

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

CORY R. KAPRAL,

Plaintiff,

v.

Case No: 8:13-cv-2967-T-36AAS

GEICO INDEMNITY COMPANY,

Defendant.

ORDER

THIS CAUSE comes before the Court on Plaintiff's Cory Kapral's Motion for New Trial (Doc. 277) and Defendant GEICO Indemnity Company's Response (Doc. 284). Having considered the Motion, Response, and relevant law, the Court concludes the Motion should be denied.

Plaintiff argues the Court should grant a new trial because the Court (1) improperly directed a verdict on his inadequate defense claim; (2) gave or failed to give proper jury instructions; and (3) disregarded a prior summary judgment order by allowing Defendant to argue a legally invalid affirmative defense. Only the first of these arguments merit discussion.¹

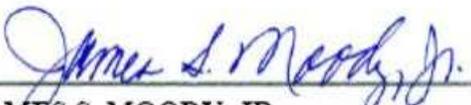
Plaintiff's argument that one of his defense counsel—who did not represent Plaintiff in the underlying trial—was negligent does not state a claim against Defendant for

¹ The Court denies the second and third arguments for the reasons stated on the record and the reasons argued in GEICO's response.

providing an inadequate defense. That is because Defendant cannot be held vicariously liable for the professional negligence of the independent defense counsel it provided; rather, Defendant satisfied its obligations by providing competent counsel who can adequately defend Plaintiff. *Marlin v. State Farm Mut. Auto. Ins. Co.*, 761 So. 2d 380, 381 (Fla. Dist. Ct. App. 2000) (citing *Aetna Cas. & Sur. Co. v. Protective Nat. Ins. Co. of Omaha*, 631 So. 2d 305, 306 (Fla. Dist. Ct. App. 1993), *on reh'g in part* (Feb. 8, 1994)); and *Zurich Am. Ins. Co. v. Frankel Enterprises*, 287 F. App'x 775, 779 (11th Cir. 2008). Thus, the Court did not err in directing a verdict in favor of Defendant on this count.

Accordingly, it is ORDERED AND ADJUDGED that Plaintiff's Motion for New Trial (Doc. 277) is DENIED.

DONE and **ORDERED** in Tampa, Florida, this 9th day of March, 2017.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record