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Big Win for Palm Beach County School Board Reduces Exposure

WE'RE PLEASED to report a big win on behalf of the School Board in Palm Beach County, and we won on every single issue.

The claimant was a teacher who claimed multiple injuries due to a book falling on her while cleaning up a classroom. She wanted to doctor shop, and it was heavily litigated to trial with Philip Thompson.

Our litigation saved the employer large exposure for potential medical care, including injection recommendations from their IME on the neck and lost wages.

The caption is Carol Robbins-Garrett v. PBCSB in West Palm Beach court with Judge Shelly Punancy presiding. *- Greg R. Margre, Esq.*



Gregory Margre

ILSA Claims Significantly Limited Against Realtors

WLSC not only recently won a huge appeal in the Eleventh Circuit, but was also a part of a landmark decision which will now help to limit ILSA actions against real estate agents.

The Interstate Land Sales Full Disclosure Act is a Federal consumer protection statute which requires that, prior to the purchase of property, a buyer must be informed of facts which would enable a reasonable person to make an informed decision about purchasing the property. Failure to comply with the notice requirements under the Act results in strict liability for a developer and/or agents of the developer.

The buyers filed an ILSA action against a real estate agent for the developer's failure to comply with ILSA's notice requirements even though the agent was not a party to the contract between the buyers and the developer and had acted solely in his capacity as a realtor. The trial court entered summary judgment in favor of the realtor, finding that, based on traditional agency principles, the real estate agent, who had no personal involvement in the ILSA violations, could not be held liable.

The buyers appealed this decision to the

Eleventh Circuit. Without hearing oral argument, the Eleventh Circuit issued a per curiam opinion affirming the trial court's decision. Finding that ILSA "distinguishes between agents who effect a sale, as opposed to those involved in the transaction in other ways," the Court held that the realtor simply acted in his role as salesperson, did not actually sell the property, and did not act in a misleading or fraudulent manner in his role as salesperson.

The Eleventh Circuit's decision has a significant limiting effect on ILSA claims against realtors. The decision now prevents remorseful buyers from bringing suit against real estate agents who have no control over

a developer's contract with a buyer and cannot ensure compliance with ILSA. The Eleventh Circuit did the right thing by limiting the scope of ILSA defendants and making it more difficult to bring ILSA claims against real estate agents who are simply doing their job. WLSC is proud to have had a part in such a significant development in ILSA case law.

John P. Joy (Ft. Lauderdale) and Sara M. Sandler (Ft. Lauderdale) successfully defended the case on appeal.

"The Eleventh Circuit did the right thing by limiting the scope of ILSA defendants and making it more difficult to bring ILSA claims against real estate agents who are simply doing their job."

Big Win at Trial for Employer Hospital

Beverly Hires v. Columbia Hospital, accident date April 24, 2009; tried in West Palm Beach.

Senior Partner Gregg Margre prevailed in a highly litigated and contested matter involving the denial of compensability of an injured worker's left foot condition. The claimant, a nurse, claimed a left foot injury approximately one year after sustaining a compensable left knee condition, which happened to coincide with the breakdown of settlement negotiations at a mediation.

The injured worker did not complain about any type of left foot complaints until well after her initial April 2009 work injury to her knee. However she claimed the foot injury happened at the time of the initial knee injury in April 2009, but focused on her knee.

The parties each obtained independent medical exams of the foot with foot orthopedic doctors. Mr. Margre obtained an IME from a Harvard-trained specialist who opined that the complaints of the foot were degenerative and unrelated to any type of twisting knee injury.

The claimant's attorney argued that the claimant sustained a lisfranc fracture from the original incident which had worsened.

The case was heard before Judge Shelley Punancy and



Columbia Hospital.

the claimant appeared live for testimony at hearing. She accepted the opinions of Mr. Margre's expert and his oral argument over that of opposing counsel. The win has saved the hospital employer many thousands of dollars in medical care and a request for a future surgery.

FLORIDA

New Florida Rules for Workers' Compensation Aim to Speed Bureaucracy

The Division of Administrative Hearings amended the Florida 60Q Rules of Procedure for Workers' Compensation Adjudications effective October 31, 2010 in an effort to advance a more efficient and self-executing workers' compensation system. Some highlights include:

- Motion hearings will not be held except in exceptional circumstances and for good cause shown, a dramatic shift away from face-to-face interaction with the JCC. Written motions will be normally disposed after the response is filed or after the response period has expired, based on all supporting documentation filed. See Fla. Admin. Code R. 60Q-6.115(4).
- The E/C may now file a motion to require the Claimant to file a verified motion for attorney's fees and costs and request adjudication. See

- Fla. Admin. Code R. 60Q-6.107(4).
- Failure to attend a mediation without good cause or full authority to resolve the issues shall subject the party *or the attorney* to sanctions. See Fla. Admin. Code R. 60Q-6.110(6).
- Any claims that are ripe, due, and owing, and all available defenses not raised in the pretrial stipulation are waived unless amended by the judge for good cause. See Fla. Admin. Code R. 60Q-6.113(2)(a).
- Impeachment/rebuttal witness and exhibits must be identified in the pretrial stipulation and trial brief memorandum. See Fla. Admin. Code R. 60Q-6.113(2)(d) and 60Q-6.116(7).
- No discovery shall be permitted within 10 days of the final hearing absent prior approval by the judge for good cause shown or by agree-

ment of the parties. See Fla. Admin. Code R. 60Q-6.113(7).

The revisions encourage electronic filing and promote a motion-based system, allowing judges to rule on issues without hearings.

The Employer/Carrier's newly established ability to push for a resolution of pending attorney's fees and costs eliminates potential unnecessary delays and closes the procedural loophole used by claimant's attorneys to use time as an additional bargaining tool. In addition, the new rules promote meaningful pretrial stipulations, streamline cases, and avoid surprises at the time of final hearing. The Amended Rules also maximize Judicial resources by offering video teleconference and/or video testimony.

For a complete review of the new rules, see www.flrules.org.

MIAMI-DADE COUNTY

Withering Cross-Examination Causes Claimant to Contradict Self; WLSC Wins for Seaboard Marine



Bernard I. Probst is a Senior Partner and Ian S. Ronderos is an associate in the Miami Office of Walton Lantaff.



Port of Miami.

On September 2, 2010, Bernard Probst and Ian Ronderos tried the workers' compensation case of Ofelio Horta v. Seaboard Marine. The Claimant, a dockworker, alleged that he injured his arm while climbing onto his work truck at Seaboard Marine's place of business the Port of Miami.

The Claimant was terminated by the Employer because the Employer determined that the Claimant was actually injured while engaged in a work place fight with a co-worker. In a devastating cross-examination, Mr. Probst confronted the Claimant with his own Final Hearing and deposition testimony that he did not get in a fight or throw a punch.

Mr. Probst then played for the Court a videotape of the Claimant punching a co-worker whilst brawling with him.

The Claimant could not provide the Court with any explanation whatsoever for his inconsistent testimony and clung to his obviously falsified testimony that

he did not throw a punch.

Mr. Probst also impeached one of the Claimant's co-workers with a prior written statement that the Claimant was injured in a workplace fight, when this co-worker attempted to testify at Final Hearing that he was not sure if the Claimant was injured in a fight. On September 23, 2010, the Honorable Judge Sylvia Medina-Shore issued a Final Compensation Order determining that the Claimant's injuries were not compensable.

Opposing counsel filed a Motion for Rehearing, arguing that, even though the Claimant was injured in a fight, the injuries were still compensable.

Recognizing that the Claimant had completely changed its position concerning how the subject injury occurred, Judge Medina-Shore entered an Amended Compensation Order even more strongly in favor of the Employer/Carrier.

Benefits Forfeited as WLSC Proves Forged Prescription

Her Tail Bone May Be Connected to Her Wrist Bone, But It Wasn't Close Enough.

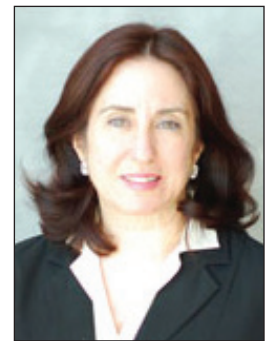
On October 20, 2010, Bernard Probst, Cristina Brodermann, and Ian Ronderos tried the workers' compensation fraud case of Ivonne Hunter v. Mercy Hospital before Judge Charles M. Hill. Ms. Hunter had altered a doctor's prescription form for a CT scan of her wrist, so as to include her cervical and lumbar spine in the CT scan.

Claimant claimed that a receptionist spoke to a doctor while Claimant was on the phone, and Claimant heard the doctor give permission to add in the additional body parts.

At Final Hearing, Mr. Probst confronted the Claimant with the numerous internal inconsistencies within her sworn statement, deposition testimony, and Merits Hearing testimony. Furthermore, Mr. Probst, Ms. Brodermann, and Mr. Ronderos presented the Judge Hill

with overwhelming evidence from authorized treating providers, the COO of the authorized treating clinic, a Human Resources witness from University of Miami (establishing Claimant had been previously terminated for falsifying employment records), Mercy Hospital's Workers' Compensation Manager, and a private investigator, which conclusively demonstrated that the Claimant did not have permission to alter the subject script and did so intentionally, in order to secure a workers' compensation benefit.

On November 30, 2010, Judge Hill held a ruling conference, wherein he ruled that the Claimant intentionally committed a misrepresentation in order to secure a benefit and, thereby, forfeited her entitlement to benefits per the workers' compensation fraud defense.



Cristina Brodermann

WLSC Protects Insurer from Baseless Liability Claim

SUCCESSFUL APPEAL OF SUMMARY JUDGMENT FAVORS GEICO



Tom Caldwell



Stephanie Bandy

GEICO Insurance Company, represented by Tom Caldwell and Stephanie Bandy of Walton Lantaff Schroeder and Carson, successfully appealed a summary judgment entered against it by a Miami-Dade Court.

Plaintiff Sanchez, a Miami lawyer, sued GEICO claiming that GEICO violated Florida law by failing to provide him with a required notice that his policy of automobile insurance was about to expire.

Sanchez did not pay his renewal premium when due, allegedly because he did not get any notice from GEICO, and consequently his policy lapsed. When Sanchez tried to renew with GEICO he was quoted a considerably higher premium because he no longer qualified for a preferred rate.

Sanchez got replacement coverage from another insurer for a substantially higher premium than he had been paying which provided the basis for him to allege in his lawsuit that GEICO's alleged failure to notify him that his policy was about to expire, and the amount of premium due, caused him to suffer monetary damages.

GEICO denied the allegations made by Sanchez and asserted that his claim failed to state a cause of action. On the eve of trial Sanchez



convinced the trial judge to enter a summary judgment in his favor which GEICO promptly appealed. The appellate court reversed the summary judgment finding that there was an issue of fact that should have precluded the trial court from entering a summary judgment for the Plaintiff.

In its opinion the appellate court also agreed with GEICO's argument that under the law of Florida that even if the factual allegations of Sanchez's lawsuit were correct that he still would not be entitled to monetary damages from GEICO thus paving the way for GEICO to ultimately prevail upon remand to the trial court.
— Tom Caldwell

The partners and staff of Walton Lantaff Schroeder & Carson wish you and your family the happiest of holidays and a VICTORIOUS 2011





ON THE WEB:
marccoalition.com.

FEDERAL AGENCY WATCH

Medicare Reporting Requirement Delayed

CMS extends current thresholds for Mandatory Insurer Reporting under Medicare Secondary Payer Act

RISK MANAGERS can rest easy for a little while longer. On November 9th the Centers for Medicare & Medicaid Services (CMS) announced that it will delay enforcement of TPOC (total payment obligation to the claimant) reporting in liability-only cases in a new "Alert" that will supersede the deadlines currently contained in their User Guide (Version 3.1).

In addition, the thresholds for reporting have been extended for an additional calendar year.

These changes indicate that CMS is aware of the problems of implementation of strongly punitive reporting requirements which come with a \$1,000-per-day, per-claimant penalties.

— Michele E. Ready



Pre-existing damage to a home had not been disclosed at closing.

Huge Liability Win for Insurer

Alienated Premises Exclusion Applies to Damage Occurring Subsequent to Property Sale

In a marathon-like victory, requiring three hearings and over four hours of argument for summary judgment, Judge Edward Fine granted final summary judgment in favor of the insurer based on the alienated premises exclusion.



Here, the buyers of property brought suit against the insured for damages arising out of the insured's misrepresentations as to the condition of the home. Damage to the property existed prior to the sale of the home, but the buyers did not incur damage until they acquired the property.

In the declaratory judgment action that followed, the buyers argued that the relevant case law required property damage to occur after the sale of the property before the alienated premises exclusion could apply. In response, we argued that it was irrelevant when the property damage occurred, so long as the damage arose out of the sale of the property, which was the clear and unambiguous reading of the exclusion.

Judge Fine ruled in favor of the insurer, finding there was no duty to defend or indemnify the insured in the suit brought against him by the buyers, following receipt of numerous binders full of case law and supplemental memorandums which was read in their entirety by the Judge. This was a huge win, as the potential exposure to the insurer exceeded \$16 million.

John P. Joy (Ft. Lauderdale), Kelly M. Corcoran (Ft. Lauderdale), and Sara M. Sandler (Ft. Lauderdale) successfully represented the insurer in the declaratory judgment action.

2011 Workers' Compensation & Liability Seminars

Call Linda Fullwood to register at (561) 689-6700. Visit www.Waltonlantaff.com for updates.



FOUR LOCATIONS FOR 2011

Fort Lauderdale January 20, 2011
Marriott North, 6650 N. Andrews Ave., Ft. Laud.

Tampa February 3, 2011
Hilton Tampa Airport Westshore,
2225 N. Lois Ave., Tampa

Tallahassee March 10, 2011
Residence Inn, 600 W. Gaines Street, Tallahassee

Lake Mary Date TBA

9 a.m. to 4 p.m. PROGRAM

- **9-10 a.m. PLENARY 1:** "What do They Think We Do Right or Do Wrong in Claims Handling"
- **10-noon BREAKOUT 1:** Worker's Compensation Law or Liability Law.
- **Noon-1 p.m. LUNCH:** Complimentary lunch.
- **1-2 p.m. BREAKOUT 2:** Workers Compensation Case Law Update or Liability Case Law Update.
- **2-4 p.m. PLENARY 2:** *An Update of Medicare Reporting and MSA requirements, a Discussion of How to Handle the Difficult Party, and a Discussion of Chiropractic Fraud, and more.*
- **NETWORKING MIXER:** Followed by complimentary cocktail hour.
For details visit www.WaltonLantaff.com