

## FROM THE COURTS

# String of Post-Shutdown Defense Wins Greets Georgia Firm

by Greg Land

With a half-dozen jury trials to its credit since the COVID-19 shutdown lifted—partially, at any rate, depending upon jurisdiction—Marietta defense firm Downey & Cleveland is finding jurors receptive to its arguments.

“We’ve had at least six trials since August, with three in front of different judges in Cobb County State Court,” said partner Sean Hynes, who successfully defended one of three cases the firm handled in September. “All auto tort cases.”

Partner Russell Davis landed another win last month, while the third ended with a \$300,000 verdict after the plaintiff turned down a \$500,000 offer, Hynes said.

Three August trials in Fulton and DeKalb counties yielded two more defense victories and a midtrial settlement that was well below the plaintiff’s pre-trial demand, he said.

Hynes said his 23-lawyer firm had been primarily working remotely until a few months ago, and are still offering flexibility for lawyers and staffers who might be at risk or have other issues, making a return to the office difficult for the moment.

“You do miss some things being out of the office, things like what we call ‘hallway law,’ where you discuss your cases in the hall with other lawyers,” he said.

As a firm of trial lawyers, he noted they were all glad to be back in court and finally litigating cases that have been stagnating.

“The negative for plaintiffs and the defense is that we can’t move cases; there’s no pressure to settle,” he said. “Our clients are like, ‘Why is this case still unresolved?’”

Hyne’s trial—his first post-lockdown—involved a couple, Robbie and Eddie McDuffie, who were rear-ended on Cobb Parkway nearly 10 years ago.

“We represented a 17-year-old man driving home from church,” said Hynes. “There was some police activity off to the right, and her position was that she was looking at that when she essentially tapped the plaintiffs’ car.”

The elderly plaintiffs claimed to have suffered injuries including a herniated disk and demanded about \$39,000 in medical bills. The defendant driver was not cited, he said, and denied liability.

The last pretrial demand was for \$175,000.

“We’d offered \$4,400,” Hynes said.

After a three-day trial before Cobb State Court Judge Maria Golick, the jury took about an hour and a half to deliver a defense verdict on Sept. 29.

Plaintiffs attorney Myrlyn Earle of Earle Injury Attorneys said he is still considering whether to file an appeal and declined to discuss the case.

Earlier last month Davis tried a case involving a woman and her passenger who were riding in the right lane of Interstate 75 in Acworth when they came upon a tractor-trailer stopped in the road.

According to pretrial order, plaintiff Amy Roberts pulled off onto the shoulder and stopped, where she was rear-ended by a motor home driven by Daniel L. Huff—not to be confused with noted defense attorney Daniel J. Huff.



JOHN DISNEY

**Downey & Cleveland partner Sean Hynes said he thinks jurors want to be sure they’re not wasting time on nonserious cases.**

Roberts claimed injuries included a neck fracture and herniated disc, and passenger Trevor Weaver also said he suffered a herniated disc. They claimed more than \$80,000 in medical expenses.

“There was some dispute about whether the plaintiffs’ vehicle was protruding into the roadway,” said Hynes. Defendant Huff was issued a warning.

Roberts demanded \$90,000, which was countered with a \$41,000 offer, he said. Weaver demanded \$75,000 and was offered \$25,000.

The case was unsuccessfully mediated at Miles Mediation & Arbitration Services, ultimately going to trial before state court Judge John Morgan.

After a four-day trial, on Sept. 7 the jury awarded nothing to Weaver and apportioned 80% of the fault to Roberts for her claims, for a defense verdict.

The plaintiffs’ attorneys, Robert Falanga and Kobelah Bennah of the Law offices of Falanga and Chalker did not respond to requests for comment.

The third Cobb case involved a woman injured when she was passing through an intersection on Johnson Ferry Road and was hit on the driver’s side by a car that ran a red light.

Plaintiff Jennifer English suffered multiple injuries requiring spine surgery, incurring more than \$255,000 in medical bills.

The defendant driver, Catherine Small, was cited for failure to yield.

Her attorney, Michael Melonakos of Greenville, South Carolina’s Melonakos Law Firm, demanded \$600,000 to settle, just before trial the defense countered with a \$500,000 offer, which was declined.

The case went to trial before State Court Judge Diana Simmons with Downey & Cleveland’s Anderson representing the uninsured/underinsured motorist carrier, State Farm Insurance; Crusier, Mitchell, Novitz, Sanchez, Gaston & Zimet associate Billy Fawcett represented Small, whose carrier tendered its limits.

After a three-day trial, on Sept. 10 the jury awarded \$300,000 in damages.

**Greg Land covers verdicts and settlements and insurance-related litigation for the Daily Report, an ALM affiliate of the Daily Business Review. Contact him at gland@alm.com.**



## CITY OF DORAL NOTICE OF PUBLIC HEARING

All residents, property owners and other interested parties are hereby notified of a **COUNCIL ZONING MEETING** on **October 27, 2021 beginning at 6:00 PM** to consider an amendment to the text of the City of Doral Comprehensive Plan, to incorporate a “Property Rights Element.” The City Council will consider this item for **FIRST READING**. The meeting will be held at the **City of Doral, Government Center, Council Chambers located at 8401 NW 53rd Terrace, Doral, Florida, 33166.**

The City of Doral proposes to adopt the following Ordinance:

**ORDINANCE No. 2021-41**

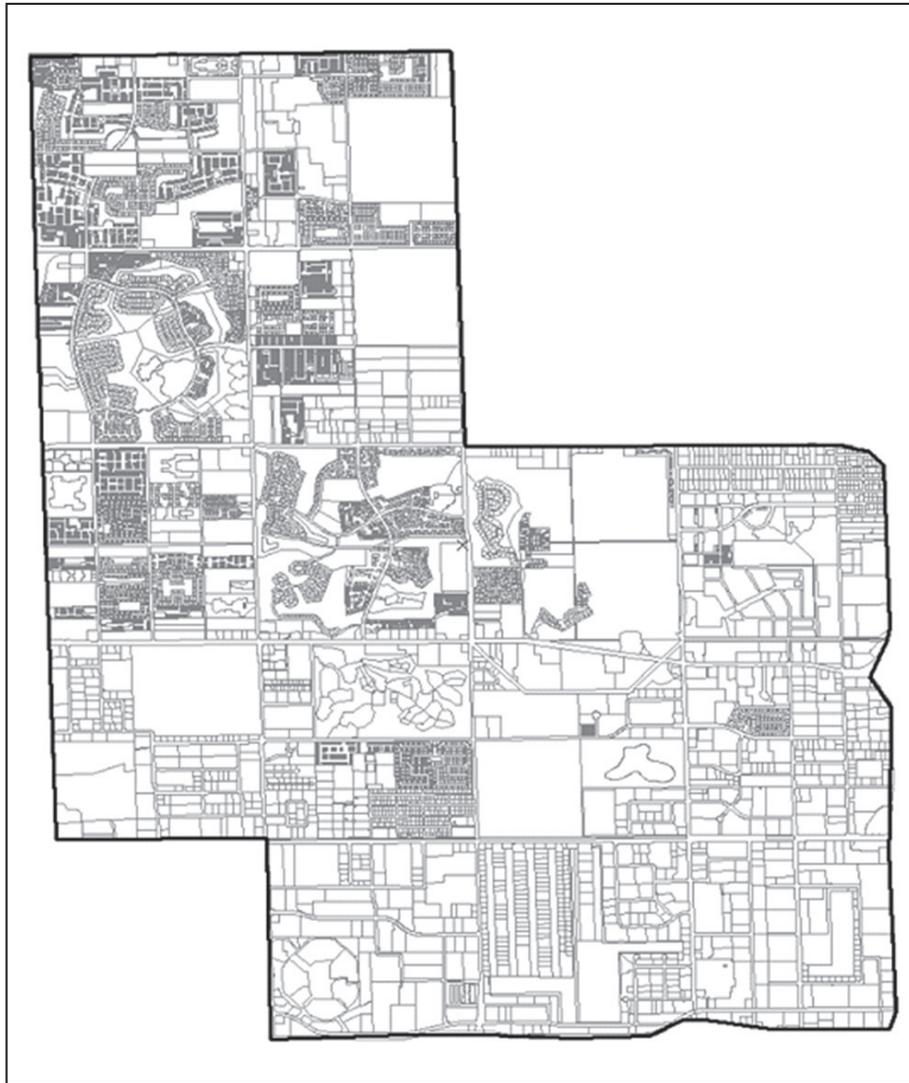
**AN ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING/DENYING A TEXT AMENDMENT TO THE CITY OF DORAL COMPREHENSIVE PLAN, TO INCORPORATE A PROPERTY RIGHTS ELEMENT, AS REQUIRED BY SECTION 163.3177, FLORIDA STATUTES; AUTHORIZING THE TRANSMITTAL OF THE TEXT AMENDMENT ADOPTION PACKAGE TO THE STATE LAND PLANNING AGENCY IN THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY AND OTHER REQUIRED GOVERNMENTAL REVIEWING AGENCIES PURSUANT TO THE PROVISIONS OF SECTION 163.3184, FLORIDA STATUTES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS, AND PROVIDING FOR AN EFFECTIVE DATE**

**HEARING NO.:** 21-10-DOR-12

**APPLICANT:** City of Doral

**REQUEST:** The City Manager’s Office respectfully recommends that the Mayor and City Councilmembers approve an amendment to the text of the City of Doral Comprehensive Plan, to incorporate a Property Rights Element.

**Location Map**



Inquiries regarding the item may be directed to the Planning and Zoning Department at 305-59-DORAL.

Pursuant to Section 286.0105, Florida Statutes If a person decides to appeal any decisions made by the City Council with respect to any matter considered at such meeting or hearing, they will need a record of the proceedings and, for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law. In accordance with the Americans with Disabilities Act, any person who are disabled and who need special accommodations to participate in this meeting because of that disability should contact the Planning and Zoning Department at 305-59-DORAL no later than three (3) business days prior to the proceeding.

Connie Diaz, MMC  
City Clerk  
City of Doral

10/13

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