

FOCUS

President's Message

Christopher Aird

As I step into the role of President of ACC South Florida, I want to express my gratitude for the organization's trust and my excitement for the year ahead. A new year brings a sense of possibility—an invitation to pause, reflect, and envision the lives we want to create. This year, I encourage each of us to choose one meaningful challenge and commit to it with focus, resilience, and optimism.

While new challenges can feel daunting or easy to postpone, they push us to stretch our abilities, shift our perspectives, and uncover strengths we didn't know we had. We are at our best when we are learning, adapting, and embracing opportunities to grow, and as the world continues to change rapidly, we shouldn't slow down either. I urge each member to identify one challenge that energizes you - something that sparks curiosity, demands effort, and inspires you to move forward.

Your challenge might be learning a new skill, running that 5k you have been promising yourself you'd do someday soon, taking on a new role, or stepping into a project that feels just outside of your comfort zone. It could be strengthening collaboration within your team, mentoring someone who is coming up behind you, or revisiting a long-standing idea you've been waiting for the right moment to pursue. You might choose to improve the way you approach your work, the way you support others, or the way you nurture your own well-being. Every challenge, no



matter how big or small, contributes to our growth and success.

But challenges are not always meant to be taken on alone. Chances are ACC South Florida can help support you along the way! One of the greatest strengths of ACC South Florida is the comradery of its members and sense of family it creates for our in-house attorney community. That was something that quickly became apparent to me when I attended my first ACC South Florida event several years ago, i.e. one of our Miami-Dade progressive dinners, and I have found that it has held true since then. We're here to support each other and learn together. So connect with us to see how the ACC South Florida community can support you as you work toward your new goal.

We have lots of ways to interact, build relationships, learn new skills, help our community, and grow together this coming year. Our events and activities are hosted

throughout Miami-Dade, Broward, and Palm Beach counties. They include CLE presentations on interesting and trending subjects; networking, member appreciation, and social events; a mini-MBA program; the Miami-Dade and Palm Beach County progressive dinners; pro-bono and community service opportunities; women's and sporting events; GC/CLO dinners; and our annual CLE conference at the Hard Rock in Hollywood, Florida. Thanks to the continuing generosity and creativity of our sponsors (thank you sponsors!!!), we are able to provide our members with interesting venues and high-quality content and events. One of my goals is to ensure that our events provide "edutainment" and that members get value.

So let's commit to embracing challenges and building our in-house community together. On behalf of myself, the rest of the ACC South Florida Board and our Executive Director, we look forward to serving you!

Protecting Your Work Product

By Frank Florio, Holly Goodman and David Garcia-Pedroza, Gunster

Corporate counsel operates at the intersection of legal risk and operational urgency. At its height are internal investigations, audits, and regulatory inquiries. In these situations, well-intentioned “business-as-usual” documentation practices, like drafting routine reports, widely distributing findings for operational follow-up, and embedding findings in enterprise systems, can undermine work-product protection and expose legal strategy. This article clarifies the contours of the work-product doctrine and translates its principles into corporate policies and playbooks to help safeguard sensitive information without impeding business needs.

What Is “Work Product” Anyway?

At its core, the work-product doctrine protects from discovery “documents and tangible things otherwise discoverable . . . and prepared in anticipation of litigation[.]”¹ For corporate counsel, this definition leads to more questions than answers. Who can create protected work product? What information is protected? What does “prepared in anticipation of litigation” mean?

Let’s dive in: Who can create protected work product? A party, its representatives, attorneys, consultants, sureties, indemnitors, insurers, and agents,² and potentially investigators or corporate non-attorney employees, including a cor-

poration’s risk management department, who gather information in investigations conducted in anticipation of litigation.³ The doctrine has also been extended to protect incident and accident reports prepared by security guards or non-attorney employees and sent to a company’s risk management department, notwithstanding that no claims or litigation had been filed.⁴

What information does the work-product doctrine protect? The short answer is that it can protect anything that is otherwise discoverable. This includes “electronically stored information, writings, drawings, graphs, charts, photographs, audio, visual, and audiovisual recordings[.]”⁵

Florida law differentiates between “fact” and “opinion” work product and assigns different degrees of protection for each.⁶ Fact work product is information that pertains to, and is prepared or gathered in connection with, a litigation.⁷ Examples include incident reports, witness statements, and statistical analyses. This protection may be overcome if the party requesting the information shows it both needs the materials to prepare its case and cannot obtain substantially equivalent materials by other means without undue hardship.⁸ Opinion work product includes an attorney’s mental impressions, conclusions, opinions, or theories concerning the litigation. Examples include: (i) notes that include counsel’s conclusions related to possible

testimony⁹; (ii) memos summarizing documentation relevant to the litigation¹⁰; (iii) counsel’s evaluation of the importance of evidence and views of how and when to present evidence¹¹; and (iv) counsel’s selection of documents to use in the litigation.¹² Opinion work product is generally afforded absolute immunity from disclosure.¹³

For work-product protection, documents and tangible things must be prepared in anticipation of litigation, even if that litigation never materialized. Even courts recognize it is difficult to determine whether something was prepared in anticipation of litigation,¹⁴ with different courts applying different standards. The standard most courts in Florida apply “is whether the document was prepared in response to some event which foreseeably could be made the basis of a claim in the future[.]”¹⁵ One court applies a stricter standard requiring that when the documents are prepared, the probability of litigation must be “substantial and imminent.”¹⁶

Most courts agree that materials “prepared in the ordinary course of business, pursuant to public requirements unrelated to litigation, or at a time when the ‘mere likelihood’ of litigation exists” are not protected.¹⁷ Thus, reports that follow an incident may not be work product if they are required in the ordinary course of business. To determine this, courts

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1 Fla. R. Civ. P. 1.280(c)(4)

2 Fla. R. Civ. P. 1.280(c)(4)

3 Southern Bell Tel. & Tel. Co. v. Deason, 632 So.2d 1377, 1384 (Fla.1994); Heartland Express, Inc., of Iowa v. Torres, 90 So. 3d 365, 367 (Fla. 1st DCA 2012).

4 Royal Caribbean Cruises, Ltd. v. Doe, 964 So.2d 713, 718 (Fla. 3rd DCA 2007); Dist. Bd. of Trustees of Miami-Dade Cnty. Coll. v. Chao, 739 So. 2d 105, 107 (Fla. 3d DCA 1999).

5 Fla. R. Civ. P. 1.350(a)

6 Acevedo v. Doctors Hosp., Inc., 68 So. 3d 949, 952-53 (Fla. 3d DCA 2011)

7 S. Bell Tel. & Tel. Co. v. Deason, 632 So. 2d 1377, 1384 (Fla. 1994)

8 Town Ctr. @ Boca Raton Tr. v. Hirokawa, 789 So. 2d 1230, 1231 (Fla. 4th DCA 2001).

9 Gen. Motors Corp. v. McGee, 837 So. 2d 1010, 1032 (Fla. 4th DCA 2002).

10 *Id.* at 1040.

11 Bishop ex rel. Adult Comprehensive Protective Services, Inc. v. Polles, 872 So. 2d 272, 274 (Fla. 2d DCA 2004).

12 Ford Motor Co. v. Hall-Edwards, 997 So. 2d 1148, 1153 (Fla. 3d DCA 2008).

13 Butler v. Harter, 152 So. 3d 705, 712-13 (Fla. 1st DCA 2014); Acevedo v. Doctors Hosp., Inc., 68 So. 3d 949, 953 (Fla. 3d DCA 2011); Duplan Corp. v. Moulinage et Retorderie de Chavanoz, 509 F.2d 730, 732 (4th Cir. 1974); S. Bell Tel. & Tel. Co. v. Deason, 632 So. 2d 1377, 1384 (Fla. 1994).

14 Airocar, Inc. v. Goldman, 474 So. 2d 269, 270 (Fla. 4th DCA 1985).

15 Marshalls of MA, Inc. v. Minsal, 932 So. 2d 444, 446 (Fla. 3d DCA 2006).

16 *Id.* (citing See Liberty Mut. Fire Ins. Co. v. Bennett, 883 So.2d 373 (Fla. 4th DCA 2004)).

17 Procter & Gamble Co. v. Swilley, 462 So. 2d 1188, 1193 (Fla. 1st DCA 1985); see also Waste Mgmt., Inc. of Florida v. S. Bell Tel. & Tel. Co., 544 So. 2d 1133, 1134 (Fla. 4th DCA 1989).

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often rely on testimony of those who conducted the investigation or prepared the report concerning the reasons why it was done.

Putting it into Action

Protection of work product doesn't happen by accident, but rather, by design. There are several steps that in-house counsel can take to help develop policies and a culture of protection of legal work product.

Conclusion

Work-product protection is won or lost in the design of the corporate processes. Clear role definitions, disciplined

documentation of legal purpose, and thoughtful separation of legal and business communications can help shore up a defensible posture, while still enabling the business to act quickly and decisively.

Authors:

Frank Florio is a business litigator in Gunster's Fort Lauderdale office. Frank represents individuals and businesses in the courtroom and through the entire litigation process.



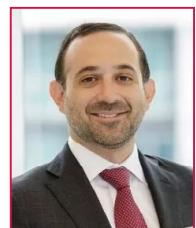
Holly Griffin

Goodman is a board-certified labor and employment attorney who focuses her practice on counseling clients, from small businesses to large institutions, in everyday employment matters.



David Garcia-Pedrosa

is a Shareholder at Gunster whose practice focuses on commercial and business litigation and construction law. He represents clients in an array of litigation matters.



Behind AI: The Rise of Data Centers

By Kenneth Duvall, Bilzin Sumberg

Lately, much of the conversation around AI has centered on the infrastructure necessary to power AI. In particular, the conversation has focused on the need for data centers—more data centers, larger data centers, more advanced data centers. This article will touch upon the evolving data center ecosystem, including the regulatory environment, burgeoning litigation, and practical impediments such as the lack of a robust energy infrastructure.

Massive Investment in Data Centers

The amount of capital being poured into AI can hardly be underestimated. In July 2025, Meta alone stated it plans to “invest hundreds of billions of dollars” into building “superintelligence.”¹ A large chunk of that investment is building data centers. Meta plans several AI campuses across the country, all with appropriately supersized names drawn from Greek mythology: Titans like Prometheus and Hyperion. Meta’s competitors, like Anthropic and one of its investors,

Amazon, are likewise sinking significant capital into data centers.²

Earlier this year, there was much talk about whether AI might require less computing power than previously thought. News about the Chinese company DeepSeek and its supposed ability to do more with less—that is, produce high-quality AI output at a fraction of the computing power and cost—temporarily cast doubt on projections of the need for so many data centers.

That hesitation appears to have passed, though, and companies are racing ahead to build data centers at an ever-growing pace. As that race continues, the regulatory setting appears to be shifting in favor of data centers.³

Federal Deregulation

In July 2025, the federal government issued “America’s AI Action Plan.”⁴ This 28-page document lays out three pillars. In addition to accelerating AI innovation and leading in international AI diplomacy and security, one of the pillars is building

American AI infrastructure. The very first recommended policy action under this pillar is streamlining the permitting of data centers.

The recommended policy actions include: establishing Categorical Exclusions under the National Environmental Policy Act (NEPA), meaning that environmental assessments and impact statements are unnecessary because the activity does not have a significant effect on the environment; exploring a nationwide Clean Water Act Section 404 permit for data centers that does not require a Pre-Construction Notification; and expediting permits under other acts including the Clean Air Act and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, a/k/a Superfund).

In short, the current administration is seeking to deregulate the data center environment to allow for the construction of more, and larger, data centers to fuel the rise of homegrown AI.

1 https://www.bisnow.com/national/news/data-center/meta-to-spend-hundred-of-billions-of-dollars-building-manhattan-sized-data-center-campuses-130140?utm_source=outbound_pub_23&utm_campaign=outbound_issue_87496&utm_content=outbound_link_2&utm_medium=email

2 <https://time.com/7273288/amazon-anthropic-openai-microsoft-stargate-datacenters/>

3 <https://www.spglobal.com/market-intelligence/en/news-insights/research/potential-impacts-of-deepseek-on-datacenters-and-energy-demand>

4 <https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf>

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Other Constraints Remain

Even if federal regulations are largely minimized, state and local regulations will remain in play. An earlier draft of the “One Big Beautiful Bill Act” would have preempted state and local regulation of AI. However, that provision did not make it into the final bill.⁵ That means companies may have to navigate local regulatory environments.

Beyond regulations themselves, the threat of litigation also looms for data centers. Some litigation is already underway. For example, Elon Musk’s AI company, xAI, has faced a lawsuit at its data center in Memphis, Tennessee, over claims of air pollution by gas-fired generators.⁶ Similar environmental-based lawsuits have been filed against companies behind data

centers in states from New York⁷ and Oklahoma⁸ to Virginia⁹ and California.¹⁰

Besides regulations and potential lawsuits, another issue confronting the construction of data centers is the limited capacity of America’s electrical grid. In the face of overloaded grids, some companies are seeking to generate their own power on-site. But even then, utility companies might not favor such arrangements.¹¹ Like everyone else, utility companies are coming to grips with the rise of AI, including how to meet rocketing energy demands.

What Comes Next?

The titans of the tech industry will continue investing into data centers. With the federal government looking to “cut the red tape” as much as possible, companies building data centers might need to focus on meeting

state and local regulations while ensuring that energy needs can be met.

Author:

Kenneth Duvall

A partner with over a decade of experience, Ken Duvall’s practice spans a variety of areas. Ken has handled commercial and financial litigation including mortgage backed securities cases, high-stakes insurance disputes such as director-and-officer claims, a wide range of real estate and land use matters, and product liability controversies including wrongful death actions. Comfortable in both federal and state courts, Ken has appeared before trial court judges across the country, from California to New York and Minnesota to Texas. As a former appellate clerk, Ken is also at ease handling appeals. In addition, Ken serves as Assistant General Counsel for Bilzin Sumberg.



5 <https://www.nlc.org/article/2025/07/11/local-impacts-from-congress-one-big-beautiful-bill/>

6 <https://www.newsweek.com/elon-musks-ai-data-center-faces-lawsuit-over-air-pollution-complaints-2087032>.

7 <https://www.wxxinews.org/local-news/2025-07-02/lawsuit-targets-data-center-proposed-for-genesee-county-industrial-park>

8 https://www.youtube.com/watch?v=v_AzE0t2RPI

9 <https://www.youtube.com/watch?v=3UgKl18Iyjo>

10 <https://biologicaldiversity.org/programs/urban/pdfs/Verified-Petition-for-Writ-of-Mandate-and-Complaint-Final-w-exhibits.pdf>

11 https://www.bisnow.com/national/news/data-center/utilities-slowing-development-of-self-powered-data-centers-130127?utm_source=outbound_pub_23&utm_campaign=outbound_issue_87496&utm_content=outbound_link_13&utm_medium=email

We are proud to be the recipient of the 2025 ACC Leadership Award - Best Partnership Program in recognition of our collaborative event with the University of Miami School of Law - “What Does it Mean to Work ‘In-House?’” Our chapter is committed to strengthening our in-house community and the next generation of lawyers.



EVENT PHOTOS

A Night of Magic & Mystery – Presented by Nelson Mullins



Mini MBA – Presented by Foley & Lardner



Cake Decorating – Presented by Gunster



2025 ACC Annual Meeting



GC/CLO Dinner – Presented by Shook, Hardy & Bacon



New Member Happy Hour



Palm Beach Food Bank Community Service Event



NEW BOARD MEMBER SPOTLIGHT



Christian Zinn

Senior Legal Counsel, Embraer

How long have you been an ACC South Florida member?

Since 2016

Why did you join the ACC?

I joined because it is an excellent organization for in-house folks to be able to network and have access to resources that make our lives easier.

What is a typical day like for you at Embraer?

Is there such a thing as a "typical" day for us in-house folks? At Embraer, I am responsible for US Labor & Employment law, US Corporate, Global Indirect Procurement, US Litigation, supporting our Non-Profit Embraer Foundation, and whatever else comes through the door.

What do you most enjoy about being in-house?

The thing I enjoy the most about being in-house is the variety of work that I do. I came up as a Labor and Employment lawyer.

Since going in-house, I am more of a jack of all trades and continue to grow in the various areas that I support.

When you're not working, where would we find you?

When not working, I am a proud member of the Indian Princess and Adventure Guide programs with my daughter and son. We go camping and spend time just fathers and daughters, or fathers and sons. It is a great way for me to get to know each of my children as they grow. I am also an avid Inter Miami fan (season ticket holder since day 1). As I write this Inter is on the cusp of playing in the MLS Finals...so I'll be very excited or quite sad next weekend. I'm going with very excited!

What's your favorite quote right now?

No good deed goes unpunished.

Tell us something that might surprise us about you.

This will ruin my ice breaker of, "if you guess where I was born, I'll buy you the first drink," but it surprises most people that I am originally from Argentina.



MEET OUR NEW Board Members



Andrea De Lima
PriceSmart, Inc.



Rob Siegel
NCCI



Christian Zinn
Embraer

We're Getting SOCIAL!

You can find updates, event information and more at:



accsouthflorida



@accsouthflorida



ACC South Florida
Chapter

ACC South Florida Upcoming Events

JANUARY

JANUARY 13

Legal Services of Greater Miami: Divorce Clinic
(Pro Bono Event)

JANUARY 22

CLE + Cooking Class – Presented by DLA Piper

FEBRUARY

FEBRUARY 11

Social Event – Presented by FTI Consulting

FEBRUARY 26

Member Appreciation Event – Panthers vs Maple Leafs

FEBRUARY 28

Big Brother Big Sister Impact Activity at Top Golf
(Community Service Event)

MARCH

March 11

Social Event – Presented by Bilzin Sumberg



Sponsors for 2025

Platinum

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Akerman
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Chane Socarras PLLC

Fox Rothschild
Heise Suarez Melville PA
Hodgson Russ LLP
Jones Walker LLP

Bronze

K&L Gates
Latitude
Reed Smith
Robert Half Legal

The Law Offices of
Stephen James Binhak,
PLLC
White & Case LLP
WhiteFord

Miami-Dade Progressive Dinner

Shook Hardy and Bacon, LLP (Premier)
DLA Piper (Dinner)
Carlton Fields (Dessert)

Social Event

FTI Consulting

GC/CLO Dinner

Shook, Hardy and Bacon, LLP
Carlton Fields

Mini MBA

Foley & Lardner

Social Event + CLE

DLA Piper
Squire Patton Boggs

Women's Event

Fisher Phillips

Holiday Party

Barnes & Thornburg (Palm Beach)
Cozen O'Connor (Miami)

Newsletter Article

Barnes & Thornburg
Pavese Law Firm

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Executive Director

Christina Kim

Christina Kim
Executive Director

Executive Director Note

Dear Members,

The stretch between the first day of school and Christmas Eve is what I affectionately call the “Year-End Sprint.” It’s that whirlwind season when chaos settles in, holidays blur together, and stores somehow offer Halloween candy, Thanksgiving décor, and Christmas trees all at once (Costco had theirs out in August!).

School events, work obligations, and year-end projects pile up, and it feels like everything is happening simultaneously.

Then, finally, by mid-December, the world starts to quiet down. You get a moment to breathe, soak in the holiday spirit, sing along to the Holly channel in the car, and treat yourself to a praline-ginger-eggnog-chestnut specialty drink from Starbucks - yes, the one that somehow costs \$15 but feels worth it.

Our chapter has been in its own “Year-End Sprint,” filled with wonderful events to close out the year - from our Magic & Mystery evening and the ACC Annual Meeting to cake decorating workshops, community service projects, Mini MBA sessions, and more. And we’re not slowing down. Planning for Q1 2026 is already underway, including our Member Appreciation Event at the Panthers vs. Maple Leafs game on February 26 - mark your calendars!

This year also marks my 10th anniversary as Executive Director of our chapter, and I can truly say that each year gets better than the last. Our Board continues to prioritize enhancing the member experience, our sponsors consistently create innovative and engaging programs, and our members show up with enthusiasm that makes this community so special. I’m excited to see what 2026 has in store.

Wishing you and your loved ones a healthy, joyful holiday season and a wonderful start to the new year!

Sincerely,

Christina Y. Kim

Executive Director, ACC South Florida



Christina & Family