

OVERVIEW

FORT LAUDERDALE, Fla. — Kelley Kronenberg, a diverse business law firm, is proud to announce that Attorney Paul M. May has been elected to the Broward County Bar Association’s (BCBA) Young Lawyers Section Board of Directors for the 2019-2020 term.



Founded in 1925, the BCBA is a not-for-profit organization, which aims to foster courtesy, ethics, and professionalism among Broward County lawyers. The Young Lawyers Section contributes to the educational and professional advancement of attorneys under the age of 36.

Kelley Kronenberg Attorney Kyle S. Roberts will join May on the Board of Directors for the BCBA’s Young Lawyers Section. Additionally, firm Partner Louis Reinstein and Attorney Marc A. Marra were elected to serve on the Board of Directors for the BCBA. The boards will be inducted at the Annual Installation Dinner and Gala on June 22.

In his legal practice, May assists in handling matters related to First Party Insurance Defense Litigation. He earned his Bachelor of Arts degree in History and Political Science from The University of Alabama, and went on to earn his Juris Doctor degree from Stetson University College of Law.

Kelley Kronenberg’s legal team has been heavily involved with the BCBA over the years, with many of its lawyers holding several leadership positions. The firm is also home to multiple winners of the Paul May Professionalism in Practice Award

CONTACT INFORMATION

Office:

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Consumers demand the latest and greatest technology has to offer. No longer limited to phones, PDAs, or cars, emerging technologies are now becoming common place in the construction process. For instance, luxury residential condominiums now offer garages with automated parking systems. And in the not too distant future, buildings will be constructed with “smart” concrete thanks to engineers at the University of Rhode Island who have developed “self-healing concrete”^[1] and engineers at State University of New

York at Buffalo who are using carbon fibers and electricity to predict failures in concrete before they occur.[ii] As buildings become “smarter,” the risk of technology failures – and the resulting defect claims against those involved in the design and construction of these buildings – becomes even greater. The consequences of their failure to operate as intended could range widely. With automated garages, a unit owner may suffer a minor inconvenience having to wait longer for a vehicle, or a system failure could result in property damage or personal injury. With smart concrete, the failure to “self-heal” or detect stress cracks could lead to a catastrophic collapse, resulting in significant property damage or injury, and even death. As technology in construction evolves, so too, must strategies for risk management.

Under a traditional design-bid-build delivery method, the owner, or developer, bears the risk that the completed project, including building components, will function as designed. This is particularly so with Florida condominium construction, where the developer is deemed to provide initial and subsequent purchasers with an implied warranty of fitness and merchantability for the purposes or uses intended extending to: each unit, personal property that is transferred with, or appurtenant to, each unit; all other improvements for the use of unit owners; all other personal property for the use of unit owners; the roof and structural components of a building or other improvements; mechanical, electrical, and plumbing elements serving improvements or a building (except mechanical elements serving only one unit); and all other property which is conveyed with a unit. Depending upon the portion of the unit or property that is transferred or conveyed with the unit that the warranty relates to, these implied warranties last between one and three years (up to five years depending upon the date of turnover and potentially even longer as it pertains to manufacturer warranties).[iii]

Under a design-build approach, the contractor is responsible to ensure a functional design. In other words, the design must not only comply with applicable building codes and standards of care, but also the expectations of the owner so that the completed building functions as intended.

With either delivery method, the contractor is responsible to the owner for proper construction. Regardless of whether failures in technology result from errors in design or construction (or both), the owner will ultimately suffer the consequences of these failures, and worse, may have liability to third parties as a result of such failures. Thus, it is important that owners mitigate these risks with the use of well-tailored contract provisions and carefully crafted insurance coverage. Contractors should manage these risks with subcontractors in a similar way.

An owner, or contractor under a design-build contract, may elect to purchase additional insurance coverage for design liability to account for lower limits traditionally in place for design professionals (typically less than \$2,000,000 per claim). Importantly, errors and omissions policies covering design liability are so-called “wasting” or “burning limits” policies where coverage limits erode with every dollar spent on the costs of defending claims. Where defense costs are significant, there will be little to no coverage remaining to pay a settlement or judgment for a defective design. Even though under a contractor’s commercial general liability policy, defense costs do not affect coverage limits, contractors should consider increasing traditional limits (often \$1,000,000 per occurrence and \$2,000,000 in the aggregate) or obtaining umbrella coverage with additional limits on projects with advanced or emerging technologies.

Another strategy to manage risk from failed technology is by reallocating it through contract. For instance, where the owner’s contemplated design requires use of a sole-source provider (such as with automated parking garages) or use of only certain specified “smart” materials, the contractor could limit its scope to installation only, with the owner being responsible for any design failures of the system or “smart” materials. This will limit the contractor’s liability to the owner for the subcontractor’s work for installation failures only. This is important, because a typical commercial general liability policy or default insurance for defective work of a subcontractor will not cover professional design liability. Neither will a performance bond. Another alternative for the contractor is to limit its professional design obligations for a design-build project through completion of the project only, as opposed to a longer period generally applicable under the law.[iv] Where “smart” materials are required, the contractor could attempt to limit its liability from material failures by using indemnity and hold harmless provisions in its contract with the owner. Alternatively, the design liability owed to the owner from the contractor could be transferred to the design professional or supplier of the “smart” materials through a release of the contractor and an assignment to the owner of the design professional’s or supplier’s obligations to the contractor. Another option is for the contractor to limit its liability to the extent of its insurance coverage.

Regardless of such limitations or an assignment by the contractor, an owner may still have other remedies against a negligent design professional. For instance, regardless of privity, a negligent design professional is liable to an owner in tort.[v] And the design professional

may have statutory liability.[vi] However, it bears noting that some jurisdictions, such as Florida, limit individual design professional liability for damages which are “solely economic in nature and...do not extend to personal injuries or property not subject to the contract” where the contract with the design professional complies with certain statutory requirements.[vii] Where property damage or personal injuries occur, the statute has no application.

In short, emerging technologies in construction are becoming more prevalent. As developers – and the construction industry professionals employed by them – continue to implement new technologies, the risk of liability for all parties involved will continue to increase. While avoiding liability altogether is unlikely, owners and contractors presenting these technologies to end-users should explore non-traditional approaches in contracting and insurance to better manage and mitigate these risks, keeping in mind the potential limitations on liability that may exist through contractual provisions or by law.

[i] In 2010, a graduate student at University of Rhode Island, working with engineers, developed “self-healing concrete.” Directly embedded within the concrete matrix is a microencapsulated sodium silicate that acts as a healing agent when tiny stress cracks begin to form in the concrete. The tiny capsules rupture and release the healing agent into the adjacent areas which in turn causes a chemical reaction that blocks the pores in the concrete. This chemical reaction creates a gel-like material that hardens in about one week. As explained by the graduate student, “[s]mart materials usually have an environmental trigger that causes the healing to occur...only in the areas that really need it.”[source: <https://today.uri.edu/news/uri-research-on-self-healing-concrete-yields-cost-effective-system-to-extend-life-of-structures/>]

[ii] Carbon fibers naturally conduct electricity. By adding carbon fibers to concrete, electrical impulses are added to the concrete structure, making the concrete able to have electrical resistance change in response to damage or defamation. In other words, the concrete becomes a sensor, able to detect even minute changes in the amount of stress inside. Thus, the concrete becomes a self-monitor for signs of cracks or stress. Where once, personal inspection was required to check concrete structures for signs of cracking, stresses can now be measured with more precision before cracks form. “With smart concrete, scientists are able to measure the precise amount that the concrete deforms as it is exposed to massive amounts of weight...With the ability to monitor the hidden stressors within to a very precise degree, smart concrete may be able to lead engineers to troubleshoot weak spots in their structures long before a crack is ever visible to the human eye.”[source: <https://www.mma-midatlantic.com/2017/05/22/smart-concrete-expected-to-revolutionize-building-structures-in-the-future/>]

[iii] See e.g., Fla. Stat. § 718.203.

[iv] See e.g., Fla. Stat. § 95.11(3)(c) which set forth a four-year statute of limitations for design defects (up to ten years for latent defects).

[v] See e.g., *Baskerville-Donovan Engineers, Inc. v. Pensacola Executive House Condominium Ass'n, Inc.*, 581 So. 2d 1301, 1303 (Fla. 1991) (“Clearly, privity between the parties may create a duty of care providing the basis for recovery in negligence...However, lack of privity does not necessarily foreclose liability if a duty of care is otherwise established.”) (internal citations omitted).

[vi] An aggrieved owner can pursue a design professional for building code violations. See e.g., Fla. Stat. § 553.84 (“Notwithstanding any other remedies available, any person or party, in an individual capacity or on behalf of a class of persons or parties, damaged as a result of a violation of this part or the Florida Building Code, has a cause of action in any court of competent jurisdiction against the person or party who committed the violation...”).

[vii] See e.g., Fla. Stat. § 558.0035.

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Kelley Kronenberg is excited to be a sponsor of the 2019 Annual Broward County Bar Association (BCBA) Installation Gala. The event will take place on Saturday, June 22, at the Ritz Carlton Fort Lauderdale, FL. The Broward County Bar Association and Young Lawyers' Section 2019 - 2020 Officers and Directors will be inducted at this year's Casino Royale Gala.

The firm is proud to announce that Partner Louis Reinstein and Attorney Marc A. Marra have been elected to serve on the Board of Directors for the Broward County Bar Association (BCBA). Additionally, Attorneys Kyle Roberts and Paul May have been appointed to serve on the Board of Directors for the BCBA's Young Lawyers' Section, which contributes to the educational and professional advancement of attorneys under the age of 36.

Congratulations to you all!

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Firm Welcomes Micheline Gros-Jean and Dakeitha Haynes



FORT LAUDERDALE, Fla. — Kelley Kronenberg, a diverse business law firm, announced that Micheline Gros-Jean and Dakeitha Haynes have joined the firm's Fort Lauderdale office as Attorneys.

Gros-Jean assists in handling matters related to General Liability, Products Liability, Construction Defect claims and the prosecution and defense of declaratory judgment actions involving insurance coverage disputes and extra-contractual claims.

Prior to joining the firm, Gros-Jean worked as an Associate Attorney at an insurance defense law firm in Miami, Florida where she focused on First Party Property insurance defense litigation.

Gros-Jean earned her Bachelor of Arts in Political Science and History from Florida International University and her Juris Doctor degree from Nova Southeastern University, Shepard Broad College of Law. While in law school, she served as the Subscriptions Editor of the ILSA Journal of International and Comparative Law and as a Judicial Intern to the Honorable Dave Brannon in the United States District Court for the Southern District of Florida. She is admitted to practice law in Florida and the United States District Court, Southern District of Florida and is fluent in Haitian Creole.



Haynes assists in handling matters related to Third Party Insurance Defense, General Liability and Coverage, Products Liability, Premises Liability, Construction Disputes,

Employer Liability, Negligent Security, Automobile and Trucking accidents.

Prior to joining the firm, Haynes worked as an Assistant Public Defender in Miami-Dade County where she handled over 150 misdemeanor and felony cases and litigated several motions and trials to verdict.

Haynes earned her Bachelor of Science Degree in Criminal Justice from Sam Houston State University and her Juris Doctor degree from St. Thomas University School of Law. During law school, she served as a Legal Intern at the Southern Poverty Law Center and Florida Justice Institute, where she helped advocate for legislative changes relating to juvenile justice, children's rights, mass incarceration, and various unconstitutional conditions of confinement. She also served as a Judicial Intern for the Honorable Michael Robinson of the 17th Judicial Circuit, Articles Editor for the St. Thomas Journal of Complex Litigation and received multiple CALI Book Awards. She is admitted to practice law in Florida.

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Firm Welcomes Charles Gowland and Katherine L. Koener

TAMPA, Fla. — Kelley Kronenberg, a diverse business law firm, announced that Charles Gowland and Katherine L. Koener have joined the firm's Tampa office as Partners.



Gowland handles First Party Property Insurance Defense Litigation, including coverage and bad faith litigation, with a special focus on insurance claims and investigations potentially involving fraud or arson. He also defends a wide array of Third Party Insurance claims.

Prior to joining Kelley Kronenberg, Gowland gained more than 20 years of civil litigation experience. He previously served as Vice President and General Counsel for the Property and Casualty Claims department of a national insurance company. Additionally, he served as General Counsel for a Florida based Property and Casualty insurance company and Chief Counsel to the Division of Insurance Fraud for the State of Florida's Department of Financial Services.

Gowland earned both his Bachelor of Science degree, *cum laude*, and his Juris Doctor degree, *cum laude* with honors, from Florida State University. He is admitted to practice law in Florida, Louisiana and North Carolina.



Koener focuses her practice on First Party Property Insurance Defense Litigation throughout the state of Florida, including coverage and bad faith litigation. She also handles the defense of a wide array of Third Party Insurance Defense claims.

Koener is experienced in defending Florida property insurers in First Party coverage matters. She has handled a broad range of claims, such as sinkhole, windstorm, fire, mold, theft and water losses. She is also skilled in handling complex civil and commercial

matters for her clients, including the defense of personal injury, premises liability, construction defect cases, and admiralty law.

Koener earned her Bachelor of Arts degrees in Political Science and Linguistics from the University of Florida and her Juris Doctor degree from Stetson University College of Law. She is admitted to practice law in Florida, including the United States District Courts for the Northern, Middle and Southern Districts of Florida.

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TAMPA, Fla. — Kelley Kronenberg, a diverse business law firm, is pleased to announce that Dana G. Andrews, Managing Partner of the firm's Tampa office, has been elected President-Elect of the 2019-2020 Board of Directors for the United States Tennis Association (USTA) Florida.

USTA Florida is a volunteer organization that strives to not only help people play tennis, but also help build communities. For more than 65 years, the organization has worked to promote and develop tennis for all.

"This organization holds a special place in my heart because my father B.A. Grubbs previously served as President and was ultimately inducted into the USTA Florida Hall of Fame. I am honored to continue the work he started and continue to serve this important organization!"

Andrews will replace Chuck Gill, who resigned from the President-Elect role earlier this year. Following nominations and a secret ballot voting process, Andrews was named to the position. She previously served as a member of the USTA's Junior Competitive Committee as well as the USTA Florida Foundation Board and as Grievance Chairman.

Andrews is rated AV Preeminent by Martindale-Hubbell, which indicates a demonstration of the highest professional and ethical standards and is the highest rating a lawyer can receive. She is also Board Certified by The Florida Bar as a specialist in Workers' Compensation.

A graduate of the University of Georgia, Andrews went on to earn her law degree from Cumberland School of Law in Birmingham, Alabama. While completing her undergraduate degree, Andrews was a scholar athlete and member of the university's tennis team. She is admitted to practice law in all Florida state courts.

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This year, several firm members will proudly participate in the 2019 Mercedes-Benz Corporate Run in Miami, FL! The Mercedes Benz Corporate Run presented by Turkish Airlines is one of the largest 5K races in the nation. The Corporate Run Series attracts 1,200 South Florida Companies and incorporates a special competition to award the overall men's, women's and co-ed teams in 18 different industries categories. The Corporate Run is about having fun, getting healthy, and boosting company morale.

The #MBCR2019 will take place on April 25th and will benefit the United Ways programs focusing on education, financial stability, and health - the building blocks for a good life.

Kelley Kronenberg is proud to promote running and walking as a means to a fit, healthy lifestyle for all employees. In addition, we believe it adds value by improving employee health and morale. We feel that a healthy employee makes for a healthy firm.

If you are in the Miami area on April 25th or participating with your company in the race, we invite you to stop by our tent for pre and post-race refreshments. The fun, healthy atmosphere always breeds good times for all.

See you there!

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FORT LAUDERDALE, Fla. — Kelley Kronenberg, a diverse business law firm, is proud to announce that Partner Louis Reinstein and Attorney Marc A. Marra have been elected to serve on the Board of Directors for the Broward County Bar Association (BCBA). Additionally, Attorney Kyle S. Roberts has been appointed to serve on the Board of Directors for the BCBA's Young Lawyers Section, which contributes to the educational

and professional advancement of attorneys under the age of 36.

Founded in 1925, the BCBA is a not-for-profit organization, which aims to foster courtesy, ethics, and professionalism among Broward County lawyers. The organization also works to educate the citizens of Broward County on their legal rights, and to provide necessary legal services to Broward County's residents.



Reinstein focuses his legal practice on Police Professional Litigation, Correctional Healthcare, Civil Rights Violations and Commercial Litigation. He is the immediate past President of the Board of Directors for the B'nai B'rith Justice Unit #5207, and has served on several Boards of Directors for various South Florida secular agencies and religious affiliated organizations. For the BCBA, he previously held roles on the Young Lawyers Section Board of Directors and was Vice Chair of the Appellate Section.



Marra focuses his practice on Real Estate and assists banks and other financial service providers with transactional and litigation matters. He also represents Condominium and Homeowners' Associations in a full range of legal and operational services. Marra currently serves as President of the Nova Southeastern University Shepard Broad College of Law Alumni Association (Broward), and sits on the Board of Governors for Nova Southeastern University Shepard Broad College of Law.



Roberts focuses his practice on the defense of individuals and corporations involved in litigation and assists in handling matters related to Third Party Insurance Defense and General Liability. He also serves on the Editorial Board of The Florida Bar Journal/News. Roberts earned his Juris Doctor degree from Nova Southeastern University, Shepard Broad College of Law, *Cum Laude*, and held the position of Editor-in-Chief of the *Nova Law Review*.

Kelley Kronenberg has continued to support the BCBA over the years, with many of the firm's legal team serving in leadership positions within the organization. The firm is committed to serving the industry and the community.

About Kelley Kronenberg

Kelley Kronenberg is a diverse, business law firm that provides litigation and other legal services to established corporations, insurance companies, entrepreneurs and individuals in Florida and other regions of the U.S. More than 130 attorneys strong, the firm offers 25 distinct practice areas throughout its network of nine offices in Florida and Illinois. Founded in 1980, Kelley Kronenberg was built on relationships and continues to grow and excel because of its strength, offering sound legal counsel and exceptional client service.

Kelley Kronenberg is ranked in the top 20 largest law firms in Florida by Florida Trend and the Daily Business Review, and has been recognized as a Top Law Firm in Florida by the South Florida Legal Guide and LexisNexis® Martindale-Hubbell®. More information on practice areas and office locations is available at www.kelleykronenberg.com.

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Firm Welcomes Alexandra O. Lavelanet and Emma S. Meyerson

FORT LAUDERDALE, Fla. — Kelley Kronenberg, a diverse business law firm, announced that Alexandra O. Lavelanet and Emma S. Meyerson have joined the firm's West Palm Beach office as Attorneys.



Lavelanet assists in handling matters related to Workers' Compensation defense. Prior to joining the firm, she worked as an Associate Attorney at a boutique real estate and civil litigation law firm in Wellington, Florida. She brings experience handling labor and employment litigation matters, as well as complex commercial litigation and planning.

Lavelanet earned her Bachelor of Arts degree in Anthropology from University of Florida and her Juris Doctor degree, *cum laude*, from University of Miami School of Law. During law school, she served as a summer intern for a statewide insurance company that provides homeowner's insurance. She also served as the Articles and Comments Editor of the University of Miami Business Law Review. Lavelanet is admitted to practice law in Florida and is conversational in French.



Meyerson assists in handling matters related to Insurance Defense Litigation, General Liability, First Party Property, Commercial Litigation and Criminal Defense. Prior to joining the firm, she worked as an Attorney for an Insurance Defense Litigation firm in Coral Springs, Florida. She brings valuable experience in litigating claims involving personal injury protection benefits, coverage opinions, defense of rental car claims, bodily injury pre-suit claims, and negotiating on behalf of insurance carriers.

Meyerson earned her Bachelors of Arts degree in Radio/Television with a minor in Political Science from the University of Central Florida and her Juris Doctor degree from Nova Southeastern University Shepard Broad College of Law. During law school, she gained experience serving as an intern for two personal injury firms. She is admitted to practice law in Florida and is conversational in Spanish.

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Let's get physical! On Saturday, April 6th, several firm members will join together as "Team Kelley Kronenberg Cares" proudly participates in the 19th Annual Riverwalk Run hosted by the Junior League of Greater Fort Lauderdale (JLGFL) in downtown Fort Lauderdale. The firm will serve as a water sponsor of this year's event. Jacqueline Costoya Guberman, Attorney in the firm's Fort Lauderdale office, is the Chair for the 2019

Riverwalk Run.

Kelley Kronenberg is proud to promote running and walking as a means to a fit, healthy lifestyle for all employees. In addition, we believe it adds value by improving employee health and morale. We feel that a healthy employee makes for a healthy firm.

The Riverwalk Run is a day of fitness and fun for the whole family. All fitness levels are encouraged to attend. Participants are welcome to run the 5K, walk the 5K or run 5 miles. Kids can compete this year too! There will be a "Kids' Fun Run," a 1 K course lined with parents and volunteers to cheer them on.

For the past 80 years, the JLGFL has made tremendous efforts in impacting our community in a positive way through the leadership of well-trained women. The money raised by this event goes towards supporting the Junior League of Greater Fort Lauderdale's current charitable initiatives including human trafficking awareness, assisting adolescents in foster care to independent housing, childhood fitness and nutrition, and more!

See you at the run!