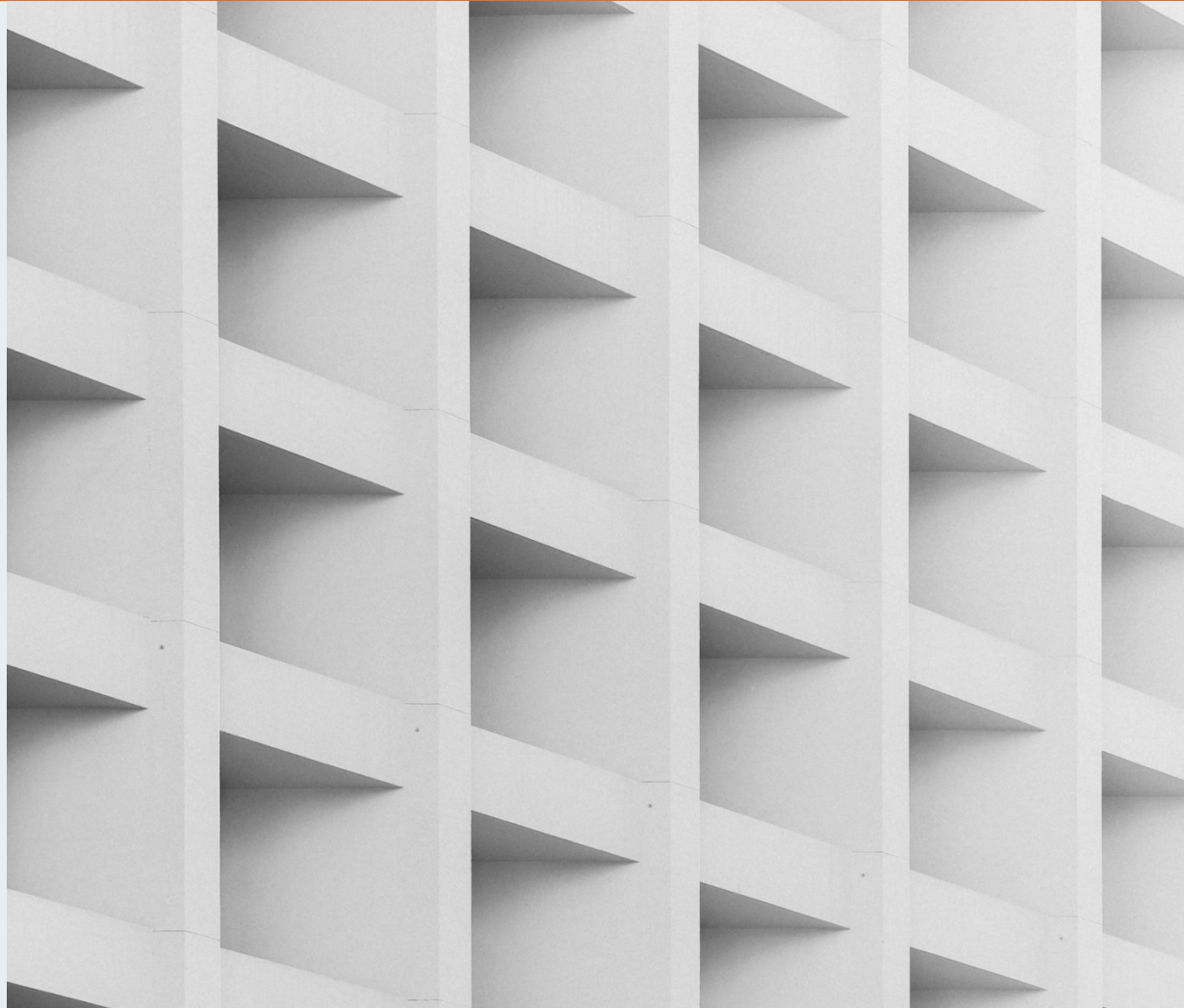
Steve Klein | Partner



Justin Guido | Partner

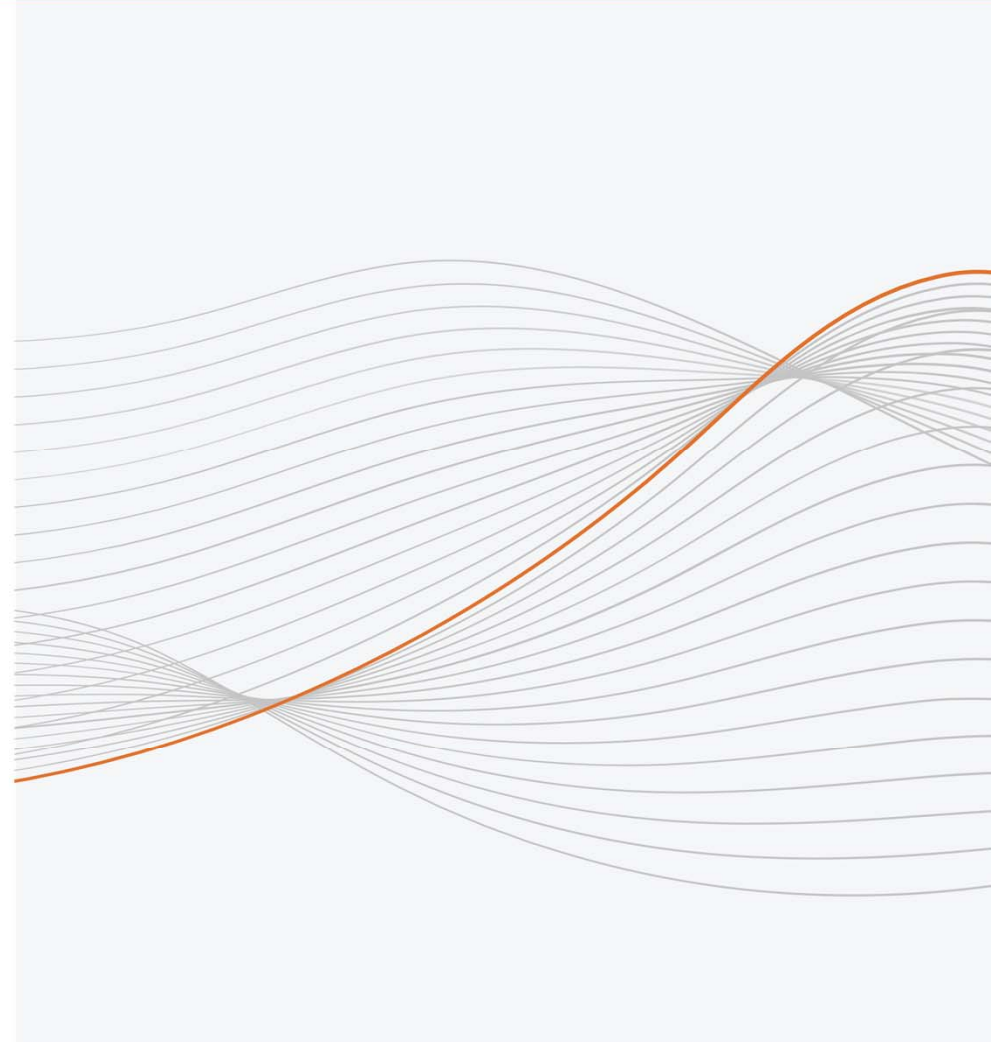
HB 837 Bird's Eye View

- Statute of Limitations (for causes of action accrued after March 24, 2023)
- Negligence Standard
- Damage Transparency
 - Calculating damages
 - Exploring firm/provider financial relationship
 - Letters of protection
- Applicable to cases filed *after* March 24, 2023



Statute of Limitations

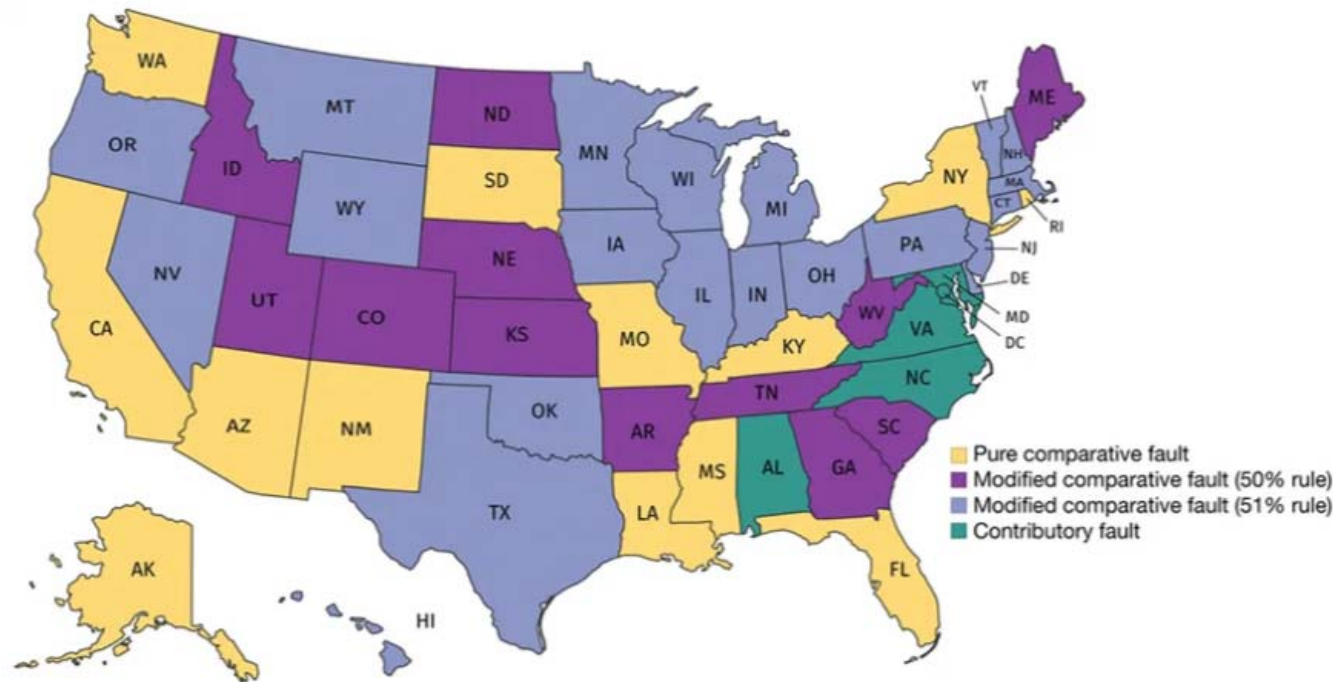
Reduces statute of limitations from four (4) years to two (2) years on negligence cases



Negligence Standard

- Out with the old (pure)
- In with the new (modified)

If the plaintiff is more than 50% at fault,
he/or she is barred from recovery



Transparency in Damages

Creates FS § 768.0427 to address past and future medical expense damages:

- **Evidence for Past Medical (paid)**

- Evidence is limited to what was *actually* paid

- **Evidence for Past Medical (unpaid)**

- PL has insurance, evidence of what PL's insurance is *required* to pay;
- PL has insurance, but treats under LOP, evidence of what PL's insurance *would have paid* under the policy (plus copays and coinsurance);
- PL has no insurance, evidence of 120% Medicare or 170% Medicaid (if no Medicare); and/or
- Reasonable amount billed to the claimant for medically necessary treatment or services provided.

Transparency in Damages

Evidence for Future Medical

- PL has insurance, what PL's insurance is required to pay;
- PL has insurance, but treats under LOP, evidence of what PL's insurance would have paid under the policy (plus copays and coinsurance);
- PL has no insurance, 120% Medicare or 170% Medicaid; and/or
- Any evidence of reasonable future amounts to be billed for medically necessary treatment or services

Transparency in Damages

Letters of Protection – Required Disclosures

- A copy of the LOP
- All billing must be provided and properly coded (ICD, CPT, etc)
- If the provider sells the bill:
 - Who purchased?
 - How much?



Transparency in Damages

Letters of Protection

- If PL is referred to provider under LOP, name of who referred must be disclosed, even if it's PL's attorney
- The financial relationship between law firm and provider is discoverable and relevant to the issue of bias of a testifying medical provider
 - Number of referrals
 - Frequency
 - Financial benefit
- * not all providers have tangible LOPs



Examples

- Liability
 - PL rear-ended a truck that was parked on the side of the road
 - No evasive action
- Damages
 - Has Medicare, treated under LOP
 - \$160,000 in medical bills
 - Life care plan

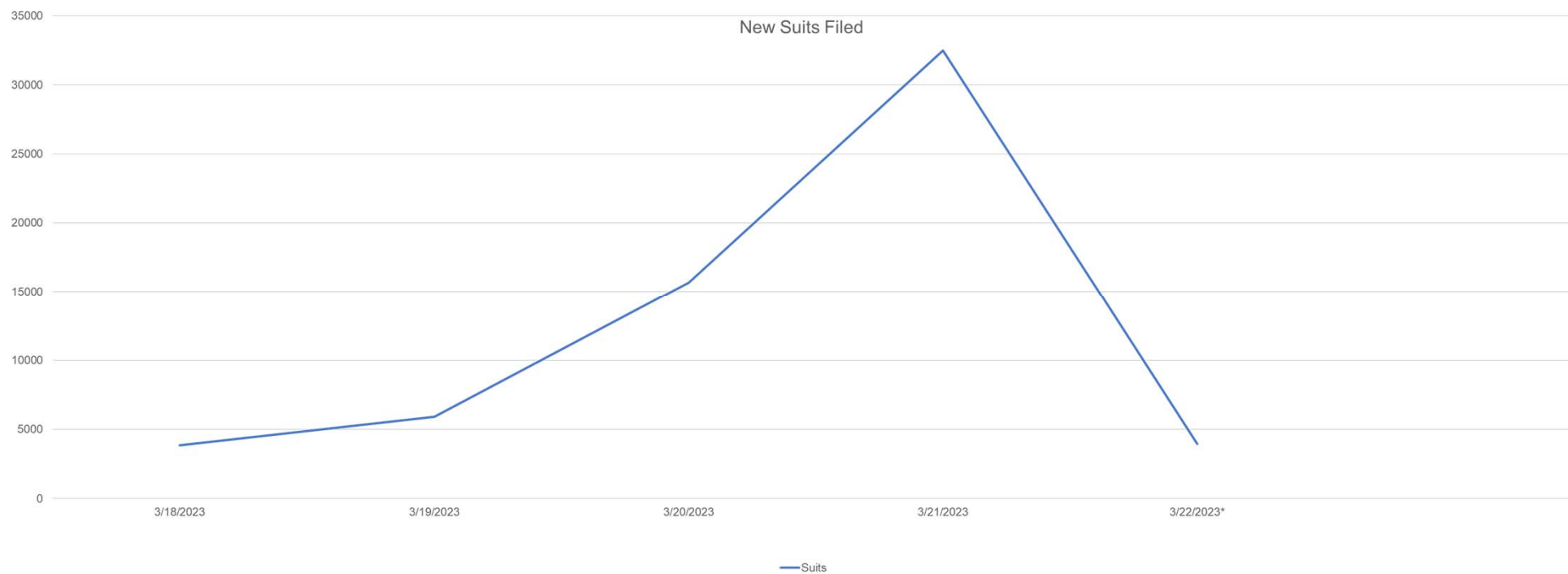


Examples

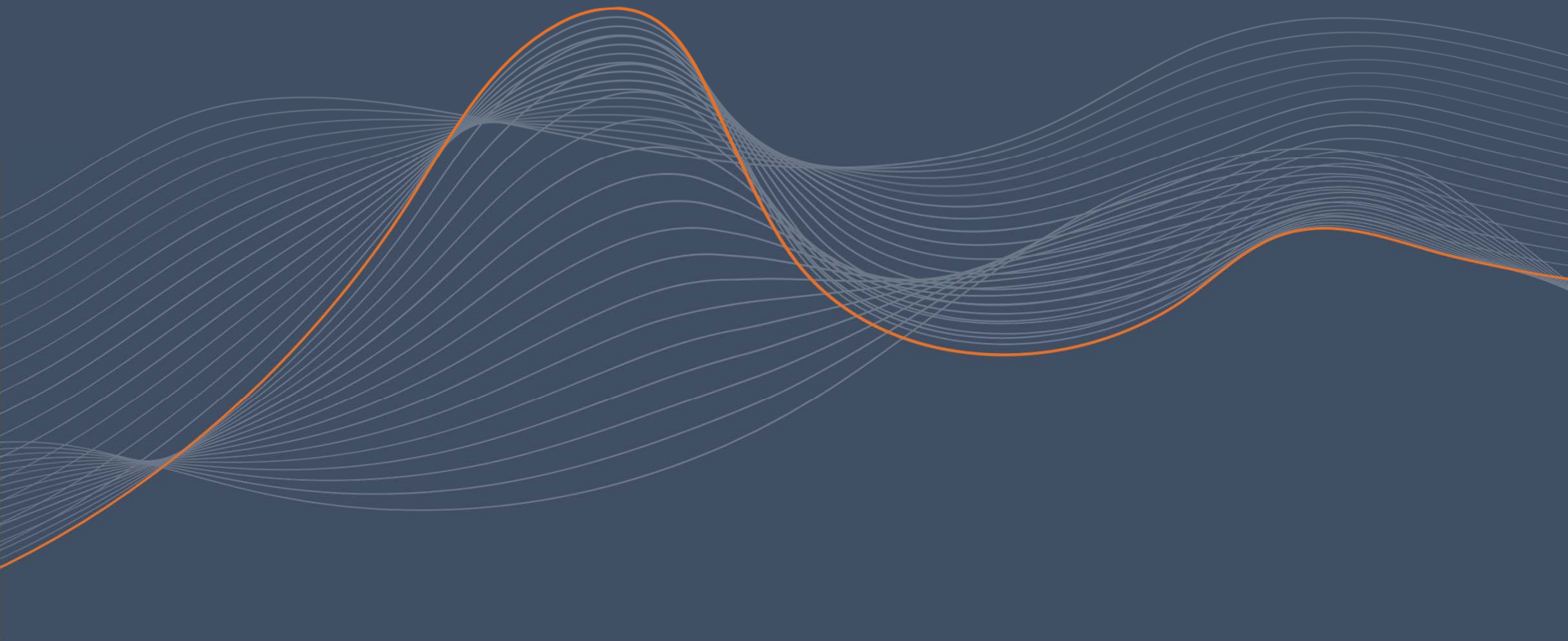
- Liability
 - Plaintiff slipped and fell due to water in a restaurant parking lot along the patio railing.
 - Talking on phone
 - Wearing sandals
- Damages
 - Has private health insurance- Treated under LOP
 - \$200,000 in medical bills
 - \$1.2M Life care plan



Plaintiff Firms Filing Frenzy



Negligent Security



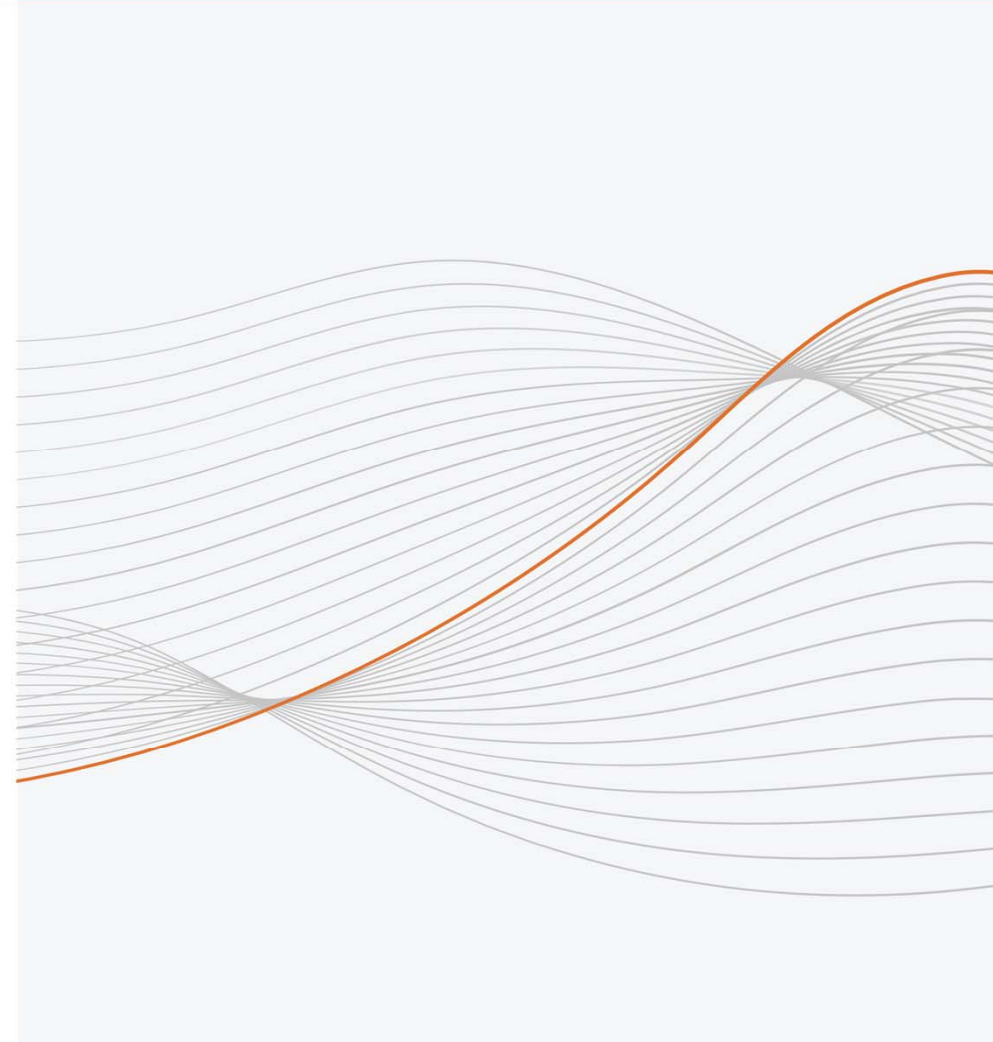
Changes at a Glance

- Presumption against liability for owners of multi-family dwellings
- Criminal actor listed on the verdict form



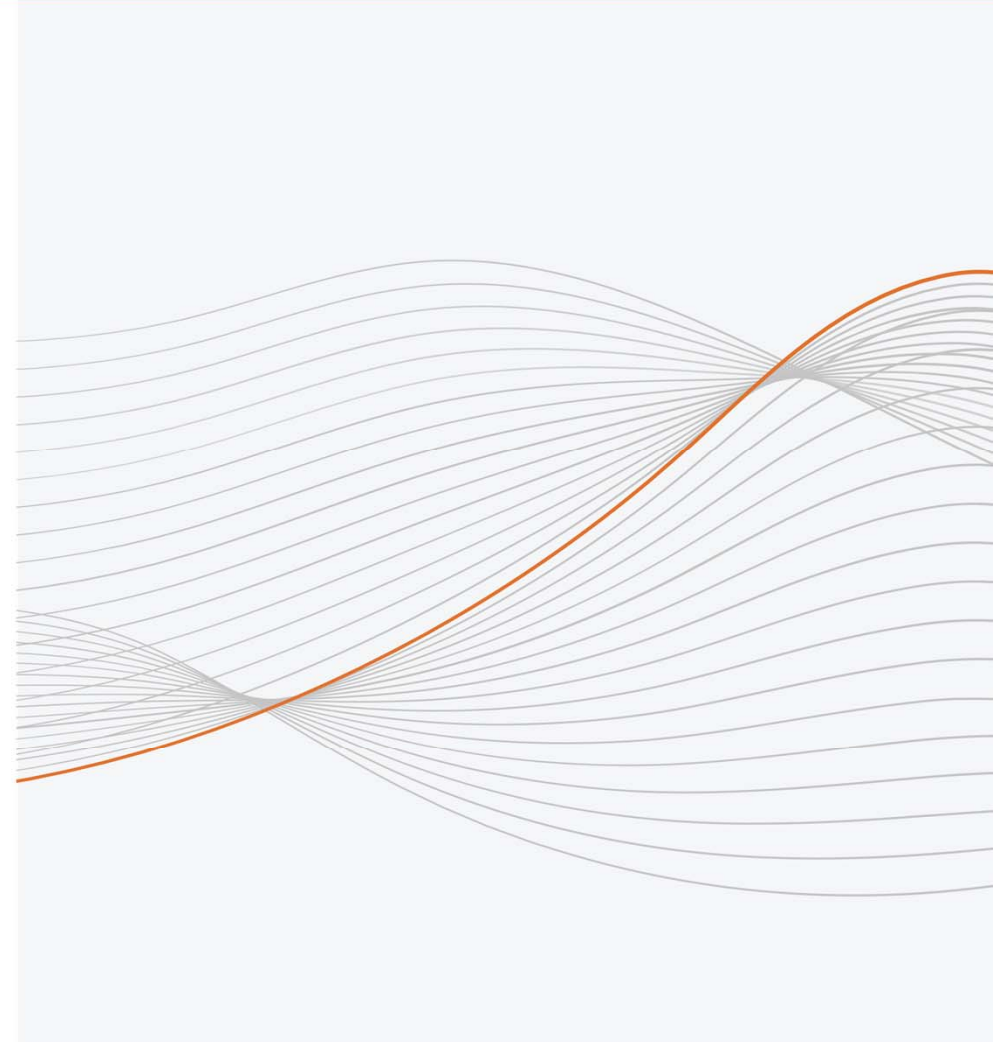
Presumption Against Liability

- Applies only to “multi-family residential properties.” This is defined to include apartments, townhouses, and condominiums which consist of at least five dwelling units on a given parcel.
- Heightened burden of proof.
- ‘Thumb on the scale’ in favor of complex owners if they implement the following security measures:



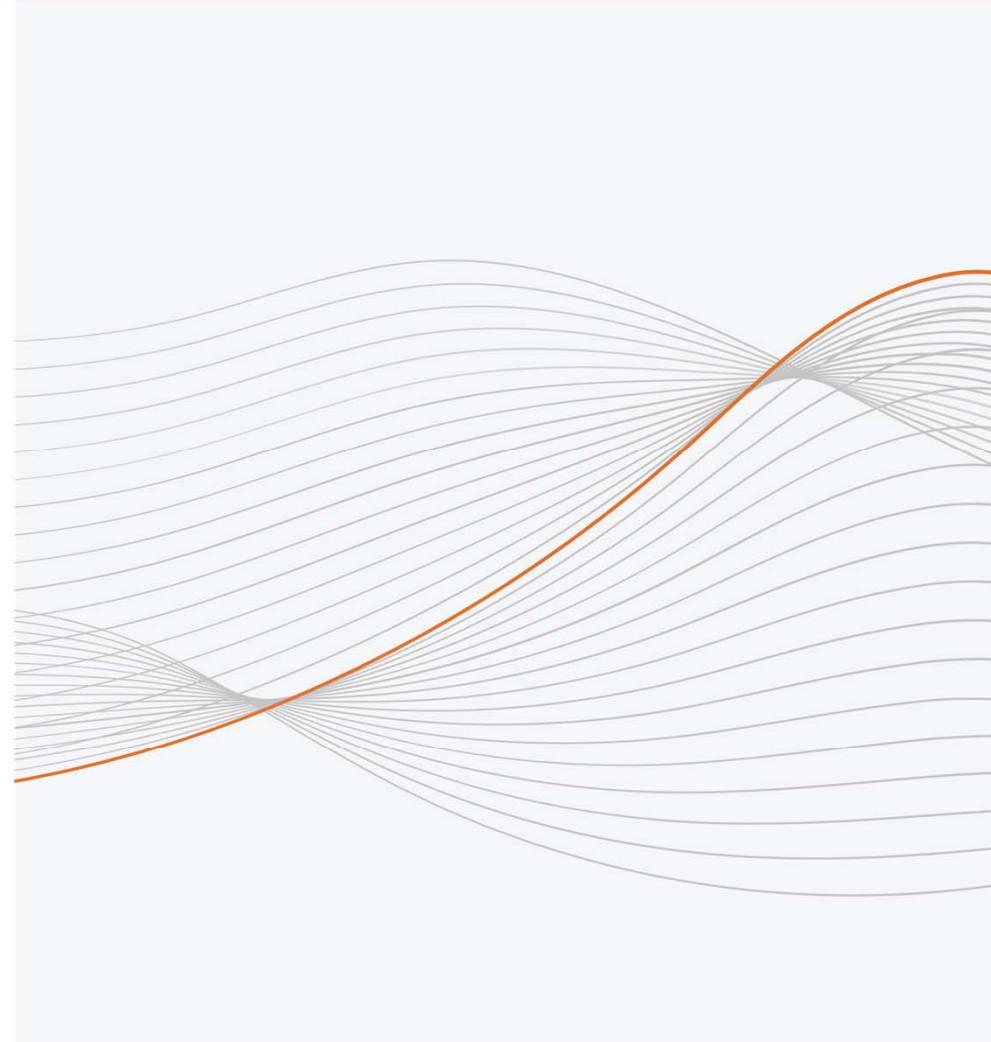
Presumption Against Liability

- Security cameras at entry and exit points
- Lighted parking lot, walkways, laundry room, common area, porches
- One-inch deadbolts in each unit door
- Locks for all windows and exterior sliding doors
- Locked gates with key or fob access along pool fences
- Peephole or door viewer for all dwelling doors which do not have an adjacent window
- By Jan. 1, 2025, owner completes “crime prevention through environmental design” assessment.
- By Jan. 1, 2025, owner provides proper crime deterrence and safety training to its current employees.



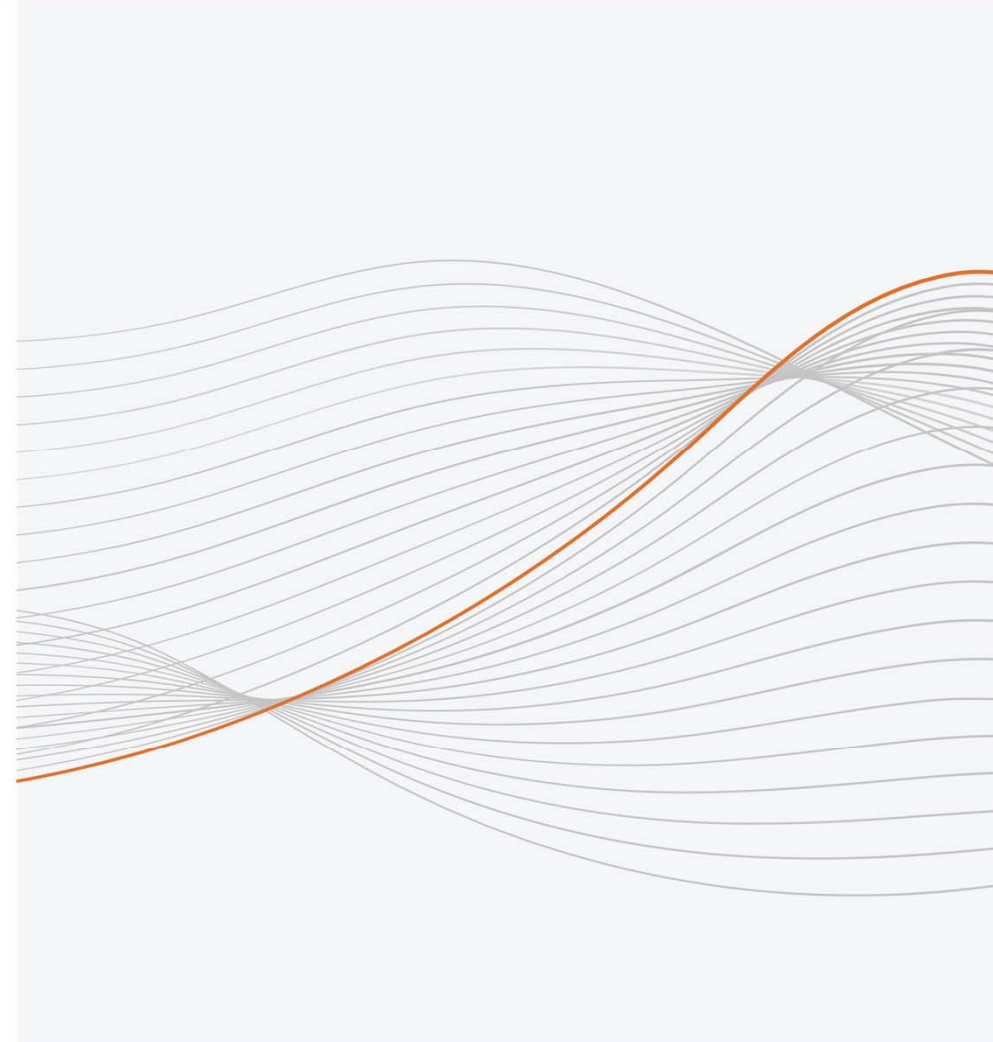
Presumption Against Liability

- Additional barrier to recovery may discourage lawsuits.
- Potential for dismissals at summary judgment.
- Hornet's nest for compliance.
- Curtailed crime means less lawsuits.



Criminal Actor on Verdict Form

- Pre: Jury unable to assign fault to criminal actor; Property owners stuck with damages bill.
- Post: Jury may consider all contributors in assigning fault – i.e., criminal actor listed on verdict form.
- Heightened risk of reduced recovery for plaintiff.
- Potential impediment to assigning > 50% fault to plaintiff.

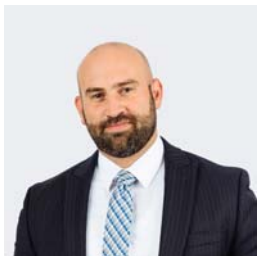


Thank You

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Steve Klein | Partner



Justin Guido | Partner

