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SOUTH FLORIDA

Victory for Grubb & Ellis Confirmed on Appeal in Case of Fall Through Roof Skylight

In lower and superior court victories represented by WLSC, the Fourth DCA agreed that a rooftop worker was not hired by the defendant, so defense was not liable for a catastrophic injury

Grubb & Ellis, Co., the property manager of several commercial warehouse buildings in Fort Lauderdale, recently prevailed on appeal and sustained a Summary Judgment which was granted at the trial level.

The Plaintiff sued Grubb & Ellis after he was injured in a work place accident while conducting repairs and replacement of a roof and skylights.



Michael H. Galex, Esq.



Daniel Alvarez, Esq.

Judgment based of Grubb & Ellis's lack of legal duty to the Plaintiff.

Grubb & Ellis was property manager of the buildings but was not involved in the selection

The Plaintiff suffered severe injuries, including injuries to the head, hip and lower extremities, resulting in hospitalization for almost two months.

After settling with the workers' compensation insurance carrier for more than \$200,000, Plaintiff sued Grubb & Ellis, Co., as well as the property owner and architect, for additional damages arising from the accident.

Miami Associate Daniel Alvarez, who represented Grubb & Ellis at the trial level, filed a Motion for Summary



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and supervision of the roofing contractor. Legally, Grubb & Ellis could not be responsible for the actions of the agents hired by the property owner unless there was a special relationship between Grubb & Ellis and the roofing contractor.

The Motion for Summary Judgment was granted at the trial level and Plaintiff proceeded to appeal. Miami Partner Michael Galex represented Grubb & Ellis at the appellate level.

Mr. Galex argued on appeal that Grubb & Ellis did not have actual, or constructive, knowledge of the dangers presented by the skylight and did not supervise the independent roofing contractor which had been employed directly by the property owner.

Therefore, Mr. Galex argued, no legal duty was owed to the Plaintiff which would allow him to recover for the injuries suffered. On March 7, 2011, the Fourth District Court of appeals, per curiam affirmed, the lower courts' ruling.

On March 17, 2011, the Plaintiffs' attorneys moved to invoke the discretionary jurisdiction of the Florida Supreme Court in a further attempt to overturn the Motion for Summary Judgment, without success.

Statute of Limitations is Ruled To Apply After Hiatus from Care

Claimant's Covert Self-Treatment Ran Down the Clock on Her Claim

Scott V. Berglund of our North Florida/Tallahassee office is pleased to report a big win on behalf of the Palm Beach County School District and insurance carrier F.A. Richard & Associates. Judge of Compensation Claims Timothy M. Basquill in West Palm Beach ruled the statute of limitations expired.

The Claimant was a bus driver who was involved in several accidents over the years involving her shoulder, neck, and lower back. After years of initial litigation, all Petitions were resolved in favor of the School District and the Claimant settled into her palliative medical care with no more indemnity benefits payable.



Scott Berglund, Esq.

She abandoned care for her shoulder and neck and pursued care only for her lower back. The authorized treating surgeon eventually notified the Claimant and the Employer/Carrier, that the Claimant's condition was no longer related to the industrial accidents, but to the Claimant's personal degenerative disease in her lower back.

As a result, F.A. Richard & Associates discontinued all medical benefits by filing a Notice of Denial. The Claimant then secretly went to her own physician for ongoing care for her lower back. She made no request of the Employer/Carrier for care, nor did she file any Petition.

After more than one year from the last authorized visit with the surgeon, the Claimant did file a Petition for authorization of medical care.

It was the Claimant's position: 1) she had a compensable permanent injury and that as a result, she was entitled to ongoing palliative care in connection with that injury; and, 2) when the Carrier denied further care, she was entitled to seek medical on her own for reasonable necessary care.

Judge Basquill found that once the Employer/Carrier filed the Notice of Denial it was the Claimant's burden to request medical care, or file a Petition for Benefits, and when she failed to do either, the statute of limitations ran one year from the date of the last authorized visit.

The ruling was not appealed and the files are now closed.



The First DCA's new courthouse in Tallahassee.

WLSC's Appellate Practice Group Successful in Defense At District Courts of Appeal

- **Millstone v. Keyes, Preira, Jonasz & Keyes, LLP**, Law office of Richard J. Preira & Richard J. Preira, 4D09-1689, (Fla. 4th DCA 2011), Appellees represented by **Deborah Fitzgerald** of the Fort Lauderdale office, oral argument was held on Jan. 25, 2011.
- **McMillan v. FAU and Department of Risk Management**, 1D10-3816, (Fla. 1st DCA 2011), Appellees represented by **Michelle Ready** of the Miami office, oral argument was held on January 19, 2011.
- **Bruce v. Sentinel Property Management Group, LLC**, 53 So. 3d 1230 (Fla. 4th DCA 2011), Appellees represented by **Michael Gallex** of the Miami office.

Claimant's Benefits Suspended for Failure to Sign Medicare Releases

Scott V. Berglund of our North Florida/Tallahassee office, representing ACE/ESIS and L-3 Communications, attended a mediation during which the Claimant agreed to a settlement pending approval of a Medicare set-aside.

Subsequently, the Claimant refused to sign the releases required by the Medicare set aside vendor necessary to complete the evaluation and submission to CMS for approval.

The Employer/Carrier sought sanctions against the Claimant for his failure to cooperate and Judge Nolan S.

Winn entered an Order discontinuing all medical and indemnity benefits until the Claimant complied with the necessary signatures to complete the Medicare set aside and submission to CMS.

Part of the ACE Group, ESIS provides a wide range of risk management products and services in the United States and around the world.

The case is **Robert Shanklin v. L-3 Communications**.

MELBOURNE

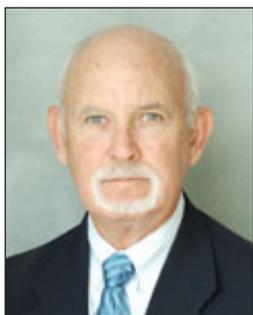
Parking-lot Injury Claim Decided For WLSC Client in Hard-Fought Victory

After three days of trial in May, a Melbourne, Fla. jury returned a defense verdict in favor of WLSC clients WRI-SRP Indian Harbour, LLC and Weingarten Realty Management Company.

The Plaintiff suffered a displaced fracture of her elbow when she fell in the Defendants' parking lot at a shopping center in the town of Indian Harbour Beach, allegedly as a result of tripping on a wheel stop in a handicapped parking space.

In a hard fought case Miami Associate Tom Caldwell successfully argued that the Plaintiff's fall was not due to the negligence of the Defendants but rather due to the Plaintiff's failure to pay attention to where she was walking and due to her own physical impairments.

A proposal for settlement made by the Defendants entitles them to attorney's fees from the Plaintiff.



Thomas Caldwell, Esq.

FORT LAUDERDALE

Office Depot Not Liable as JCC Grants Motion for Summary Final Order

Claimant at maximum medical improvement with no permanent impairment not entitled to continued remedial medical care.

Beth Leahy and Douglas Cohen of WLSC's Fort Lauderdale office successfully obtained a Summary Final Order in favor of the Employer/Carrier in the case of Pedro Vasquez v. Office Depot on March 18, 2011.

The Claimant sought additional remedial medical care, but was found to have reached Maximum Medical Improvement (MMI) with no permanent impairment in a prior final compensation order.

MMI occurs when an injured employee reaches a state where his or her condition cannot be improved any further or when a treatment plateau in a person's healing process is reached.

Judge Daniel Lewis held the claim was barred by the doctrine of *res judicata*, which prevents the same parties from re-litigating a claim already settled by a judicial decision.

Since the Claimant had previously been found to have reached MMI with no permanent impairment, his claim for follow-up remedial medical care was denied.



Beth J. Leahy, Esq.



Douglas Cohen, Esq.

MIAMI

'Super Lawyer' Recognizes Walton Lantaff Lawyers



Carmen Rodriguez-Altieri, Esq.



Bernard I. Probst, Esq.



Thomas P. Falcon, Esq.

Carmen Rodriguez-Altieri, an associate in the firm's Miami office, has been chosen for the third year in a row as a 2011 Rising Star in Construction Litigation by Florida Super Lawyers Magazine. "Only 2.5% of attorneys in their geographical region are named to the Rising Stars list. The selection process is based on peer nominations and independent research."

The magazine has also recognized Bernard I. Probst and Thomas Falcon, partners in the Miami office. Listings will appear in the magazine and can be found in a supplements to *The Wall Street Journal* and *Miami Magazine*.



Gregg R. Margre, Esq.

“In today’s real estate market, Buyers, Sellers and Lenders all face new risks during the sale of real property”



JUPITER | PALM BEACH | BROWARD

Florida Businesses Rely on WLSC’s Expanding Commercial Real Estate Practice

The Real Estate Department in West Palm Beach recently handled the settlement and title insurance for a commercial transaction.

The \$600,000 purchase of commercial property located in the Commerce Park Business District in Jupiter was handled by Attorney Gregg R. Margre of WLSC’s Fort Lauderdale Office.

Attorney Margre also handled the purchase for Mark T. Timbie, Executive Officer of McCormick & Company of a \$1,000,000 condominium in Boca Raton.

Walton Lantaff Schroeder & Carson’s Real Estate Department has closed several condominium units at Boca West Country Club in Boca Raton and continues to grow the firm’s real estate practice.

The real estate market has never been trickier. Contact any of our offices statewide for help.

What Are Best Practices In Risky Real Estate Times?

The importance of hiring a Real Estate attorney/Title Agent/Settlement Agent to handle your real estate transaction is critical.

In today’s real estate market, Buyer/Seller/Lenders face new risks when purchasing real property:

1. Changes to title insurance underwriting rules and regulations that can lead to policies that do not insure Buyer/Lender’s of specific title exceptions;
 2. Recent foreclosures, short sales, and MERS practices require specific compliance to insure marketable title; and
 3. Department of Housing and Urban Development (HUD) changes to Settlement Statement preparation and funding require that your Settlement Agent complies with the new financing requirements to fund loans.
- Failure to hire a qualified Real Estate attorney/ Title Agent/Settlement Agent can result in Buyer/Lender and Seller’s inability to obtain and deliver clear marketable title.



If your real estate fortunes have turned the wrong way, Walton Lantaff can either file your foreclosure motion, or defend you against a foreclosure.

NATIONWIDE

Child Advocacy Group Honors WLSC's Armstrong

Walton Lantaff Schroeder & Carson congratulates our Miami partner **James T. Armstrong** on his appointment as 2011 National Chairperson of the Lawyers For Children America Board of Directors. LFCAs is a national non-profit child advocacy group that provides direct *pro bono* legal representation to children who are victims of abuse, abandonment, or neglect and collaborates for systemic change to improve children's lives. Jim has been representing the child clients of this deserving organization for over 25 years.



James Armstrong, Esq.

Join Us in Welcoming...

The newest members of the Walton Lantaff team, eager to help you manage risk in the Southeast U.S.

Kelly M. Vogt, Esq.,
Fort LauderdaleThomas P. Fabricio,
Esq., Fort LauderdaleNathan Stravers, Esq.,
Orlando
Spring 2011Kelly Ziegler, Esq.,
West Palm Beach

INTERNET LAW

Risk in Social Media Doesn't Concern You? It Will.

Senior Partner Beth Leahy recently addressed the Broward Chapter of the Risk and Insurance Management Society (RIMS), titled "Social Media: New Frontier, New Risk."

More clients are asking for consultation and education in new and old areas of law. For example Leahy also recently lectured in Tampa on "Investigation Techniques and Fraud Claims."

Risk managers are often happy to learn that WLSC offers such seminars for in-house audiences, and the firm has veteran speakers able to address concerns. Enquire with the WLSC office near you.



Download Beth Leahy's "Risk in Social Media" presentation at <http://bit.ly/beth-leahy>

FLORIDA WORKERS' COMPENSATION CONFERENCE

Experts to Share Best Practices for Taking Medicare's Interest Into Account, at WC Conference

A wide range of claims adjusters and risk managers attending the Florida Workers Compensation Institute Conference will benefit from a deep dive breakout session being offered on the subject of the Medicare Secondary Payer Act, Wednesday, Aug. 24th from 8:45 am to 3:45 pm.

Sharing a panel discussion at 11:30 am, WLSC's Michele E. Ready will address "MSA Allocations, Approvals, and Administration."

The panel will go through a comprehensive overview of Medicare Set Aside allocations, approval process, and the impact on settlements.

Within this context, the panel will discuss the Medicare Secondary Payer Act and CMS Memoranda from their unique perspective as defense attorneys.



Michele E. Ready, Esq.

SAVE THE DATE

- 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.

LOCATIONS

■ **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



WLSC education seminar in Tampa, earlier this year.

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