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PROPERTY INSURANCE DEFENSE

Strong Insurance Defense Pulls Plug on Overstated Water Damage Claims

Leaking Appliances Left Homeowner with A Very Expensive Mess. But the Claims She Filed Didn't Hold Water in The End.

Managing Partner Richard Rosenblum and associate, Tom Fabricio, recently obtained a double defense verdict in a first-party property damage case. The verdicts were rendered following a three day jury trial before Judge Jack Tuter in Broward County Circuit Court.

This was a first-party action by the insured against Firm client, National Federated Insurance Company. The defense achieved a double defense verdict as plaintiff had two separate claims consolidated into on trial.

The first claim was for water damage to her home while the second claim was for a theft

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ISTOCKPHOTO

LIABILITY

Three Strikes and You're Out!



ISTOCKPHOTO

WLSC Defeats Three Claims Against Client-Insured

A team of Miami attorneys, Partner Joseph Suarez and Associate Jorge Maza, recently secured adjudication with prejudice on behalf of a physical therapy assistant in a cross-claim that has been in litigation since 2009. In the underlying action, a man who had recently undergone a total knee replacement and his wife sued the man's home healthcare company, its independent contractor physical therapy company, and an independent contractor physical therapy assistant of the physical therapy

Please see THREE STRIKES on page 2

WLSC Defeats Three Claims Against Client-Insured

THREE STRIKES from page 1

company for injuries sustained during a physical therapy session. While the physical therapy assistant was the only defendant personally present when the injuries were sustained, the Plaintiffs brought claims under theories of negligence and vicarious liability against all three Defendants.



Joseph Suarez,
Esq.



Jorge Maza,
Esq.

During the pendency of the underlying litigation, the home healthcare company filed a cross-claim against the assistant seeking common law indemnification, contribution, and contractual indemnification for damages it alleged it sustained and continued to sustain as a result of the assistant's alleged negligence. After the Plaintiffs' underlying claim against the assistant was settled, Attorneys Suarez and Maza stepped in to defend the assistant in the resultant cross-claim.

First, the team attacked the company's claim for common law indemnification by arguing that there was no "special relationship" between the parties because the assistant was an independent contractor of the home healthcare company's independent contractor and, as such, the company could not be vicariously liable for any alleged negligence on the part of the assistant. After an extensive evidentiary hearing, the Court granted WLSC's Motion for Partial Summary Judgment, finding that there was no "special relationship" between the parties. The Court also found that the assistant was not the company's apparent agent and there was no non-delegable duty



ISTOCKPHOTO

owed by the company to the Plaintiffs that would open the company up to liability for the assistant's alleged negligence. The Court upheld its ruling on a subsequent Motion for Reconsideration.

After prevailing against the count for common law indemnification, Attorneys Suarez and Maza attacked the contribution claim. Using the details of the parties' separate settlement agreements with the Plaintiffs and the company's own statements regarding its lack of negligence, the Court found that there was no right of contribution in favor of the company and granted the assistant's Motion for Partial Summary on contribution. This left a final remaining count for contractual indemnity, which the Court had allowed the company to add on the same day it granted the summary judgment on contribution.

The company's last ditch effort to prevail on its cross-claim was by way of a claim for contractual indemnification, which it based on a theory

that the company was a third-party beneficiary of the employment contract between the physical therapy assistant and physical therapist.

After the company amended its cross-claim to add the count for contractual indemnification, WLSC's attorneys filed a Motion to Dismiss arguing that, as a matter of law and the terms of the contract upon which the company relied, the company was not an intended third-party beneficiary.

The Court agreed with the assistant's position on the issue. The Court also found that, insofar as it relied on the contract attached to the cross-claim, the company could never prevail on its claim for contractual indemnification because the contract did not explicitly reference the company or any class to which it could be reasonably interpreted to belong.

Therefore, the Court dismissed the contractual indemnification claim with prejudice, effectively ending the company's cross-claim in favor of WLSC's client.

— Joseph A. Suarez, Esq.

Firm Honored by Mayor of City of Fort Lauderdale with Proclamation Presented Upon its 80th Anniversary

Office of the Mayor City of Fort Lauderdale *Proclamation*

Presented to
Walton Lantaff Schroeder & Carson, LLC
80th Anniversary

WHEREAS, Walton Lantaff Schroeder & Carson LLC is a Florida business law firm with more than 40 attorneys working out of offices in Miami, Fort Lauderdale, West Palm Beach, Orlando, Tampa and Tallahassee; and

WHEREAS, the firm was founded in 1934 by Miller Walton and Lawrence O. Casey, the firm has grown steadily throughout its 80 year history and is positioned as one of the leading insurance defense firms in Florida; and

WHEREAS, Walton Lantaff Schroeder & Carson LLC is the second oldest law firm in the state of Florida; and

WHEREAS, Walton Lantaff Schroeder & Carson LLC is celebrating its 80th Anniversary throughout the year of 2014, a celebration was held on April 3, 2014 at The Bonnet House in Fort Lauderdale; Florida, and

WHEREAS, Walton Lantaff Schroeder & Carson law firm established, as one of its anniversary goals, to partner with several charities throughout the year for food, clothing drives, and charity projects; and

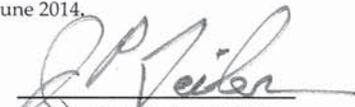
WHEREAS, the firm has become one of the most respected insurance defense firms in Florida, and one of the oldest firms still in existence in Florida and has developed and maintained a work environment which promotes professionalism, service to the Bar, service to the judiciary, high ethical standards, integrity among its attorneys, and charitable giving, with deep Florida roots.

NOW, THEREFORE, WE, as City Commissioners of the City of Fort Lauderdale, Florida, do hereby proclaim **June 6, 2014** as:

Walton Lantaff Schroeder & Carson, LLC Day

in the City of Fort Lauderdale and do congratulate Walton Lantaff Schroeder & Carson LLC on its 80th Anniversary.

DATED this, the 6th day of June 2014,


Mayor John P. "Jack" Seiler



*Celebrate Fort Lauderdale
100 Years of History • 1911-2011*

Walton Lantaff was honored by the City of Fort Lauderdale, when Mayor John P. Seiler, the Vice Mayor, and the City Commissioners presented the Partners with a Proclamation in honor of the firm's 80th anniversary. The Proclamation recognized the firm as one of the most respected insurance defense firms and one of the oldest law firms in existence in Florida.

It recognized the firm's work environment which promotes professionalism, service to the Bar and Judiciary, high ethical standards, integrity among its attorneys, and charitable giving.

June 6, 2014 was proclaimed "Walton Lantaff Schroeder & Carson Day" in the City of Fort Lauderdale.



Left to right: Vice Mayor Rodney Rogers, Mayor John P. Seiler (seated), Beth Leahy, Sarah Sandler, Jonathan Wickham, Douglas Cohen.



80TH ANNIVERSARY

Thanks to our clients and the State of Florida legal community





*... for allowing us to serve you
and the Bar in Florida since 1934*



WATER DAMAGE from page 1

loss and vandalism eight months after the water damage. The jury was given an itemized verdict on each claim and rendered a “No Liability” verdict on both. Damages questions were, therefore, not answered.

The plaintiff insured, who owned a single family home, alleged that her washing machine continuously leaked water into her house while the insured was out of town for several weeks on vacation. She was alleging thousands of dollars in damage to the structure itself as well as damage to furniture, designer clothing, electronics and various other items that were either on the floor or had water expanding up walls and furniture to damage low placed items.

The insured testified that water “gushed” out of the house when she opened the door upon her return and that the water was several inches deep



Richard Rosenblum, Esq.



Thomas Fabricio, Esq.

in some locations. When pressed, the insured never could pinpoint the cause of the washing machine water leak.

The insured alleged that eight months later she was again on vacation when unidentified individuals broke into her home stealing thousands of dollars worth of jewelry and electronics. She alleged they also committed acts of vandalism inside the home. Interestingly, plaintiff alleged that much of her documentation supporting her prior water damage claim were destroyed in the

vandalism or stolen.

The defense was very aggressive in attacking the insured’s credibility on the facts, the causes of the two losses and on plaintiff’s claims for damages. There were aspects of the insured’s version of events which could not withstand careful scrutiny. There were many parts of her story which were either too convenient or seemed implausible. The insured had difficulty in providing witnesses who would corroborate her version of events as to both causation and damages and had further difficulty in producing documents supporting the value of her damaged items. The jury returned defense verdicts on both claims.

The icing on the cake was that Federated National had authorized the service of a Proposal for Settlement early on in the litigation and was entitled to taxation of attorney’s fees as well as costs.

BROWARD COUNTY

Cohen Honored by Jewish Federation of Broward

On May 20, 2014, Douglas Cohen of the Fort Lauderdale office was awarded the Joan and Douglas Gross Community Service Award by the Jewish Federation of Broward County.



Douglas Cohen, Esq.

This award is given to those who enrich the lives of others through leadership involvement and volunteerism, furthering the goals and philosophy of the Jewish Federation of Broward County.

Douglas received this award for having co-chaired the Jewish Federation of Broward County’s Young Leadership Division Mitzvot (Volunteer) Committee and making volunteering a part of everything YLD does and for the many agencies that have been helped with tangible support to care for the needy in our community. Douglas is proud to carry on Walton Lantaff’s tradition of charity in the local community.

CONGRATULATIONS



Kelly Vogt, Esq., and Sara M. Sandler, Esq.

WLSC Duo Helping to Lead Broward Bar Assoc.

The Firm proudly congratulates associate Kelly Vogt on her installation as Secretary and partner Sara Sandler on her installation as director of the Broward County Bar Association Young Lawyers Section. Senior partner Deborah FitzGerald is a Past President of the Broward County Bar Association.

Ms. Vogt and Ms. Sandler were sworn in at the annual installation dinner held on June 19, 2014 at the Hyatt Regency Pier 66, Crystal Ballroom in Fort Lauderdale.

Ms. FitzGerald and Ms. Vogt’s

practice includes the defense of lawyers, accountants, realtors, appraisers, and other professionals.

Ms. Sandler’s primary area of practice involves insurance coverage and appellate law and this year’s installation marked the commencement of her fifth year as a member of the board of directors of the Young Lawyers Section.

Please join us in congratulating Ms. Vogt and Ms. Sandler in continuing the firm tradition of active bar membership.

Please Welcome New Associates

MARSHALL N. LAHIFF, ESQ.: Mr. Lahiff's primary area of practice involves first-party property insurance coverage litigation. During law school, Mr. Lahiff worked as a Law Clerk in the Civil Division of the United States Attorney's Office for the Southern District of Florida, and as a Judicial Intern for the Honorable Senior Judge James Lawrence King. Bar and Court Admissions: The Florida Bar (2013). Education: University of Miami School of Law (J.D., Magna Cum Laude, 2013); University of Virginia (B.A. in Economics and Foreign Affairs, 2010)

STEPHANIE M. SUAREZ, ESQ.: Prior to joining the firm, Ms. Suarez practiced in multiple areas of law, including construction law, real estate, landlord-tenant law, condominium law, domestication and enforcement of foreign judgments, collections and contractual disputes. In law school, Ms. Suarez completed a clinical internship with the Miami-Dade State Attorney's Office, 11th Judicial Circuit, Juvenile Division and served as Articles Editor of the Nova Law Review. Bar and Court Admissions: The Florida Bar (2008); United States District Court, Southern District of Florida (2009). Education: Nova Southeastern University (J.D., Cum Laude, 2008; Florida International University (B.A. in Political Science and Psychology, Magna Cum Laude, 2004)

Walton Lantaff Supporting U.S. Soldiers Serving in Afghanistan; How You Can Help

Walton Lantaff is helping to sponsor the U.S. Army's 3rd Cavalry Regiment, which was recently deployed to Afghanistan from its base in Fort Hood, Texas.

Soldier Christopher Heald was deployed in June along with the regiment; his mother Jean Heald, a longstanding friend of the firm with the City of Boca Raton, let us know of the need for support. Senior Partner Beth Leahy is encouraging participation by the firm's lawyers and any interested friends or clients.

What to send? We suggest supplies, letters of support and/or notes on the unit's Facebook page. Here are details.

LETTERS OF SUPPORT: A simple card or letter telling a soldier that they are **supported** and **appreciated** by you and their country is most welcomed.

The names of the soldiers and the address follows. They have a Facebook page and you are invited to monitor and post to them on that as well.

SUPPLIES: For a bigger impact, Soldiers need various items while they are deployed. Hygiene items, snacks, clean socks, bed sheets, and other "luxuries" can do wonders for morale and are oftentimes extremely hard to come by for any unit distant from a PX. Sending Care Packages is easier than you might think, and postage is inexpensive because of the APO Address.

FACEBOOK PAGE: You can follow the Cavalry unit on Facebook at: www.facebook.com/3dCavHeavyTroop.

facebook.com/3dCavHeavyTroop. There are recent photos, and you can send messages to one or all of the Soldiers. Soldiers can't always access Facebook from deployment, but they do connect often enough to maintain the page.

MAILING: Because U.S. Army will not deliver "unsolicited" mail, you cannot send a letter or package simply addressed "To Any Soldier."

Address your mail directly to any of the named individual soldiers below. The address for all is the same. You *must* include the soldier's name!

**TF 31 FLE JAF
FOB Fenty, JAF
APO AE 09310**



Emblem of the Third Cavalry.

- Julio Aldama
- Jordan Colon
- Caesar Tanguma
- Daniel Farr
- Zack Barris
- Brian Lakin
- Joseph Primo
- Christan Cabico
- Samuel Heer
- Don Gomez
- Eric Capel
- Ethan Meyer
- Adam Cushway
- Johnathan Brown
- Christopher Heald

For more, please see APO/FPO Guidelines published at USPS.gov

Two Honored as 'Super Lawyers' Florida Rising Stars

Sara M. Sandler, Esq., and Lourdes C. de Armas-Suarez, Esq., were honored to be selected for the Florida Rising Stars section of Super Lawyers magazine.



Lourdes C. de Armas-Suarez, Esq.



Sara M. Sandler, Esq.





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Going to the 69th FWCI Educational Conference in Orlando? You're welcome to join us!



MONDAY AUG. 18TH: WLSC Client Luncheon,
11:30-1pm San Antonio Room
MONDAY AUG. 18TH: Party in WLSC Hospitality Suite,
9 pm-midnight, Suite #22176