



**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2012	2013	2014	2015	2016
Capital Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
<b>NET FISCAL IMPACT</b>	_____	_____	_____	_____	_____
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____

Is Item Included In Current Budget? Yes  No

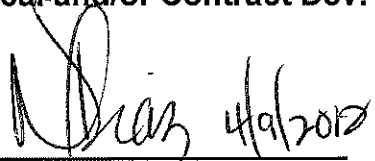
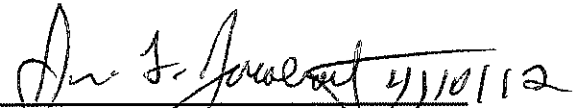
Budget Account No.: Fund \_\_\_\_\_ Department \_\_\_\_\_ Unit \_\_\_\_\_  
 Object \_\_\_\_\_ Reporting Category \_\_\_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

**C. Departmental Fiscal Review:** \_\_\_\_\_

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Dev. and Control Comments:**

 _____ OFMB SN 4/16/12 4/15/12	 _____ Contract Dev. and Control 4-10-12
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**B. Legal Sufficiency:**

  
 \_\_\_\_\_  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

**This summary is not to be used as a basis for payment.**

# Wage Theft Project Report



**Legal Aid Society of Palm Beach County, Inc.**

**February 2, 2011 through February 29, 2012**

**ATTACHMENT #1**

## **Project Background**

This report presents and explains the data collected by the Legal Aid Society of Palm Beach County's ("LAS") Wage Theft Project between February 2, 2011, and February 29, 2012. Wage theft refers to the nonpayment or underpayment of wages.

## **Acceptance Criteria**

Any individual who has/had an employer-employee relationship who has a claim of wage theft that occurred in Palm Beach County, regardless of amount owed, is eligible for acceptance into the Wage Theft Project.

## **Definitions**

**Potential Clients.** Individuals who have contacted Legal Aid through the Wage Theft Project; referrals from other individuals, advocacy groups and public agencies. It is important to note that these individuals may or not make specific claims that they are victims of wage theft or that their employer owes them money. Potential clients are then subject to an intake (see definition below) to determine eligibility (*i.e.*, that they have/had an employer-employee relationship and that their claim is for unpaid wages).

**Intake.** The process of completing internal intake forms, establishing the employer-employee relationship, conducting a preliminary investigation of employer and/or liable legal entities, determining wages owed, and drafting an initial demand letter.

**Retained Clients.** Retained clients are those individuals who have completed an intake form, been interviewed by Legal Aid staff and determined to have a claim for wages under state or federal law.

**Employee.** As defined by the Fair Labor Standards Act, and consistent with the Miami-Dade Wage Theft Ordinance, and an employee is "any individual who is employed by an employer" who is "to suffer[ed] or permit[ted] to work"; the term employee does not include any bona fide independent contractor or independent contractor relationship.

**Independent Contractor.** An individual, who in their own name or through a legal entity, contracts with an employer to provide services on a project or on an as-needed basis, but who is not legally classified or defined as an employee. The definition of independent contractor shall have the same meaning as in the Internal Revenue Code (the 20-Factor Test) and implementing federal regulations.

**Partner (Pro Bono) Attorneys.** Local attorneys specializing in wage theft (labor and employment law), who have volunteered on a completely pro bono basis, to take on referred Wage Theft Project clients for whom demand letters failed to garner satisfactory settlements. Clients referred through the Wage Theft Project are never charged a fee for representation.

### **The Data**

A total of 282 individuals contacted LAS during the time period studied, between February 2, 2011 and February 29, 2012.

### **Methodology**

In an attempt to insure complete transparency for the Wage Theft Project, all contact with the Project is tracked. These initial contacts are referred to as “potential clients”. There are various reasons that potential clients do not become retained clients (see Exhibit C-2), which include not showing up for appointments (including referrals with outdated contact information), and determinations that the complaint is unrelated to wage theft, such as no employee-employer relationship (i.e., independent contractors).

In addition, some clients who are retained and who complete an intake and interview have their cases dismissed by the Wage Theft Project (see Exhibit C-1) for a variety of reasons, but in all cases related either to the client’s failure to pursue his/her claim, lack of merit to the claim (determined following intake and investigation) or lack of ability to collect (the investigation determined that the employer is no longer in business or claims are otherwise legally uncollectable).

Finally, in determining the percentage of clients who receive compensation for unpaid wages, we utilize the following methodology: the total number of demand letters sent out to employers divided by the payments received thereafter (it is important to note that our initial Wage Theft Project Updates utilized a different basis for the calculation: the total number of potential cases (see definition above) divided by the payments received). The former calculation was inaccurate because it took into account cases that were not in any way pursued by the Wage Theft Project and in almost all cases were not wage theft claims or involved individuals who did not intend to pursue a case of wage theft. We believe the revised method of calculating results presented here is a more accurate reflection of the efficacy of the Wage Theft Project.

## Update from January Report

25 new potential clients contacted LAS since we last updated this report on January 31, 2012. 10 of the 25 came in for intakes, and of that group, 10 were retained by Legal Aid and/or partner pro bono attorneys. 15 of the 25 new potential clients were not retained for various reasons (detailed information found in Exhibit C).

As of February 29, 2012, disposition of the 10 cases is as follows:

- **7 cases** are pending.
- **3 cases** were referred to partner attorneys and are pending.

**FIGURE 1** represents all cases by source of referral.

**FIGURE 2** represents all cases by disposition.

**FIGURE 3** represents all cases by the industry in which the client was employed.

**FIGURE 4** represents all cases by amount of alleged wage theft, as well as what, if any, compensation was attained.

**FIGURE 5** represents all retained cases by nature of alleged wage violation.

**FIGURE 6** represents compensated cases by amount of time taken to attain compensation.

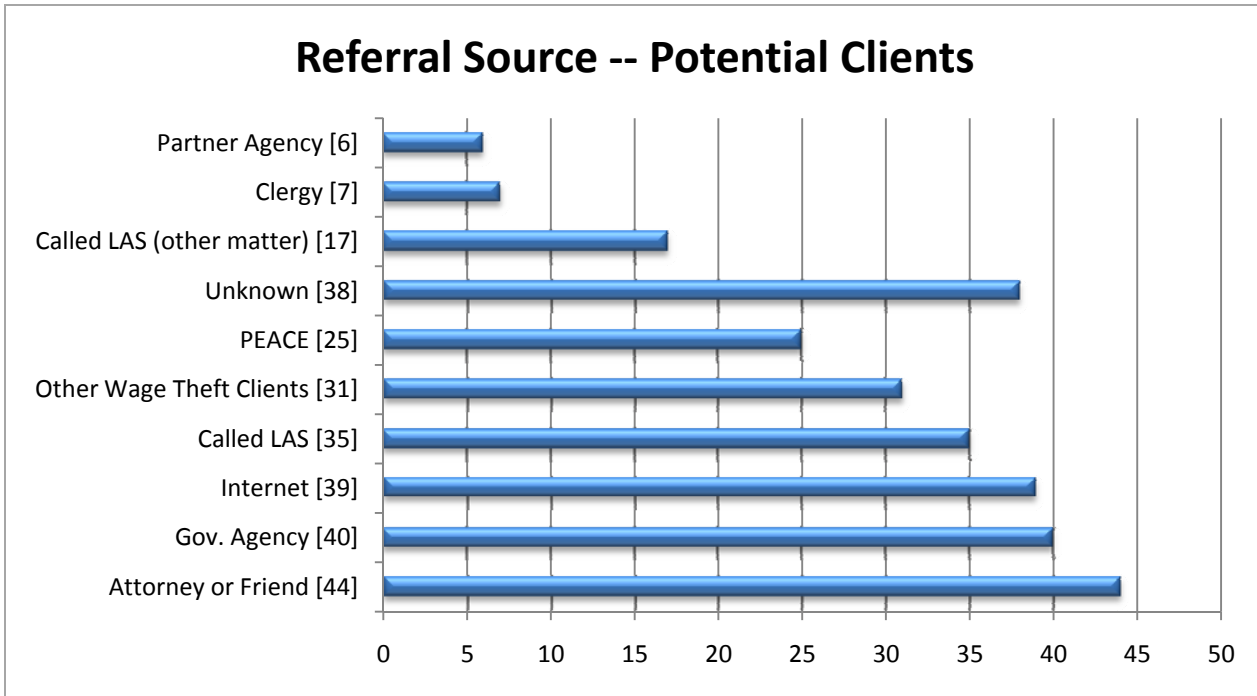
**FIGURE 7** is a final summary of data.

**FIGURE 8** represents all case intakes by month from the start of the Project through February 29, 2012.

**FIGURE 9** represents partner attorney referred cases – status update

**All figures are based on data collected and compiled through February 29, 2012.**

**FIGURE 1.1**  
Where did **potential clients** come from?

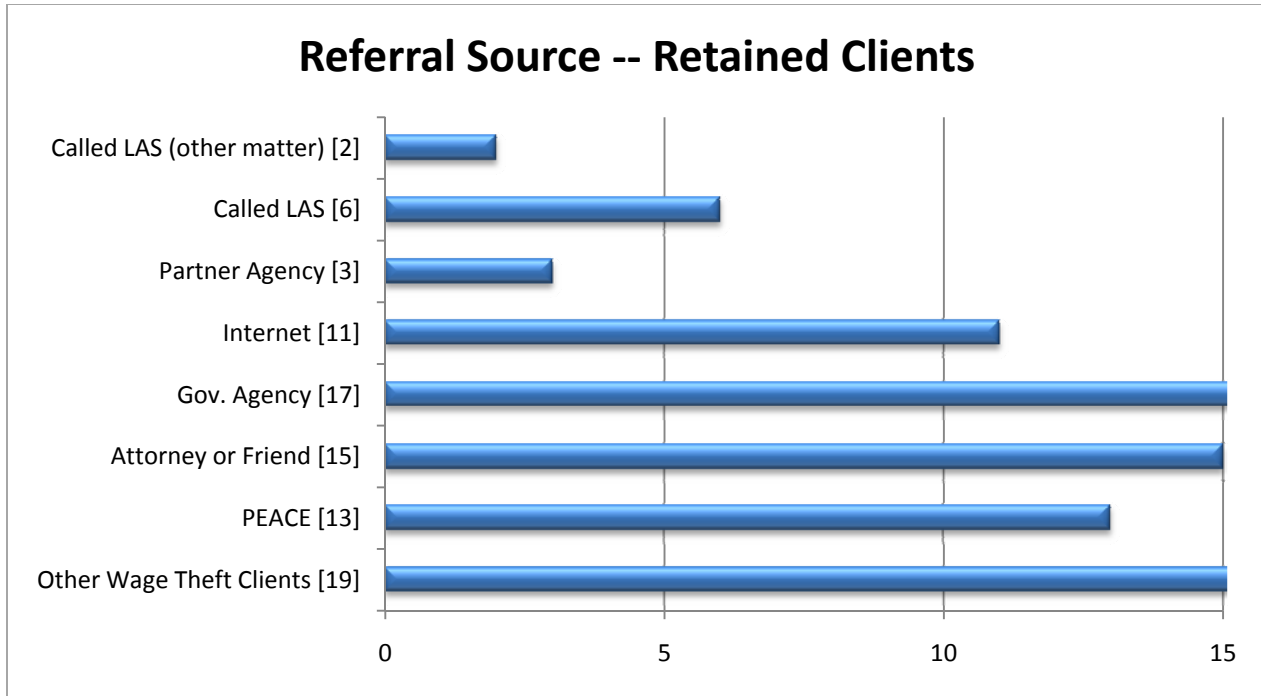


The largest grouping of potential clients (16%) contacted LAS directly after learning about the Wage Theft Project through LAS efforts (attorney/friend recommendations). Two categories, each respectively representing 14% of potential clients for a total of 28%, were tied for the next largest grouping of referral sources; the Internet and Government agency referrals. Government agency referrals came from a variety of local, state, and federal sources. Palm Beach County Courthouse, Palm Beach County OEO, and the U.S. Department of Labor accounted for a large percentage of government agency referrals. Some of these potential clients (11%) were referred by friends who had already contacted LAS about potential wage theft claims.

11% of potential clients were referred through a combination of Clergy (2%) and PEACE (9%) outreach efforts.

The thirty-eight (38) potential clients (13%) with “unknown” referral sources were classified as such because those clients did not return LAS’s phone calls and never provided referral information; these potential clients were obviously not retained.

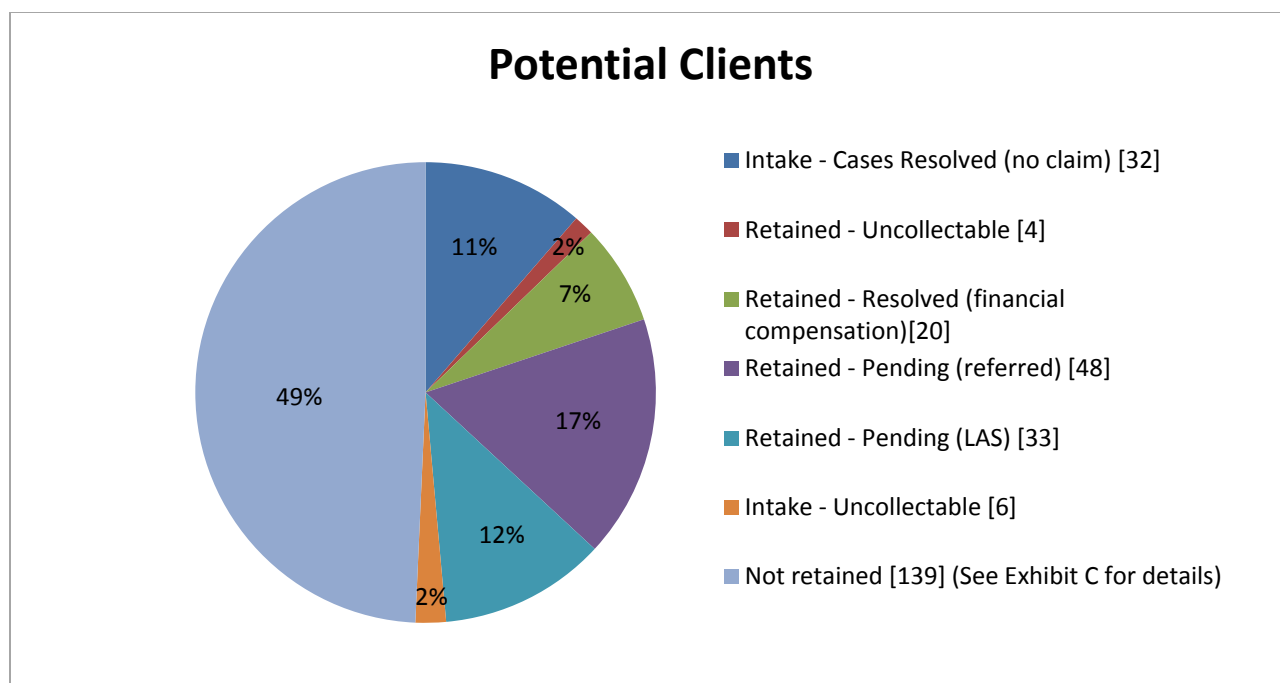
**FIGURE 1.2**  
Where did **retained clients** come from?





**FIGURE 2**

What happened to each Individual (potential client) who contacted Legal Aid?



Approximately 51% of potential clients came in for an intake and of that number, 145 total clients, 59% (86) were retained and demand letters were sent out. Typically, clients for whom demand letters failed to garner satisfactory settlements were referred to partner attorneys who specialize in wage theft.

59% (51) of retained clients were referred to partner attorneys and currently some are still pending. (See Figure 9 – Partner Attorney Referred Cases – Status Update)

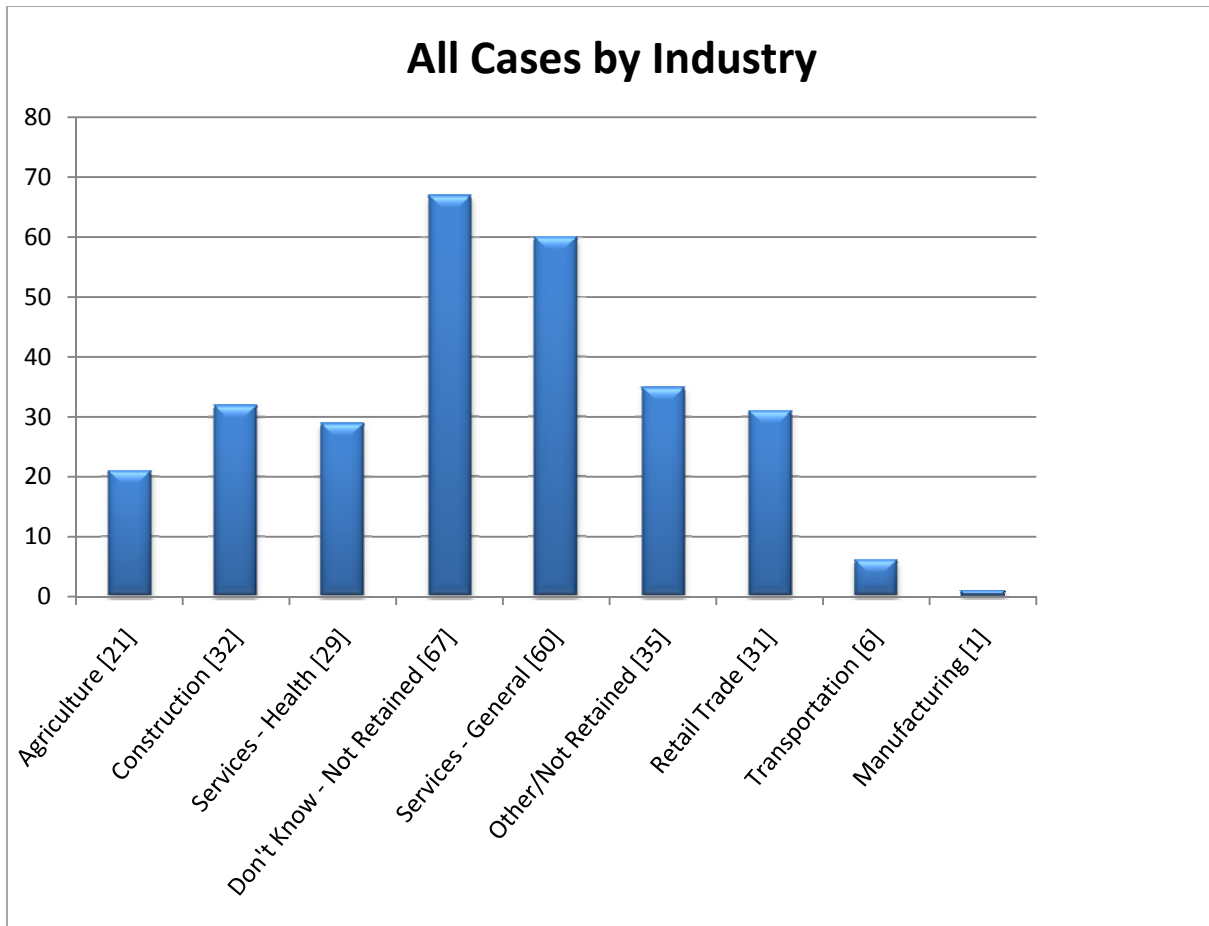
20 (LAS Clients) of the 86 clients retained (23%) have been compensated thus far, typically with settlements for full wages legally owed before being referred to a partner attorney to potentially commence litigation.

Of the “Retained-Uncollectable” group, 50% (2 cases) were found to be without merit/no legal basis and the other 50% (2 cases) the company had gone out of business.

Those in the non-retained group included clients that called the Project but after a telephone or in-person screening process, did not meet the qualifications for a wage theft claim, e.g. independent contractors or those with non-wage related claims. See Exhibit C for details.

**FIGURE 3.1**

Where did individuals (potential clients) who contacted Legal Aid work?

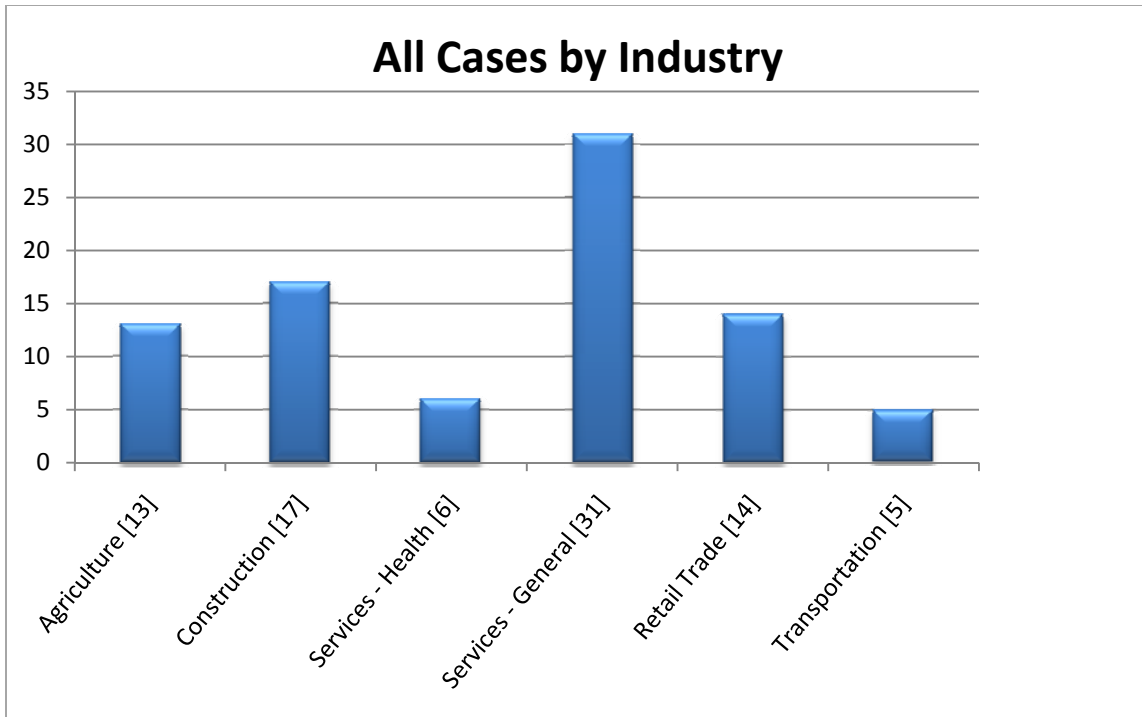


The most represented single industry was services, divided into two categories, general and health, representing a total of 34%, which included services such as: housecleaning/housekeeping, laundry, beauty salons, recreational facilities, animal shelter/humane society, as well as home healthcare companies and medical offices. Next was agriculture (7%), and construction (11%) which also included HVAC services. Retail trade represented 9% and predominantly included the following: restaurants/bars, general and specialty food supermarkets.

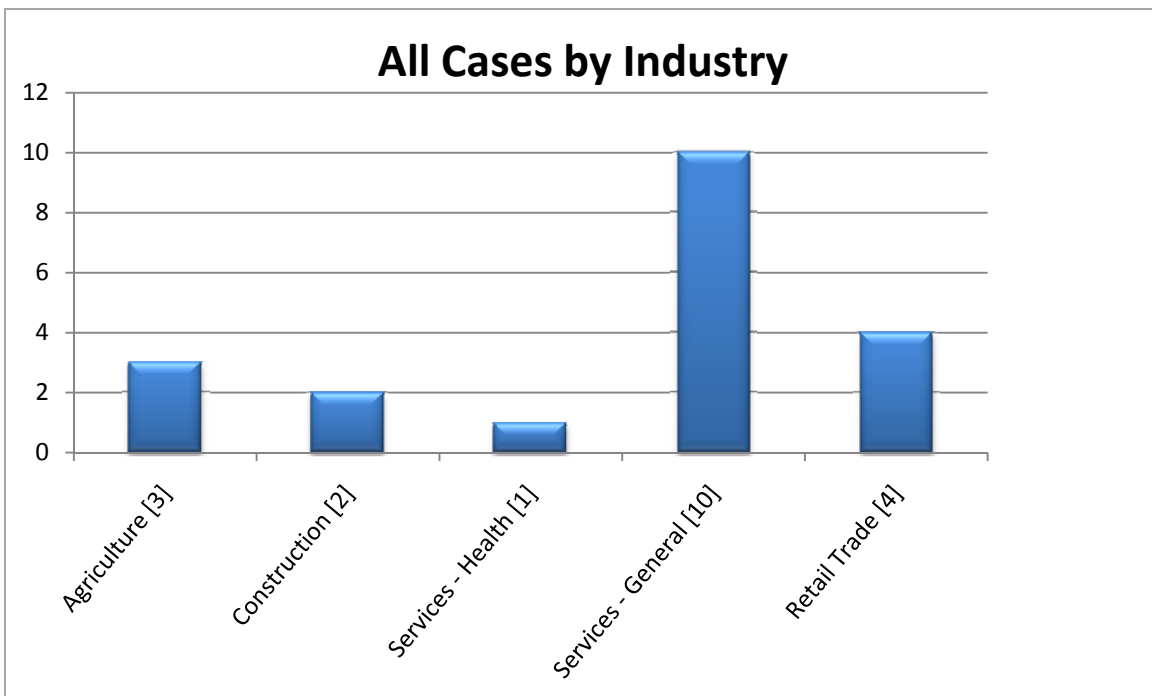
The thirty-five (35) cases classified as “Other/Not Retained” encompassed a wide array of professions. This classification included, but was not limited to, general administration, telemarketing, housekeeping and recreational services, transportation, and real estate.

There did not appear to be any statistically significant correlation between industry and case disposition.

**FIGURE 3.2**  
Where did **retained clients** work?



**FIGURE 3.3**  
Where did LAS clients work where claims were **paid or resolved**?



**EXHIBIT A-1**

Industry Details (potential clients)  
(Grouped by Current SIC Codes)

<b>INDUSTRY CATEGORIES</b>	<b>PLACES OF EMPLOYMENT</b>
<p align="center"><b>Agriculture</b> Division A Major Group 071-078</p>	<p><b>2 Farms (Fruits and Vegetables)</b> <b>4 Nurseries with Landscaping Services</b> <b>15 Specialized Landscaping Services</b></p>
<p align="center"><b>Construction</b> Division C Major Group 15-17</p>	<p><b>3 Handyman/General Repairs</b> <b>4 Stone/Mason Company for Large Construction</b> <b>3 Air Conditioning Companies</b> <b>1 Private Residence</b> <b>17 General Construction Company (including painting)</b> <b>1 Granite Company</b> <b>1 Tile and Flooring Company</b></p>
<p align="center"><b>Services – Health</b> Division I Major Group 80</p>	<p><b>1 Medical Management Company (Group 80)</b> <b>20 Home Healthcare Companies (Group 80)</b> <b>6 Medical Practitioner’s Office (Group 80)</b></p>
<p align="center"><b>Other/Not Retained</b></p>	<p><b>1 General Administration</b> <b>2 Real Estate</b> <b>4 Construction (general)</b> <b>8 Housekeeping (services) &amp; general services</b> <b>2 Recreational Facility (services)</b> <b>4 Restaurant (retail)</b> <b>1 Specialty Food Store (retail)</b> <b>3 Home Healthcare (services)</b> <b>1 Inside Sales</b> <b>1 Outside Sales</b> <b>7 General Services</b> <b>2 Health Services</b> <b>2 Transportation (trucking)</b> <b>54 Don’t Know (no follow-through)</b></p>
<p align="center"><b>Services</b> Division I Major Group 70-88</p>	<p><b>1 Entertainment/Games- Slots (Group 79)</b> <b>2 General Administration/Nonprofit (Group 83)</b> <b>2 Security Company (Group 73)</b> <b>1 Equestrian Sports (Group 79)</b> <b>6 Marketing/Mgt/PR and Staffing (Group 87)</b> <b>1 Teacher (Educational – Group 82)</b> <b>4 Beauty (Nail and Beauty Salons and Spa) (Group 72)</b> <b>1 Health/Fitness (Gym) (Group 79)</b> <b>2 Hotel (Group 70)</b> <b>2 Laundromats (Group 72)</b> <b>2 Dry Cleaner (Group 72)</b> <b>7 Housecleaning Services (Group 73)</b> <b>5 Janitorial Services (Group 73)</b> <b>1 Country Club (Group 79)</b> <b>4 General Administration (Groups 73 and 87)</b> <b>1 Road Cleaning Services (Group 73)</b></p>

**EXHIBIT A-1**  
 Industry Details (potential clients)  
 (Grouped by Current SIC Codes)

<b>INDUSTRY CATEGORIES</b>	<b>PLACES OF EMPLOYMENT</b>
<b>Services</b> Division I Major Group 70-88	<b>1 Recreational Campground (Group 70)</b> <b>3 Mechanic (Group 75)</b> <b>7 Human Society/Animal Shelter (Group 86)</b>
<b>Retail Trade</b> Division G Major Group 52-59	<b>20 Restaurants (Group 58)</b> <b>1 Specialty (Imported) Food Store(Group 54)</b> <b>1 Department Store (Group 57)</b> <b>6 Specialty (Latin) Supermarket (Group 54)</b> <b>1 General Supermarket (Group 54)</b> <b>1 Retail Store (Pets) (Group 59)</b>
<b>Transportation</b> Division E Major Group 40-49	<b>1 moving company (local) (Group 42)</b> <b>5 trucking company (OTR) (Group 47)</b>
<b>Manufacturing</b> Division D Major Group 20-39	<b>1 Sign Company (Group 39)</b>

**EXHIBIT A-2**

Industry Details (intake clients)  
(Grouped by Current SIC Codes)

<b>INDUSTRY CATEGORIES</b>	<b>PLACES OF EMPLOYMENT</b>
<p align="center"><b>Agriculture</b> Division A Major Group 071-078</p>	<p><b>1 Farm (Fruits and Vegetables)</b> <b>14 Specialized Landscaping Services</b></p>
<p align="center"><b>Construction</b> Division C Major Group 15-17</p>	<p><b>3 Handyman/General Repairs</b> <b>4 Stone/Mason Company for Large Construction</b> <b>3 Air Conditioning Companies</b> <b>1 Private Residence</b> <b>14 General Construction Company (including painting)</b> <b>1 Granite Company</b> <b>1 Tile and Flooring Company</b></p>
<p align="center"><b>Services – Health</b> Division I Major Group 80</p>	<p><b>1 Medical Management Company (Group 80)</b> <b>8 Home Healthcare Companies (Group 80)</b> <b>6 Medical Practitioner’s Office (Group 80)</b></p>
<p align="center"><b>Other/Intake-Not Retained</b></p>	<p><b>1 General Administration (services)</b> <b>2 Real Estate (Division H: Real Estate)</b> <b>2 Housekeeping (services)</b> <b>2 Recreational Facility (services)</b> <b>1 Restaurant (retail)</b> <b>1 Specialty Food Store (retail)</b> <b>1 Home Healthcare (services)</b> <b>1 Inside Sales (services)</b> <b>1 Outside Sales (services)</b></p>
<p align="center"><b>Services</b> Division I Major Group 70-88</p>	<p><b>1 Entertainment/Games- Slots (Group 79)</b> <b>6 Marketing/Mgt/PR and Staffing (Group 87)</b> <b>1 Teacher (Educational – Group 82)</b> <b>2 General Administration/Nonprofit (Group 83)</b> <b>2 Security Company (Group 73)</b> <b>4 Beauty (Nail and Beauty Salons and Spa) (Group 72)</b> <b>1 Health/Fitness (Gym) (Group 79)</b> <b>1 Hotel (Group 70)</b> <b>2 Laundromats (Group 72)</b> <b>2 Dry Cleaner (Group 72)</b> <b>7 Housecleaning Services (Group 73)</b> <b>4 Janitorial Services (Group 73)</b> <b>1 Country Club (Group 79)</b> <b>1 Road Cleaning Services (Group 73)</b> <b>1 Recreational Campground (Group 70)</b> <b>4 Mechanic (Group 75)</b> <b>7 Human Society/Animal Shelter (Group 86)</b></p>

**EXHIBIT A-2**

Industry Details (intake clients)  
(Grouped by Current SIC Codes)

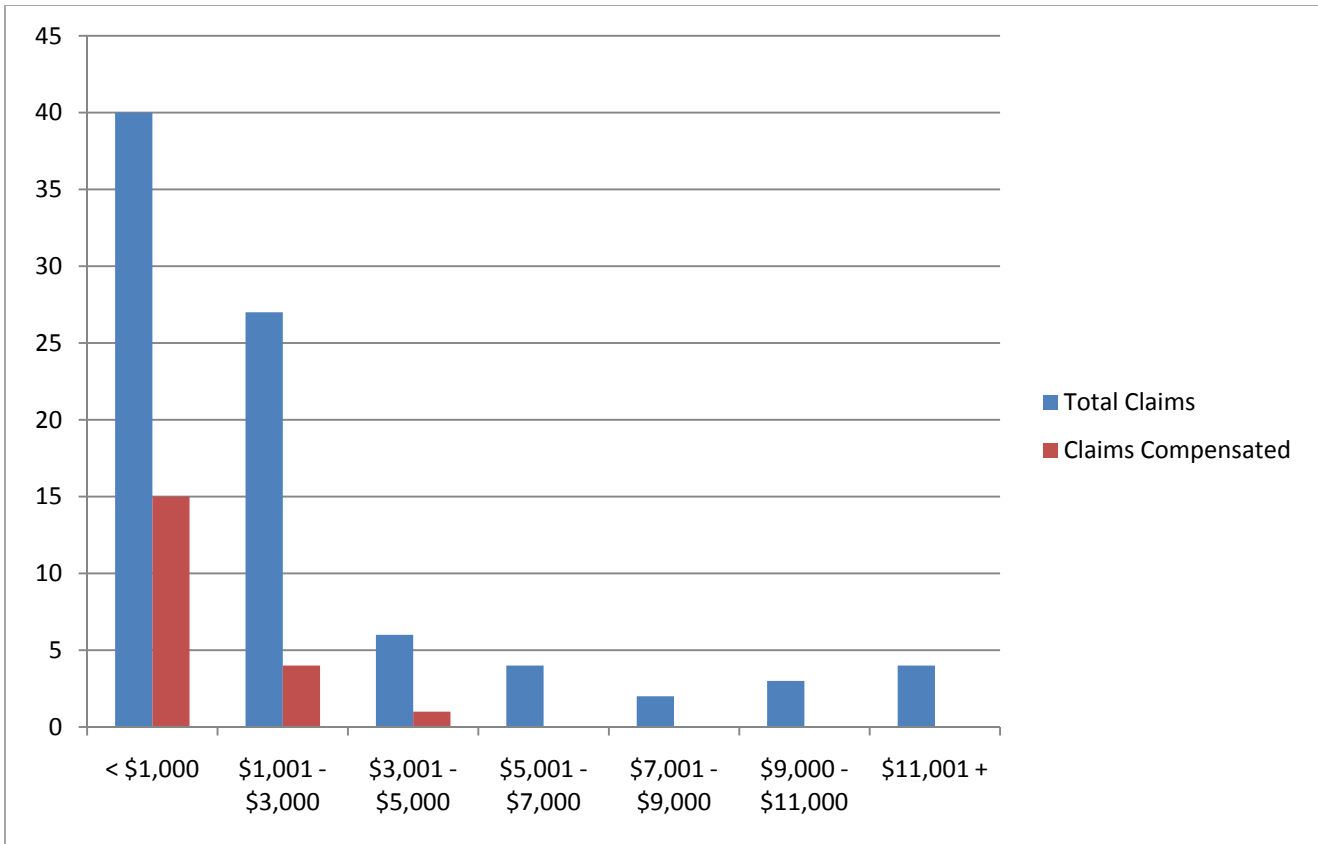
<b>INDUSTRY CATEGORIES</b>	<b>PLACES OF EMPLOYMENT</b>
<b>Retail Trade</b> Division G Major Group 52-59	<b>13 Restaurants (Group 58)</b> <b>2 Specialty (Imported) Food Store(Group 54)</b> <b>6 Specialty (Latin) Supermarket (Group 54)</b>
<b>Transportation</b> Division E Major Group 40-49	<b>2 moving company (local) (Group 42)</b> <b>5 trucking company (OTR) (Group 47)</b>
<b>Manufacturing</b> Division D Major Group 20-39	<b>1 Sign Company (Group 39)</b>

**EXHIBIT A-3**

Industry Details (resolved cases)  
(Grouped by Current SIC Codes)

<b>INDUSTRY CATEGORIES</b>	<b>PLACES OF EMPLOYMENT</b>
<b>Agriculture</b> Division A Major Group 071-078	<b>3 Specialized Landscaping Services</b>
<b>Construction</b> Division C Major Group 15-17	<b>1 Air Conditioning Company</b> <b>1 General Construction Company (including painting)</b>
<b>Services – Health</b> Division I Major Group 80	<b>1 Medical Office (Hearing Aid Center) (Group 80)</b>
<b>Services</b> Division I Major Group 70-88	<b>1 Entertainment/Games- Slots (Group 79)</b> <b>1 Marketing/Mgt/PR (Group 87)</b> <b>1 General Administration/Nonprofit (Group 83)</b> <b>2 Security Company (Group 73)</b> <b>2 Laundromats (Group 72)</b> <b>2 Janitorial/Cleaning Services (Group 73)</b> <b>1 Road Cleaning Services (Group 73)</b>
<b>Retail Trade</b> Division G Major Group 52-59	<b>2 Restaurants (Group 58)</b> <b>1 Specialty (Imported) Food Store(Group 54)</b> <b>1 Retail Store (Pets) (Group 59)</b>

**FIGURE 4**  
 What amounts were owed to **retained clients**?



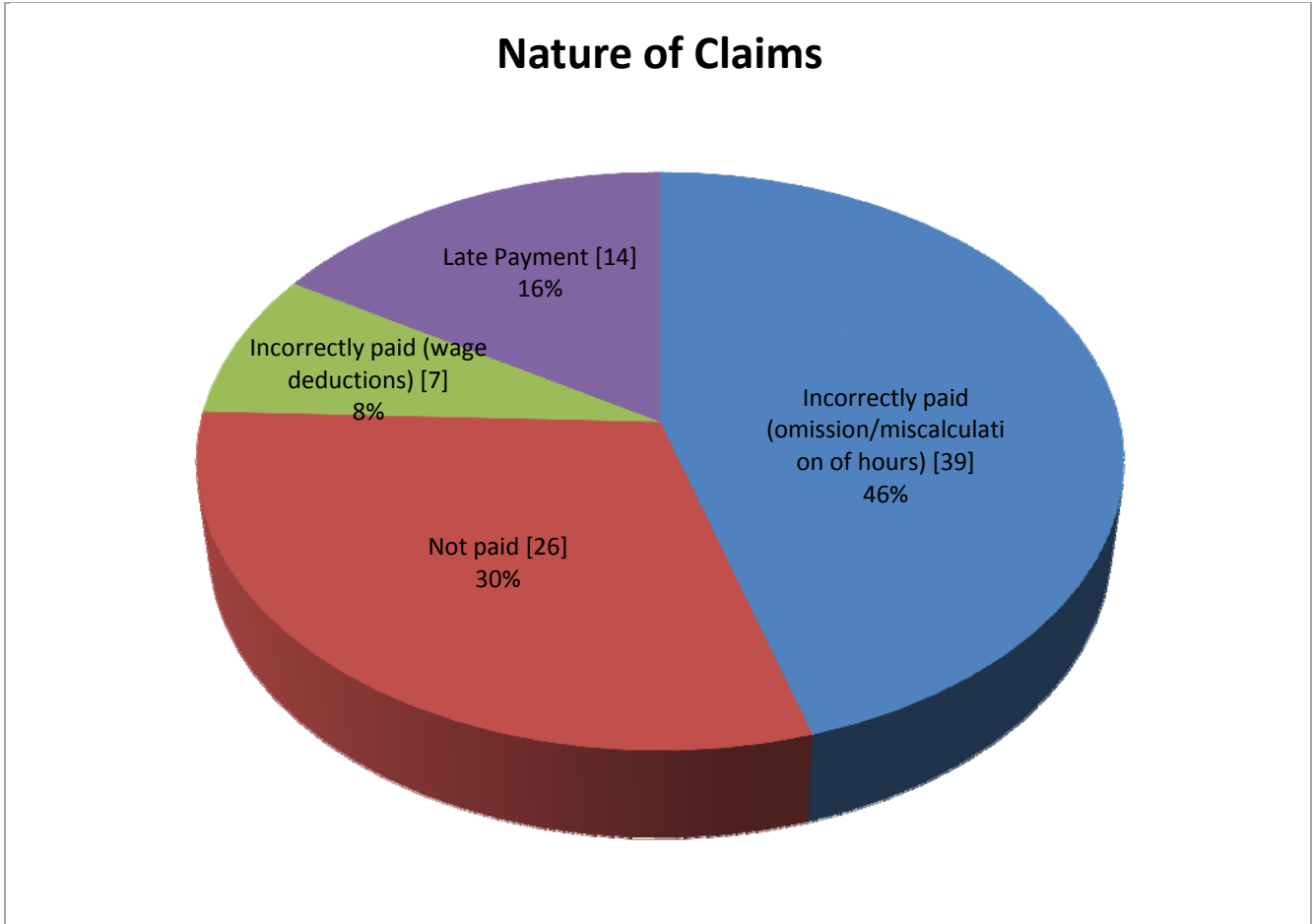
The above chart includes the claims of all retained clients. Legal Aid has not independently verified the claimed amounts for these cases; amounts are solely based upon each individual’s claims for wages. In most cases the individual’s claim was based solely on verbal claims of wages owed, without any documentation corroborating either the agreement as to the amount they were to be paid or the hours/dates actually worked. Based on this information from the client, the figures representing wages owed were calculated by LAS staff in accordance with appropriate legal principals. Several clients were referred to partner attorneys before claims could be calculated by LAS and are therefore not included in the chart.

All clients who had received compensation as of February 29, 2012 had claims ranging between \$104.00 and \$6,000.00.

The lowest single claim between November 18, 2011 and February 29, 2012 was \$87.00. The highest single claim was \$19,500.00.



**FIGURE 5**  
What issues did **retained clients** present?



The majority of retained clients (46) (53%) alleged that they were incorrectly paid. This category can be subdivided into (a) instances of improper wage deductions, and (b) instances of omission or miscalculation of overtime or straight hours. Nonpayment of wages accounted for 30% of claims (26).

All claims between January 2012 and February 2012 involved non-payment of last few paychecks including some incorrect payment of wages and/or late payment of wages including some bad checks.

See Exhibit B below for additional details regarding the nature of claims (for all intake clients).

**EXHIBIT B-1**

Nature of Claims Based on Intake – Additional Details for “Incorrect Payment” Claims

<b>CATEGORY</b>	<b>INCORRECTLY PAID</b>	<b>NUMBER</b>
	<ul style="list-style-type: none"><li>• Correctly Paid by Contractor, but Subcontractor took cut of wages</li></ul>	<b>4</b>
	<ul style="list-style-type: none"><li>• Not Paid Minimum Wage</li></ul>	<b>4</b>
	<ul style="list-style-type: none"><li>• Omission or Miscalculation of Hours (<i>includes: adjustment of timesheets, off-the-clock work, disagreement about hours worked, and wage deductions</i>)</li></ul>	<b>37</b>
	<ul style="list-style-type: none"><li>• Miscalculation of Hours – Employee Mistaken/Confused</li></ul>	<b>4</b>
	<ul style="list-style-type: none"><li>• Not Paid Overtime</li></ul>	<b>15</b>
	<ul style="list-style-type: none"><li>• Employer Behind in Payment of Wages</li></ul>	<b>1</b>
	<ul style="list-style-type: none"><li>• Partially Incorrect Pay</li></ul>	<b>1</b>
	<ul style="list-style-type: none"><li>• Commissions Unpaid</li></ul>	<b>1</b>
	<ul style="list-style-type: none"><li>• Employer Out of Business – Last Paycheck Not Paid</li></ul>	<b>26</b>

**EXHIBIT B-2**

Nature of Claims Based on Intake - Additional Details for “Not Paid” Claims

<b>CATEGORY</b>	<b>NOT PAID</b>	<b>NUMBER</b>
	<ul style="list-style-type: none"><li>• Employer Out of Business</li></ul>	<b>3</b>
	<ul style="list-style-type: none"><li>• Employer Having Financial Difficulties</li></ul>	<b>22</b>
	<ul style="list-style-type: none"><li>• Employee Termed/Resigned-Employer Refuses to Pay</li></ul>	<b>12</b>
	<ul style="list-style-type: none"><li>• Employer Withholding Wages in Exchange for Return of Company Property or Completion of Paperwork</li></ul>	<b>2</b>
	<ul style="list-style-type: none"><li>• Employer refusing to pay due to broken equipment</li></ul>	<b>1</b>
	<ul style="list-style-type: none"><li>• Employer Refused to Pay (no reason given)</li></ul>	<b>10</b>
	<ul style="list-style-type: none"><li>• Employer does not have records of employee working during that time-frame (part-time employee)</li></ul>	<b>1</b>
	<ul style="list-style-type: none"><li>• Employee on FMLA – allegedly owed PTO/Sick/Vacation Time</li></ul>	<b>1</b>

**FIGURE 6**

How long did it take to resolve cases?

<b><i>LAS Client Number</i></b>	<b><i>Business Days Between LAS Demand Letter and Payment</i></b>
1	9
2	5
3	0 (paid before demand letter)
4	11
5	22
6	0 (paid before demand letter)
7	27
8	33
9	28
10	0 (paid before demand letter)
11	12
12	10
13	9
14	95
15	150
16	45
17	15
18	21
19	30
20	2

**FIGURE 7**  
Final Summary

<b>Number of potential clients</b>	282
<b>Number of clients that came in for intake</b>	145
<b>Number of retained clients (demand letter sent out)</b>	86
<b>Total of wage theft claims (not including cases referred before claims established)</b>	\$300,419.16
<b>Number of cases settled (LAS Clients (20) and Pro Bono Referral Clients (13))</b>	33
<b>Total amount recovered</b>	\$15,000.50
<b>Number of cases currently pending</b>	51
<b>Cases dismissed, determined uncollectable or closed at pro bono attorney's discretion (See Exhibit C)</b>	45
<b>Number of retained cases where employees were paid in cash</b>	13
<b>Estimate of Mailing Costs including Certified Letters</b>	\$811.86

The Legal Aid Society of Palm Beach County performed intakes with 145 clients that came in with wage theft complaints between February 2, 2011 and February 29, 2012. 86 (59%) of those clients were actually retained.

33 (20 LAS cases and 13 Pro Bono Referral cases) (38%) of the 86 retained cases have resulted in clients receiving compensation from their employers. The length of time between demand letter and payment generally ranged from 2 to 150+ days.

See Exhibit C-1, C-2 and C-3 for details regarding all cases that were dismissed/determined to be uncollectable/cases closed at pro bono attorney's discretion and cases where no intake was performed.

13 of the retained clients were paid in cash by their employers, representing 15%.

Of the current 51 cases pending, 14 are LAS clients and 37 have been referred to partner pro bono attorneys, and are either awaiting more client information or a response from the employer following the initial demand letter/complaint.

**EXHIBIT C - 1**

Cases Dismissed/Determined to be Uncollectable (**Retained Clients**)

CATEGORIES	NUMBER
<b><u>CASES DISMISSED/DETERMINED TO BE UNCOLLECTABLE</u></b>	
• Employer Out of Business	3
• Client Fell Under Agricultural Exemption under FLSA	1
• Employer Paid Independent Contractor Who Stole from Employees*	4
• Employer Did Not Meet Enterprise Coverage Under FLSA	2
• Client Changed Mind after Lawsuit Prepared	2
• Client Did Not Follow Up with Pro Bono Attorneys	7
• Pro Bono Attorney closed case – chose not to proceed with litigation	2
• Client changed mind	1
• No Merit (no legal basis)	5

\*Referred to Palm Beach County State Attorney

**EXHIBIT C - 2**

Cases Not Taken (Potential Clients) (no intake performed)

CATEGORIES	NUMBER
<b><u>CASES NOT TAKEN(No Intake)</u></b>	
• No Show or Follow-Up	62
• Issue Completely Unrelated to Wage Theft	36
• Independent Contractors (referred to small claims or reduced fee panel)	28
• Matter Resolved without Legal Assistance Required (after client called)	7
• Company bankrupt – referred to small claims or private attorney	3
• Not in Palm Beach County - referred	2

**EXHIBIT C - 3**

Cases Dismissed/Determined to be Uncollectable (Intake Clients)

CATEGORIES	NUMBER
<b><u>CASES DISMISSED/DETERMINED TO BE UNCOLLECTABLE</u></b>	
• Client Confused (not wage theft and/or vacation pay issue)	5
• Independent Contractors (referred to small claims)	4
• No Show to Intake/No Follow-Up	20
• Client Changed Mind/Wants to Wait	1
• Client never followed up with pro bono attorney after referral	3
• Client not Reachable (phone number not in service)	1
• Case too old to pursue – all applicable statutes of limitation for collection have expired	2
• Client lied on intake form about having retained attorney	1
• Client changed mind and hired private attorney	1

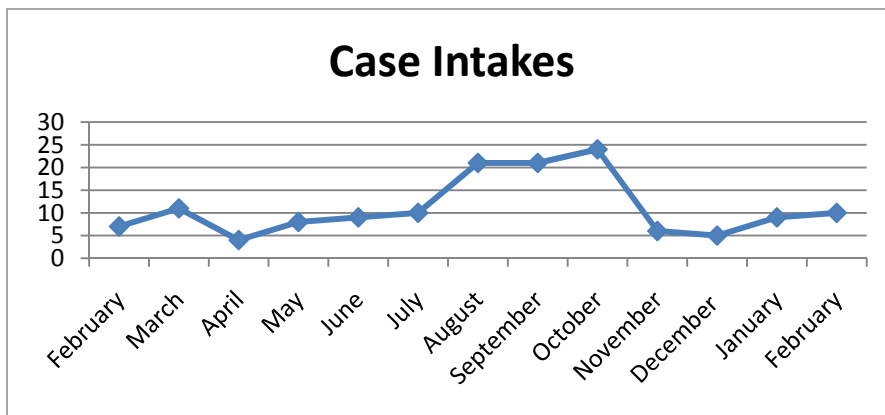
**FIGURE 8.1**

Case Intake Numbers by Month  
February 2, 2011 through February 29, 2012

<b>Month</b>	<b>Number of Case Intakes</b>
February	7
March	11
April	4
May	8
June	9
July	10
August	21
September	21
October	24
November	6
December	5
January 2012	9
February 2012	10

**FIGURE 8.2**

Case Intake Numbers by Month  
February 2, 2011 through February 29, 2012



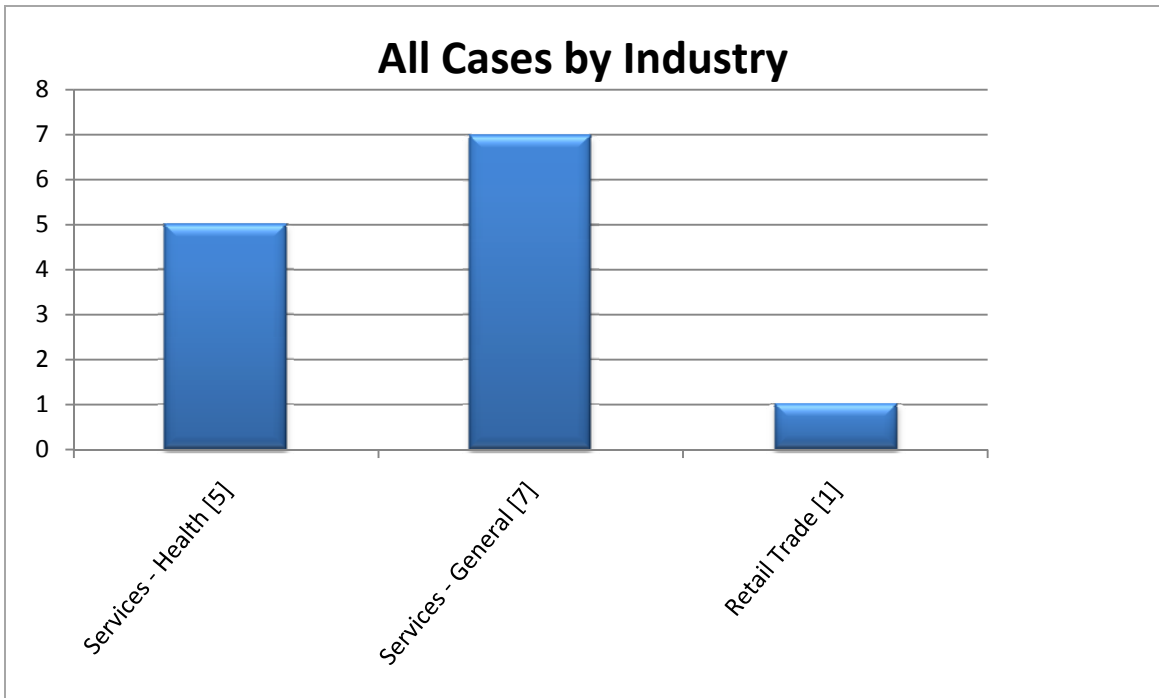
**FIGURE 9**

Partner (Pro Bono) Attorney Referred Cases – Status Report  
February 2, 2011 through February 29, 2012

<b>NUMBER OF CASES</b>	<b>STATUS</b>
7	<b>Closed/Uncollectable</b>
2	<b>Closed/Attorney decided to not litigate</b>
3	<b>Closed/Employer didn't meet Enterprise Coverage</b>
7	<b>Closed/Clients Unresponsive/Missed Intakes</b>
3	<b>Closed/Client Changed Mind</b>
4	<b>Lawsuit Filed - Pending</b>
9	<b>Lawsuit Filed – Process of Settling</b>
13	<b>Closed/Settled</b>
24	<b>Currently Pending</b>

**FIGURE 9.1**

Where did referred clients work where claims were **paid or resolved**?





**AN ANALYSIS OF HOW A WAGE THEFT ORDINANCE IN PALM BEACH  
COUNTY COULD BE HELPFUL IN INCREASING PERFORMANCE METRIC IN  
THE RESOLUTION OF WAGE THEFT CASES**

BASED ON A COMPARISION OF

The Wage Theft Project of the Legal Aid Society of Palm Beach County

WITH THE

Wage Theft Program of the  
Department of Small Business Development of Miami Dade County as established by the  
Wage Theft Ordinance

**UPDATE: April 3, 2012**

*Submitted by*

**The Wage Theft Committee  
of P.E.A.C.E. (People Engaged in Active Community Efforts)**

Jan Booher B.S.  
John DMello Ph. D.

**ATTACHMENT #2**

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## **PURPOSE OF THE PAPER**

The purpose of this paper is twofold: 1) to present a comparison of the procedures used to process wage theft cases in Miami Dade County and in Palm Beach County (PBC), and 2) to discuss possible reasons for the differing results arising from those processes, and how the Palm Beach County Wage Theft Ordinance (PBC WTO) would be helpful in resolving wage theft claims in an efficient and just manner in Palm Beach County (PBC).

The data for Palm Beach County was provided by the Legal Aid Society of Palm Beach County (henceforth called LAS), while the data for Miami Dade County was provided by the Department of Small Business Development of Miami Dade County (henceforth termed SBD). Content of clarifying emails from John Foley, Esq., at LAS, and Jeanette Smith, Esq. from Miami Dade County is included for reference.

## **BACKGROUND OF THE STUDY**

For a couple of years now in South Florida there have been serious concerns about wage theft.

1. That Wage Theft is a wide spread problem.... (see Wage Theft in Florida, Cynthia Hernandez, *Research Institute on Social and Economic Policy*, 2010)
2. Many wage theft cases do not fall under the purview of the Federal Department of Labor or the State Attorney, or other governmental offices. Hence, many wage theft cases are forced to go through a civil process in the court system.
3. The civil process requires many months of involvement on the part of victims, and is relatively expensive for them given that the vast majority of them are people who struggle for a living. Once a judgment has been won, the collection process is time consuming and has additional costs.
4. Many of the claims are for amounts of money that do not justify the court fees, time, or transportation expenses required by the victims to see the civil process through to its conclusion.

5. Hence wage theft continues to be an 'open wound' in our economic system.

6. The comparison study prepared 169 days after the implementation of the Wage Theft Project at LAS by P.E.A.C.E. showed differing results from the LAS and Miami Dade programs. This Update Study addresses some possible procedural reasons for those differences.

### **THE APPROACH OF THE TWO COUNTIES:**

In Miami Dade County, due to the efforts of the Florida Wage Theft Task Force (WTTF) and with the help of County Commissioners, a Wage Theft Ordinance was signed into law on Feb 2, 2010 and became effective on Feb 28, 2010.

In Palm Beach County, due to the efforts of PEACE (People Engaged in Active Community Efforts), County Commissioners directed staff to draft an Ordinance against Wage Theft for a first reading. While the Ordinance passed its first reading, the draft had no teeth. Its public hearing was postponed until June 2011, but then due to objections from a section of the Business Community, it was further postponed until March of 2012. In its place, the Legal Aid Society of Palm Beach County (LAS) was asked to handle wage theft cases. This study has been compiled by comparing the data provided by LAS of Palm Beach County with the data provided by SBD of Miami Dade. It has been prepared primarily to inform the discussion that will take place before the Board of County Commissioners on April 17, 2012. It is the Wage Theft Project of LAS which has provided the data upon which comparisons are made herein. This document has been prepared to inform the discussion that will take place before the Board of County Commissioners on April 17, 2012.

### **TIME PERIOD COVERED BY THE DATA:**

LAS (392) days: The data prepared by the Legal Aid Society of Palm Beach (LAS) covers the time period from Feb 2, 2011 through February 28, 2012 and represents the first 372 days of monitoring.

SBD Intake Phase and Conciliation Phase (765 days) : The data obtained from SBD in the Intake Phase and the Conciliation Phase covers the time period from Feb 28, 2010 to April 3, 2011. The Wage Theft Ordinance of Miami was signed into law on Feb 18, 2010 but became effective only on Feb 28, 2010. Hence, Feb 28, 2010 was considered the first day of the time period.

SBD Adjudication Phase (454 days): The hearing Examiner Process was first implemented on January 5, 2011, so the SBD data on the hearings covers the period from January 5, 2011 through April 3, 2012.

### **METHODOLOGY USED TO SCALE MD DATA TO A PBC EQUIVALENT** (calculation details appear in APPENDIX E)

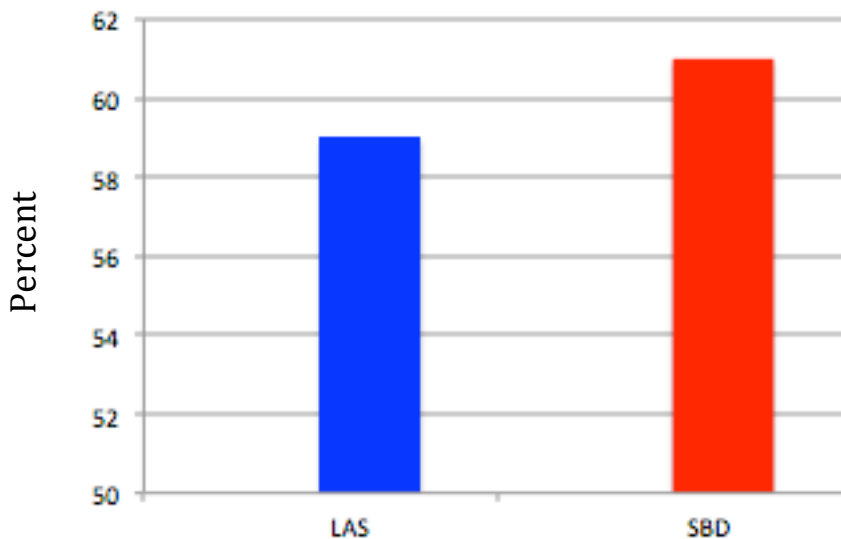
For the purposes of comparison, percentages are used throughout this document because data scaling for population and time period is irrelevant to the percentage.

In order to create a PBC equivalent of MD raw data in the Intake Phase or the Conciliation Phase, where raw data from Miami Dade is presented, it will be multiplied by a scaling factor of 0.27.

In order to create a PBC equivalent of MD raw data in the Adjudication Phase, where raw data from MD is presented it will be multiplied by 0.46, because the time periods covered are more nearly the same.

1. **Intake Phase:** LAS introduces an investigative component at the Intake Phase that is not allowed by either the PBC WTO draft or in the existing MD WTO. However, in spite of this difference in procedure, the LAS Intake is only slightly less than that of SBD.. (see APPENDIX A)

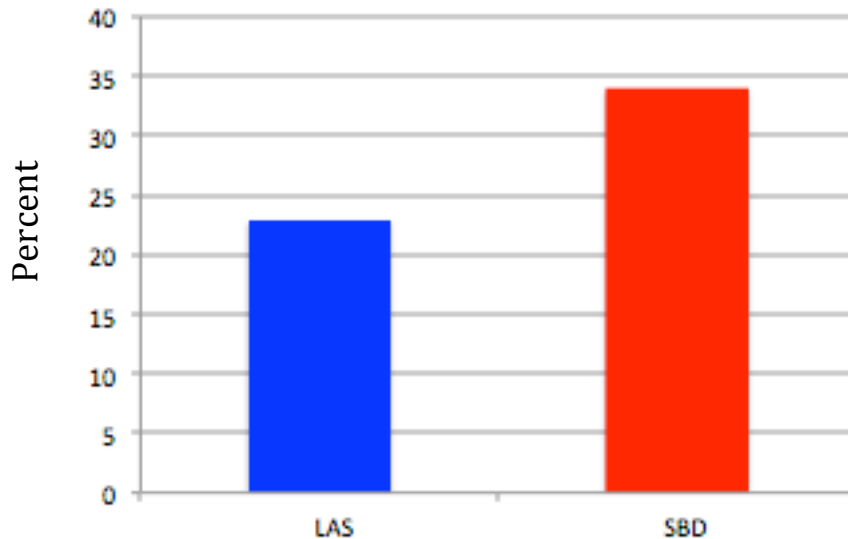
### Intake Rate



Of 145 potential clients who completed the Intake procedure, LAS accepted 86 as clients. Of 1,693 (457 population and time adjusted) complaints, the SBD accepted 1,026 (277 population and time adjusted) through their Intake process. LAS, therefore had a 59% intake rate, which is slightly less than SBD's 61% Intake Rate.

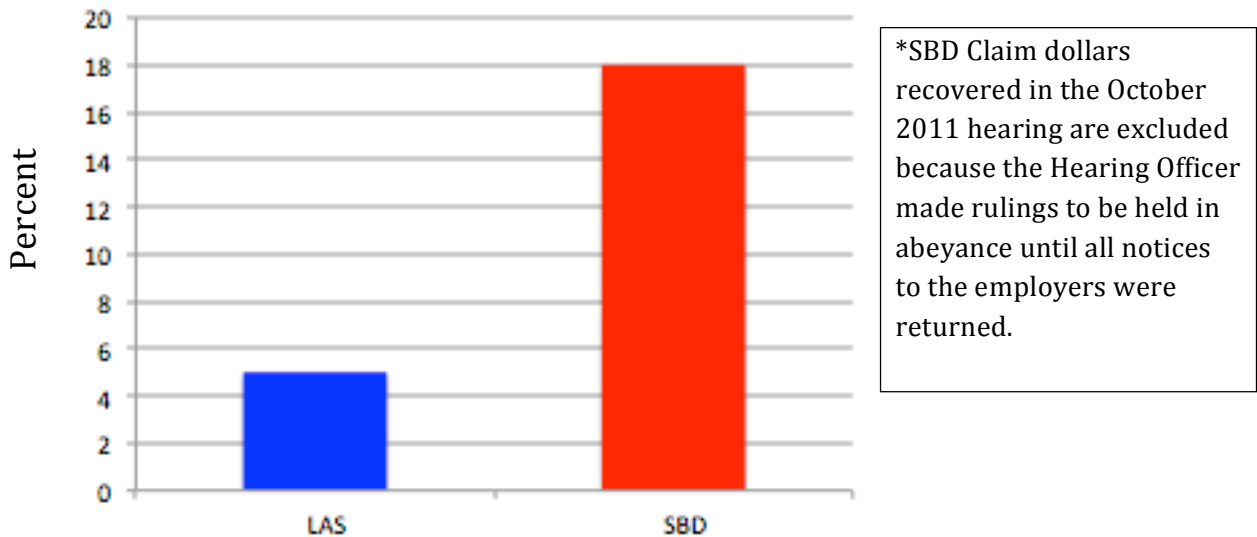
2. **Conciliation Phase:** LAS sends the employer a demand letter, whereas MD serves employers with notice “setting forth the allegations, rights and obligations of the parties including, but not limited to the right to a due process hearing on the matter before a Hearing Examiner and that the respondent may be responsible for the costs of the Hearing Examiner and other enforcement costs.” The language in the PBC WTO Draft is similar to the wording in the MD WTO. (see APPENDIX B)

## Rate of Case Resolution by Conciliation



LAS resolved 20 of the 86 clients' cases through conciliation. SBD resolved 347 ( 94 population and time adjusted) of the 1,026 (277 population and time adjusted) cases through conciliation. LAS, therefore had a rate of resolution by conciliation of 23%, as compared to SBD's 34%.

## Rate of Claim Dollar Recovery by Conciliation\*

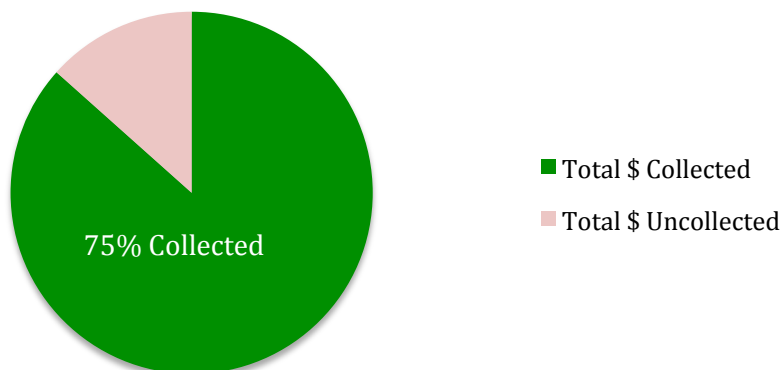


By conciliation, LAS has recovered \$15,000.50 of a total of \$300,419.16 in claims. SBD has recovered \$443,510.89 (\$119,747.94 population and time adjusted) of a total \$2,467,121.66 (\$666,122.84 population and time adjusted) in claims. This represents a claim dollar recovery rate by conciliation of 5% for LAS, and 18% for SBD.

It would appear that serving the person alleged to have committed wage theft with legal notice, as indicated in the MD WTO and the PBC WTO Draft, motivates employers to enter into conciliation more effectively than a demand letter, because 8% more cases, with a dollar claim recovery over 13% more, were resolved through conciliation by the SBD than by LAS.



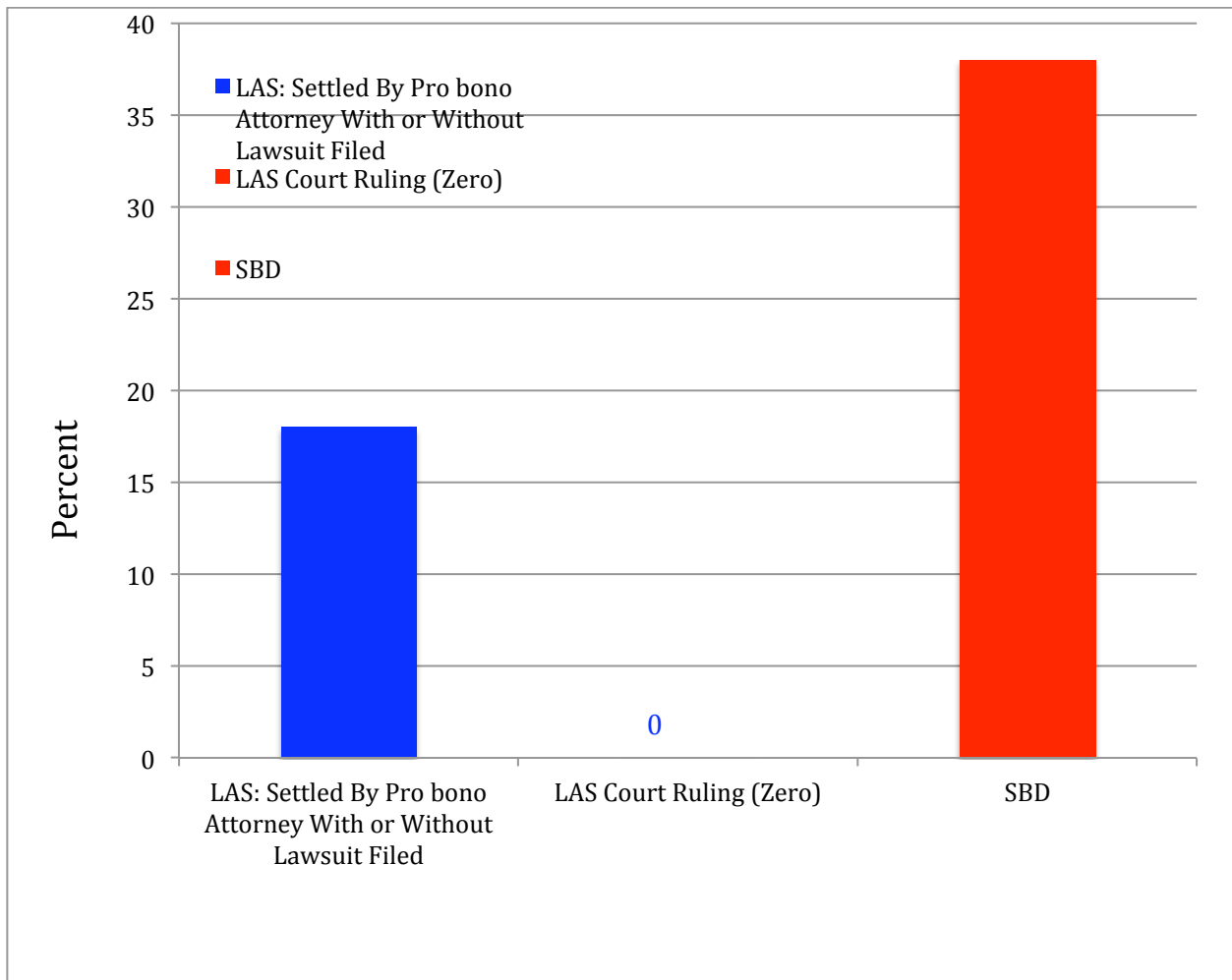
## SBD Total Collected for Conciliated Cases



This is supported by the fact that of a total of \$588,563.47 (\$158,912.14 population and time adjusted) in total claims that entered into conciliation, SBD has recovered \$439,537.54 (\$118,675.14 population and time adjusted). This is an impressive 75% recovery rate, in spite of the fact that the October 2011 hearing is not included because the Hearing Officer made rulings to be held in abeyance until all notices to the employers were returned.

**3. Adjudication Phase: LAS uses pro-bono attorneys who represent their clients in the civil court system, whereas MD advances cases to a hearing for which the Hearing Examiner is granted subpoena authority. The PBC WTO Draft also advances cases to an administrative hearing, but does not grant subpoena authority to the Special Master.**

Adjudication Phase: Rate of Settlement at LAS or Resolution by Hearing at SBD



13 of 72 referred cases have been settled by the actions of pro-bono attorneys to whom LAS referred cases (Fig. 9, p. 21 of the February 28,

2012 LAS Update Report). **No cases have been resolved by court ruling in Palm Beach County since the inception of the study.** SBD resolved 256 (118 population and time adjusted) of 697 (321 population and time adjusted) cases that proceeded to administrative hearings. The rate of settlement by pro bono attorneys in the adjudication phase was 18% at LAS, and the rate of resolution by hearing was 38% at SBD.

Palm Beach County: Cases entering this phase of the process are referred to “pro bono” attorneys, who represent the wage theft victims in civil court.

Miami Dade County: Cases entering this phase of the process proceed to a hearing. Jeanette Smith, Esq indicates that, “Some Independent Contractors are found and, if (the case) makes it to the hearing examiner process, the adjudicating officer finds for the employer as the (independent contractors) are not covered under the WTO.” (email clarification from Jeanette Smith, Esq)

By leaving the investigation to the hearing phase, subpoena power given to the Hearing Examiner can be used to aid in investigation. (see APPENDIX C) In email communication, both LAS and SBD indicate that the investigation is the most difficult part of the process.

## **CONCLUSION:**

### **Instituting the PBC WTO DRAFT would:**

- 1. Most likely not influence the case Intake rate.**
- 2. Increase the success rate of the Conciliation phase in both percentage of cases and dollar claim recovery rate.**
- 3. Provide for a speedier resolution of cases through the administrative hearing process.**

### **Adding subpoena power to the hearing process would:**

- 1. Provide a tool to assist in the investigative process.**
- 2. Increase the effectiveness of the adjudication phase.**
- 3. Deter unscrupulous employers from engaging in wage theft.**

## **APPENDIX A: TEXT EXPLAINING INTAKE**

**The PBC LAS definition of Intake** appears on page 2 of the February 28th Report, and states:

**Intake.** The process of completing internal intake forms, establishing the employer-employee relationship, conducting a preliminary investigation of employer and/or liable legal entities, determining wages owed, and drafting an initial demand letter.

**The PBC WTO draft Section 3(B)(2)(a) defines the Intake procedure as follows:**

Upon the filing of any complaint, the county shall promptly determine whether the wage theft complaint alleges wage theft, names at least one respondent, and meets the threshold amount criterion. The duty of the county to determine whether a complaint meets these criteria is limited to receiving the complaint and comparing the information provided in the complaint to the criteria provided herein. This determination is a ministerial act and may not be based on further investigation or the exercise of independent judgment by the county.

**The MD WTO Section 22-4 (2)(a) defines the Intake procedure as follows:**

Upon the filing of any complaint, the County shall promptly determine that the wage theft complaint alleges wage theft, names at least one respondent and meets the threshold amount criterion. The duty of the County in determining whether a complaint meets this criterion is limited to receiving the complaint and comparing the information provided in the complaint to the criteria required herein. This determination is a ministerial act and may not be based on further investigation or the exercise of independent judgment.

## **APPENDIX B: TEXT DESCRIBING CORRESPONDENCE**

### **PBC WTO Section 3(B)(2)(b)**

(b) Upon making such determination, the county shall serve the complaint and a written notice on the respondent or person charged with the commission of a wage theft practice, setting forth the allegations, rights and obligations of the parties including, but not limited to, the right to a due

process hearing on the matter before a special master and that the respondent may be responsible for the costs of the special master and other administrative costs incurred by the county in processing the complaint. Such service shall be by certified mail.

**MD WTO Section 22-4 (2)(b)**

(b) Upon making such determination, the County shall serve the complaint and a written notice on the respondent or person charged with the commission of a wage theft practice, setting forth the allegations, rights and obligations of the parties including, but not limited to the right to a due process hearing on the matter before a Hearing Examiner and that the respondent may be responsible for the costs of the Hearing Examiner and other enforcement costs. Such services shall be by certified mail.

**APPENDIX C: TEXT DESCRIBING POWER OF THE SPECIAL MASTER OR HEARING EXAMINER**

**PBC WTO Section 3 (B)(7)(c)**

The special master may direct the parties to submit a pre-hearing statement addressing the issues of law and fact that will be involved in such hearing, identify the witnesses that will testify, and provide a list of all documents or other types of exhibits that will be submitted. The special master may also direct each party to provide this information as well as copies of the listed documents or other types of exhibits to the opposing party.

**MD WTO Section 22-4(3)**

If a Hearing Examiner is appointed, any party may request that a subpoena be issued by the Hearing Examiner. Witnesses summoned by subpoena of the Hearing Examiner shall be entitled to the same witness and mileage fees as are witnesses in proceedings in the County Court of Miami-Dade County, Florida. Fees payable to a witness summoned by subpoena issued at the request of a party shall be paid by the party.

## **APPENDIX D: METHODOLOGY USED TO SCALE MD DATA TO A PBC EQUIVALENT**

The 2010 U.S. Census data reports a population of 1,320,134 and a population of Miami Dade County of 2,496,435. Dividing the PBC population by the MD population yields a population scaling factor of 0.53. The time period covered by the LAS data was 392 days. The time period covered by the SBD data in the Intake and Conciliation phases was 765 days. 392 divided by 765 gives a time scaling factor of 0.51. Thus multiplying the MD data by  $0.53 \times 0.51$  will adjust the MD data to a PBC population and time equivalent. This scaling factor is 0.27.

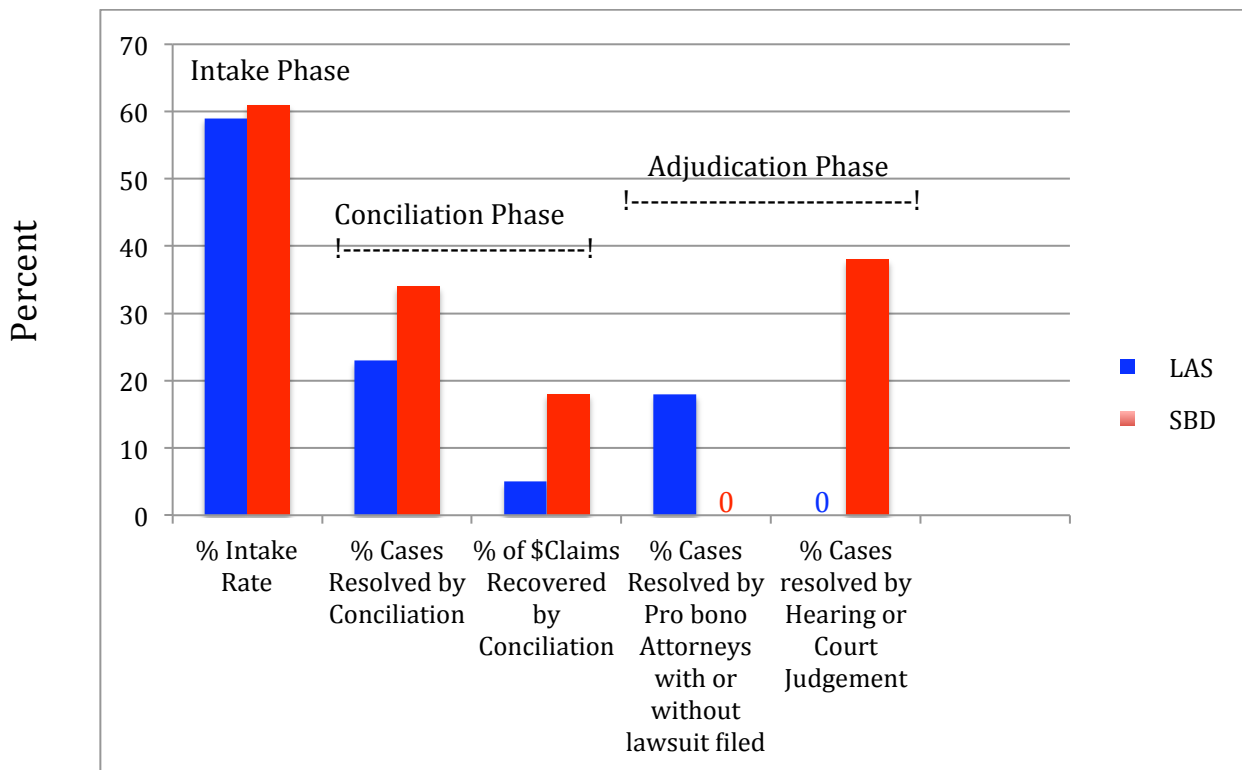
In order to create a PBC equivalent of MD raw data in the Adjudication Phase, where raw data from MD is presented it will be multiplied by 0.46. This scaling factor utilizes the 0.53 population scaling factor as stated above, but the time period during which the hearing process was in effect in MD was only 454 days. The Wage Theft Project in PBC covers a 392 day period. The time scaling factor for the adjudication phase is therefore 0.86, which is 392 divided by 454. Thus the population and time scaling factor in the adjudication phase is  $0.53 \times 0.86$ , or 0.46.

# A Comparison of Performance Measures in the Resolution of Wage Theft Cases

The Legal Aid Society of Palm Beach County's Wage Theft Project functioning without support of a Wage Theft Ordinance (LAS)

And

The Small Business Development Department of Miami Dade County functioning with support of the Miami Dade Wage Theft Ordinance (SBD)



## Intake Rate:

LAS 59% (86 accepted clients of 145 potential clients)

SBD 61% (1,026 clients of 1,693 complaints)  
*(277 clients of 457 complaints - population and time adjusted)*

## % Cases Resolved by Conciliation:

LAS 23% (20 of 86 cases)

SBD 34% (347 of 1,026 cases)  
*(94 of 277 cases - population and time adjusted)*

### **% of \$Claims Resolved by Conciliation\***

LAS	5%	(\$15,000.50 of \$300,419.16 in total claims)
SBD	18 + %	(\$439,537.54 of \$2,467,121.66 in total claims) <i>(\$119,747.94 of \$666,122.84 – population and time adjusted)</i>

\*Note that the SBD claim dollars recovered and used to calculate the Rate of Claim Dollar Recovery by Conciliation are lower than the actuals here, because the October 2011 hearing is not included. The Hearing Officer made rulings to be held in abeyance until all notices to the employers were returned.

### **% Cases Resolved in Adjudication Phase**

LAS		
Pro-bono Attorney	18%	(13 of 72 referred cases – Fig. 9, p. 21 of the LAS Feb 28, 2012 Update))
Court Ruling	0%	(0 cases resolved in court)
SBD	38%	(256 of 770 cases proceeding to hearing) <i>(118 of 321 cases – population and time adjusted)</i>

### **Time period covered:**

LAS	February 2, 2011 – February 28, 2012
SBD	Intake and Conciliation Phases February 28, 2010 – April 3, 2012 Hearing Examiner Process: January 5, 2011 – April 3, 2012

### **CONCLUSION of the Comparison Study:**

#### **Instituting the PBC WTO DRAFT would:**

- 1. Most likely not influence the case Intake rate.**
- 2. Increase the success rate of the Conciliation Phase in both percentage of cases and dollar claim recovery rate.**
- 3. Provide for a speedier resolution of cases through the administrative hearing process.**

#### **Adding subpoena power to the hearing process would:**

- 1. Provide a tool to assist in the investigative process.**
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