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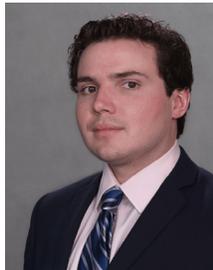
* Satellite Offices

PROPERTY LIABILITY DEFENSE

Burst Pipe Property Liability Claim Proven Leaky by Strong Walton Lantaff Defense



Michael R. Jenks,
Esq.

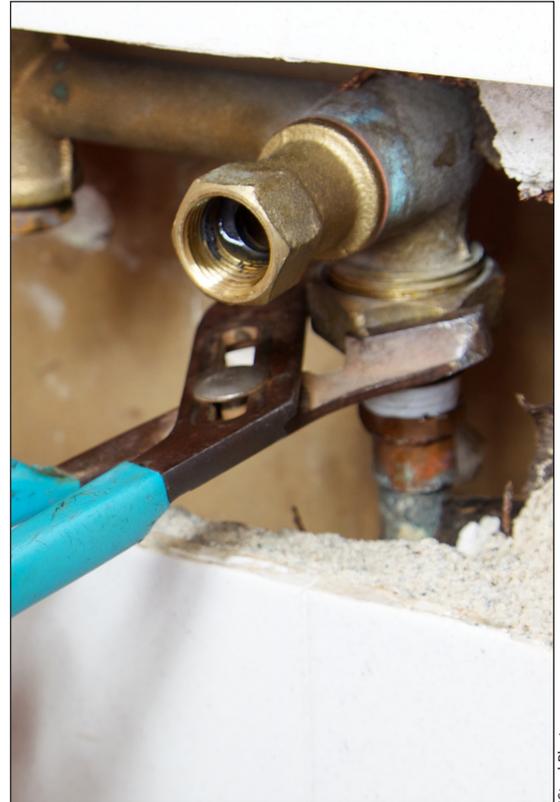


Marshall N. Lahiff,
Esq.

At trial before Hon. Judge Antonio Marin of the Miami-Dade Circuit Court, Walton Lantaff Senior Partner Michael Jenks and Associate Marshall Lahiff persuaded the court to enter a directed verdict in favor of the defense, an insurance company, on the insureds' claim that their tile was damaged from a leak that they sustained.

The plaintiffs claimed that a leak of the pressurized supply line in an exterior wall of the property caused water to de-bond the tiles in the kitchen, dining room,

Please see TILE on page 4



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WORKERS' COMPENSATION DEFENSE

Hours, Rates Termed 'Bordering on Frivolous' Dramatically Reduced by Judge on Request by WLSC



Allison Chittum
Hartnett, Esq.

Senior Partner Allison Hartnett obtained a victory in an attorney fee hearing before OJCC Judge Eduardo Almeyda where the JCC awarded claimant's counsel, the Law Office of Richard Zaldivar, an hourly fee of \$100 an hour.

In this workers' compensation case, the claimant sought a carrier paid attorney's fee for obtaining compensability of the claimant's rash condition and a PCP. Prior to

the fee hearing, the parties stipulated that an employer/carrier paid fee was due and owing for obtaining said benefits. Thus, the only issue to be heard was the amount of a reasonable fee to be awarded.

At the fee hearing, Attorney Hartnett testified that \$225 - \$240 for 30 hours billed was a reasonable hourly rate. The Law Office of Richard Zaldivar submitted 50.3

Please see FEE on page 3



WEST PALM BEACH OFFICE

GENERAL PHONE 561-689-6700

ADDRESS: 1645 Palm Beach Lakes Blvd. Suite 300, West Palm Beach, FL 33401

Serves Palm Beach County, including West Palm Beach, Boca Raton, Delray Beach and Belle Glade in addition to surrounding Florida counties.

Walton Lantaff’s West Palm Beach Office handles workers’ compensation defense, property insurance defense, commercial real estate, premises liability, general civil litigation, immigration and employment law.

In addition to a significant background in insurance defense, **Senior Partner Stephen Kaufer** has experience as corporate counsel for a multi-state third-party administrator and handled matters regarding state compliance and the establishment of both homogeneous and diverse self-insured funds and drafted contracts between the funds and their members. Mr. Kaufer also serves his community as a *guardian ad litem*.

Senior Partner Gregg Margre, in addition to his workers’ compensation and general liability defense practice, heads the firm’s real estate department and handles review of real estate contracts, and assists with the purchase and sale of properties both residential and commercial.

Mr. Margre is a member of the Attorneys’ Title Insurance Fund/Old Republic Insurance and issues title insurance for clients when needed for real estate transactions.

Junior Partner Michele Bachoon, is very active in the legal community and is a member of the Florida Bar’s Workers’ Compensation Rules Advisory Committee and the Animal Law Section. Additionally, Ms. Bachoon serves on the Workers’ Compensation Committee of the Palm Beach County Bar Association



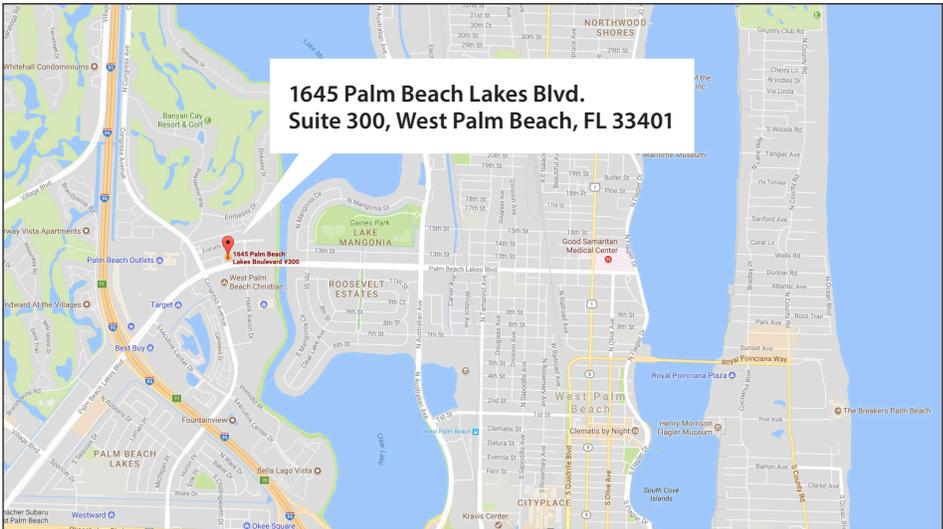
Stephen Kaufer, Esq.



Gregg Margre, Esq.



Michele Bachoon, Esq.



and has been published in the Claims Journal. Ms. Bachoon is also an active member of her community and serves on the Community Advisory Board of St. Mary’s Medical Center and is on the Board of Directors for the Safety Council of Palm Beach County.

All three partners are certified by the state of Florida to lecture and provide Florida continuing education credits to insurance adjusters and speak at various seminars and events.

Associate Attorney Michael Scott, Esq. contributes to the work of the partners in the West Palm Beach office.

Walton Lantaff Defends Insurer Against Excessive Attorney Fees in Case Where Claimant Received No Benefits

FEE, from page 1

hours at \$300 an hour.

In his order, Judge Almeyda made the factual finding that the amount of the benefits secured was \$0 – the benefit obtained was compensability of a condition and a PCP, but the JCC found there was no evidence presented that in the 22 months since the original date of accident the claimant received any medical or indemnity benefits.

The JCC reasoned that the claimant failed to meet his burden to establish that any benefits were secured and rejected the argument that the value of the benefits could be estimated at \$5,000.

The JCC noted that the claimant's attorney could have secured a doctor's affidavit to state the value of the benefits for five years from the date the claim was filed but failed to do so. Thus, the JCC found there was no competent substantial evidence submitted as to the value of medical benefits secured for the five year cap.

The JCC then applied the *Lee Engineering* factors as described in the *Castellanos* case. In applying the factors, the JCC reduced the 50.3 claimed hours to 35.9 by eliminating unrelated and clerical hours.

The JCC noted that the evidence presented by the claimant's attorney in his affidavit did not identify which attorney performed which task, making it impossible to evaluate the experience and reputation of each attorney in relationship to the amount of time required of each of the claimant's attorneys.

The importance of accurate time sheets when considering hourly fees is well established. In *Ferrer v. Truly Nolen, Inc.*, 212 So. 3d 544 (Fla. 1st DCA 2017). The First DCA found that clearly designating which attorney performed which task is an important detail because this can have a significant effect on the hourly rate or the hours claimed. Thus, the JCC found that since the affidavit failed

to indicate the attorney performing each task, the skill and experience of the attorney was unknown. The JCC also noted that the case was not novel, there was no evidence of work that was precluded by taking on this case, and the benefit obtained was evaluated at \$0.

Based upon the JCC's interpretation of the attorney fee statute, the administrative rules and the case law, the JCC found that the claimant's attorney failed to meet his legal burden of proof. Noting that without competent substantial evidence, the fee should have remained at the statutory fee of \$0. However, the JCC considered the \$0 statutory fee inadequate and, thus awarded an hourly rate of \$100.

In deciding so, the JCC recognized the case of *Marshall v. City of Miami*, 920 So. 2d 107, 108 (Fla. 1st DCA 2006), which restricts JCCs from relying on their own beliefs and non-record evidence when determining reasonable-

The JCC emphasized that – given the fact that the claimant failed to obtain any benefits for almost two years – the number of hours submitted bordered on frivolous litigation.

ness of attorney's fees. However, the JCC found that awarding an hourly fee of \$100 an hour was warranted.

In doing so, the JCC noted that it appeared that the claimant had no interest in the benefits that were being pursued given the fact that the claimant failed to appear at a deposition and did not seek medical treatment when offered.

The JCC emphasized that given the fact that the claimant failed to obtain any benefits for almost two years, the number of hours submitted bordered on frivolous litigation.

Additionally, Judge Almeyda observed that the extent of the labor which was dedicated to prosecute this case required a lesser degree of experience in handling routine worker's compensation matters as the majority of the work performed by the claim-

ant's attorney was administrative in nature and could have been performed by a paralegal.

Finally, the JCC noted that but for the *Castellanos* decision, the claim would have yielded a nominal fee – at best \$1,500 for a medical only claim. Yet, given the decision in *Castellanos*, the JCC was required to analyze the hours spent under the *Lee Engineering* factors. Having done so, Judge Almeyda felt that it was justifiable to depart from the statutory fee of \$0 (no benefits were obtained) due to the concession of compensability and fee entitlement.

Likewise, the JCC felt that there was justifiable reason to depart from a \$1,500 fee due to the number of hours awarded, but noted that a total fee of \$3,590 more than adequately compensated claimant's attorney.

With respect to the subsequent appellate history of the claim, the Law Office of Richard E. Zaldivar filed a motion

for rehearing pursuant to Fla. Admin. Code 60Q-6.122. That motion was denied, and no appeal was ever filed.

The claimant's bar will likely argue that this order has limited scope and only applies to matters where the claimant's attorney failed to indicate which attorney performed which task. Nevertheless, the employer/carrier industry can use this order as a persuasive argument in support of a lower fee rate to be assigned when the claims filed are merely for a return to doctor, mileage, or for an MRI which was already being set up. Many JCCs will be hesitant to award \$100 an hour, but if the claims are minimal and are for administrative types of matters this order, OJCC-16-002236ERA, should be effective.

— Associate Attorney Gabriella E. Mijares contributed to this article

Burst Pipe Property Liability Claim Proven Leaky by Strong Walton Lantaff Defense

TILE from page 1

and living room of their house.

Plaintiffs' expert advanced an argument that water from the burst supply line traveled on top of the concrete slab along the path of least resistance through the trowel grooves used in setting the tile, and eventually settling underneath the tile before being absorbed through the concrete by capillary action, impacting the substrate, and causing the tile to de-bond.

The resulting "hollow" sound, according to plaintiff's expert, was a sign of a void between the substrate and tile.

Accordingly, the plaintiffs presented an estimate greater than \$140,000

which called for the replacement of the continuous tile throughout the house.

However, on cross-examination the plaintiffs admitted that in the two years that had elapsed since the date of loss, no tiles had chipped, cracked, lifted or otherwise broken.

They also admitted that they could use the floor for its intended purpose.

Rather, according to plaintiffs, the only damage was a "hollow" sound and feeling that they noticed.

The plaintiffs' expert likewise was forced to admit that he did not see any broken tiles when he inspected the property nearly two years after the date of loss.

During cross-examination, the plaintiffs' expert further acknowl-

edged that he was unable to testify as to when in the future the tiles would actually break, if at all.

After initially reserving ruling following presentation of the plaintiffs' case, the court granted defendant's renewed motion for directed verdict at the conclusion of the presentation of all evidence.

Plaintiffs argued that the "hollowness" and de-bonded tiles were evidence of damage, but the court found that since both the plaintiffs and their expert admitted that there was no physical damage then there was no damage to the tiles and thus nothing to trigger coverage for the tile floor portion of plaintiffs' claim.

— Marshall N. Lahiff, Associate

Walton Lantaff: Your Partner In *Personal* Risk Management

Walton Lantaff is here to assist our clients with their professional as well as their personal risk management challenges. We know our clients have lives outside of claims adjusting: they have families, and property, and good days and bad. And when the bad days become overwhelming, our firm has experienced attorneys who can assist them with family, real estate, probate, criminal and bankruptcy law challenges.



Linda Muralt, Esq.
• Real Estate/
Guardianship



Elisa Terraferma, Esq.
• Family Law



Gregg Margre, Esq.
• Real Estate Law



Michael Galex, Esq.
• Criminal Law



Kelly Vogt, Esq.
• Bankruptcy Law



In these overwhelming times, you can rely on our professionals.

www.WaltonLantaff.com



COMMUNITY COMMITMENT

James Armstrong Honored by Florida Bar for Selfless Pro-Bono Work

On October 20th the Ninth Circuit Pro Bono Committee recognized attorneys who had provided pro bono services within the Circuit, including James Armstrong, Esq. of the Orlando office. The ceremony was attended by many of the judges so it was an honor to be recognized. It was officiated by Judge Heather Pinder Rodriguez and the Executive Director of the Florida Bar Foundation.



Orlando Office Raises Funds for Local Canine-Support Charity

As the Social Committee Chair of the Orange County Bar Association Young Lawyers Section, Associate Brittany G. Melendez assisted in organizing a joint networking event with Orlando Young Professionals, National Association of Insurance & Financial Advisors and the Young CPAs supporting the Canine Companion for Independence charity. The event included a silent auction, photo booth, raffle, food and drinks. The groups raised \$3,500 for the charity that supports the training of service dogs that are provided free of charge to those in need.

Back to School!

Sara Sandler, a junior partner in the Fort Lauderdale office, recently found herself back in the classroom as part of two great initiatives happening in Broward County.

Pre-Law Panel for Magnet Students

On October 17, 2017, Sara was part of a six-attorney panel at Fort Lauderdale High School where she spoke as part of the school's Pre-Law Magnet Program's Law Talk series. Sara and the other attorneys on the panel spoke about the various paths they took on the road to law school, the many opportunities available in the legal field, and then answered questions from the students that ranged from the toughest case they ever handled to what kind of music they listen to. As an alumnus of Broward County Public Schools, the experience was especially rewarding for Sara.



WLSC Salutes Broward RIMS' Support of SOS Children's Village

Walton Lantaff is proud to support the Broward Chapter of RIMS in its mission to raise funds for SOS Children's Village. SOS Children's Village is a foster care neighborhood located in Coconut Creek Florida. The Village has 12 houses which are home to up to 75 children. These children have been removed from their homes because of abandonment, abuse and neglect. The priority at SOS is keeping sibling groups together. SOS's motto is "Healing, Hope, and Home for Every Child."

The annual RIMS dinner to benefit SOS was held on October 19th, and Walton Lantaff supported the effort through its sponsorship of the cocktail hour, provision of centerpieces made from food and personal care items the children can use, and donation of auction items, including Dolphins and Panther sports tickets, a weekend hotel stay, holiday baskets, and a girls basket of Crafts, Clothes and Cool Things, and a boys basket of All Things Athletic.

Larry Glasser, the president of the Broward Chapter of RIMS, helped make the night a success by bidding on and modeling items up for auction. A youth-sized bicycle he rode at the event, along with many other items auctioned that night, were generously donated back by auction winners to SOS for use by the SOS children.

Read for the Record

On October 19, 2017, Sara took part in national Read for the Record day, a program put together to promote early literacy. As part of this initiative, children all across the country sit down to read the same book as part of a shared reading experience. Sara read to a kindergarten class at Everglades Elementary School in Weston, where she and the students went quackers for this year's Read for the Record book, 'Quackers.'

WLSC's Professional Malpractice Group Enjoys Banner Year

This has been a great year for the defense of professional malpractice claims for partners Deborah FitzGerald and Kelly Vogt.

They obtained voluntary dismissals without payouts in two separate legal malpractice cases for their insured lawyer clients.

They attribute the dismissals, in part, to the use of § 57.105 motions for sanctions for frivolous claims.

In the first case, pending in Stuart, Florida, the plaintiffs claimed breach of a fiduciary duty and legal malpractice in allegedly advising one shareholder to the detriment of another and thereafter representing one partner in litigation against the other.

Partial summary judgment was granted in the insured lawyer's favor on some of the claims.

Thereafter, a motion for § 57.105 sanctions for a frivolous claim was served, but the plaintiffs did not dismiss the remaining claims within the safe harbor deadline, potentially subjecting them to attorney's fees at the end of the case.

On the eve of trial, the plaintiffs took a voluntary dismissal with no payout. Any future claim is barred by the statute of limitations.

In the second case in Broward County, the plaintiff took a voluntary dismissal with prejudice with no payout after having been served with a motion for § 57.105 sanctions.

The plaintiff company claimed the lawyer had negligently advised it of its rights to recover advances made to a personal representative in a wrongful death action.

The plaintiff claimed damages in excess of \$2 million. The plaintiff had rejected a pre-suit offer by the carrier, with the insured lawyer's consent, for \$25,000 to avoid litigation costs.

The plaintiff had demanded policy limits. After suit was filed, additional discovery was provided to the plaintiff and thereafter a motion for § 57.105 sanctions was served. The plaintiff filed a voluntary dismissal with prejudice within the safe harbor deadline to avoid potential attorney's fee sanc-

tions at the end of the case.

Deborah FitzGerald and Kelly Vogt have extensive experience in defending professionals in malpractice claims, including lawyers, accountants, realtors, and appraisers.

Ms. FitzGerald may be reached in the Fort Lauderdale office and Ms. Vogt in the Fort Lauderdale or Naples office.

— *Deborah FitzGerald, Esq.*



Deborah
FitzGerald, Esq.



Kelly Vogt, Esq.

GROWING THE FIRM

Walton Lantaff Miami Office Welcomes New Associates



Amanda M. Rodriguez, Esq.

Ms. Rodriguez joined the firm in 2017. She primarily practices in the area of first-party insurance defense, third-party insurance defense and premise liability.

Prior to joining the firm, Ms. Rodriguez practice in several areas of law, including family law, bankruptcy, collections, and contractual disputes, as well as insurance defense matters.

She was admitted to the Florida Bar in 2015 and the United States District Court, Southern District of Florida in 2016. She studied law at St. Thomas University School of Law, and graduated cum laude in 2015.

Her Bachelor's Degree in psychology and history from Florida International University was awarded in 2012.



Carolina de la Pedraja, Esq.

Ms. de la Pedraja graduated from the University of Miami School of Law. While at the University of Miami, Ms. de la Pedraja was a member of the University of Miami Business Law Review and treasurer of the Hispanic Law Students Association. She has previously worked as a legal intern at Pinera-Vasquez Law Firm, a boutique criminal defense firm, and as a law clerk at Liberty Mutual Insurance Company.

Her central practice area is workers' compensation defense litigation. She was admitted to the Florida Bar in 2017.

She studied business management at FSU, graduating with a Bachelor's Degree in 2014.

Walton Lantaff Wins Dismissal of Federal Case Against Central Florida State Attorney

The 18th Circuit Florida State Attorney; Saleem vs. State Attorney Phil Archer

Recently, Orlando Partner James Armstrong and Fort Lauderdale associate Edward Ibeh were successful in securing a dismissal for a firm client, the 18th Circuit Florida state attorney, in a federal lawsuit. The firm was assigned to represent the client against an allegation, (which was raised within a complex 29 page 10 count complaint) of negligent hiring, retention, and supervision of a subordinate agent that was involved in a shooting during a sting operation.

The plaintiff rode in the passenger seat of a vehicle, driven by his cousin, to a location where the cousin was meeting a confidential informant to purchase weapons. The plaintiff remained in the car while the cousin purchased multiple firearms and a silencer. After the purchase was completed, the cousin returned to the vehicle and multiple agents were given the signal to cause an arrest.

The cousin backed out of the parking space and collided with an undercover van. The cousin began driving the vehicle towards the parking lot exit and the agents fired several shots into the vehicle. A high speed chase ensued, which resulted in the vehicle crashing and flipping before the cousin and the plaintiff were arrested. The plaintiff was struck by a bullet, and allegedly suffered a rectal injury, hip fracture, and retroperitoneal hematoma. The incident garnered attention with news outlets and on social media.

The plaintiff brought claims against multiple defendants for violations under the Federal Tort Claims Act, 42 U.S.C. § 1983 (for violating plaintiff's Fourth and Fifth Amendment rights), and under state law claims for battery, and negligent hiring/retention/supervision of one of the agents. In response to the allegations, Mr. Ibeh and Brittany Melendez (Orlando) worked together in drafting a Motion to dismiss with regard to our client, and a memoranda of law in support of the U.S. Attorney's motion for sum-



James Armstrong,



Edward Ibeh, Esq.



Brittany Melendez, Esq.

mary judgment by arguing that the agent subordinate to our client did not violate plaintiff's constitutional rights, and that the agent was entitled to qualified immunity. Our memoranda put forth that our client, pursuant to governing Florida law, could not be liable for the negligent hiring/retention/supervision if the actions of the subordinate officer were not contrary to constitutional law.

Federal Judge Paul G. Byron agreed with our argument in regard to the federal counts, and entered an order

dismissing them with prejudice. This decision was reached in light of the determination, by way of judicial notice, that the cousin driving the vehicle had attempted to use the vehicle to strike one of the agents. The court

declined to exercise supplemental jurisdiction of the state law claims, and dismissed them without prejudice.

While the plaintiff will be able to re file his state law claims in the appropriate state court, the disposition of the federal substantive claims against the codefendants will make the pursuit of any state law case more difficult. Fort Lauderdale Partner Beth Leahy also contributed to the outcome by supervising the draft of the motion to dismiss and memoranda.

#THANKFUL: Walton Lantaff's Miami office celebrated Thanksgiving with a turkey buffet recently. We are always thankful for our clients and for the legal community!





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A 2018 Continuing Education Opportunity for Friends of Walton Lantaff in South Florida

Our annual firm seminar in the Fort Lauderdale area for our insurance adjuster and risk manager clients and friends has been set:

Date: Thursday, Feb. 1, 2018

Time: 9 a.m.–4 p.m.

Location: The Signature Grand
6900 State Road 84, Davie 33317

Notes: This is a new location.
Registration opens at 8 a.m.

Topics include: the guardianship process; first-party and third-party liability; professional malpractice; workers' compensation; Medicare set-asides; when to appeal and spoliation.

More info: Robert Freschlin, (407) 425-3250
rfreschlin@waltonlantaff.com

