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**staff box**

**PUBLISHER**

Connie Ramos-Williams  
connie@conricholdings.com  
239.690.9840

**EXECUTIVE EDITORS**

Art Goldberg  
artg@browardbar.org  
Braulio Rosa  
braulio@browardbar.org

**LAYOUT AND DESIGN**

April Bordeaux

**ADVERTISING DIRECTOR**

Linda Fiore  
linda@conricholdings.com  
239.690.9840

**ACCOUNT EXECUTIVE**

Sue Bridges  
sue@conricholdings.com  
239.690.9840

**CONTRIBUTING WRITERS**

Deborah FitzGerald  
Meghan Clary  
Stacey R. Weinger  
John P. "Jack" Seiler  
Mark Popolizio

**BILLING INQUIRIES**

954.764.8040 Ext. 201

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**On the Cover:** Left to right: 17th Judicial Circuit Trial Court Administrator Kathy Pugh, 17th Judicial Circuit Chief Judge Peter Weinstein, Broward County Bar Association President Deborah FitzGerald, and Fort Lauderdale Mayor John P. "Jack" Seiler are leaders of local and legal organizations, which have contributed to the realization of the new courthouse project.

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*Deborah FitzGerald*

Fall is in the air. The temperatures are dropping, Thanksgiving is approaching, and the holidays are not far off. It is a time to enjoy being with family and friends and to reflect upon our many thanksgivings. As your President, let me highlight just a few of the many people for which the BCBA is thankful:

**AN EXTRAORDINARY JUDICIARY.** Broward County is fortunate to have the most qualified, hard-working and ethical judges in the State. Their contributions to the BCBA, individually and collectively, are immeasurable. Our Chief Judge has

worked tirelessly to make the new Courthouse a reality. Each year, our Judiciary strives for 100% membership in this Association.

**OUR COUNTY COMMISSION AND MAYOR.** Despite the public's lack of support for a new courthouse, the Commissioners demonstrated courage and conviction to do the right thing and approve the construction of a desperately needed courthouse. Mayor Seiler, also a BCBA member, also has been instrumental on this issue.

**OUR STAFF.** We have a loyal staff who work tirelessly and energetically to ensure the success of our sections and other programs throughout the year.

**OUR SPONSORS AND SUPPORTERS.** We are so fortunate to have generous and loyal sponsors and supporters upon whom the BCBA depends for the success of our Association. Please get to know them throughout the year and consider using their products and services. They are the best in their respective businesses.

**OUR 100% LAW FIRMS.** These firms understand the importance of membership in our Association and are role models for all lawyers in Broward County. The BCBA takes pride in recognizing these firms' commitment to our Association.

**OUR SECTION AND COMMITTEE CHAIRS.** Our Executive Committee and Board know that we alone cannot make the BCBA successful. It takes the leadership and vision of our section and committee chairs to implement new ideas, plan events and CLE's, and write articles. The BCBA is strengthened by their hard work and diligence.

**OUR MEMBERS.** We are the third largest voluntary bar association in Florida and it is your commitment to this Association that makes it successful. Each of you are leaders, whether it be in this Association, your firm or the community.

**To All, THANK YOU,  
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## letter from the young lawyers' president



Meghan Clary

How appropriate it is — with Thanksgiving just a few weeks away — for the Young Lawyers Section to express its deepest appreciation and gratitude to the lawyers, businesses, judges and members of our community who came together to support our Twenty-Fifth Annual Charity Golf Tournament. Although this article is being written before the final numbers have been tallied, the support for this year's tournament was unprecedented, allowing us to fill the course weeks before the event and have a waiting list of over 20 players hoping for a spot to open for them. On behalf of our organization and our charitable beneficiary, Florida's Children First,

thank you so much for your generosity and for making this year's tournament such a success.

In addition, we cannot go without thanking the speakers of our October luncheon, Judge Jack Tuter, the Administrative Judge for the Civil Division, and Christin Gallardo, the Seventeenth Judicial Circuit Program Attorney, who presented the contemporary topic: E-Orders/E-Service/E-Filing. We appreciate your putting together this informative presentation on such an important and timely issue for our legal community.

This month we have other events lined up for you to look forward to, starting with our November luncheon on the 15th, where three prominent Broward County attorneys and an exceptional member of our judiciary who is about to retire will share with you effective tips, pointers and guidance on How to Use the Rules of Evidence in Your Favor. Please join us at noon at the Tower Club, where we will hear from family law attorney Terry E. Fixel, Esq., criminal defense attorney Michael E. Dutko, Esq., civil litigation attorney Paul O. Lopez, Esq and The Honorable Ronald Rothschild, as they weigh in on this relevant issue in your practice. The cost is \$25 to attend this CLE luncheon, and you may RSVP to the Broward Bar at 954-764-8040.

Also, on November 30 at 8:30 a.m. in the Broward County Courthouse Law Library, we will host our very popular and exclusive quarterly event, Breakfast with the Judiciary. This quarter's Breakfast with the Judiciary is being proudly sponsored by Sabadell United Bank, also known as "The Lawyers' Bank." Many young lawyers have shared that this is their favorite YLS event because nowhere else do they have the opportunity to be in a room full of judges, general magistrates and hearing officers in such a casual atmosphere, and get to know our judiciary beyond the bench. The breakfast is catered and is \$25 per person (free for all judiciary). Space is limited so please RSVP to Eric Rosen, Esq. at [esr@kulaw.com](mailto:esr@kulaw.com).

If anyone has any questions about joining YLS or to learn more information about our events, please feel free to call me at Chorowski & Associates, P.A. at 954-525-6566 or email me at [meghan@cmfamilylaw.com](mailto:meghan@cmfamilylaw.com). You may also find a calendar of our events on the Broward Bar web site at [www.browardbar.org/yls](http://www.browardbar.org/yls).

We wish you a Happy Thanksgiving, and thank you for continuing to support YLS and our events. **B**



# RECENT DEVELOPMENTS IN THE LAW

*by Nancy Little Hoffmann*

## Appeals

**Portis v. Seatruck, Inc.,**  
37 Fla. L. Weekly D\_\_\_\_  
(Fla. 3d DCA October 3, 2012).

While on appeal from a final order the DCA may review any prior ruling or matter in the case, it cannot do so where, in a multi-defendant case, the nonfinal order sought to be reviewed pertains only to a defendant who is not an immediate party to the appeal.

## Discovery Orders/Certiorari Review

**Board of Trustees of Internal Improvement Trust Fund v. American Education Enterprises, LLC,**  
37 Fla. L. Weekly S589  
(Fla. September 27, 2012).

The Third District granted certiorari and quashed an order compelling production of certain financial records as over broad, unduly burdensome, and irrelevant. The supreme court in turn quashed that opinion, holding that the DCA failed to apply the proper standard for certiorari relief. The supreme court clarified that certiorari is available only upon a showing of irreparable harm and that overbreadth is not a sufficient basis for granting certiorari.

## Attorney's Fees

**Saunders v. Dickens,**  
37 Fla. L. Weekly D2274  
(Fla. 4th DCA September 27, 2012).

After a defense verdict, fees were awarded against both plaintiffs jointly and severally for all fees claimed for defending the underlying injury claim and the widow's consortium claim. The Fourth District held that defendants had the burden to allocate fees between the claims or to show that the issues were so inextricably intertwined that allocation was not feasible, and reversed for an evidentiary hearing.

**Fidelity Warranty Services, Inc. v. Firststate Insurance Holdings, Inc.,**  
37 Fla. L. Weekly D\_\_\_\_  
(Fla. 4th DCA October 3, 2012).

In a lengthy multi-party commercial case, the Fourth District again addressed the respective parties' entitlement to fees where the issues were allegedly intertwined. Too long to summarize here, the opinion is instructive as to application of the law in such cases, as well as the entitlement of fees where counsel with a contingency fee agreement withdraws from representation.

## Dissolution of Marriage

**Hoff v. Hoff,**  
37 Fla. L. Weekly D\_\_\_\_  
(Fla. 4th DCA October 3, 2012).

The Fourth District has held that a temporary relief order need not contain detailed factual findings to support it, and that the ruling will be affirmed if it is supported by competent, substantial evidence in the record.

**Murphy v. Murphy,**  
37 Fla. L. Weekly\_\_\_\_  
(Fla. 3d DCA October 3, 2012).

Addressing the criteria for modifying alimony where the recipient is in an alleged post-dissolution "supportive relationship," a Third District panel majority held that reduction is not allowed unless some economic support is shown. A lengthy dissent maintained that the trial court could rely on other factors as well. **B**



*Nancy Little Hoffmann is a Board-Certified Appellate Lawyer practicing in the Fort Lauderdale area since 1974. She may be contacted at 954-771-0606 or by e-mail at [NLHappeals@aol.com](mailto:NLHappeals@aol.com). For more information, see [NancyLittleHoffmann.com](http://NancyLittleHoffmann.com).*



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# New Courthouse

## A Wise Investment in Our Future

*By John P. "Jack" Seiler, Mayor, City of Fort Lauderdale*

*Architectural Rendering by The Spillis Candela & Partners/Heery/Cartaya Joint Venture*

Greater Fort Lauderdale is brimming with optimism as economic indicators confirm our sound fiscal management, progressive economic development initiatives, and long-term business strategies are paying off. Helping to fuel this economic resurgence are infrastructure projects that collectively pump billions of dollars into our local economy, create thousands of jobs, and send a clear signal of strength and confidence about Fort Lauderdale's future.

One of the projects leading the way is the new Broward County Courthouse. As the first major public facility being built on the south side of the New River in over five decades, this judicial complex will redefine downtown Fort Lauderdale, enhance our stature as the centerpiece of South Florida's legal community, strengthen our position as a world class business center, and help attract additional development and private sector investment in this area.

Thanks to visionary leadership on the Broward County Commission, extraordinary efforts from our local Judges and staff, a strong partnership with the City of Fort Lauderdale, and outstanding support from the legal community, this \$213 million project will include: a new 20-story, 741,000 square-foot courthouse, close to 80 courtrooms, 355,000 square feet of administrative office space, a 500-space secured parking garage, improved security screening areas, generator systems for emergency operations, and an improved layout for better circulation of employees and visitors.

A public plaza will lie in the center of the judicial campus linking the new courthouse to the facility's existing east wing. The tree lined urban park will provide a safe, comfortable community gathering place that will be integral to our long-term vision of creating an active, pedestrian-friendly destination by connecting downtown Fort Lauderdale

with the north and south sides of the New River.

Recognizing the importance of sustainable development, the project is registered for the U.S. Green Building Council's silver level LEED (Leadership in Energy Efficiency and Environment Design) certification. It will incorporate

*This project represents a significant investment toward creating a vibrant, inclusive, and sustainable future for our community.*

sustainable building materials, energy efficient lighting, and design features to decrease energy consumption, minimize environmental impact, and reduce our carbon footprint.

For members of the legal profession, construction of the new courthouse is welcome news. The state-of-the-art complex will dramatically improve the efficiency of courthouse operations by eliminating delays due to the age, condition, and layout of the current building. The needs of clients and the public will be better served in a convenient, safe, and secure complex that provides outstanding resources, services, and amenities to enable justice to be dispensed in a fair and meaningful manner.

Above all else, the new Broward

County Courthouse is about community. It is about building community, strengthening community, and serving community. This project represents a significant investment toward creating a vibrant, inclusive, and sustainable future for our community. Years from now, many of us will look back on this project as a key turning point in our efforts to strengthen democracy and build a strong, healthy and livable community for ourselves, our

children, and our grandchildren.

And while the immediate impact of this investment will be seen when the new courthouse facilities are completed, the lasting benefits will be measured by the contributions this facility and the people who use it make to uphold justice and ensure freedom, liberty and equality.

With that stated, I can think of no better or more rewarding investment. **B**



*John P. "Jack" Seiler is in his second term as Mayor of the City of Fort Lauderdale. Mayor Seiler formerly served 8 years in the Florida House of Representatives, and is a founding partner in the law firm of Seiler, Sautter, Zaden, Rimes & Wahlbrink. Mayor Seiler may be reached at [jack.seiler@fortlauderdale.gov](mailto:jack.seiler@fortlauderdale.gov) or 954-828-5003.*



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# DETERMINING MEDICARE STATUS

## Understanding CMS' Query Process System



By Mark Popolizio, Esquire

An individual's Medicare status plays an integral part in evaluating one's compliance obligations under the Medicare Secondary Payer Statute (MSP). When a plaintiff is identified as a Medicare beneficiary, several MSP compliance considerations come into play: MMSEA Section 111 reporting (Medicare's new electronic reporting law), Medicare conditional payment reimbursement issues, and Medicare set-asides (MSAs).

To help primary payers determine a plaintiff's Medicare status, the Centers for Medicare and Medicaid Services (CMS) has established an electronic "Query Process" system as part of its implementation of the Section 111 reporting mandates.

This article provides a general overview of the basic mechanics and features of the Query Process system as follows:

### *What is CMS' Query Process System?*

Under Section 111, Responsible Reporting Entities (RREs) are required to comply with the new reporting law. RRE determination is fact and situational specific per CMS' RRE definitions and related criteria. In general, RREs are typically insurance carriers or self-insureds. Claimants and their lawyers are never RREs. RREs face a steep penalty of \$1,000 per day, per claim for non-compliance with Section 111.

RREs are required to (i) determine a plaintiff's Medicare status and (ii) report claims involving Medicare beneficiaries if they meet a Section 111 "reporting trigger." While RREs are required to determine Medicare status, the statute

is silent as to how this is to be done. In response, CMS developed an electronic Query Process system.

### *How Does Query Process Operate?*

Under Query Process, an RRE may submit an unlimited number of query requests once a month. Only an RRE (or its duly registered Section 111 reporting agent) are permitted access to the Query Process system. A "query response" file is returned to the RRE within 14 calendar days

To use Query Process, the plaintiff's social security number (SSN) or health identification claim number (HICN) is required. In addition, the RRE must submit the plaintiff's first and last name, the claimant's birth date, and gender. CMS' system must find an exact match of the submitted SSN or HICN. Thereafter, at least three out of the four remaining data elements must yield an exact match.

If the queried individual is identified as a Medicare beneficiary, a response is returned indicating that the plaintiff was "matched" to a beneficiary in CMS' data base. Due to privacy concerns, the actual date of Medicare entitlement and enrollment, or the basis of the plaintiff's entitlement is not provided. With this information, the RRE then assesses whether the claim meets a "reporting trigger" thereby requiring it to be reported under Section 111. Conversely, if the queried individual is not identified as a Medicare beneficiary, a "non-match" response is returned.

### *Practitioner Considerations*

For the most part, legal practitioners have a tangential, but potentially

important, connection with Query Process. Unless defense counsel is a properly registered Section 111 reporting agent (which will be a rare circumstance), they are unable to use Query Process.

However, defense counsel may find that their clients request their help in obtaining a plaintiff's SSN to assist them in utilizing Query Process. This is particularly true in liability cases since liability RREs do not generally have the same type of access to a plaintiff's SSN, as their workers' compensation counterparts have.

As part of this, claimant's counsel may have noticed an increasing number of requests for their client's SSNs. There have been some reported instances (all liability cases) where plaintiff's counsel has refused to provide their client's SSN. In general, the primary objections to releasing this information have been based on privacy and confidentiality arguments. However, the court in each of these cases ordered the plaintiff to produce his/her SSN for Section 111 purposes. **B**

<sup>1</sup>In this article, the author uses the term "plaintiff" in a very general sense to include individuals in personal injury type actions and workers' compensation claims.

<sup>2</sup>See e.g. *Seger v. Tank Connection*, 2010 WL 16652353 (D. NE., April 22, 2010); *Hackley v. Garofano*, 2010 WL 3025597 (Ct. Sup. Ct., July 1, 2010); *Smith v. Sound Breeze of Groton Condo Ass'n*, 2011 WL 803067 (Ct. Sup. Ct., Feb. 3, 2011); *Torriss v. Hirsch Park, LLC*, 938 N.Y.S.2d 145 (Jan. 31, 2012); and *Donlan v. Connecticut College*, 2012 WL 3089342 (Ct. Sup. CT., July 2, 2012).



Mark Popolizio, Esquire is Section 111 Senior Legal Counsel for Crowe Paradis Services Corporation. Mark is based out of Miami, Florida, and can be reached at [mpopolizio@cpscmsa.com](mailto:mpopolizio@cpscmsa.com) or (786) 459-9117.



(1) Ward Kim Vaughan & Lerner LLP was honored as Law Firm of the Year at the Legal Aid/Coast to Coast For the Public Good event. (1 to r) Brian Lerner, BCBA Board Member Jay Kim, Greg Ward, Cherine Smith Valbrun, and Robert Vaughan. (2) (1 to r) Bankruptcy Co-Chair Julie Hough, Locksley Rhoden, Board Member Jeff Solomon, Frances Sheehy, and Bankruptcy Section Co-Chair David Stern at the Bankruptcy Section CLE titled The Intersection of Tax and Bankruptcy Law. (3) (1 to r) Past President Jordana Goldstein and Juliet Roulhac at the Legal Aid/Coast to Coast For the Public Good event. (4) Fourth District Court of Appeal Chief Judge Melanie May and West Broward Section President Randy Rosenblum at the September 27 West Section luncheon. Chief Judge May presented a CLE titled: "Interpreting and Complying with Rule 2.420, Public Access to Judicial Branch Records." (5) Florida Supreme Court Justice Fred Lewis presenting Judge Ron Rothschild with the 2nd Annual Commitment to Justice Award from Coast to Coast Legal Aid of South Florida (CCLA). Pictured with Barbara Prager, Esq., Executive Director CCLA. (6) Ilene Simmons with her husband, Attorney Roger Simmons of the Law Office of Roger C. Simmons. (7) The winning group, which won with a score of 57, at the Young Lawyers 25th Annual Charity Golf Tournament whose proceeds were donated to Florida's Children First to benefit the Tracey McPharlin Pro Bono Initiative and the Broward Chapter of Florida's Youth SHINE: (1 to r) John Lorow, YLS Board Member and Tournament Director Jeff Wank, and Nash Kulendranwith (not in the picture are Tasso Sterghos and Scott Taylor).

# FIGHTING BLIGHT

Local government code enforcement combats issues caused by foreclosure crisis.

By Stacey R. Weinger

Local government has become a first responder in the fight to combat the adverse effects of foreclosure on the community. Foreclosure negatively impacts property values, encourages blight, and frequently results in the abandonment of property. When a property is left vacant or abandoned, the property becomes susceptible to the forces of nature, often resulting in overgrown lawns, broken windows, vermin, illegal occupants, and stagnant swimming pools. Vacant properties are frequently targeted by squatters who move in illegally, and often live in uninhabitable conditions without proper sanitation. Squatters also vandalize and loot properties, removing anything of value. Further, abandoned properties may become drug houses, subjecting residents in the surrounding neighborhood to increased risks of crime.

Local government is responsible for enforcing an array of building, housing and property maintenance codes. In Florida, the standard approach to code

enforcement is the initiation of an administrative enforcement proceeding to compel the property owner of record to remedy code violations. When a property owner fails to take corrective action, the responsibility shifts to local code enforcement departments to take action to maintain the property. State law authorizes the recording of a lien to secure the costs incurred in abating a nuisance on a property, and any resulting fines. However, a lien recorded by local government is typically a junior lien in a foreclosure action, inevitably resulting in foreclosure of the lien.

Many local governments have implemented policy and regulatory changes to mitigate the local effects of the foreclosure crisis. One method utilized by local government is the adoption of vacant property registration ordinances, which are designed to address the difficulties in determining and locating responsible mortgage servicers, and the mortgage industry's general lack of responsiveness in maintaining properties in foreclosure, even after they have

obtained title to the property. Vacant property registration ordinances require lenders to register vacant properties, and enable local government to impose fines for failure to comply.

Local governments have also implemented nuisance abatement programs, which permit the local government to abate nuisances on vacant properties, and place the costs of abatement on the County tax rolls as a special assessment. This method enables local government to guarantee reimbursement from the current or subsequent owner as part of the tax bill, and exempts the costs of abatement from foreclosure.

In response to the foreclosure epidemic, a number of municipalities enacted ordinances which purport to grant municipal liens a super priority status, co-equal with ad valorem and other super priority taxes and assessments. The validity of super priority ordinances is currently under review by the Florida Supreme Court.

Delays and lengthy foreclosure proceedings result in properties remaining vacant for an extended period of time, during which local government continues to incur maintenance costs, and uncollectable fines continue to accrue. To mitigate the effect of these delays, local governments may seek a court order compelling the lender to take action; or in the alternative, seek sanctions for the lender's dilatory tactics.

As new challenges arise and resources become more scarce, local governments will need to continue to adapt to respond to the foreclosure crisis, and serve the community's needs. **B**



Photo by Jeffery Turner



Stacey R. Weinger is an attorney at Goren, Cherof, Doody & Ezrol, P.A., a law firm based in Fort Lauderdale, Florida. For more information email: [sweinger@cityatty.com](mailto:sweinger@cityatty.com) or visit [www.cityatty.com](http://www.cityatty.com)

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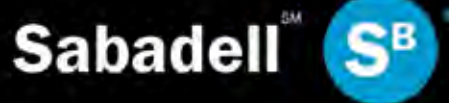


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