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## MISREPRESENTATION

# 'PTD' Landscape Contractor's Scam Uncovered in WLSC Defense Victory

Senior Partner Allison Hartnett and Associate Gabriela Mijares, both of Miami, obtained a victory before the judge of compensation claims in a workers' compensation fraud claim where the entire claim was dismissed.

The Claimant was injured while working as a sub-contractor. As a result of the accident, he injured his low back and both heels and underwent surgery for those injuries.

Consequently, the Employer/Carrier (E/C) Allison Hartnett, Esq. voluntarily accepted him permanently and totally disabled (PTD). He received PTD benefits for close to 15 years - until



Notorious: Bonnie Parker and Clyde Barrow.

PHOTO BY MEMBER OF BARROW GANG VIA US LIBRARY OF CONGRESS.

Please see HUSTLE on page 3

## ON APPEAL

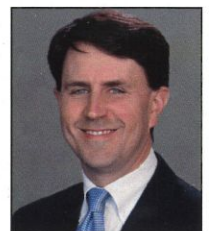
# Third DCA Affirms Summary Judgement WLSC Obtained Defending Landscaper Electrocution



PHOTO: FPL

## Independent Contractor Electrocuted by FPL Service Wires Had Sued Homeowner

WLSC attorneys Michael Galex and Laura Weinfeld recently won an appeal in the Third DCA, which affirmed summary judgement Mr. Galex won in the trial court on a negligence action. Plaintiff, employed as a landscaper hired to perform a two-day residen-



Michael Galex, Esq.



Laura Weinfeld, Esq.

See ZAPPED on page 2



## Spotlight on Professional Claims in 2018

2018 was another great year for the defense of professional malpractice claims by WLSC partners Deborah FitzGerald and Kelly Vogt.

They obtained a jury defense verdict in favor of a lawyer followed by the dismissal of two separate disciplinary complaints filed against WLSC's lawyer clients.

Deborah and Kelly obtained a complete defense verdict in a legal malpractice case in February 2018 after a six-day jury trial in Miami-Dade County, Florida, one of the most liberal venues in Florida. Plaintiffs alleged WLSC's client failed to properly conduct a lien and permit search in a residential home purchase transaction causing damage to the Plaintiffs. The jury deliberated less than an hour and returned a verdict finding the lawyer's conduct did not fall below the stan-



dard of care and was not the proximate cause of the Plaintiffs' damages.

Deborah and Kelly then obtained the dismissal of two separate Florida Bar disciplinary complaints against WLSC's lawyer clients, one complaint alleging ineffective assistance of counsel in a criminal appeal and another alleging overbilling and failure to follow the instructions of the client in a civil case.

Deborah FitzGerald and Kelly Vogt have extensive experience in defending professionals, including lawyers, accountants, realtors, and appraisers in malpractice claims and disciplinary proceedings. Ms. FitzGerald may be reached in the Fort Lauderdale office and Ms. Vogt in the Fort Lauderdale or Naples office.

— Deborah P. Fitzgerald



## 'Inn of Court' Forms for Miami-Dade WC Courts; Invites WLSC Partner as Sr. Member

Miami Partner Michele E. Ready was invited and has joined the newly formed Richard A. Sicking American Inn of Court. The mission of the organization is to inspire the legal community to advance the rule of law by achieving the highest level of professionalism through example, education and mentoring.



Michele Ready, Esq.

Ms. Ready joins the Inn at the most senior level, "Master of the Bench." She is pleased that the Inn has selected as their charitable focus Take Stock in Children. Take

Stock in Children was established in 1995 as a non-profit organization in Florida that provides a unique opportunity for deserving low-income youth/students, many from minority families, to escape the cycle of poverty through education.

See [www.takestockinchildren.org](http://www.takestockinchildren.org) and [www.innsforcourt.org/inns/sickinginn](http://www.innsforcourt.org/inns/sickinginn)

## Third DCA Affirms Summary Judgement WLSC Obtained Defending Landscaper Electrocution

ZAPPED, from Page 1



PHOTO: FPL

tial landscape clean-up, received severe electrical injuries when a branch he cut fell onto a FPL electrical wire.

Plaintiff sued the homeowner, among others, alleging the homeowner negligently ordered him to climb into the tree and cut the branch. Plaintiff argued the homeowner, who he claimed had superior knowledge of the wire, assumed control of the work when he ordered plaintiff into the tree to cut the branch.

The Third DCA rejected this claim and affirmed summary judgment for

the homeowner as the record evidence established the owner of the landscaping company, an independent contractor, actually knew of the electrical wires, which knowledge was imputed to plaintiff as an employee.

The court rejected plaintiff's claim the homeowner assumed control of the work by ordering plaintiff into the tree to cut the branch. Tree trimming was within the landscaping company's scope of work. Given this, the homeowner did not owe plaintiff any duty of care required to support the negligence claim. Therefore, the Third DCA affirmed summary judgment for the homeowner.

## 'PTD' Contractor's Scam Uncovered

*HUSTLE, from Page 1*

October of 2017, when the E/C suspended the PTD benefits on suspicion that the Claimant was working. Through its investigative efforts, the E/C found that the Claimant and his wife had been involved in a scheme to defraud the E/C. Even more, the husband and wife team was aided and abetted by a wealthy businessman through his corporation.

As part of its investigation, the E/C ordered surveillance of Claimant which revealed that the Claimant was driving to the wealthy businessman's corporation and his home numerous times a week.

In follow-up investigation, the E/C subpoenaed records of the corporation and the guard gate records of the wealthy businessman's residential community. During this time, the E/C also deposed the Claimant,

his wife, the wealthy businessman, the wealthy businessman's wife, and the corporate representative of the wealthy businessman's corporation. The E/C also subpoenaed the Claimant's bank records.

The Claimant vigorously objected to the production of his bank records arguing their relevancy and also arguing that their production was a violation of his and his wife's privacy rights. However, when the Claimant testified at an advance hearing that he had a bank account solely in his name with no money in it, the JCC granted the E/C's subsequent request to subpoena his bank records.

Deposition testimony revealed that

Claimant would drive the wealthy businessman and his family to restaurants and the airport. However, it was Claimant's and the wealthy businessman's position that Claimant did this driving for free.

Deposition testimony also revealed that Claimant's wife never worked/cleaned for the wealthy businessman. In fact, she had never met the wealthy businessman. Later in the case, the

JCC allowed the E/C to subpoena Claimant's bank records which revealed that the wealthy businessman's corporation was making bi-weekly payments to a cleaning company incorporated by Claimant's wife.

Discovery revealed that the Claimant and his wife incorporated a sham cleaning company (in the wife's name), for the sole purpose of providing a cover for payment made to the Claimant for services/work the Claimant provided to the wealthy business

man and his family.

The JCC found that the E/C met its burden by a preponderance of the evidence that the Claimant engaged in a deceitful scheme in violation of §440.105(4)(b) Florida Statutes (1999) of knowingly and intentionally making false, incomplete and misleading statements regarding facts material to his claim for workers' compensation benefits. The JCC determined that the Claimant concealed his income and his ability to engage in gainful employment in order to continue to receive his permanent total disability benefits. Thus, the JCC held that all future workers' compensation benefits were barred pursu-

ant to §440.09(4) and §440.105(4)(b) Florida Statutes. The entire claim was dismissed by the JCC. The Claimant was no longer entitled to PTD benefits or any medical care.

The Employer/Carrier was successful in establishing this "fraud" because of its thorough investigative efforts.

### *Tips for successfully mounting a misrepresentation ("fraud") defense:*

- Perform spot surveillance on dormant claims.
- Obtain bank records of the Claimant when you suspect Claimant may be working.
- Obtain bank records of family members who are suspected of being involved in the Claimant's potential employment or financial status.
- Cross check bank records with Claimant's income tax returns.
- Subpoena records of places you believe Claimant may be working.
- Look at self-employment jobs like Uber and/or Postmates to see if the Claimant may be working part-time.

### CONTINUING EDUCATION

## *WLSC Partner to Present on Panel at WCI Conference*

Walton Lantaff Senior Partner Stephen G. Kaufer, of the West Palm Beach office, will be presenting a session on Tuesday, August 13th at the Workers' Compensation Institute 2019 conference in Orlando, titled, "Managing Conflict Inherent in a Worker's Compensation Claim."



Stephen G. Kaufer,  
Esq/

The end goal of every workers' compensation claim is to provide quality medical care and to get the injured worker back to work as quickly

and as cost-effectively as possible. But if everyone has the same overall objective, why does misalignment occur throughout the process? Learn how coordination among the key players of the claim ensures focus on the "real exposure." As priorities differ between stakeholders, parties can discover creative ways to build stronger alignment.

Mr. Kaufer will participate in a panel that also includes a medical provider and a risk manager, to discuss better methods for handling your workers' compensation claims.



## Workshop on Trial Preparation Tips for Young Lawyers Features Duo from Walton Lantaff Miami

Miami Partner Jazmine Preston-O'Neill and associate Ingrid P. Benson-Villegas presented valuable trial skills for an audience of young lawyers in February, along with Kimberly Cook, Cristina Pérez Soto, and Maria Fehretdinov.

They delivered a presentation to a packed house at Stearns Weaver Miller regarding "Tips for Young Lawyers in the Courtroom" that the Honorable Diane Ward moderated.

The MDFAWL complimentary panel discussion and lunch was an effective segue into the Sixth Annual Trial Skills Workshop for Women Lawyers.

Among the topics discussed was trial preparation, including reviewing the courtroom in anticipation of a trial to determine the layout, so as to better address the presiding judge and the jury, identifying obstacles in the courtroom, such as columns, that prevent a jury from properly observing court proceedings, and managing



Jazmine Preston-O'Neill, Esq.



Ingrid P. Benson-Villegas, Esq.



the technical components of the trial to deter the possibility of any technical difficulties during the trial period.

### Benson-Villegas to Florida Bar Committee

The Florida Bar President-Elect John Stewart appointed WLSC Associate Ingrid Benson-Villegas to the Voluntary Bar Liaison Committee for the 2019-2020 Bar year.



### Committed to Public Safety in Palm Beach Co.

Fort Lauderdale Partner Michele Bachoon has been a top volunteer with the Safety Council of Palm Beach County and her commitment to the organization, and community was recognized at a luncheon attended by about 200 in the legal and public safety community. She volunteers her time and energy on the gift and awards committee.



### Strong Walton Lantaff Presence Supports Judicial Reception for Women Lawyers

Partners Emily K. Smith and Jazmine Preston-O'Neill, as well as Associates Ingrid P. Benson-Villegas, Alina N. Yaniz, and John A. Fregeolle, attended the 36th Annual Judicial Reception that the Miami-Dade Chapter of the Florida Association for Women Lawyers held in December 2018. The Honorable Alan Fine joined attorneys from WLSC at its table. Ms. Benson-Villegas is on the MDFAWL board and is co-chair of the Public Relations Committee.



## Miami Legal Community Honors Justice Barbara Lagoa as She Joins Florida Supreme Court

Ingrid P. Benson-Villegas, an associate in the Miami office, had the honor of recognizing Justice Barbara Lagoa at a MDFAWL Women Making History event honoring the justice on March 13 at Miami Freedom Tower on the Miami-Dade College campus.

Justice Lagoa is the first Cuban American woman to serve on the Florida Supreme Court, after her appointment on January 9, 2019, by Governor Ron DeSantis. Earlier she had served on the Third District Court of Appeal after being appointed by Governor Jeb Bush in June 2006.

Ms. Benson-Villegas had interned for Justice Lagoa for about 10 months



Ingrid P. Benson-Villegas with new Florida Supreme Court Justice Barbara Lagoa

in law school while she was at the Third District Court of Appeal.

WLSC sponsored the event and Ingrid was on the Women Making History Committee that organized it.



Fla. Supreme Court Justice Barbara Lagoa.

### HURRICANE IRMA CLAIMS

## Motion for Summary Judgment Granted for No-Peril-Created Opening Defense

Walton Lantaff has prevailed on Motions for Summary Judgment based on Insurance Policies containing no coverage for wind-created openings to the property on roof leak claims.

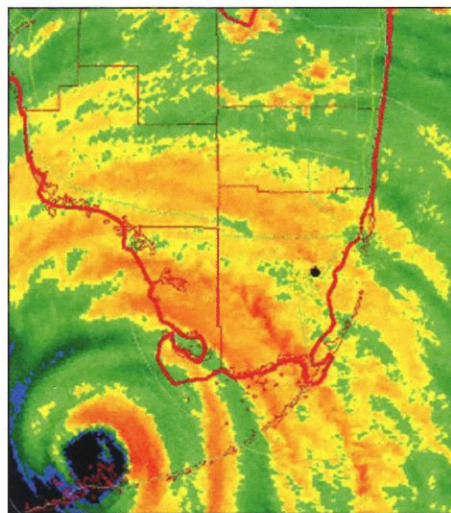
Melissa Jordon from the firm's Miami Office recently had such success raising the defense in the 11th Judicial Circuit in and for Miami-Dade County, wherein Ms. Jordon successfully obtained a Final Judgment against the Plaintiff based on her Motion for Summary Judgment and argument to the Court.



Melissa Jordon, Esq.

In her Motion, Ms. Jordon set forth the facts establishing that there were no observable peril created openings to the property, that the Plaintiff could provide no proof of a peril created opening, and that any damage was determined to be the result of another exclusion under the policy.

Crucial to the motion was the deposition testimony obtained by Ms.



NATIONAL WEATHER SERVICE

Jordon, wherein the Insured admitted that they did not observe any openings to their roof and did not know the cause of the damage to their home. Plaintiff provided no evidence to rebut the Defendant's Motion, but instead attempted to discredit the field adjuster, asserting that the adjuster was not qualified to make a determination as to the cause of the damages observed.

The Judge, after hearing argument and reviewing the motion and evidence submitted by Defendant, granted final summary judgment.

### MIAMI-DADE COUNTY

## Jury Sides with Citizens Insurance in Property Claim

Partner Jazmine Preston-O'Neill and associate Laura Weinfeld successfully defended Citizens Property Insurance Corp in the case of Natasha Armorer vs. Citizens Property Insurance Corporation, in a two-day trial before Judge Hogan-Scola of Miami-Dade County Circuit Court.

The case involved a plumbing leak which defense counsel proved was long-term in nature and therefore excluded from coverage by the insurance policy.

Following the testimony of Citizens' corporate representative, the testimony of the defense's engineer, as well as the exhibits of compelling photos and a diagram of the subject property, the jury entered a full defense verdict. In a true team effort, defense counsel relied on the capable assistance of paralegal Sharon Staples and assistants Lourdes Herrera and Letty Hunter.

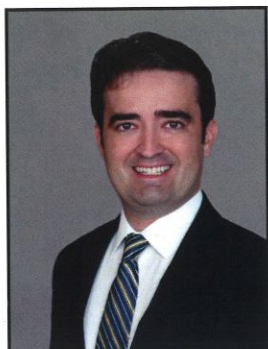
— Laura R. Weinfeld



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# Walton Lantaff Adding Top Talent for Growth



John A. Fregeolle, Esq.



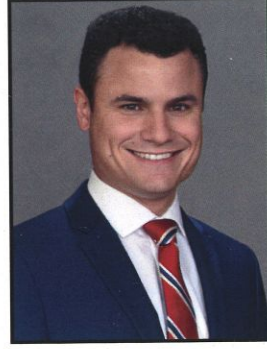
John Hinz, Esq.



Rebecca S. Lewis, Esq.



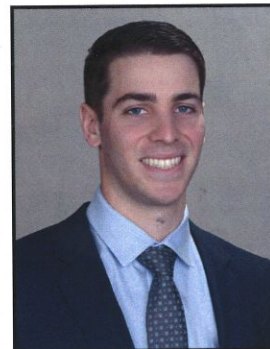
Samantha Nugent, Esq.



Brian M. Otero, Esq.



Jesse Peterson, Esq.



Kevin Salinas, Esq.



Zachary Sonenblum, Esq.



Charles S. Thompson, Esq.



Nicholas A. Yoda

**John Loring Bischof** (not pictured) is a new associate in the firm's Tallahassee office. His legal career spans 20 years, during which he worked as an Assistant General Counsel with the Florida Department of Revenue and an associate attorney with two Florida-based insurance defense firms. His experience includes first-party insurance defense in the areas of products liability, sinkhole litigation, condominium association collapse cases, and premises liability. He served in the U.S. Navy. He practices First-Party Insurance defense, Real Estate Disputes and Product Liability. FSU College of Law with honors, 1999.

**John A. Fregeolle**, joined Walton Lantaff's Miami office as an Associate in 2018. Previously he had five years of experience with other law firms. He practices Insurance Defense. Thomas M. Cooley Law School, *cum laude*, 2012.

**John Hinz** joined WLSC as an Associate for our Fort Lauderdale office in November 2018. During law school, he clerked in two firms, handling a wide variety of matters. He was born and raised in Miami. FIU College of Law, 2018.

**Rebecca S. Lewis** recently became an associate in the Firm's Orlando office and practices in the area of Insurance Defense. Before joining Walton Lantaff, she was an Assistant Public Defender for the Ninth Judicial Circuit, where she represented hundreds of indigent clients. Florida A&M College of Law, *cum laude*, 2015.

**Samantha Nugent** has joined our Miami office in 2018 as an associate. She practices Workers Compensation and Insurance Defense law. University of Miami School of Law,

*cum laude*, 2015.

**Brian M. Otero**, is a new associate in our Fort Lauderdale office. He practices Insurance Coverage, Insurance Defense and Appellate Law. Barry University Andreas School of Law, *magna cum laude*, 2016.

**Jesse Peterson**, a native Miamian and associate in our Miami office. He practices Insurance Defense. Jesse earned his Bachelor of Fine Arts degree, in Studio Arts at FIU. St. Thomas University School of Law, *magna cum laude*, 2015.

**Kevin Salinas** became a Miami associate in August 2018. He practices Insurance Defense, and he has prior experience in estate planning and probate litigation. UCLA School of Law, 2018.

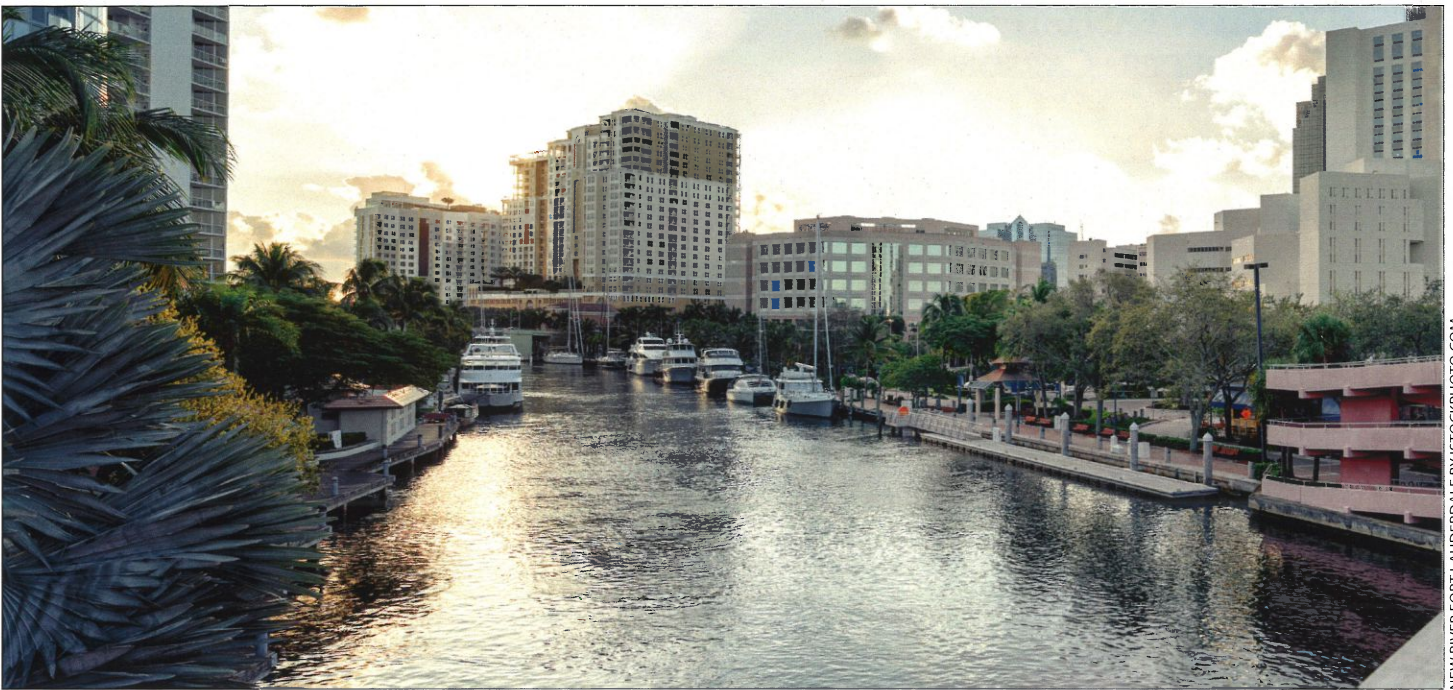
**Zachary D. Sonenblum**, Originally from New York, and now a new associate in our Fort Lauderdale office. He practices Insurance Defense, Insurance Coverage, General Liability and Workers' Compensation. University of Miami School of Law, 2018.

**Charles S. Thompson**, practices Insurance Defense in the firm's Miami Office, with prior experience in Entertainment, Intellectual Property, Residential and Commercial Property Insurance Litigation, and Criminal Defense. FIU College of Law, 2018.

**Nicholas A. Yoda** is an associate who practices insurance defense in the firm's Miami office. During his studies at Florida International University College of Law, Nicholas studied abroad in Spain. He is a Miami native and fluent in Spanish. FIU College of Law, 2018.



GET TO KNOW A WALTON LANTAFF LOCATION



NEW RIVER FORT LAUDERDALE BY ISTOCKPHOTO.COM

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## Going to the 74th Workers' Compensation Institute Educational Conference in Orlando?

Meet Walton Lantaff's risk-management attorneys at this information-packed conference and networking event, August 11-14, 2019.

*The Orlando World Center Marriott*

### **Meet Our Attorneys**

MONDAY, Aug. 12, 11:30 a.m.  
Luncheon @ San Antonio Room.

TUESDAY, Aug. 13, 11:30 a.m.  
Luncheon @ San Antonio Room.

*Note: Seating is limited.*