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ON APPEAL

## Walton Lantaff Defends Florida Insurer from Fraudulent Homeowner Claim



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### *Third DCA Finds in Favor of Homeowners' Insurer on Concealment or Fraud Provision*

**S**enior Partner **Jack Joy** and Partner **Sara Sandler**, both of Ft. Lauderdale, obtained an appellate victory in the Third DCA where the Court, in a *per curiam* affirmance, upheld a motion for summary judgment entered in favor of a homeowners insurer based on a concealment



John P. Joy,  
Esq.



Sara M.  
Sandler, Esq.

*Please see WATER DAMAGE on page 2*

#### PROPERTY INSURANCE

### Assignment of Benefits Contracts Limited by Florida Homestead Law

**T**he firm recently won an appeal in the Fourth District Court of Appeals which affirmed a judgment finding that an assignment of benefits contract was unenforceable under the Florida homestead law.

A water extraction company entered into an assignment of benefits contract with an insured who sustained water damage to the insured dwelling. The agreement provided that the water extraction company would bill the insurer and the insured assigned to the water extraction company all rights under the insured's policy.

*Please see HOMESTEAD on page 2*

#### FLORIDA SUPREME COURT RULING

### Medicaid liens on settlements of future medical benefits disallowed by Fla. Supreme Ct.

**T**he Florida Supreme Court has ruled that Medicaid liens cannot be made against future medical expenses in *Giraldo, et. al. v. Agency for Health Care Administration*, SC17-297.



Michele Ready, Esq. District Court of Appeals

The Florida Supreme Court's July 5 decision held that Medicaid liens could attach only to past—but not future—medical expenses and resolved an important conflict between the First

*Please see MEDICAID on page 6*

## PROPERTY INSURANCE

## Assignment of Benefits Contracts Limited by Florida Homestead Law

*HOMESTEAD, from page 1*

The trial court ruled that the assignment of benefits contract was unenforceable because it did not comply with the requirements of Florida law for transfer of interests in homestead property. The water extraction company appealed to the Fourth District Court of Appeal, and the firm was hired to defend the appeal. The appeal was handled by Senior Partner **Jack Joy** and Partner **Sara Sandler**, both of the Fort Lauderdale office.

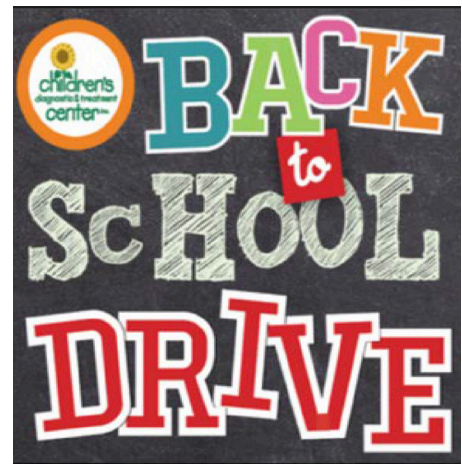
On appeal the water extraction company asserted that the requirements for transferring interests in homestead property did not apply based on the exception in the Florida Constitution for contracts for repair of homestead property. Appellant further argued that the insurer lacked standing to assert rights under the homestead law.

In response, Joy and Sandler argued that the assignment of benefits contract at issue was not within the constitutional exception for contracts for repair of the homestead, but was rather a non-exempt contract for the

financing of said repairs. Joy and Sandler further asserted that Florida case law has for decades recognized that insurance proceeds on homestead property are treated the same as homestead property itself; and, that the requirements in Florida law for transfer of interests in homestead property were designed to protect both the homestead property and the homesteader. Joy and Sandler alternatively argued that, since there was no agreement between the water extraction company and the insured on the price for the water extraction work, the water extraction company's only remedy was in quantum meruit, which is also not within the constitutional exception for contracts for repair of homestead property. Finally, Joy and Sandler argued that an insurer that was being sued on an assignment of benefits clearly had standing to assert legal defenses to the enforceability of the assignment on which the suit against it was based.

The Fourth DCA agreed with the firm's arguments and affirmed the final judgment in favor of the insurer.

This decision creates a significant new defense for insurers on assignment of benefits claims.



Walton Lantaff Schroeder & Carson LLP and its Broward partner CBRE are supporting **CHILDREN'S DIAGNOSTIC & TREATMENT CENTER** in collecting school supplies for children with health complexities.

The following supplies are needed:

- Backpacks
- Pens, Markers
- Spiral Notebooks
- Glue Sticks
- Colored Pencils
- Rulers
- Scissors
- Filler Paper
- Composition Books
- Crayons
- Pocket Folders

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**Tel: 954-909-4016**  
**Email [Heidi.anderson@cbre.com](mailto:Heidi.anderson@cbre.com)**

## Walton Lantaff Defends Florida Insurer from Fraudulent Homeowner Claim, at Trial and On Appeal

*... WATER DAMAGE from page 1*

or fraud provision found in standard homeowners policies. Partner **Ian Ronderos** of Miami represented the carrier at the trial level.

The subject appeal arose out of a first party water damage claim which ultimately led to a breach of contract action against the carrier.

During the course of litigation, the named insured's husband produced fraudulent rental receipts to support a claim for additional living expenses. Based on the fraudulent receipts, Ronderos filed a motion for summary

judgment pursuant to the concealment or fraud provision which precludes coverage for property damage when an insured, *inter alia*, engages in fraudulent conduct relating to the insurance.

The trial court granted summary judgment in favor of the carrier.

On appeal, the insured argued that the concealment or fraud provision required that an insured engage in fraudulent conduct which was material to the claim and further argued that the false rental receipts were not material since no claim for additional living expenses had formally been made to the carrier.

In response, Joy and Sandler argued that the plain language of the concealment or fraud provision did not require a showing of materiality to prove that an insured engaged in fraudulent conduct. Joy and Sandler further argued that the concealment or fraud provision only requires that said fraudulent conduct relate to the insurance, not that an insured make a formal claim before the provision becomes viable as this reading of the provision would be against public policy.

The Third DCA agreed with Joy and Sandler and upheld the summary judgment obtained by Ronderos.



# WLSC Leadership Maximized Bar Association's Community Impact

## *Walton Lantaff Congratulates Partner Sara Sandler on a Successful Year as President of the Broward County Bar Association Young Lawyers Section*

The Firm extends its congratulations to Partner **Sara M. Sandler** of Ft. Lauderdale, on her successful term as President of the Broward County Bar Association's Young Lawyers Section.

Under Sara's leadership, the Young Lawyers Section raised close to \$100,000 for local charities in Broward County and supported numerous organizations through school supplies drives, a toy drive, a pet supplies drive, and a snack drive to benefit the Fort Lauderdale Police Department. Over the last year, members of the Young Lawyers Section read to hundreds of pre-K and kindergarten students throughout Broward County through the Young Lawyers' Read for the Record and Lawyers for Literacy programs. The Young Lawyers Section also supported local foster children through its annual Holiday in February event and were even able to be a part of National Adoption Day, where over 60 Broward County children were adopted. This past year also saw Broward County's talent shine in the Young Lawyers Section's Thriller Dance Challenge and a charity fashion show, Catwalk Conquers Cancer. Under Sara's leadership, the Young Lawyers Section also came together with other local voluntary bar associations when our community needed it most — putting together a Hurricane Irma Relief Drive and raising funds for the family of Sergeant La David Johnson. Members of the Young Lawyers Section also helped make handmade pillows for children being treated at Nicklaus Children's Hospital and encouraged Random Acts of Kindness over the holidays with the RAK Up Some Kindness campaign.

Under Sara's leadership, the Young Lawyers Section was also recognized



**LEADERSHIP RECOGNITION:** Sara M. Sandler, Esq., was honored by Broward County Bar Association for her service as President of the Young Lawyers Section, 2017-18.

by the Florida Bar Young Lawyers Division as the Affiliate of the Year — the third year in a row the Broward County Young Lawyers Section has received this honor. Sara also worked with local judiciary to put together numerous CLE programs and other educational events for young and new attorneys in Broward County.

Walton Lantaff is extremely proud to see Sara carry on the Walton Lantaff tradition of community involvement and we congratulate her on a successful year.



**FUNDAMENTAL:** Reading kids' book 'Quackers' with Judge Ari Abraham Forth.



**BON APPETIT:** Successful YLS food drive.



**GIFTS FOR KIDS:** The YLS of BCBA supported underprivileged Broward school children with backpacks and school supplies.



**LOVE FOR OUR MOST VULNERABLE CHILDREN:** The Young Lawyers' Section of the Broward County Bar Association was honored (left photo) in February to present Gilda's Club South Florida with \$20,000 raised from its Catwalk Conquers Cancer event. 4Kids of South Florida (right photo) also received a generous grant under Sandler's leadership.





# With Age Comes Wisdom and... Larger Workers' Comp Claims

**A**s the U.S. work force continues to age, this will affect how workers' compensation claims are handled. The Bureau of Labor Statistics estimates that over the next five years, the percentage of people over the age of 45 in the U.S. workforce will increase to over 40% and the number of workers 55 or over will grow an estimated 25%.

In the near future, approximately two out of every five workers will be 45 or older. Concomitantly, approximately one out of every four workers will be 55 or older in the coming years. As the workforce ages, we should anticipate the effect this will have on both the types of workers' compensation claims being reported, as well as how these claims are handled.



Scott Berglund, Esq.

Age affects injuries. As people age, they see changes to their health, which may be completely unrelated to any workplace activity or injury.



Jose Pagan, Esq.

Nevertheless, these changes can adversely affect the number of reported accidents and injuries within the older population, as well as the severity of those injuries. This affects how claims professionals will need to respond in order to improve results and help those injured workers return to productive employment.

Granted, older workers are more likely to have pre-existing physical conditions compared to their younger counterparts. This could include orthopedic problems such as loss of muscle strength, decreased range of motion or flexibility, arthritis, and



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**ELDER WORKERS:** Sometimes bring pre-existing physical conditions to the job.

prior joint or spine surgeries.

Any one of these physical conditions could affect the typical lifting, carrying, pushing, pulling, bending, reaching or squatting motions associated with many workplace injuries. Similarly, older workers may also experience issues with other less noticeable medical conditions, which affect balance (such as Parkinson's and other movement disorders) and memory (such as dementia, Alzheimer's and other similar nervous disorders). Some of these conditions and their treatment can also affect a person's endurance and vision.

## Pre-existing conditions come into play

Treatment for an injured worker with any underlying condition of this nature could complicate the claims professional's management of the case. If a worker already manifests any of these physical or medical issues, dealing with a new injury could complicate the ability to resolve both the injury and the claim quickly.

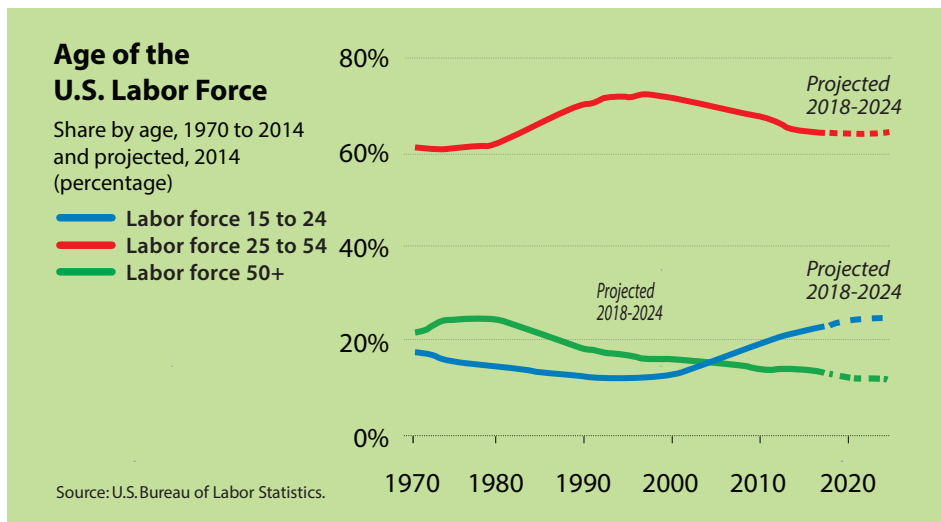
Some factors affecting the claims process could include pre-existing treatment for conditions such as pain, diabetes, heart disease, hypertension, cholesterol, cancer and more. These may be aggravated or need to be treated and controlled to address the new injury.

A worker with these types of pre-existing conditions may already be prescribed multiple medications. How they affect or interact with treatment for a workplace injury can complicate or prolong the required treatment. Moreover, some of these pre-existing conditions, or the medications used to treat them, could potentially increase the likelihood of the occurrence of the work-related accident.

Medication affecting memory or balance can alter cognitive or physical functions, leading to falls.

Some physical limitations and pain medication can cause strains, sprains and injuries triggered by physical exertion. If it can be proven, issues of apportionment should be considered.

In addition, some of these pre-existing conditions can be expected to



## “[Changes] affect how claims professionals will need to respond in order to improve results and help those injured workers return to productive employment”

not only increase the incidence of accidents and injuries with older workers, but are also likely to increase the severity of the injury resulting from a workplace accident.

### Getting back to work

An injured older worker may take longer to heal than a younger employee, which could extend the payment of temporary total disability or temporary partial disability. Pre-existing conditions could limit a worker's ability to participate in traditional courses of medical treatment, such as physical therapy or surgery, or preclude the use of typical medications.

A patient's pre-existing conditions or interactions with previously prescribed medications may also require the use of alternative courses of treatment and more expensive medications.

These issues could also affect when Maximum Medical Improvement (MMI) is reached and the percentage of disability assigned to the injured worker. While every case is different, if an injured worker is slower to heal, this could increase the permanent impairment assigned and affect settlement opportunities.

It is possible that permanent total disability claims could increase due to the combination of pre-existing disabilities with any new restrictions

associated with the work-related accident.

### Examining other options

Some workers over age 62 who are eligible for Social Security may be less motivated to return to work after an injury if new physical restrictions are imposed. In those cases, if a return to work is less likely, there would be increased opportunities to settle.

The particular circumstances of the older workers' medical history could drive their decision to settle their claims. For instance, an injured worker with a more complicated medical history or with pre-existing, life-

shortening illnesses could be more inclined to settle their workers' compensation claim.

Meanwhile, other workers with less extreme pre-existing conditions may be less likely to settle their claims for workplace injuries if they anticipate that their injury would require more lengthy palliative care. In either respect, the required Medicare Set-Aside (MSA) associated with some of these older injured workers could pose an obstacle to reasonable settlements.

Due to these anticipated issues, it would be wise for the claims professional to explore the employee's pre-existing medical history early on in the claims process. This allows the authorization of appropriate medical care and specialties to accelerate the recovery and the return-to-work process, and to obtain any necessary prior medical records.

With that early information, the claims professional can make an informed decision on compensability as well as any defenses regarding issues of major contributing cause and idiopathic cause.

In addition, apportionment will also need to be calculated to ensure appropriate benefits are provided to the injured worker with non-work-related pre-existing conditions.

For difficult or complicated cases, consider assigning a nurse case manager. The nurse can help the claims professional with the medical-based legal decisions of compensability and apportionment, as well as assist the injured worker by answering questions and providing coordination of care services. In the appropriate circumstances, the inclusion of a nurse case manager can expedite the appropriate handling of these claims.

Keeping some of these issues in mind will lead to a more productive 2018, for both claims professionals and injured workers.

*Jose Pagan, Esq. (jpagan@WaltonLantaff.com) is a partner with Walton Lantaff Schroeder & Carson LLP in Tallahassee, Fla., with experience handling both first-party and third-party claims. Scott Berglund, Esq. (sberglund@waltonlantaff.com) is a partner with Walton Lantaff Schroeder & Carson LLP in the Tallahassee and Pensacola offices.*



*This article appeared in Claims magazine and is reprinted with permission.*



## FLORIDA SUPREME COURT

## Medicaid Liens Cannot Be Made for Both Past and Future Medical Expenses

MEDICAID, from page 1

and the Second District Court of Appeals.

The First DCA had held in *Geraldo v. Agency for Health Care Administration*, 208 So. 3d 244 (Fla. 1st DCA 2016) that the Agency for Health Care Administration (AHCA) could pursue liens for both past and future medical expenses based on the expressly permissive statutory language found in Florida's Medicaid Third-Party Liability Act §409.910 (17) (B), Fla. Stat. (2014).

In quashing the first DCA opinion, and accepting the second DCA's reasoning in *Willoughby v. Agency for Health Care Administration*, 212 So. 3d 516 (Fla. 2d DCA 2017), the Florida Supreme Court held that federal law

preempted the State's Medicare statute. A majority of the court held that the federal Medicaid act, by its plain language, contained a "ceiling" on what money could be recouped from a third party liability settlement.

The majority also stated that their interpretation was dictated by the statutory language, but it was also supported by prior United States Supreme Court decisions. Those decisions, *Ahlborn* in 2006 and *Wos* in 2013, had limited the recovery efforts of individual States to those third-party liability proceeds that were not protected by the Federal Medicaid statute's anti-lien provisions that specifically limited recovery portions of the settlement funds that were allocated to reimbursement for past medical expenses; all other allocated portions

of the settlement were vested property rights which could not be subject to a lien.

### Analysis

When Florida amended its Medicaid third-party liability act in 2014 in response to the *Wos* decision, the language specifically allowed for the recovery of future medical expenses and many consultants advocated for the use of so-called Medicaid Set-Asides to allocate future medical expenses in settlements involving Medicaid beneficiaries. This decision makes it clear that in Florida there is no need to obtain a Medicaid set-aside which will be a cost-savings for those attempting settlement with a Medicaid beneficiary.

### ACCOLADES

## Historic Miami Bar Group Taps WLSC's Preston-O'Neill

**Jazmine Preston-O'Neill**, a Partner from the Miami Office, has been elected as the Group II Director for the Wilkie D. Ferguson Jr. Bar Association (WDFJBA). The Wilkie D. Ferguson Jr. Bar Association was founded in 1977, as the Black Lawyers Association in attempt to challenge the barriers that prevented African Americans from gaining full inclusion and access to the legal system in Miami-Dade County. In 2003, the organization changed its name to honor the contributions and legacy of the late Judge Wilkie D.



Jazmine Preston-O'Neill, Esq.

Ferguson Jr., and over the last 40 years, WDFJBA has grown into the oldest and largest association of Black attorneys in Miami. WDFJBA continues its rich legacy by promoting the ideals of excellence, inclusion, equal access, equal opportunity and equal justice in the legal system, and promoting diversity in

the legal community through financial assistance, scholarship, mentorship, and professional development.

The new WDFJBA Executive Board begins its tenure on July 1, 2018, and as a member of the Board, Mrs. Preston-O'Neill will promote the organization's strategic initiatives to Empower, Engage, and Educate, WDFJBA's membership and the community at large.

We look forward to Mrs. Preston-O'Neill's work on the Board as she starts her term as a Director.

### Outstanding Walton Lantaff Attorneys Recognized as 2018 Super Lawyers

Congratulations to **Joseph Suarez** of the Miami office and **Sara M. Sandler**, of Fort Lauderdale who were recognized for their superiority in Insurance Coverage Law by Super Lawyers in its 2018 edition.

### WLSC Provides Leadership for Dade County Bar Board

**Melissa Jordon**, an associate in the firm's Miami Office, was sworn in for her second term as a Group 1 Director of the Dade County Bar Association Board of Directors, at its Installation Gala on June 23rd, 2018. She is looking forward to a productive year on the board, serving the Miami-Dade legal community and continuing to improve the services for local attorneys and the greater community.



New Board of Directors installed for 2018

GROWING THE FIRM

## Walton Lantaff Adds 8 Stars to The Bar



Ingrid Benson-Villegas, Esq.



Elizabeth Carlin, Esq.



Amanda Rodriguez, Esq.



Laura Reid Weinfeld, Esq.



Alina Yaniz, Esq.



Joshua Orlan, Esq.



Darrell Limia, Esq.

**INGRID P. BENSON-VILLEGAS's** (305-671-1331) practice areas include first- and third-party insurance defense. She graduated from FIU College of Law, dean's list, in 2013. Admitted to the Florida Bar, 2015; the Southern District of Florida, 2016; and the U.S. Court of Appeals Eleventh Circuit, 2016.

**ELIZABETH CARLIN** (305-671-1350) is a veteran independent lawyer returning to legal practice after a few years of parenting, now concentrating her practice at WLSC on first-party property insurance defense. She graduated from St. Thomas University School of Law, *cum laude*, 2003. Admitted to the Florida Bar, 2004 and the U.S. District Court 2006-2014. She serves on the Civil Litigation Committee and the Judiciary Committee of the Dade County Bar Association.

**BLAIR HYSENIKA** is a graduate of University of South Florida College of Law. Admitted to the Florida Bar, 2018.

**DARRELL A. LIMIA's** (305-671-1330) main areas of practice are first- and third-party insurance defense. He's a graduate of St. Thomas University School of Law, 2010. Admitted to the Florida Bar, 2010 and the Southern District of Florida, 2015.

**JOSHUA ORLAN** (954-713-1418) practices in the area of insurance defense, medical and dental malpractice, workers' compensation and property damage, construction, and products liability claims. Joshua graduated Emory University School of Law with honors. Admitted to the Florida Bar and the Georgia Bar.

**AMANDA M. RODRIGUEZ** (305-671-1346) practices in the area of first-party insurance defense, third-party insurance defense and premises liability. She's a graduate of St. Thomas University School of Law, *cum laude*, 2015. Admitted to the Florida Bar, 2015 and the Southern District of Florida, 2016.

**LAURA REID WEINFELD** (305-671-1362) practices first-party property insurance coverage litigation, premises liability and third-party liability claims. She comes from Mitrani Rynor Adamsky & Toland, Tew Cardenas, and Greenberg Traurig. She's a graduate of UM School of Law, 1996 *magna cum laude*. Admitted to the Florida Bar, 1996 and the Southern District of Florida, 1996.

**ALINA YANIZ** (305-670-7065) practices primarily in the area of Insurance Defense. She's a graduate of the UM School of Law, 2017, *cum laude*. She's a veteran bilingual broadcast journalist for News12 The Bronx and Telemundo in Miami. Admitted to the Florida Bar, 2017.



GET TO KNOW A WALTON  
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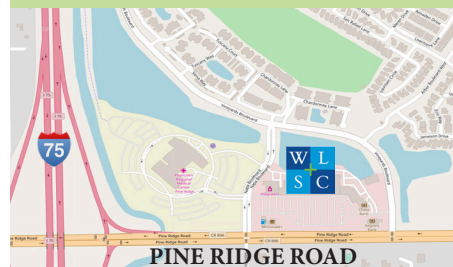
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■ Robert J. Strunin, senior part-  
ner; Tel. 305-671-1336

■ Joseph A. Suarez, partner;  
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■ Kelly M. Vogt, partner;  
Tel. 954-463-8456



## Advancement for Women in Legal Profession

**INGRID P. BENSON-VILLEGAS** was installed on the Board of Directors of the Miami-Dade Chapter of the Florida Association for Women Lawyers (MDFAWL) on June 7, 2018, after her re-election. In this capacity, she will advance MDFAWL's mission by actively promoting the advancement of women in the legal profession and promoting women's rights.





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Miami, FL 33156



## Going to the 73rd Workers' Compensation Educational Conference in Orlando?

Meet Walton Lantaff's risk-management attorneys at this information-packed conference and networking event, August 19-22, 2018.

*The Orlando World Center Marriott*

### Meet Our Attorneys

MONDAY, 11:30 a.m.  
Luncheon @ San Antonio Room.

TUESDAY, 11:30 a.m.  
Luncheon @ San Antonio Room.

*Note: Seating is limited.*