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Comparison and Contrast: Differing Standards for Inferences in Federal and Florida State Courts

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Direct evidence of a matter at issue will not always be available; consequently, civil litigants may sometimes establish facts effectively and conclusively with circumstantial evidence. *Nielsen v. City of Sarasota*, 117 So. 2d 731, 733 (Fla. 1960). This is true both in federal and Florida state courts. *Id.*; *Daniels v. Twin Oaks Nursing Home*, 692 F.2d 1321, 1323, 1326 (11th Cir. 1982). But the manner in which parties are entitled to establish their case by circumstantial evidence and inferences drawn therefrom, including stacking or pyramiding inferences, varies widely between federal and Florida state courts. In federal court, an inference is allowable so long as it may reasonably be drawn from the evidence, regardless of whether the circumstantial evidence supports a contrary but equally probable inference. *Id.* Federal courts will not reject as unreasonable an inference that is partially based on conjecture, but they prohibit speculation and conjecture that rises to a degree that would render a finding "a guess or mere possibility." *Id.* So long as the possible inferences are reasonable, the jury is tasked with choosing among them. *Id.* Under the federal standard, moreover, "there is no prohibition against pyramiding inferences." *Preferred Care Partners Holding Corp. v. Humana, Inc.*, No. 08-20424-CIV, 2009 WL 982433, at *11 (S.D. Fla. Apr. 9, 2009) (citing *Daniels*, 692 F.2d at 1324). Thus, inferences derived from other inferences are permissible, so long as they are reasonable. *Id.* But the landscape is much different under Florida law. In Florida civil court, "a fact may be proved by circumstantial evidence if the inference of the fact preponderates over other inferences." *Nielsen*, 117 So. 2d at 733. Thus, when a civil litigant relies upon circumstantial evidence to prove an essential fact or circumstance, that inference must "outweigh all contrary inferences to such extent as to amount to a preponderance of all of the reasonable inferences that might be drawn from the same circumstances." *Voekler v. Combined Ins. Co. of Am.*, 73 So. 2d 403, 405 (Fla. 1954). Florida courts also prohibit the stacking of inferences "'unless it can be found that the original, basic inference was established to the exclusion of all other reasonable inferences.'" *Stanley v. Marceaux*, 991 So. 2d 938, 940 (Fla. 4th DCA 2008) (quoting *Nielsen,* 117 So. 2d at 733); *Cohen v. Arvin*, 878 So. 2d 403, 405

(Fla. 4th DCA 2004) (same); *accord Food Fair Stores v. Trusell*, 131 So. 2d 730, 733 (Fla. 1961) (stating that a party may not "indulg[e] in the prohibited mental gymnastics of constructing one inference upon another inference in a situation where . . . the initial inference was not justified to the exclusion of all other reasonable inferences"). Because civil litigants frequently rely on circumstantial evidence to prove their cases, an attorney should be cognizant in the earliest stages of litigation about the standards employed by the forum court regarding inferences. An action's success or failure may be impacted to a large degree by whether the forum's inference standard is more lenient or more restrictive. Furthermore, because "the rules regarding sufficiency of evidence and pyramiding inferences are matters of federal law," *Preferred Care Partners*, 2009 WL 982433, at *11, this inquiry may have bearing on a defendant's decision whether or not to seek removal to federal court and preparing their requested instructions. Given the dramatic distinction between inference standards in federal and Florida state courts, and the impact that distinction can make, attorneys should be mindful of the inferences they or their opposition may ask the jury to draw. And they should consider the manner in which their forum court will treat those inferences when developing their litigation strategy.

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