

**MIAMI**

9350 S. Dixie Hwy
10th Floor
Miami, FL 33156
Tel: 305-671-1300
Fax: 305-670-7065

FT LAUDERDALE

110 E. Broward Blvd.
Suite 2000
Ft Lauderdale, FL
33301
Tel: 954-463-8456
Fax: 954-763-6294

ORLANDO

200 S. Orange Ave.
Suite 1575
Orlando, FL 32801
Tel: 407-425-3250
Fax: 407-425-3255

PENSACOLA*

21 East Garden Street
Pensacola, FL 32501
Tel: 850-262-0214
Fax: 850-701-1786
* Satellite Office

TALLAHASSEE

2074 Centre Pointe
Blvd
Suite 100
Tallahassee, FL 32308
Tel: 850-701-1781
Fax: 850-701-1786

TAMPA

2203 N. Lois Ave.
Suite 750
Tampa, FL 33607
Tel: 813-775-2375
Fax: 813-775-2385

WEST PALM BEACH

1700 Palm Beach
Lakes Blvd
7th Floor
West Palm Beach, FL
33401
Tel: 561-689-6700
Fax: 561-689-2647

UNITED STATES SUPREME COURT

A Clear Policy Against Discrimination Protected Walmart from Huge Class Action

Employers nationwide should review the ruling in Walmart v. Dukes

Walton Lantaff's Employment Law Practice keeps abreast of cases like the recent *Walmart v. Dukes et al.* case in which the United States Supreme Court refused to expand the circumstances in which class actions could be certified under Federal Rules of Civil Procedure 23(a)(2) and 23(b)(2).

The Supreme Court held that class certification in this case was not consistent with Rule 23(a) which requires the class seeking certification to prove that the class has common "questions of law or fact."

Title VII questions the reason for a particular employment decision and the Plaintiff must prove that their adverse employment decision was based on discriminatory reasons or that the effect of an employment practice created a disparate impact on a suspect class, in this case women. Plaintiffs wanted to sue for millions of employment decisions at once and failed to prove that Walmart acted under a general policy of discrimination.

Looking at the size and geographical scope of Walmart, the Court found it unlikely that all managers would exercise their discretion in a common way without some direction, and Walmart's stated policy forbids discrimination and has penalties for same.

The Court also found that the Plaintiffs backpay claims were improperly certified under 23(b)(2) and specifically stated that claims for individualized relief, like back pay should not be certified under Rule 23(b)(2) at all.

The preponderance test used by Plaintiffs to obtain certification under 23(b)(2) created the possibility that individual class members' compensatory damages claims would be precluded by litigation they had no power to hold themselves apart from, which is why 23(b)(3) protections are so important to monetary claims.

Furthermore, Walmart is entitled to indi-



The Plaintiffs in Walmart wanted to sue for millions of employment decisions at once and failed to prove that the world's largest retailer acted under a general policy of discrimination.

PLEASE SEE 'WAL-MART' ON PAGE 7



MIAMI-DADE

Hurricane Wilma-related claim blown away after clock runs out on terms of policy

The Miami-Dade Circuit court entered a final summary judgment in favor of WLSC client State Farm Florida Insurance Company based on a provision in the policy requiring suit to be filed within 5 years of the date of the loss. The insured filed suit against State Farm in January of 2011 for a loss that allegedly occurred in October of 2005 as a result of Hurricane Wilma.

Since the suit was filed about five years and two months after the hurricane, WLSC's Tom Caldwell prepared a motion for summary judgment based on a breach of the policy's requirement that suit be filed within five years of the date of the loss.

Even though Florida has a five-year statute of limitations period, under the case law the limitations period does not begin to run until there has been an alleged breach of the contract, so the statute of limitations was not a ground for the motion for summary judgment.



Thomas Caldwell, Esq.

FORT LAUDERDALE Summary Judgment Won In Premises Case

A wet surface painted without anti-slip additives may be defective, but it's latent; Owner held not liable for fall

Partner Richard Rosenblum and associate Tom Rogers, from our Fort Lauderdale office, recently won a Summary Judgment on behalf of an insured commercial property owner in a premises liability case. The case was filed in Broward County Circuit Court. The plaintiff, a Publix shopper in her early 30's, slipped and fell on a painted parking lot directional arrow after a rainfall.

Plaintiff alleged the painted surface caused the rainwater to bead up, making the painted surface more slippery than the surrounding asphalt. She further alleged there were Building Code violations in that the paint material used did not have anti-slip additives. In regard to her injuries, she sustained a herniated lumbar disc with resulting surgery.

The Motion for Summary Judgment was based upon two arguments. The first was that the alleged defect was latent, or not easily identified upon reasonable inspection. Here, an independent asphalt contractor had re-surfaced and re-striped the parking lot. The parking lot had passed inspection by the local Building Department, the prior property owner and the professional property manager. Under the Slavin case doctrine, a property owner is responsible for patent, or obvious defects, once a contractor's work has been accepted.

However, a property owner is not responsible for accepted latent defects not discovered in work performed by a contractor. The contractor remains liable to the injured party under latent defect circumstances. The second argument was that plaintiff failed to prove that a negligent condition existed.

The Court agreed that plaintiff's testimony that water had beaded upon the painted surface and that to her it was more slippery than the surrounding asphalt was insufficient factually to support allegations of a dangerous condition.

The defense also had a pending Motion to Dismiss for Fraud upon the Court, but that Motion was not heard. Plaintiff had lied about her past medical history.

It became unnecessary to argue the Motion to Dismiss for Fraud once the Court granted the defendant's Motion for Summary Judgment.



Richard Rosenblum, Esq.



Tom Rogers, Esq.

Walton Lantaff: Committed to the pursuit of justice for over 77 years, with long traditions of community service

This article is dedicated to the memory of Senior Partner Lawrence D. Smith, whose 30 years of service to the firm and its clients was an extension of the founders' original vision.

As the second oldest law firm in the State of Florida, Walton, Lantaff, Schroeder & Carson has a vast and unique history. Founded in 1934, Miller Walton built the firm on solid ground: a professional commitment to providing exceptional – and honest – legal services complimented by a moral commitment to community engagement.

MILLER WALTON

Miller Walton came from a very prominent family in colonial Georgia. His ancestors played roles in the his-

In 1957, Miller Walton joined the board of trustees for Baptist Hospital, three years before the hospital actually opened.

tory of both the state of Florida and our country. One of his ancestors was a representative for Georgia in the Continental Congress and went on to sign the Declaration of Independence.

When Mr. Walton's ancestors later moved to Florida, they founded Walton County in North Florida. Mr. Walton, who was described by many as the perfect Southern gentleman, went straight

from high school into law school at the University of Georgia, clearly an impossible thing to do in today's world, and rare even in the early 1900s.

He moved to Fort Lauderdale in 1925 and nine years later opened the doors to his own practice. It was from there on that Mr. Walton dedicated his life to both his work and his community, instilling the values which Walton Lantaff came to pride itself on.

The first Walton Lantaff office found itself in the heart of Miami in the Congress Building, which has since been added to the National Register of Historic Places. After the firm moved to a new location, the Congress Building became the first building in Miami to have air conditioning.

Famously, Miller Walton would not allow the firm to return to the much



Miller Walton



Bill Lantaff

cooler building for fear that going from an air conditioned building to a humid courtroom would engender disease and illness amongst his employees.

Mr. Walton, himself, was a workaholic, often working six or seven days a week and often found vacationing on the beach with his case files.

Said to be very thorough and dedicated to his clients, Mr. Walton could be found in the Walton Lantaff Miami office as little as two months before he passed away in 1987 with over 60 years of practice before the Florida Bar.

A civic leader, Mr. Walton joined the Baptist Hospital board of trustees in 1957, three years before the hospital actually opened. He was involved in the Hospital's planning stages and in 1960 led the not-for-profit hospital through a very difficult financial crisis.

In 1963, Mr. Walton was named chairman of the board and for the 22 years that followed, he oversaw Baptist Hospital's enormous expansion. In all of those years, Mr. Walton never missed a board meeting, even attending one meeting while a patient in the Hospital, showing up to the boardroom in pajamas and slippers. Truly

the epitome of a volunteer, Mr. Walton never received a penny in compensation for all his years working with Baptist Hospital.

In addition, his civic engagement extended to mediation. A problem solver, in 1951, Mr. Walton was part of a four man trustee committee dedicated to resolving a tumultuous rift between

*Bill Lantaff became a
founding member of the
Dade Community Foun-
dation, now
The Miami Foundation*

faculty at Rollins College in Winter Park, Florida in order to revamp the school.

He would later go on to serve on the board of trustees as chairman for the College from 1953 through 1969. Miller Walton was also a deacon of his church and a lifetime member of the Kiwanis

Club, an organization internationally dedicated to helping children in all facets of life.

BILL LANTAFF

William "Bill" Lantaff was one of the most powerful political figures in South Florida of his time. Originally from Buffalo, New York, Mr. Lantaff moved to Jacksonville in 1921 and then to Miami in 1929. He attended the University of Florida for both his undergraduate and legal studies. He began practicing in 1937, serving as Assistant City Judge of Miami Beach from 1939 through 1940.

In 1941, Mr. Lantaff was inducted into the Florida National Guard as a first Lieutenant, where he served as executive officer for the Military Intelligence Division of the War Department General Staff. From 1947-1950, Bill Lantaff was a member of the Florida House of Representatives and from 1951-1955, Mr. Lantaff was a U.S. Representative for Florida's Fourth District.

Mr. Lantaff was a delegate to the 1956 and 1960 Democratic National



Larry Schroeder



Kit Carson

Conventions. After his political career, Mr. Lantaff joined Miller Walton in his legal practice in Miami.

Following in the Walton Lantaff tradition of giving to the community, in 1967 Bill Lantaff became a founding member of the Dade Community Foundation, now The Miami Foundation. The Dade Community Foundation was put into place in order to allow philanthropists a more effective and efficient means to serve the community. Since its inception, the Foundation has been trusted with over \$220 million, which has allowed the Foundation to invest over \$10 million in community improvements every year.

LARRY SCHROEDER

A true “Yalie,” Laurence “Larry” Schroeder moved to Miami in 1931 after graduating from Yale Law School during the height of the Great Depression. Originally from Ohio, Mr. Schroeder became so entranced with the City of Miami, that he decided to stay rather than return to the north. Mr. Schroeder was one of the best trial attorneys of his time and remembered by many as being a gentleman in court.

During World War II, Mr. Schroeder served as director of rent control in Key West, ensuring that rooms and apartments were made affordable for servicemen who were stationed there. After the war, he returned to practicing law.

Mr. Schroeder was director of the Dade County Bar Association from 1940-45 and again from 1968-71. He served as a member of the Yale scholarship and admissions committee for 30 years.

Although Mr. Schroeder retired from Walton Lantaff in the mid-1980's, he was often found in his office working on his cases late into his 70's, with over 60 years of practice.

Larry Schroeder and his wife, Elizabeth were married in 1936, and were a huge presence in Miami charities, further establishing the Walton Lantaff philanthropic tradition and service in the legal community.

KIT CARSON

Samuel “Kit” Carson was originally from Lake City, Florida. As a child, he



Congress Building, built 1926.

*Originally from Ohio,
Mr. Schroeder became so
entranced with the City of
Miami, that he decided to
stay rather than return to
the north.*

enjoyed fishing, hunting, and trapping, and so his parents gave him the nickname Kit after the famous American frontiersman, Kit Carson. Mr. Carson attended the University of Florida for both his undergraduate education and for law school.

A scratch golfer, Kit played for the University's golf team. Prior to practicing law, Mr. Carson served as a law clerk in the Florida Supreme Court. This clerkship likely played a huge role in his incredible ability to write in shorthand, a difficult skill to master, even winning him the title of the State of Florida Champion Shorthand Writer one year. During World War II, Mr. Carson was in the Navy, in which he served as a yeoman for an admiral. Following the War, Mr. Carson joined Walton Lantaff.

As an attorney, Kit is remembered as one of the best insurance defense trial lawyers in Miami. His secret to winning so many jury trials? What Kit referred to as “getting in the box” with the jury, meaning that he made it a point to understand his juries so

well that it felt like he was sitting in the jury box with them. Mr. Carson would also drive his opposing counsel crazy by sitting at counsel table and reading novels during breaks in his jury trials. Kit was a member of the American College of Trial Lawyers, a very prestigious organization, dedicated to improving the standards of trial practice.

Mr. Carson was a deacon in his church, in which he also sang in the choir and taught Sunday School.

Perhaps a part of his frontiersman alter ego, Kit was a very casual man, and always drove around in an RV styled Ford Econoline Van, which he enjoyed traveling and camping in. He was always found in his trademark “Hush Puppy” shoes and never wore a suit, but a more casual attire consisting of a sports jacket and trousers.

SERVING ON THE BENCH

In addition to its long tradition of philanthropy, Walton, Lantaff, Schroeder & Carson also has seen many of its attorneys serve as members of the judiciary. Most notably, the Honorable C. Clyde Atkins, a partner with the firm from 1941-66, served as President of the Dade County Bar Association and the Florida Bar Association. He was named a Knight of St. Gregory by Pope Paul VI in 1965.

In 1966, President Lyndon B. Johnson nominated and the Senate confirmed Judge Atkins to serve as a United States District Court Judge for the Southern District of Florida. Judge Atkins served as Chief Judge from 1977-82 and continued to serve until his death in 1999, assuming senior status in 1982.

In 2007, the House of Representatives passed legislation to designate the United States Courthouse located on North Miami Avenue as the C. Clyde Atkins United States Courthouse. Mr. Atkins' brother, Ed Atkins, also a former partner with the firm, served as President of the Florida Bar Association. Other members of the judiciary who once walked the halls of Walton Lantaff include Palm Beach County Circuit Judge, the Honorable Joseph P. Metzger who served on the bench from 1969-72; Palm Beach County Circuit Judge, the Honorable David

Crow, appointed in 2002 who worked for Judge Metzger while at Walton Lantaff; Palm Beach County Circuit Judge, the Honorable Diana Lewis, elected in 2003; and Palm Beach County Circuit Court Judge, the Honorable Amy Smith, elected in 2004, who, while working for Walton Lantaff, was an avid skydiver, taking part in the "first all-lawyer demonstration jump" in 1994.

TRADITION OF EXCELLENCE

As the second oldest law firm in the State, WLSC is proud of its unique history and deep Florida roots.

Today, after 77 years, Walton Lantaff strives to follow the traditions established by its named partners: a dedication to the ethical and adept practice of law and a dedication to helping our community. Miller Walton and his partners understood that a healthy law practice could not exist apart from its community, and that service to one was service to the other. This philosophy enabled the firm to expand its practice statewide.

Many of the attorneys at Walton Lantaff serve on the Board of their local County Bar Association, some even as Executive Board members, and are actively involved within the legal community through various local organizations.

To date, the firm has appeared in over 1,200 written appellate decisions in Florida and Federal Courts, including over 117 in the Florida Supreme Court, dating as far back as 1943. Many of these opinions have resulted in significant changes or advances in Florida law.

COMMUNITY COMMITMENT

Both individually and collectively, Walton Lantaff supports numerous community-based non-profit organizations. Charities such as His House Children's Home and SOS Children's Village, both aiding abused, neglected and drug exposed children; Friends of 440, a scholarship fund for the children of injured workers and insurance personnel; Lighthouse of Manasota, an organization dedicated to caring for the blind; the Office Depot Foundation, dedicated to providing

Sam Carson enjoyed fishing, hunting, and trapping as a child, so his parents gave him the nickname Kit after the famous frontiersman

school supplies for children in need; Smile Train, an international charity that provides cleft palate surgery to those in need, as well as provides training to doctors; Leukemia & Lymphoma Society; Lawyers for the Children of America; USO; The United

Way; American Diabetes Association; National Multiple Sclerosis Society; American Cancer Society; Make a Wish Foundation; Palm Beach Gardens Youth Athletic Association, Unicef; Make a Wish Foundation, and more.

Walton, Lantaff, Schroeder & Carson is proud of its unique history and deep Florida roots. We are truly a family, finding ourselves in each others weddings, on each others intramural sports teams, and at each others family gatherings.

We remain committed to providing exceptional legal services while serving our community and look forward to making more history in the many years to come.

LAWRENCE D. SMITH JR., NOV. 13, 1950-JULY 24, 2011

Esteemed Miami partner will always be loved, remembered

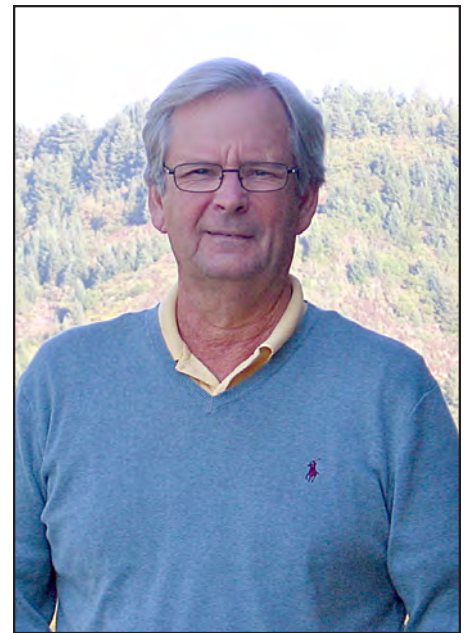
Larry Smith, an accomplished commercial litigation lawyer at Walton Lantaff Schroeder & Carson in Miami, passed away in South Miami on Sunday July 24th, 2011 among close friends and family gathered to bid him goodbye and give thanks for his life.

He was born Lawrence David Smith Jr. in Brooklyn, New York on November 13, 1950, and attended Fordham University, graduating in 1972, then attended St. John's University, where he obtained his Juris Doctor in 1975. He practiced law in New York for a few years and then was admitted to the Florida bar in 1981 and the U.S. District Court, Southern District of Florida in 1982.

Smith joined Walton Lantaff Schroeder & Carson to work in the firm's aviation department on July 6, 1981, 30 years ago.

He married Sandra Ellen Norman on November 5, 1983. Together they raised their daughter Emily, a recent Nova School Law graduate, following in the footsteps of her father and grandfather. Smith is survived by his wife and daughter, as well as a brother, John, and sister, Susan.

Senior Partner Bernard I. Probst,



Larry Smith, Esq.

who worked closely with Larry since he joined the firm's Miami office in 1978, said, "Larry Smith exhibited the commitment to the community and his family that many of us only hope to achieve in a lifetime. He was loved by his colleagues, who will miss him and are joining to offer support to Sandra and Emily during this difficult time."

SETTLEMENT WITH UNREPRESENTED CLAIMANT

JCC's denial of Motion to Enforce Settlement is Reaffirmed on Appeal

In a case with important ramifications for Employers and Carriers throughout Florida, Claimant Michael Taylor (deceased), through his personal representative, sought to enforce a proposed settlement agreement regarding future medical benefits. The E/C denied the settlement agreement was a final binding contract on various grounds. The case was tried by Cristina Brodermann before Judge of Compensation Claims Shelley H. Punancy on the Claimant's Motion to Enforce Settlement.

At the evidentiary hearing, the E/C established that the agreement was reached directly between the adjuster and the unrepresented Claimant through conversations in which they agreed to resolve the future medicals for \$100,000 and the adjuster sent correspondence to the Claimant confirming the settlement for \$100,000.

The Claimant's personal representative's Motion to Enforce relied on the verbal agreement and correspondence from the adjuster. The Employer/Carrier's position was that there was no valid binding contract, as the parties had not reached a meeting of the minds as to the essential terms of the proposed agreement. Specifically, there were contingencies, including the Claimant's Medicare status and whether an MSA would be required (which could potentially void the proposal).

Further, even if the parties' proposed Settlement Agreement constituted a contract, it would not have been final and binding until it was approved by the JCC. The JCC rejected the argument that the confirming letter between the adjuster and the unrepresented Claimant constituted a valid contract. The case was appealed by the personal representative and WLSC Partner Michele E. Ready argued in the appeal that the JCC correctly found that the parties had failed to achieve a meeting of the minds as to all the essential terms prior to the death of the injured worker. The Court of Appeals confirmed the JCC in a per curiam decision.



Cristina Brodermann, Esq.



Grace Tan, right, bags up a grocery purchase for Angela Coffey and her daughters at a Gladstone, Mo. Walmart. (Photo source: Walmart Corp.)

It's unlikely all Walmart managers would exert discretion in common way

WALMART, FROM PAGE 1

vidualized determinations of each employee's eligibility for backpay per Title VII's remedial scheme which states that if the employer can show that it took adverse employment action against an employee for any reason other than discrimination, the court cannot order the "hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any backpay." Walmart's stated policy against discrimination seems to have helped save them from what could have been the largest class action in history.

Business owners need to be aware that having employee handbooks with well stated policies and practices against discrimination and other illegal employment practices could avoid legal problems such as above.

Having an attorney review all corporate policies and how they are implemented could save future time, trouble and expenses.



Beth Leahy, Esq.

Please contact Senior Partner Beth Leahy, whose practice includes employment discrimination law, if you have questions about this perpetually shifting area of the law.

Diligent Analysis of Records Leads to Favorable Settlement for Employer

Robert J. Strunin, Senior Partner in the Firm's Miami Office, was retained by a large national medical products manufacturer to represent it and its permissive driver in a Miami-Dade County Circuit Court lawsuit involving a motor vehicle accident.

Although liability was conceded, the Plaintiff's demand of \$450,000 appeared suspicious based on what appeared to be overutilization, "doctor-shopping," and overblown damages.

Through the use of judicious analysis of records, retention of appropriate experts, and thorough investigation and discovery, Strunin was able to establish sufficient "flaws" in the Plaintiff's case so as to achieve a settlement at mediation that was very substantially below the demand. The client was ecstatic with the result as the settlement amount was also substantially less than the reserve on the file.



Robert J. Strunin Esq.



Going to FWCI in Orlando?

- Sunday Aug. 21st, 7 pm: **WLSC Client Dinner***
- Monday Aug. 22nd, noon: **WLSC Client Luncheon***
- Monday Aug. 22nd, 9 pm-midnight: **Party in WLSC Suite**
- Wednesday Aug. 24th, 11:30 am: **"Taking Medicare's Interests into Account"**
- Wednesday Aug. 24th, noon: **WLSC Client Luncheon***

* Invitation-only events

Workers' Compensation & Liability Seminars

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

LOCATION(S)

■ Maitland, Fla.

Date:
October 20th

PROGRAM: 9 am to 4 pm

- **9-10 am 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 pm LUNCH:** Complimentary lunch.
- **1-2 pm BREAKOUT 2:** Workers Compensation Case Law Update or Liability Case Law Update.

• **2-4 pm 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



10th Floor
9350 South Dixie Hwy.
Miami, FL 33156