

SINCE 1934

YOUR PARTNERS IN RISK MANAGEMENT

FLORIDA GULF COAST

Repetitive Trauma Claim Denied; Personal Medical Issues Proven

Aggressive, tough defense deflected claims while exposing property loss

Tampa partner Mark Massey recently secured a victory for the employer/carrier in a case tried before Hon. Donna Remsnyder, Judge of Compensation Claims, in St. Petersburg, Florida. The claimant worked in a manufacturing setting which involved repetitive motion of the hands and arms.

She began experiencing pain and stiffness in her neck and pain in her arms and hands. She alleged that she notified her immediate supervisor (and a co-worker whom she incorrectly described as a supervisor) of the problems and that she told them she thought the symptoms were work related.

However, the supervisor and the co-worker both disputed the claimant's testimony. The claimant sought treatment under her group health insurance and was diagnosed with cervical stenosis. Nerve testing for carpal tunnel syndrome was negative. She brought in a doctor's note stating she had stenosis and needs

to be on light duty. Again there was a dispute as to whether the claimant said the problems were work related but ultimately the Judge accepted the testimony of the employer witnesses and rejected the testimony of the claimant after her lack of credibility was demonstrated through impeachment.

The claimant continued to treat under group health insurance for over two years. Her condition was treated — and billed — as a personal, non-work related condition. Massey obtained and placed into evidence every medical bill from every provider, with all the bills indicating the

condition was not related to the claimant's employment.

The claimant also went out on short-term disability twice, and the Attending Physician's Statement also indicated the condition was not



Mark Massey, Esq.

DISMISSAL*Continues on next page*

MIAMI-DADE

Employer/Carrier's Non-payment of Indemnity Upheld by First DCA



Robert J. Strunin, Esq.



Michele E. Ready, Esq.

Robert J. Strunin and Michele E. Ready, Partners in the Firm's Miami Office, recently collaborated to secure JCC and First DCA rulings on an important point of Florida Workers' Compensation law — the right of employer/carrier to withhold indemnity payments for an injured worker's willful refusal or failure to submit a completed DWC-19 (Employee Earnings Report.)

INDEMNITY*Continues on next page...***MIAMI**

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Umbrella Didn't Cover Personal Medical Expenses Claimed as Compensable Workplace Claims

DISMISSAL

Continued from Page 1

work related. She continued to bring in doctor's notes indicating she has stenosis and needs to be on light duty. The employer provided her with a job within her restrictions, and the job was approved by her treating physicians.

The claimant continued to work in the physician-approved position (which she later claimed further aggravated her condition) for about two years until she was terminated for

mony of the employer witnesses over that of the claimant, and specifically found that "It is clear that the claimant looked around to see if anyone was in the area before she took the umbrella. It is also clear that it was sunny when the claimant went outside."

About two months after she was terminated (and after her claim for unemployment benefits was denied based on misconduct, and also after she lost her group health insurance), the claimant filed a Petition for Benefits claiming, for the first time, that her condition was work related. The claim was denied in its entirety based on late notice as well as lack of medical causal relation.

As to notice, claimant argued that the employer was on notice of her condition and had a duty to report it to the carrier to investigate whether it was work-related. However, the Judge rejected that contention. As to medical causal



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theft of company property. The company was having a significant problem with theft despite a zero-tolerance policy. Therefore surveillance was set up, and the claimant's theft of a company umbrella was caught on video-tape.

The tape was also placed into evidence. The claimant claimed that the umbrella was one of many that are routinely made available for employees to use when it was raining, so she took it because it had been raining that day, and simply forgot to bring it back.

However, the employer testified that such umbrellas are not generally available for employee use, and in fact this umbrella had been specially marked and placed as part of the theft investigation.

Again the Judge accepted the testi-

relation, both sides obtained independent medical examinations. The Judge accepted the testimony of the employer/carrier's IME (who could find no objective evidence of injury) and rejected the claimant's IME (who opined that she actually had carpal tunnel syndrome and had been misdiagnosed).

The Judge found that "Based on the totality of evidence before me I find that the Claimant has not established that she suffered a compensable injury as a result of her work activities. It is clear that the Claimant treated for an extensive period of time for personal conditions and only attempted to assert that they were work-related after she had been terminated for theft. All pending claims are hereby denied and dismissed."

Three-week Suspension of Indemnity Benefits Upheld

INDEMNITY

Continued from Page 1

Robert was instrumental in securing a ruling from JCC G.B. Hogan that the injured worker willfully failed or refused to complete and submit a DWC-19 to the carrier which then suspended benefits for about a 3-week period. Once benefits were suspended, the employee submitted the completed and signed DWC-19 and benefits were reinstated. A claim was brought to recoup the 3 weeks of suspended benefits. Through skillful and judicious use of discovery and argument at time of trial, Robert convinced Judge Hogan that the benefits that were suspended should not be repaid, even though claimant was on permanent total disability status at the time and an argument was made that only the JCC could order suspension of PTD benefits. Subsequent to Judge Hogan's ruling, the injured worker, through her attorneys, appealed.

The First DCA entertained and analyzed written arguments by the injured worker's attorney and by Michele (on behalf of employer/carrier.) The First DCA held that the law at issue — Fla. Stat. §440.15(1)(e)2.b. and its accompanying administrative rule — was clear and unambiguous and Judge Hogan's ruling was affirmed. Michele succeeded in overcoming the argument of claimant's attorneys, one of whom is one of the top workers' compensation appellate specialists in Florida.

The facts and the rulings may be reviewed at OJCC Case No.: 83-000566GHB and Fla. First DCA Case No.: 1D11-1512.

Walton Lantaff Recognizes Excellence, Promotes Trio from Junior to Senior Partner

The Partners are extremely pleased to announce that the Firm has unanimously elected new Senior Partners and new Junior Partners.

The Partnerships have been awarded as these individuals have consistently shown fidelity to the Firm, hard work,

superior legal ability on behalf of our clients and continuation of our tradition of working with others for the greater good of all. All candidates have clearly demonstrated that they merit being called “Partners” at WLSC.

The new Senior Partners are Mike

Galex, Steve Kaufer and Laz Rodriguez.

A heartfelt “congratulations” to all. The promotions are well deserved.

—Richard Rosenblum, Esq., Managing Partner



Michael Galex, Esq.

MICHAEL GALEX’ primary areas of practice include third party liability litigation, first party commercial and homeowner’s insurance litigation (coverage and bad faith), premises, automobile and general liability, criminal law, appeals, juvenile delinquency and dependency law, and probate and guardianship law.

Prior to joining the Firm, Mr. Galex served as an Assistant State Attorney for the 11th Judicial Circuit, Miami, Florida.

Professional and Civic Activities

Conflict counsel, 11th Judicial Circuit, Miami, Florida
Florida State-certified volunteer Guardian Ad Litem
Volunteer, Justice Teaching Program

Florida State-certified lecturer for continuing education credits to insurance adjusters and others
Member, Legal Committee, W.I.N.D.

Bar and Court Admissions

Florida, 1995
United States District Court, Southern District of Florida, 1997
United States 11th Circuit Court of Appeals, 1999
United States Supreme Court, 2002

Education

Chicago-Kent College of Law/Illinois Institute of Technology, Chicago, Illinois (J.D. with Honors 1995)
University of Wisconsin-Madison, Madison, Wisconsin (B.S. Ed. 1991)



Steve Kaufer, Esq.

STEVE KAUFER’S primary area of practice involves Workman’s Compensation defense liability litigation. In addition, he handles Commercial Real Estate matters to include litigation and the drafting of contracts.

Prior to joining the Firm, Mr. Kaufer was corporate counsel for a multi-state third party administrator and handled matters regarding state compliance and the establishment of both homogenous and diverse self insured funds, as well as drafting contracts between the Funds and their members.

Professional and Civic Activities

Certified Guardian Ad Litem since 1995.

Appointed in 1996 by the President of the United States to serve as a Local Board Member for the Selective Service.

Bar and Court Admissions

The Florida Bar
Palm Beach County Bar Association
Admitted to practice in the Southern and Middle Districts of the United States District Court of Florida

Education

Santa Clara University School of Law (Juris Doctor, 1992)
University of Florida (Bachelor of the Arts, 1988)



Lazaro Rodriguez, Esq.

LAZARO RODRIGUEZ is a partner in the Miami office. He practices primarily in the area of insurance defense litigation. He has extensive experience defending matters in many different litigation sub-areas (including professional liability, dental/medical malpractice, premise liability, property liability, automobile negligence, and workers’ compensation, as well as professional administrative actions before the Department of Health), and in numerous jurisdictions throughout the State of Florida.

Bar and Court Admissions

The Florida Bar
Southern District of the United States District Court of Florida
Dade County Bar Association
Cuban American Bar Association

Education

The George Washington University Law School (J.D. 1998)
Florida International University (M.B.A. 1997)
Florida International University (B.A. 1994)

The Firm Congratulates and Welcomes...



Daniel Alvarez, Esq.

DANIEL ALVAREZ'S primary area of practice involves first party insurance coverage litigation, including first party claims, appraisals and mediations. Mr. Alvarez also handles third party insurance defense litigation including personal injury, premises liability and automobile negligence. Additionally, Mr. Alvarez handles collection matters for small businesses throughout South Florida.

Prior to joining the Firm, Mr. Alvarez was a Law Clerk, and subsequently an Associate, for a litigation firm specializing in third party insurance defense litigation.

In law school, Mr. Alvarez was Vice-President of The American Constitution Society,

Student Chapter, at the University of Miami.

Professional and Civic Activities

Mr. Alvarez is an active supporter of The Humane Society of Greater Miami, including the annual Adopt-A-Pet walk for the animals.

Bar and Court Admissions

The Florida Bar
Dade County Bar Association

Education

University of Miami (J.D. 2008)
Florida International University (B.A. in Political Science, cum laude, 2005)



Thomas Caldwell, Esq.

THOMAS CALDWELL'S primary area of practice involves insurance defense liability litigation including product's liability, premises liability, automobile negligence, construction defects, professional negligence, insurance coverage, first party claims and appellate practice.

Prior to joining the firm Mr. Caldwell was a member of the law firm of Caldwell & Carroll.

Professional and Civic Activities

Mr. Caldwell is certified by the State of Florida to lecture and provide Florida Continuing Education credits to insurance adjusters.

Mr. Caldwell has served on planning and zoning and code enforcement municipal boards.

Bar and Court Admissions

The Florida Bar
Dade County Bar Association
Southern District Federal Court
Middle District Federal Court

Education

University of Florida, B.S. in Accounting with honors, 1973
University of Florida, J.D. with honors, 1976



Douglas Cohen, Esq.

DOUGLAS COHEN practices in the areas of first party property, professional malpractice, general liability and workers compensation defense.

In law school, Mr. Cohen served as Certified Legal Intern with the Broward County State Attorney's Office and clerked at a commercial litigation and personal injury law firm.

Prior to law school, Mr. Cohen was an Associate Account Executive with Travelers Property Casualty Corp.

Professional and Civic Activities

Broward County Bar Association
Young Lawyers Division
The B'Nai Brith Justice Unit

Bar and Court Admissions

The Florida Bar
The New York Bar
Admitted to practice in the Southern and Middle Districts of the United States District Court of Florida

Education

Nova Southeastern University (J.D. 2007)
Tulane University (B.A. 2002)



Janetlee Garcia, Esq.

JANETLEE GARCIA'S primary area of practice involves all areas of workers compensation defense.

Prior to joining the Firm, Ms. Garcia worked at the Law Offices of Eduardo E. Neret and Edwards and Edwards P.A., also practicing workers compensation defense.

In law school, Ms. Garcia completed a clinical internship in the asset forfeiture division of the United States Attorneys Office.

Bar and Court Admissions

The Florida Bar
Dade County Bar Association
Cuban-American Bar Association

Education

University of Miami (J.D. 2003)
University of Miami (B.A. in English 1999)

The 2012 Class of New Walton Lantaff Partners



Sara M. Sandler, Esq.

SARA M. SANDLER'S primary area of practice involves insurance coverage and appellate law.

Prior to joining Walton Lantaff, Ms. Sandler clerked with an insurance defense firm in Boca Raton and a title insurance company in Plantation, Florida.

In law school, Ms. Sandler served as the Lead Articles Editor of the Nova Law Review.

Ms. Sandler's article, *Battered Woman's Syndrome: Setting a Standard in Florida*, was published in Nova Law Review's thirty-first volume.

Bar and Court Admissions

The Florida Bar

Broward County Bar Association
Broward Young Lawyers Division
Admitted to practice in the Southern and Middle Districts of the United States District Court of Florida

Admitted to practice in the United States 11th Circuit Court of Appeals

Education

Nova Southeastern University (J.D., with Honors, 2008)

University of Florida (B.A. in Criminology, with Honors, 2005)



Michael Sperounes, Esq.

MICHAEL SPEROUNES' primary area of practice over the last twenty years involves all areas 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.

Professional and Civic Activities

Mr. Sperounes has published articles and lectured

on tort law subjects - including Premises Liability Law, Pre-Suit Investigations, Experts, Use of Surveillance, Construction Defects, and Legal Malpractice.

He is certified by the State of Florida to provide Continuing Education credits to insurance adjusters and members of the Florida Bar.

Bar and Court Admissions

The Florida Bar

Admitted to practice in the Middle District of the United States District Court of Florida

Education

Stetson College of Law (JD 1989)

University of South Florida (BA 1985)

Occidental College



Joseph Suarez, Esq.

JOSEPH SUAREZ practices in the areas of insurance defense, commercial litigation and construction litigation.

Prior to joining the Firm, Mr. Suarez was a law clerk with two Miami law firms who focused their practice on admiralty law and commercial litigation, respectively.

While in law school, Mr. Suarez was a member of Florida International University's Board of Advocates and Moot Court team, where he was honored with awards for his writing and advocacy skills. Mr. Suarez also made the Dean's List for his academic achievements.

Professional and Civic Activities

Member of the Cuban American Bar Association,

Dade County Bar Association and the Belen Alumni Lawyers Section.

Mr. Suarez is also active in the Cuban American Bar Association's mentoring program.

Bar and Court Admissions

The Florida Bar (2007)

United States District Court for the Southern District of Florida (2007)

Education

Florida International University College of Law (J.D. 2007)

Florida International University (B.A. in Political Science 2003)

Belen Jesuit Preparatory School (1999)

PALM BEACH COUNTY

WLSC Defense: Voluntarily Dismiss All Pending Claims or We Will Pursue Costs

WLSC saves Employer litigation trial fees by securing a voluntary dismissal

Gregg Margre, Senior Managing Partner in the Firm's West Palm Beach office, with associate Kelly Ziegler, recently successfully defended an Employer in a workers' compensation claim.

The Claimant alleged she sustained an eye injury when dirt blew into her eye at work. The Employer/Carrier, through their WLSC attorneys, completely denied the claim and asserted a major contributing cause defense.

The defense relied on medical evidence that the Claimant contracted viral conjunctivitis, which is a contagious viral infection that cannot be contracted by a piece of dirt into the eye.

WLSC conducted diligent discovery, obtained medical records, and an Independent Medical Evaluation in support of their client's position that the Claimant's contraction of a contagious viral infection was not a compensable industrial accident. Additionally, WLSC was able to

depose the Claimant's husband and obtain his medical records; which showed that he had subsequently contracted viral conjunctivitis.

After conducting discovery and extensive negotiations with opposing counsel, WLSC was able to secure a voluntary dismissal of all pending claims for compensability and indemnity benefits.

The Employer/Carrier saved on litigation expenses at trial and prevailed on a completely denied claim through the diligence of WLSC in obtaining all necessary medical evidence and deposition testimony. Opposing counsel essentially had no choice but to voluntarily dismiss all pending claims, as the Employer/Carrier was also pursuing costs in the likely event WLSC prevailed at the Final Merits Hearing.



Gregg Margre, Esq.



Kelly R. Ziegler, Esq.

MIAMI

Denial of Claim for Two-Level Neck Fusion

Miami partner Jim Armstrong obtained important, potential high exposure decisions completely in favor of Walton Lantaff employer clients before different Judges of Compensation Claims (JCC).

The first decision was entered on December 2, 2011 that denied the claim for a change in treating doctor and the claim for authorization of a two level neck surgery with fusion, screws and plates as a result of a May 29, 2008 work injury. The JCC agreed with the authorized treating orthopedic surgeon and the Employer IME orthopedic spine surgeon that the proposed surgery was not medically necessary and unrelated to the 2008 work accident.

The authorized doctor and Employer IME doctor had well reasoned opinions that the proposed complicated neck surgery would not relieve the Claimant's continuous pain complaints of 9 on a scale of 10 over the entire right side of his body for the years following the 2008 accident.

The Employer and attorney Armstrong undertook the difficult denial of the Claimant IME doctor recommended neck surgery as a result of their case assessment that the injured worker would be permanently totally disabled (PTD) following surgery. Claimant, a 52 year-old production line worker, has a high average weekly wage that entitled him to the 2008 maximum compensation rate of \$746. The PTD indemnity exposure had a present value that exceeded \$555,000. It is important to note that Claimant's medical needs resulting from the work accident have continuously been provided by the Employer's Servicing Agent. The Employer's facility manager was present throughout the trial of this case.



James Armstrong, Esq.

Claimant Opts for Retirement Over Permanent, Total Disability

A successful defense of any high exposure case requires close teamwork between the client, lawyer and defense experts. Jim Armstrong teamed up with a Miami-Dade County public employer and vocational expert Leslie Delman, P.A. to successfully establish that a 63 year old professional voluntarily retired rather than being permanently, totally disabled (PTD).

A Miami-Dade Judge of Compensation Claims determined that a 66 year old professional voluntarily retired at age 63 rather than being PTD as a result of a 2002 knee injury that required ongoing treatment that would eventually require a total knee replacement. The Employer Human Resource witnesses presented documentary and testimonial evidence demonstrating that the Claimant made a planned retirement at age 63.

Additionally vocational expert Leslie Delman P.A. opined that Claimant could perform the essential job functions of the position she retired from and that there were available open positions in the local area within the Claimant's restrictions despite high unemployment. This case had significant exposure due to the age of the Claimant and due to an average weekly wage over \$2,000.

MIAMI-DADE

Walton Lantaff Gives Back to the Community by Supporting 'His House' Children's Home

Most people reading this Newsletter, particularly parents, cannot imagine children in the United States being forced into prostitution as young as 12 years old. It is shocking, but believe it! Sadly Florida is ranked as one of the top regions in the nation for human trafficking cases.

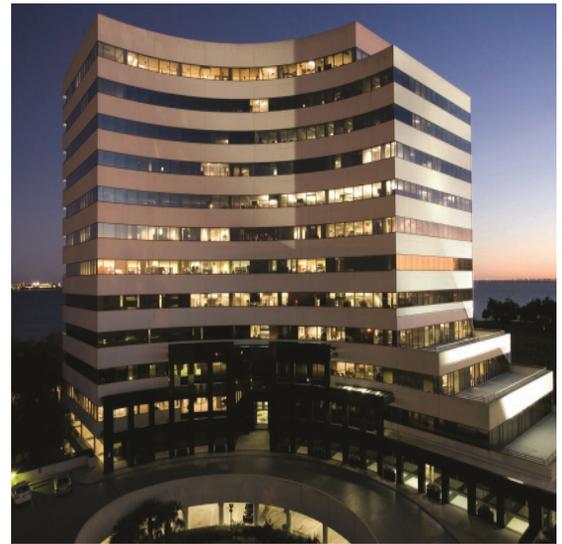


HIS HOUSE: Among the children awaiting adoption and foster homes at His House Children's Home are 96 kids who came to Miami following the earthquake in Haiti. (Photo: HHCH)

Recognizing this awful reality Walton Lantaff supports His House Children's Home a private, non-profit, faith-based organization dedicated to restoring the joy in the lives of children from newborn to 18 years of age, and those who have transitioned out of the foster care system. Established in 1989, the organization provides residential care for abused, neglected and drug-exposed children in a home-like setting. His House is a frontline provider of residential services when an abused child comes into the foster care system.

Miami partner Bernard Probst serves on the Board of Directors and Walton Lantaff attorneys donated countless hours to make the His House Children's Home 18th Annual Banquet fund raiser for The Garden. A number of Walton Lantaff partners and their spouses attended the 18th Annual Banquet to benefit The Garden at His House which will soon open as a long term residential program for young victims of commercial sexual exploitation. The Garden will provide compassionate, therapeutic, and trauma-sensitive support to minor girls, offering the safety and restoration.

For more about the pro bono services to children visit His House Children's Home at www.hhch.org and Lawyers for Children of America, Inc. at www.lawyersforchildrenamerica.org.



Island Center Welcomes WLSC's Tampa Office

Growth is a given in the busy Tampa/St. Petersburg/Clearwater metro area, and the legal community is no exception.

Walton Lantaff's office has moved to a new, more convenient location at the prestigious Island Center to serve its clients better.

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Island Center**

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FORT LAUDERDALE

Charity Clothing Drive

Walton Lantaff's Fort Lauderdale legal staff gathered for a charitable cause - a clothing drive for the needy that yielded several large bags of clothing and household goods. Valentines Day Group (left to right): Jonathan Wickham; Thomas Fabricio; Kelly Vogt; Douglas Cohen; and Kelly Corcoran.



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

Workers' Compensation & Liability Seminars

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

LOCATION: Maitland, Fla.

Date: April 16, 2012.

*Missed it? Private seminars available.
Email Lfullwood@waltonlantaff.com.*

For more information please see our website (www.waltonlantaff.com) or contact Linda Fullwood at Lfullwood@waltonlantaff.com. This year's topics will include—

9:00 A.M. to 10 A.M.

Insurance Fraud Prosecutions: Ethical Implications and Mechanics

10:00 A.M. to 12:00 P.M.

Break Out: Worker's Compensation or Liability Law

Worker's Compensation Breakout

Utilization Review: Control Medical Expenses and Learn Utilization Review Procedures

Reducing Risk and Exposure: Application of Apportionment and Contribution and Compliance with Statutory Time Deadlines

Average Weekly Wage: A Review

Understanding Longshore and the Harbor Worker's Compensation Act

OR

Liability Law Breakout

Coverage: Best Practices for Liability Claims with Coverage Issue

Understanding Construction Litigation: An Overview of Key Case Law and Statutory Provisions

When is an Employer Liable for the Acts of Its Employees?: A Review of Respondent Superior, Negligent Hiring and Related Doctrines

~12:00 Noon to 1:00 P.M. - A Complimentary Lunch~

1:00 P.M. to 2:00 P.M.

Workers Compensation Case Law Update or Liability Case Law Update

2:00 P.M. to 4:00 P.M.

MSP Compliance In 2012

Depositions: What To Do, and What Not To Do When You Are In That Hot Seat

Understanding the Effective Use of Formal and Informal Discovery: A discussion of Work Product and Attorney Client Privileges, and of Useful Website Sources

Note: Attending the full course entitles you to six continuing education credits (CEU's).



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