

And The Defense Wins

or that it was fine for her to keep driving. In any event, she continued to drive for four miles until the left front wheel came off and struck another vehicle. The Plaintiff was able to bring her vehicle to a stop without impacting anything. They next day she went to the ER with complaints of shoulder and neck pain. Ultimately, she had two surgeries on her shoulder and one on her neck, in addition to diagnoses of back and hip pain. Her medical bills were over \$400,000.

The Plaintiff claimed that she was in constant pain, had lost the use of her right arm, and was permanently disabled and unable to work as a result of the injuries she received in the accident. Plaintiff alleged the service center was negligent for failing to tighten the lug nuts. The service center admitted its employee failed to tighten the lug nuts, but showed that it had responded to the incident exactly how a consumer would expect by helping the Plaintiff and paying for all towing and repairs.

The service center also presented evidence that the Plaintiff was comparatively negligent and had pre-existing conditions that accounted for her alleged damages. A retained defense expert testified that the Plaintiff ignored noises and vibrations from her vehicle that were getting increasingly louder and stronger for six minutes of driving. He also showed that if she had turned around after talking to the store manager, the accident would not have occurred. And he showed that the forces on a belted driver in a wheel off incident such as this are similar or less than what would be incurred from driving over a pothole. A retained spinal surgeon and retained orthopedic surgeon both testified that Plaintiff's surgeries were not related to the accident and instead were due to preexisting conditions. After two and half hours of deliberations, the jury returned a defense verdict finding that the negligence of the service center did not cause any damages to the Plaintiff.

Josh Lerner



In a case against an annuity issuer alleging the wrongful processing of withdrawals of more than \$1.1 million over a ten-day period and in excess of \$1.6 million over five months from two variable annuities, DRI member [Josh Lerner](#) of **Rumberger Kirk & Caldwell** in Miami, Florida, obtained a dismissal with prejudice and an appellate decision affirming the dismissal. In *Farah, as Personal Representative of the Estate of Luis Farah v. Guardian Insurance and Annuity Company of America*, the personal representative of the estate of the annuitant, who was in his late seventies when the subject withdrawals occurred, alleged the defendant permitted withdrawals that were inconsistent with the annuitant's "buy and hold" investment strategy, his prior practice, and were based on patently suspicious withdrawal forms. Plaintiff also alleged that the defendant knew the annuitant was elderly and had Parkinson's disease. The annuitant had given power of attorney to a cousin and plaintiff alleged that defendant could therefore only process withdrawals requested by the attorney-in-fact. Plaintiff alleged breach of contract, negligence and breach of fiduciary duty.

The withdrawal forms contained what was clearly the handwriting of more than one person. But the annuitant's signature on each was supported by a Medallion Signature Guarantee. After three amendments of the complaint, the trial court entered a nine page order dismissing the action with prejudice. Plaintiff appealed to Florida's Third District Court of Appeal, which, after conducting oral argument, affirmed the dismissal.