

WALTON LANTAFF SCHROEDER & CARSON LLP

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YOUR PARTNERS IN RISK MANAGEMENT

PALM BEACH COUNTY

Aggressive strategy leads to big win in property liability case

Managing Partner Rosenblum fights for Universal Property, grabs victory against odds

A poorly installed ceiling fan spontaneously fell and struck the tenant of a South Florida rental condominium, who was hospitalized as a result of the accident. The tenant sustained a laceration over the right eye requiring suturing in the emergency room and leaving a one-inch scar. The tenant brought suit against her landlord who did not install the fan. A Jury Trial was held in Palm Beach County. The landlord's insurer, Universal Property and Casualty Insurance Company, elected to make no more than

a nuisance offer on the case and proceeded to Trial. Despite adverse Trial rulings by the Judge, the Jury returned a verdict of no negligence on the part of the defendant.

Walton Lantaff's Managing Partner Richard Rosenblum obtained this defense verdict on behalf of the new owners and their insurance carrier, Universal Property and Casualty Insurance Company, with the assistance of associate Thomas Fabricio, both from the firm's

LIABILITY continues on next page...



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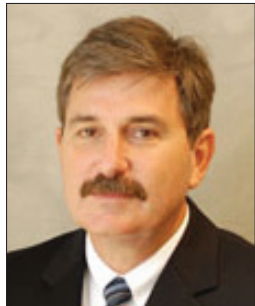
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Richard Rosenblum,
Esq.



Tom Fabricio, Esq.

MIAMI-DADE COUNTY

\$350/hr for W/C Work? Excessive Fee Request Rebuffed

Strong Defense at Trial by WLSC Keeps Claimant Counsel's Hand Out of Cookie Jar



In this 2001 claim, years went by without the Employer/Carrier furnishing medical treatment or benefits to the Claimant. A petition was filed, and the E/C timely asserted the statute of limitations defense.

At trial, the judge found that an Order issued in 2007 dismissing all Petitions from DOAH was unsigned and technically did not dismiss all Petitions and thus, the statute had not run in this claim. Therefore, the Claim-

FEE PETITION continues on Page 3...



Allison Chittem Hartnett,
Esq.

WLSC Victory Against Odds for Universal in Ceiling Fan Case

LIABILITY from front page

Fort Lauderdale office.

The fan had been installed by the prior owner without required permits and inspections. Plaintiff argued that the defendants failed to inspect the premises and that such an inspection would have revealed the admittedly dangerous installation. No permits were pulled for the installation, or when the insureds began to rent the property.

Plaintiff argued that the lack of mandatory permits for the installation, as well as the lack of permits required of all landlords in this municipality, was a statutory violation. Under Florida law, a statutory or code violation can be used as evidence of negligence.

Plaintiff contended that not only were the lack of permits evidence of negligence, but that the burden of proof should be shifted from the plaintiff to the defense. This would have meant that the plaintiff did not need to prove the insureds were negligent, obviously a key issue.

Mr. Rosenblum said, “there was no question that the fan, mounted by the prior owner in the master bedroom of the condo had been improperly mounted, so we decided to stipulate to the Court and Jury that the installation was improper. This preserved our credibility with the Jury to argue fault, causation and damages.” Mr. Rosenblum also noted that the Trial Judge made his job harder by making a significant ruling in favor of the plaintiff.

The Judge suggested to plaintiff’s counsel, at the close of the evidence, that plaintiff move for Directed Verdict on the issue of lack of comparative negligence. Upon the Judge’s prompting, plaintiff’s counsel immediately made the Motion for Directed Verdict, which the Judge granted. This ruling voided the defense’s ability to argue that the tenant’s damages should be



*A previous unit owner’s
shoddy ceiling fan
installation failed, injuring
the new owner’s tenant.
A jury found the new owner
was not negligent.*

reduced by her own comparative negligence. As a result, the only question for the Jury other than damages was whether the insureds were negligent.

Plaintiff then argued that *Res Ipsa Loquitur*, a rule of evidence, should apply. *Res Ipsa* is used when the plaintiff is injured in a situation where the defendants have exclusive control of the instrumentality causing the injury, the plaintiff is without negligence and the accident would not have occurred

without negligence. “It is, in essence, a method to impose strict liability,” said Mr. Rosenblum. “If anyone had control of the fan, it was the plaintiff.” This time the Judge ruled for the defense, and the *Res Ipsa* motion was denied.

But, the defense faced another hurdle. The insureds had lost an inspection report generated when they had purchased the unit several years before the date of loss. The tenant argued that the loss of this report amounted to spoliation (loss of evidence). Whether accidental or intentional, a finding of spoliation could have created a presumption that the report contained information detrimental to the owners in regard to the fan, again creating a legal presumption of negligence. Again, the plaintiff’s attorneys failed in their attempt to establish the owner’s negligence.

In this significant case, where the past medical expenses alone exceeded \$31,000, the tenant asserted she had sustained a vitreous detachment in the right eye with resulting loss of visual acuity, partial loss of peripheral vision and that she now suffered from floaters. She also claimed she was at heightened risk for a future retinal detachment.

Her neurologist opined that in addition to the injury, she suffered from Post Concussion Syndrome with accompanying memory loss, mental confusion and headaches. She also complained of neck pain and aggravation of pre-existing anxiety and depression.

After closing arguments, wherein Mr. Rosenblum cogently made the case that the owners were not negligent, the Jury deliberated for less than two hours before finding for the owners and returning a Defense Verdict. As the tenant could not prevail, even with a Directed Verdict in her favor on comparative negligence, plaintiff attorneys have not appealed.



Movers and Shakers

Walton Lantaff Miami Associate Elisa Terraferma was recently certified by the State of Florida as a family law mediator.

Please E-mail Elisa via eterraferma@waltonlantaff.com.

MIAMI-DADE

FORT LAUDERDALE

Claimant Counsel's Hand Kept Out of Fee Cookie Jar

FEE PETITION from front page

ant's attorney was entitled to an employer paid fee for benefits secured which amounted to an evaluation with a hernia specialist.

Thereafter, the parties attended a hearing seeking a judicial determination on the amount of a reasonable fee to be awarded to Claimant's attorney for securing medical benefits. The attorney was seeking an hourly fee based upon hours expended in the claim, in the range of \$18,000.

This was based upon a rate of \$300-320 an hour for the work performed. Miami Senior Partner, Allison Hartnett, testified on behalf of the E/C that the fee should be limited to compensate for the attorney time that was necessary to obtain the benefits. Furthermore, she argued that the hourly award, even in Miami, for this type of case should be in the range of \$150 to \$250 an hour.

Having heard the defense argument that the quality of legal services rendered did not support the rates sought, Judge Medina Shore entered an Order finding that a rate of \$150/hour was a reasonable fee (for the services rendered to the Claimant in this type of case) and the judge ordered that the \$150 hourly rate should be applied to only 33.4 of the 56.4 hours claimed.

This case sets a new defense oriented precedent, and establishes that not all claims in Miami warrant an hourly fee in the range of \$300 an hour-- as the attorneys in Miami like to assert.

This case can assist employers and carriers in settling fee claims for pre 2009 claims because they can point to an Order where a Miami judge has recently found \$150 an hour to be a reasonable community hourly rate.

For copies of this useful decision, please contact Allison Hartnett at 305-671-1395, or ahartnett@waltonlantaff.com.

Liability for Messy Mortgage Mistake Ended when Statute of Limitations Kicked In

Motion for Summary Judgment Granted on Statute of Limitations Grounds

Senior Partner Deborah FitzGerald and Associate Kelly Vogt recently obtained a Summary Judgment in a legal malpractice action in favor of their lawyer client. The action was pending in the 20th Judicial Circuit in Naples, FL.

WLSC was retained by a prominent liability insurance carrier to defend its Insured's lawyer in a professional malpractice action stemming from a real estate transaction in which the lawyer satisfied a different mortgage than was intended. The prospects for the malpractice carrier were bleak.

Pulling the proverbial rabbit out of the hat, the WLSC team argued the statute of limitations barred the plaintiff's claims as the plaintiff knew of the negligent act and suffered redressable harm no later than when

the plaintiff's subsequent counsel wrote a letter outlining the damages the plaintiff had sustained and would sustain. The action was filed more than 2-1/2 years after the letter. The Plaintiff argued the statute did not begin to run until he straightened out the mortgages as he might never suffer a loss if the mortgage rate he obtained was lower.

In accepting the Defense's SOL argument, the Court found the statute was triggered when the mortgage was satisfied and some damage had been incurred as a result, even though the full measure of damage was unknown until much later.

Ms. FitzGerald and Ms. Vogt concentrate in the defense of professionals, including lawyers, accountants, real estate brokers and agents, and appraisers.



Deborah Poore Fitzgerald, Esq.



Kelly Vogt, Esq.



"Pulling the proverbial rabbit out of the hat, the WLSC team argued the statute of limitations barred the plaintiff's claims"

Deep Roots, Broad Reach, Local Knowledge:



Armstrong



Massey



Sperounes



Berglund



Kaufer



Margre

Dream Team Enjoys Challenges of Serving the Counties of Beautiful Central and North Florida

WLS&C is pleased to announce that the following Partners, Associates, and Paralegal are partnering with the Orlando office in our expansion of services and continuing efforts to provide the highest quality legal services in all areas of the law to meet our clients' needs:

PARTNERS

■ **Jim Armstrong** – Mr. Armstrong's primary area of practice involves all aspects of civil litigation with emphasis in the areas of Florida Workers' Compensation claims, Longshore and Harbor Workers' Compensation Act cases and general civil litigation, including personal injury cases. Prior to joining the firm, Mr. Armstrong was a Senior Civil Litigator for the CNA Insurance Companies in the South Florida Office.

■ **Mark A. Massey** – Mr. Massey has 24 years of experience handling all aspects of defense work including Workers' Compensation defense and General Liability Defense. He has been Board Certified in Workers' Compensation Law since 1997. Additionally, Mr. Massey's experience in over fifty appeals includes several important precedent-setting decisions.

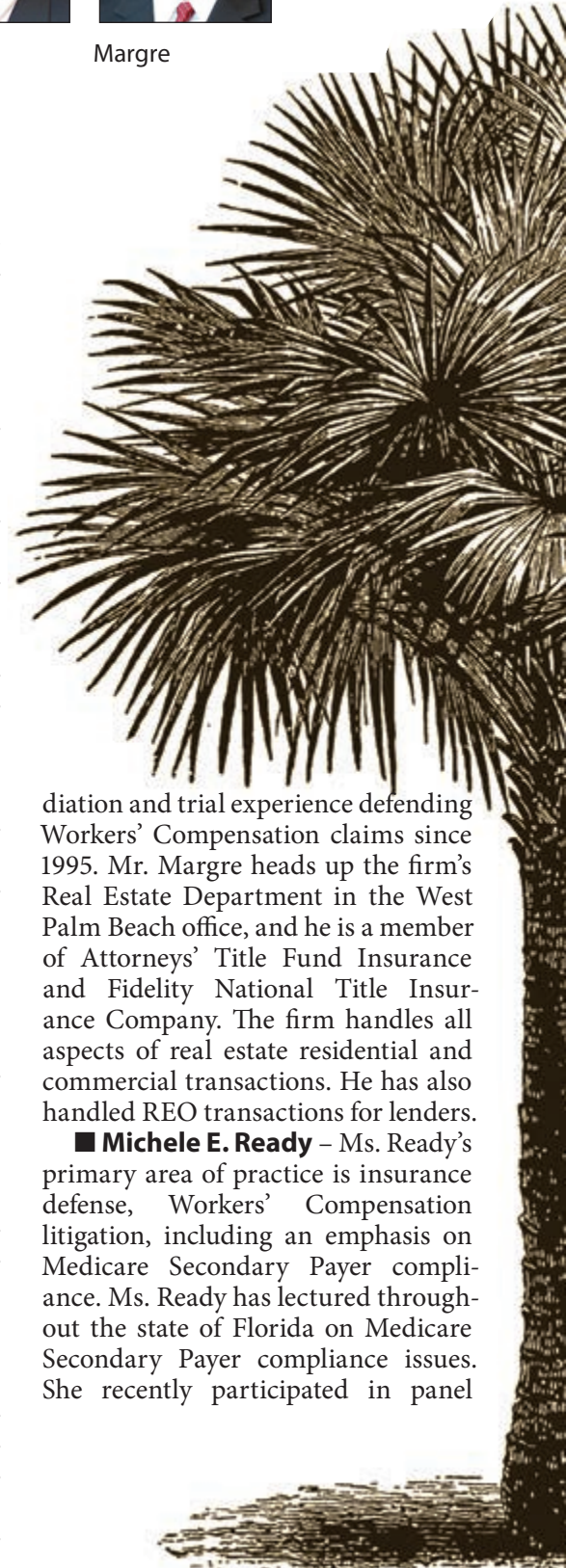
■ **Michael S. Sperounes** – Mr. Sperounes' primary area of practice over the last twenty years involves all areas of insurance defense litigation, including: premises liability; construction accident and construction defect litigation; insurance coverage litigation; bad faith litigation; negligent security litigation; motor vehicle and trucking accident cases; products

liability; first party claims and litigation; professional malpractice; wrongful death litigation; sexual harassment/abuse and employment litigation; and subrogation. His experience prior to joining the firm includes working as a consultant with the United States Department of Justice investigating and combating liability and No-Fault fraud.

■ **Scott V. Berglund** – Mr. Berglund's primary area of practice has been in all aspects of Worker's Compensation since graduating law school in 1978, and exclusively practicing insurance defense representing self-insured government agencies, self-insured employers, self-insured funds, and commercial carriers since 1985.

■ **Stephen G. Kaufer** – Mr. Kaufer's primary area of practice involves insurance defense litigation with a focus on Workers' Compensation defense and liability litigation representing commercial carriers, employers, third party administrators, self-insured funds, and government agencies since 1994. In addition, he handles Commercial Real Estate matters to include litigation, contractual work and eviction. Prior to joining the Firm, Mr. Kaufer was corporate counsel for a multi-state third party administrator; handling matters regarding state compliance, the establishment of both homogenous and diverse self insured funds, as well as drafting contracts between the Funds and their members.

■ **Gregg R. Margre** – Mr. Margre's area of practice involves the defense of Workers' Compensation, liability cases, and property insurance defense claims. He has extensive me-



diation and trial experience defending Workers' Compensation claims since 1995. Mr. Margre heads up the firm's Real Estate Department in the West Palm Beach office, and he is a member of Attorneys' Title Fund Insurance and Fidelity National Title Insurance Company. The firm handles all aspects of real estate residential and commercial transactions. He has also handled REO transactions for lenders.

■ **Michele E. Ready** – Ms. Ready's primary area of practice is insurance defense, Workers' Compensation litigation, including an emphasis on Medicare Secondary Payer compliance. Ms. Ready has lectured throughout the state of Florida on Medicare Secondary Payer compliance issues. She recently participated in panel

Walton Lantaff Strengthens its Orlando Magic



Ready



Stravers



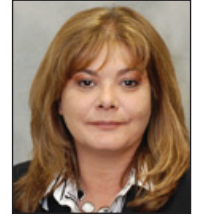
Wilder



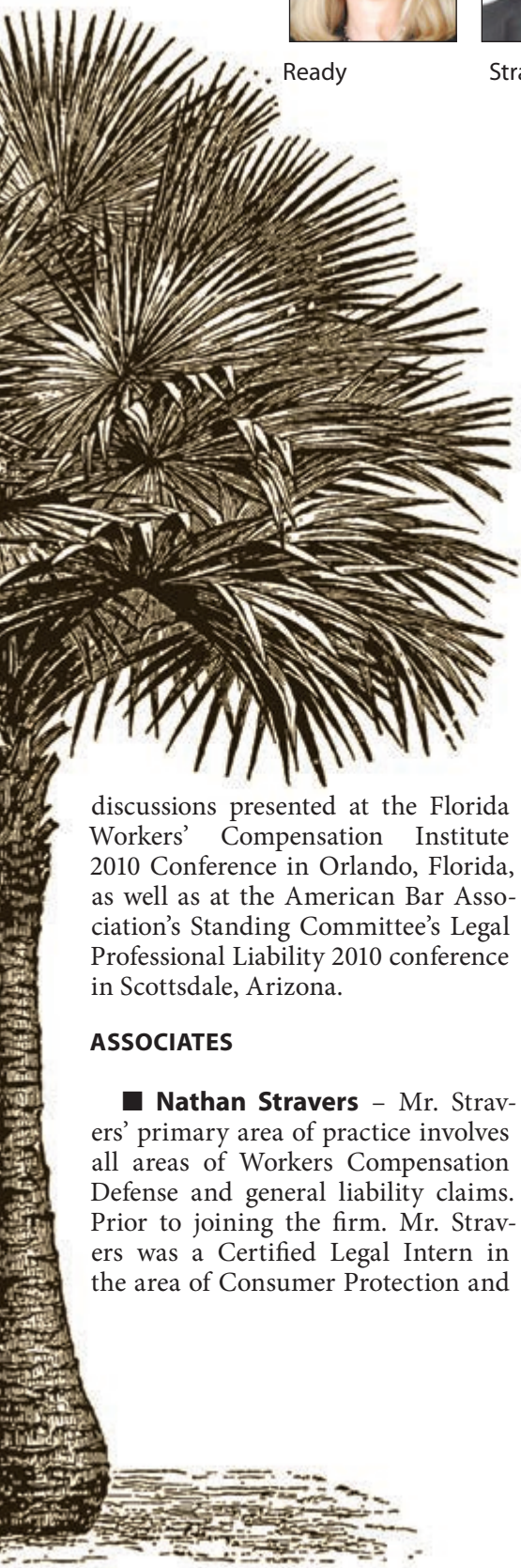
Bachoon



Bennett



Muralt



discussions presented at the Florida Workers' Compensation Institute 2010 Conference in Orlando, Florida, as well as at the American Bar Association's Standing Committee's Legal Professional Liability 2010 conference in Scottsdale, Arizona.

ASSOCIATES

■ **Nathan Stravers** – Mr. Stravers' primary area of practice involves all areas of Workers Compensation Defense and general liability claims. Prior to joining the firm, Mr. Stravers was a Certified Legal Intern in the area of Consumer Protection and

served as a Certified Legal Intern in Criminal Law for the State Attorney's Office of the Fourth Judicial Circuit in North Florida.

■ **Robert Wilder** - Mr. Wilder has been litigating in the areas of insurance and tort defense for the past 10 years. His experience includes premises liability, professional liability, construction accidents, construction defects, auto and trucking accidents, insurance coverage, bad faith, negligent security, products liability, defamation as well as commercial and employment litigation.

■ **Michele Bachoon** –Ms. Bachoon's primary area of practice involves Workers' Compensation, labor and employment law, first party insurance coverage litigation, including first party claims, appraisals and mediations. Ms. Bachoon also handles third party insurance defense litigation including personal injury and premises liability. Prior to joining the firm, Ms. Bachoon practiced labor and employment law, primarily dealing with discrimination cases and claims for unemployment compensation.

■ **Kelly R. Bennett** - Mrs. Bennett's primary area of practice involves Workers' Compensation defense, first party insurance coverage litigation,

family law, and criminal law. Prior to joining the Firm, Mrs. Bennett practiced civil defense, specializing in the areas of Dependency, Marchman Acts and Involuntary Civil Commitments (Jimmy Ryce Act).

■ **Linda Muralt** - Ms. Muralt's primary area of practice involves all areas of Workers' Compensation defense, insurance defense liability litigation, family law, and probate including Wills, Trusts, Estates, and Guardianships. Prior to joining the Firm, Ms. Muralt worked in the insurance industry for 18 years in sales, underwriting, service, and adjusting of medical as well as property and casualty claims.

PARALEGAL

■ **Armenthia Walker** – Ms. Walker has been working in the legal arena for over 30 years, including working for a Circuit Court Judge. After relocating to Florida she continued working in the field of law. Ms. Walker has experience in Workers' Compensation, civil litigation, personal injury, bankruptcy, and criminal law. Ms. Walker has worked as a paralegal for both claimant and defense attorneys.

FOR OVER 75 YEARS, Walton Lantaff Schroeder & Carson LLP has defended insurers and their insureds in an increasingly complex and challenging economic environment. The Firm's goal is to minimize our client's exposure and achieve the client's desired result. We are your partners in managing risk.

A simple operating philosophy has guided Walton Lantaff in its relationships with its clients: "To Provide Strong Advocacy for the Client While Maintaining the Highest Standards of Ethics and Professionalism." Walton Lantaff's attorneys continually expand their legal education beyond the core knowledge of the profession, so that they will always represent clients with a full understanding of the most current changes in the law, trial advocacy and negotiating strategies.

BROWARD COUNTY

No Coverage for Fatal Workplace Mishap

Experienced WLSC Team Argues Business Pursuits Exclusion Applies; Wins Case in Florida's 3rd DCA

As recently reported in our Fall 2011 newsletter, Senior Partner Jonathan Davis (Ft. Laud) and Associate Kelly Corcoran (Ft. Laud) obtained a Final Declaratory Judgment on behalf of the insurer in an action to determine insurance coverage for a wrongful death suit against the insured. The suit arose out of an incident in which the decedent was crushed while working on a truck. The insurer defended the insured in the wrongful death suit, and simultaneously filed a complaint for declaratory relief seeking a ruling that it had no duty to defend or indemnify the insured based on the business pursuits exclusion.



John P. Joy, Esq.



Sara Sandler, Esq.

business pursuits exclusion.

During the course of the declaratory action, the insured retained personal counsel; withdrew its request for a defense; and, discharged the defense counsel appointed by the insurer. Nonetheless, the insured's withdrawal of its request for a defense was stated to be without prejudice to whether the business pursuits exclusion applied to the claim.

The insurer moved for summary judgment and for judgment on the pleadings in the declaratory judgment action. The insured opposed these motions and simultaneously filed his own motion for summary judgment, argu-

ing that the trial court lacked jurisdiction to hear the pending declaratory judgment action based on the fact that the insured had withdrawn its request for a defense. The trial court granted the insurer's motions and denied the insured's motion, finding that the insurer had no duty under the policy to defend or indemnify the insured with regard to the suit based on the business pursuits exclusion.

The insured then appealed the trial court's ruling to the Third District Court of Appeal, arguing that the trial court lacked jurisdiction to make a ruling because the insured had withdrawn his request for a defense.

Senior Partner Jack Joy (Ft. Laud) and Junior Partner Sara Sandler (Ft. Laud) successfully defended the appeal, which presented an issue of first impression in Florida. In asserting that the trial court had jurisdiction to decide the case, WLSC argued

Florida law defines a business pursuit as 'a continuous and comprehensive activity for financial gain.'

that the insurer had an independent right under the Florida Declaratory Judgment Act to obtain a ruling with regard to whether it had a duty to defend or indemnify the insured with regard to the claim, even in situations where the insured had withdrawn its request for a defense. The firm further asserted that Florida law supported an insurer's right to obtain an early resolution of coverage issues; and, that preventing same would have prejudiced the insurer by making it subject to potential collusion between the claimant and the insured to create coverage that did not exist.

The Third District Court of Appeal agreed with the firm's arguments; ruled that the trial court had jurisdiction to decide the case; and, affirmed the trial court's ruling that the insurer had no duty to defend or indemnify the insured with regard to the wrongful death suit based on the business pursuits exclusion.

2012 FLORIDA BAR LUNCHEON

Still Going Strong After All These Years...



Miami partner James T. Armstrong was photographed with Southern District Federal Court Senior Judge William M. Hoeveler at the 2012 Florida Bar Judicial Luncheon. Judge Hoeveler swore Jim Armstrong into the Federal Bar in 1983. Judge Hoeveler is the most senior judge sitting in the Southern District of Florida.

WLSC Welcomes New Attorneys

JANA BLOUNT, ESQ. : Ms. Blount is a 2009 graduate of the University of Miami School of Law, practicing in the area of first party property, and comes to us already with three years of experience in practice. Why did she choose Walton Lantaff as her new team? "After three years of hearing Ian Ronderos speaking WLSC's praise, I jumped at the opportunity to work here. So far it has lived up to its great reputation!"

MICHAEL D. FORD, ESQ.: Mr. Ford is a 2010 graduate of the University of Miami School of Law, magna cum laude, and a 2007 graduate of the University of Pennsylvania with a B.A. in Economics. His primary areas of practice are insurance coverage and appellate law. He has already been practicing law in Florida for a year, and previously served as a judicial law clerk for the Connecticut Superior Court.

His reason for joining WLSC's Miami Team: "I became a lawyer, and particularly enjoy my position at Walton Lantaff, because I see my role as ensuring fairness and honesty in the business world, especially in the insurance industry."

CARLOS L. SANTI, ESQ.: Mr. Santi was a 2009 graduate of the Florida State University College of Law and has been licensed to practice law in Florida for three years. Based in Miami, he currently practices first party property insurance law. Prior to joining the Firm, he practiced in the area of foreclosure litigation, representing servicers, lenders, and investors

throughout all Florida state courts. Santi says, "I became a lawyer with WLSC because I love to research, read, write, and advocate. Working for an established firm with extensive ties to the community is very important to me. Litigating interesting cases alongside talented lawyers and staff is equally important. I luckily found these qualities in Walton Lantaff."

AARON WARREN, ESQ.: Mr. Warren is a 2011 graduate of the University of Miami School of Law, practicing in the area of insurance coverage and coverage liability. Warren says, "I chose to become a lawyer due to my enthusiasm for our nation's legal system, as well as my general interest in advocacy. I enjoy practicing at WLSC because my assignments are always engaging and the staff is a true pleasure to work with! Also, being a native Floridian, I enjoy being apart of a law firm with a long and rich tradition in our state." You can meet Aaron in our Fort Lauderdale office.

ROB WILDER, ESQ.: Mr. Wilder is a 1998 graduate of the John Marshall Law School in Chicago with an undergraduate degree in Biological Sciences. He practiced law for 7 years in Chicago and has been practicing in Florida for three years, primarily in the area of tort defense. He says he joined the legal profession because he enjoys problem-solving and advocacy, and loves working for Walton Lantaff because of the healthy diversity of interesting cases and strong team environment.



FORT LAUDERDALE

Victory for Insurer in Dog Mauling Case

Court Finds No Coverage Under Insurance Policy Applying the Animal Liability Exclusion

Junior Partner Sara Sandler (Ft. Laud.) and Associate Kelly Corcoran (Ft. Laud.) recently obtained a Final Declaratory Judgment on behalf of the insurer in an action to determine insurance coverage for a dog mauling suit against the insureds.

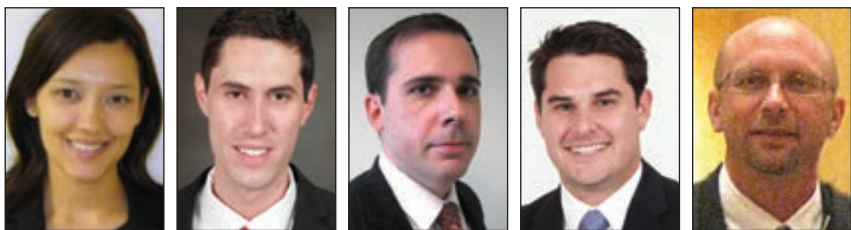


Kelly Corcoran, Esq.

The suit arose out of an incident in which the claimant was mauled by the insureds' 140-pound dog. The insurer defended the insured in the underlying tort suit, and simultaneously filed a complaint for declaratory relief seeking a ruling that it had no duty under the policy to defend or indemnify the

insured with regard to the suit based on the animal liability exclusion. WLSC was able to obtain a stay of the underlying suit pending determination of the issue of insurance coverage.

Judge Lucy Brown ruled in favor of the insurer, finding that the insurer had no duty to defend or indemnify the insured with regard to the underlying suit and specifically rejected claimant's position that the animal liability exclusion did not apply wherein claimant argued that the cause of the claimant's injuries was the insureds' negligence, not the dog.



Blount Ford Santi Warren Wilder

WLSC is honored to be named a **Top-Ranked Law Firm** by Martindale-Hubbell™ in 2012



Going to the 67th Workers' Comp Educational Conference in Orlando?

- **Monday Aug. 20th: WLSC Client Luncheon,** 11:30-1pm San Antonio Room*
- **Monday Aug. 20th: Party in WLSC Hospitality Suite,** 'Sweets in the Suite', 9 pm-midnight, Suite #22176

CONGRATULATIONS

Walton Lantaff proudly congratulates



our partner Deborah Poore Fitzgerald on her Installation as President of the Broward County Bar Association, and congratulates Sara Sandler and Kelly Vogt on their installation as directors of the Young Lawyer Section.



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