



# PALM BEACH COUNTY BAR ASSOCIATION

# BULLE<sup>T</sup>IN

[www.palmbeachbar.org](http://www.palmbeachbar.org)

May 2014

## YLS to Host Fishing Tournament June 14

The Young Lawyers Section will be hosting its fifth annual fishing tournament on Saturday, June 14 to benefit a local charity. Entry fee is \$250 per boat and all activities will be held at the Palm Beach Yacht Club. For more information, go to the Bar's website at [www.palmbeachbar.org](http://www.palmbeachbar.org)



Members of the YLS Board shaved their heads for St. Baldrick's Day raising money for children's cancer. Pictured are Lou Delgado, Matt Ocksrider and Santo DiGangi.



## Mark your calendar for upcoming Membership Events

**May 9:**  
Young Lawyers Section  
End of the Year Luncheon

**May 15:**  
North County Section's  
Jurist of the Year Dinner

**June 7:**  
Annual Installation Banquet



*"Measure your actions today against the legacy you will leave tomorrow"*

— Scott G. Hawkins

Michael Mopsick (left) and Amy Borman (right) co-chairs of our Professionalism Committee presented Scott Hawkins with the Sidney A. Stubbs Professionalism Award. The award was re-named this year in honor of Sid Stubbs.

## Banquet June 7 Save the date!

Our annual Installation Banquet will be held on Saturday, June 7 at The Breakers Hotel in Palm Beach. Please join us for the induction of our Board of Directors including Theo Kypreos as president and Grier Pressly as president-elect. The evening includes a reception beginning at 7:00 p.m. followed by dinner and dancing. Invitations will be mailed at the end of the month. Thank you to our gracious underwriters from Jones Foster Johnston and Stubbs; Sabadell United Bank; Lesser Lesser Landy & Smith; Searcy Denney Scarola Barnhart & Shipley; Dimond Kaplan & Rothstein, P.A.; Daily Business Review; Phipps Reporting; Rock Legal Services and Investigations; Fox Rothschild; USI Affinity; Joel M. Weissman and Pressly & Pressly, P.A.

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## Rule 1.190(c): Back to the Future Part II

By Matt Triggs and Jonathan Galler

In October 2012, we wrote about Florida's civil procedure time machine, Rule 1.190(c). The rule allows an amended pleading to relate back to the date of the original pleading, under certain circumstances, even when the statute of limitations has run in the interim.

We were prompted to discuss the time-space continuum in that month's column by the First District's opinion in *Graney v. Caduceus Props., LLC*, 91 So. 3d 220 (Fla. 1st DCA 2012). There, the First District held that a belated attempt by the plaintiffs to bring a direct action against a third-party defendant did not relate back to the filing of the original complaint against the original defendant.

The opinion created a direct and express conflict with existing Fifth District precedent, as expressed nearly 30 years earlier in *Gatins v. Sebastian Inlet Tax Dist.*, 453 So. 2d 871 (Fla. 5th DCA 1984). Accordingly, the First District certified the conflict to the Supreme Court.

Exercising its 1.21 gigawatts of discretionary review, the Supreme Court recently issued a decision quashing the First District's decision in *Graney* and approving the Fifth District's decision in *Gatins*. See *Caduceus Props., LLC v. Graney*, 2014 WL 763137 (Fla. 2014). Hence, our excuse to revisit the issue (and our license to overuse Back to the Future references).

Rule 1.190(c) provides as follows: "When the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment shall relate back to the date of the original pleading."

To take a trip down memory lane: The 2012 *Graney* decision involved claims related to a construction project. The plaintiffs sued the contractor; the contractor filed a third-party complaint against the subcontractor; and the plaintiffs, after the expiration of the limitations period, then sought to assert a direct action against the subcontractor. The issue on appeal was whether the

direct action against the third-party defendant related back to the filing of the original complaint against the original defendant.

To reach its conclusion, the First District travelled back to 1984 to consider the Fifth District's *Gatins* decision issued that year, addressing a similar question, but the First District rejected the Fifth District's holding. In fact, the First District also looked at the approach of other jurisdictions and determined that the Fifth District's more liberal approach (i.e., in favor of relation back) was the minority view.

The First District's primary rationale in rejecting the application of the relation back rule was that the amendment created an unfair surprise. That's because the First District concluded that the third-party defendant would have been justified in concluding that the plaintiffs' decision not to file a direct action against it in the first instance, within the limitations period, had been intentional.

By contrast, the rationale of the Fifth District in applying the relation back rule was that the amendment "merely adjusts the status of an existing party," re-characterizing a third-party defendant (who is already litigating the matter) as a direct party defendant as well. *Gatins*, 453 So. 2d at 875. The third-party defendant should have been on notice that the plaintiff could so amend.

In siding with the Fifth District's approach, the Supreme Court pointed out that Rule 1.190 itself emphasizes that amendments should be granted freely and when justice so requires. Case law similarly holds that Rule 1.190(c) itself is to be liberally construed. See *Caduceus Props. LLC*, 2014 WL 763137 at \*3.

Moreover, the Supreme Court explained, the goals of statutes of limitations are to prevent lack of notice and prejudice. Put another way, the purpose is to promote justice by avoiding bringing claims back from the past long after evidence has been lost. Those concerns are not implicated, however, where a "new" party has already properly and timely been brought into the lawsuit as a third-party defendant and where the plaintiff's amended claims against that party arise from the same conduct, transaction, or occurrence at issue in the third-party complaint. *Id.* at \*4.



The Supreme Court also noted that (1) the amended claim, under the facts alleged in *Caduceus Props. LLC*, relates back to the filing of the third-party complaint (not to the plaintiff's original complaint) and (2) its holding does not remove all discretion from the trial court, as the court must determine whether the amended claim arises from the same conduct, transaction, or occurrence as the third-party complaint and may nevertheless deny the amendment if it is so late in the proceedings that the opposing party would be unfairly prejudiced. *Id.* at \*5.

Thus, a paradox – as Doc Brown might have called it – has now been resolved.

Matt Triggs is a partner in the litigation department of Proskauer Rose LLP and the head of the department in Boca Raton. Jonathan Galler is a senior counsel in the department. Both concentrate their practices in commercial and probate litigation.



## Do You Need a Mentor?

The Palm Beach County Bar Association's Mentor Program is designed to provide members with a quick and simple way to obtain advice, ideas, suggestions, or general information from an attorney that is more experienced in a particular area of law. The mentors provide a ten-to-fifteen-minute telephone consultation with a fellow attorney, at no fee. Any member of the Palm Beach County Bar, whether newly admitted or an experienced practitioner, can use the program. Call the Bar office at 687-2800, if you need a Mentor.