

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: December 4, 2012  Consent  Regular  
 Workshop  Public Hearing

Submitted By: COUNTY ADMINISTRATION

Submitted For:  
=====

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to adopt: a resolution of the Board of County Commissioners of Palm Beach County, Florida, establishing a policy that Palm Beach County condemns the denial of lawful wages to an employee and a procedure for victims of wage theft to recover back wages through a contractual wage recovery program administered by the Legal Aid Society of Palm Beach County.

**Summary:** A proposed Palm Beach County Wage Theft Ordinance was brought before the Board for preliminary reading on February 1, 2011, and the public hearing scheduled on June 21, 2011. That public hearing was deferred pending the outcome of several issues that could have affected the Board's ability to enact a wage theft ordinance. However, the legislative bill did not pass, the Eleventh Circuit Court dismissed the Florida Retail Federation's lawsuit and found that the Miami-Dade County Wage Theft Ordinance was a proper exercise of governmental authority under Florida's Constitution and Legal Aid provided an updated report regarding their wage theft project. On April 17, 2012, the Board directed Staff to meet with the representatives from Legal Aid, People Engaged in Active Community Efforts, Inc., (PEACE), and the business community. Staff revised the proposed Wage Theft Ordinance based upon comments from the interested parties and met with the parties in June and October 2012. The parties were not able to agree upon the language of or the need for a County Wage Theft Ordinance. Legal Aid has represented that an approximate amount of \$100,000.00 annually will be required to provide the necessary support to implement the wage recovery program. If the resolution is adopted by the Board, Staff will bring back to the Board for approval a contract between the County and Legal Aid which will include deliverables, deadlines, benchmarks and reporting requirements for the wage recovery program including a provision that the contract will be reviewed within two (2) years. Additionally, Chief Judge Blanc has suggested a potential role for the courts in resolution of wage disputes. Countywide (DO)

**Background and Policy Issues:** (continued on page 2)

**Attachments:**

1. Resolution
  2. Legal Aid Society Wage Theft Project Update Report
  3. October 31, 2012 letter from the Business Community Representatives
  4. November 5, 2012 letter from PEACE Wage Theft Committee
  5. November 29, 2012 letter from Chief Judge Peter D. Blanc
- =====

Recommended By: \_\_\_\_\_  
Department Director Date

Approved By: *Pat Williams*  
Assistant County Administrator Date

**Background and Policy Issues:** On February 1, 2011 the Board approved the proposed Palm Beach County Wage Theft Ordinance on preliminary reading and set it for public hearing on June 21, 2011 which was deferred due to several pending concerns. Specifically, a bill had been filed in the Florida legislature that would preempt the County from enacting a wage theft ordinance. The legislative bill did not pass. In addition, the Board discussed concerns about the pending litigation in Miami-Dade County regarding the Florida Retail Federation's legal challenge to the Miami-Dade Wage Theft Ordinance. On March 23, 2012, the Eleventh Circuit Court dismissed the Florida Retail Federation's lawsuit and found that the Miami-Dade County Wage Theft Ordinance was a proper exercise of governmental authority under Florida's Constitution. Furthermore, the Board wanted to obtain an update from Legal Aid regarding their wage theft project. Legal Aid has provided a report of its wage theft program for the period of February 2, 2011 through August 31, 2012. Legal Aid has represented that it cannot continue to operate the pilot program without funding and has proposed a resolution. PEACE and the business community have communicated with staff, in writing, their respective positions.

**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2013	2014	2015	2016	2017
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<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:**

\* If the resolution is approved, the estimated fiscal impact of \$100,000 per year for two years will come out of Contingency Reserve.

OFMB *11/15/12* *11/15/12* *11/15/12*
  
 Contract Dev. and Control *11-2-12* *B. Wheeler*

**B. Legal Sufficiency:**

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

**C. Other Department Review:**

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

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

**RESOLUTION NO. R-2012**

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, SUPPORTING A WAGE RECOVERY PROGRAM PROVIDED THROUGH THE LEGAL AID SOCIETY OF PALM BEACH COUNTY, TO FACILITATE WAGE RECOVERY FOR UNDERSERVED INDIVIDUALS THROUGH THE COURTS, AND PROVIDING FUNDING FOR THE PROGRAM.**

**WHEREAS**, The Board of County Commissioners of Palm Beach County ("BCC"), Florida wish to state a clear policy condemning the unlawful under payment or non-payment of employees earned wages by unscrupulous employers; and

**WHEREAS**, a significant portion of workers affected by under payment or non-payment of earned wages are economically disadvantaged and low-income; and

**WHEREAS**, the BCC pledge their support to facilitate access to the courts through the LAS program for the underserved, which may include certain day workers, casual laborers and the like.

**WHEREAS**, the BCC sponsored and endorsed a pilot Wage Recovery Program ("WRP") administered by the Legal Aid Society of Palm Beach County ("LAS"); and

**WHEREAS**, the LAS developed procedures, implemented processes and executed the pilot WRP to facilitate meaningful outcomes and conform to legal and ethical canons; and

**WHEREAS**, the pilot WRP has been successful; and the BCC does not wish to interfere with LAS' ability to act and react to changing laws and market conditions by limiting their ability to modify and execute the processes and procedures associated with the WRP; and

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:**

Section 1. An employee who has been denied wages when due may contact LAS for wage recovery assistance.

Section 2. In keeping with their legal and ethical obligations, LAS will determine whether the individual has a bona fide claim for unpaid wages. If the individual has a bona fide claim for unpaid wages, LAS will:

- A. Notify the employer and provide the employer with an opportunity to cure the matter of unpaid wages *in the manner deemed most appropriate to each claim*. The notification may take the form of a telephone call, letter, or *any other means that LAS deems appropriate*.
- B. Work with the employee and employer to resolve the issue informally but expeditiously. The informal resolution may include obtaining attorneys' fees and costs from the employer.
- C. File court actions as appropriate and may refer unresolved claims to local pro bono or other counsel for resolution.
- D. Monitor and report results to the BCC at predetermined intervals in a manner prescribed by the BCC.

Section 3. The BCC shall provide funding to the LAS program as necessary which, at the outset, shall be \$100,000 each year for two years. This funding shall cover the salary and benefits of the staff attorney assigned to the program together with the support, investigative, court processing services and other of the program's actual costs. This program and its funding allocation shall be re-evaluated no more than twenty-two months following the adoption of this Resolution.

The foregoing Resolution was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_, and upon being put to a vote, the vote was as follows:

- Commissioner Abrams -
- Commissioner Berger -
- Commissioner Burdick -
- Commissioner Santamaria -
- Commissioner Taylor -
- Commissioner Valeche -
- Commissioner Vana -

The Chairman thereupon declared the Resolution duly passed and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

PALM BEACH COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS

SHARON R. BOCK, CLERK & COMPTROLLER

By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

By: \_\_\_\_\_  
County Attorney

# Wage Recovery Project



Legal Aid Society of Palm Beach County, Inc.

November 16, 2012 Update

## **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 November 16, 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 possibly 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 410 individuals contacted LAS during the time period studied, between February 2, 2011 and November 16, 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.

**Wage Theft Report Highlights**

Through November 16, 2012

Total amount of wages recovered: **\$115,915.38**

Total number of clients receiving wages: **59**

Average recovery per client: **\$1,964.67**

Average time for between intake and payment: **104 days**

Total number of clients retained: **168**

## Update from August Report

26 new potential clients contacted LAS since we last updated this report on August 31, 2012. 17 of the 26 came in for intakes, and of that group, 17 were retained by Legal Aid and/or partner pro bono attorneys. 1 of the 17 new clients that came in for an intake was directly referred to a partner pro bono attorney for expediency at the discretion of the LAS attorney. Of the 9 remaining potential clients, several were not wage theft-related cases, and several never followed up again after LAS attempted to return calls.

As of November 16, 2012, disposition of the 17 cases is as follows:

- 16 cases are pending.
- 1 case was referred to a partner attorney and is 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.

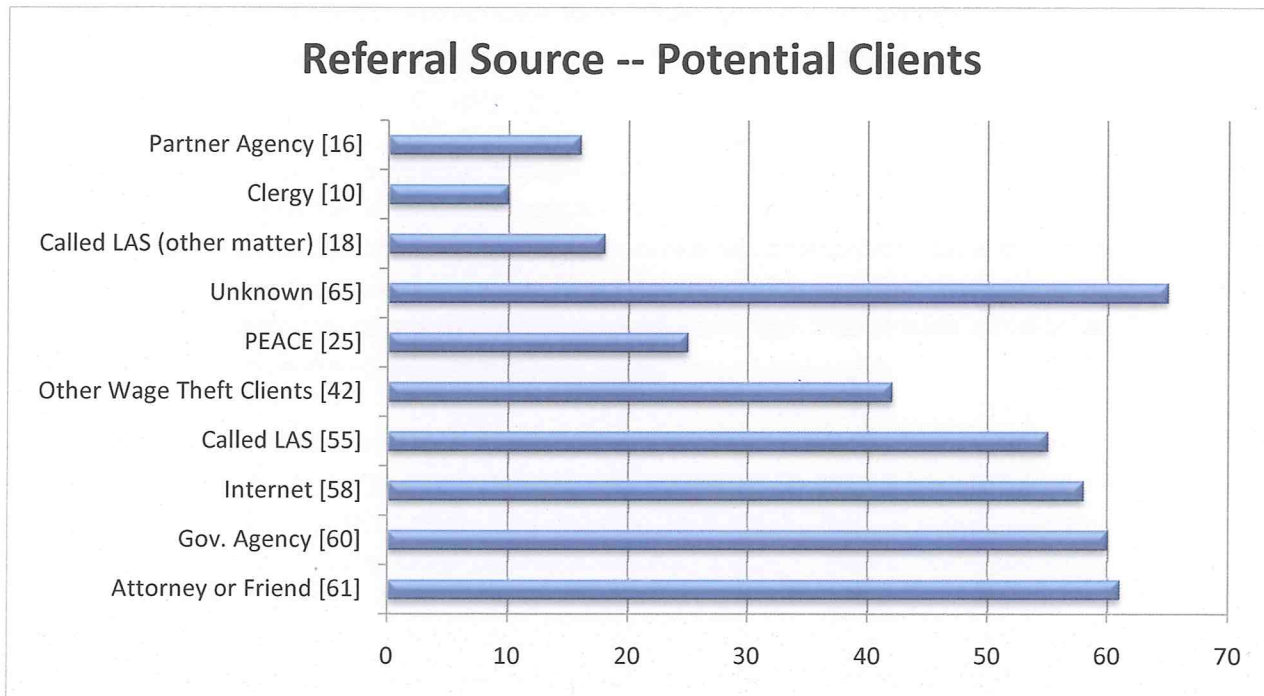
**FIGURE 8** represents all case intakes by month from the start of the Project through November 16, 2012.

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

**FIGURE 10** represents totally compensated claims – graph.

**All figures are based on data collected and compiled through November 16, 2012.**

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

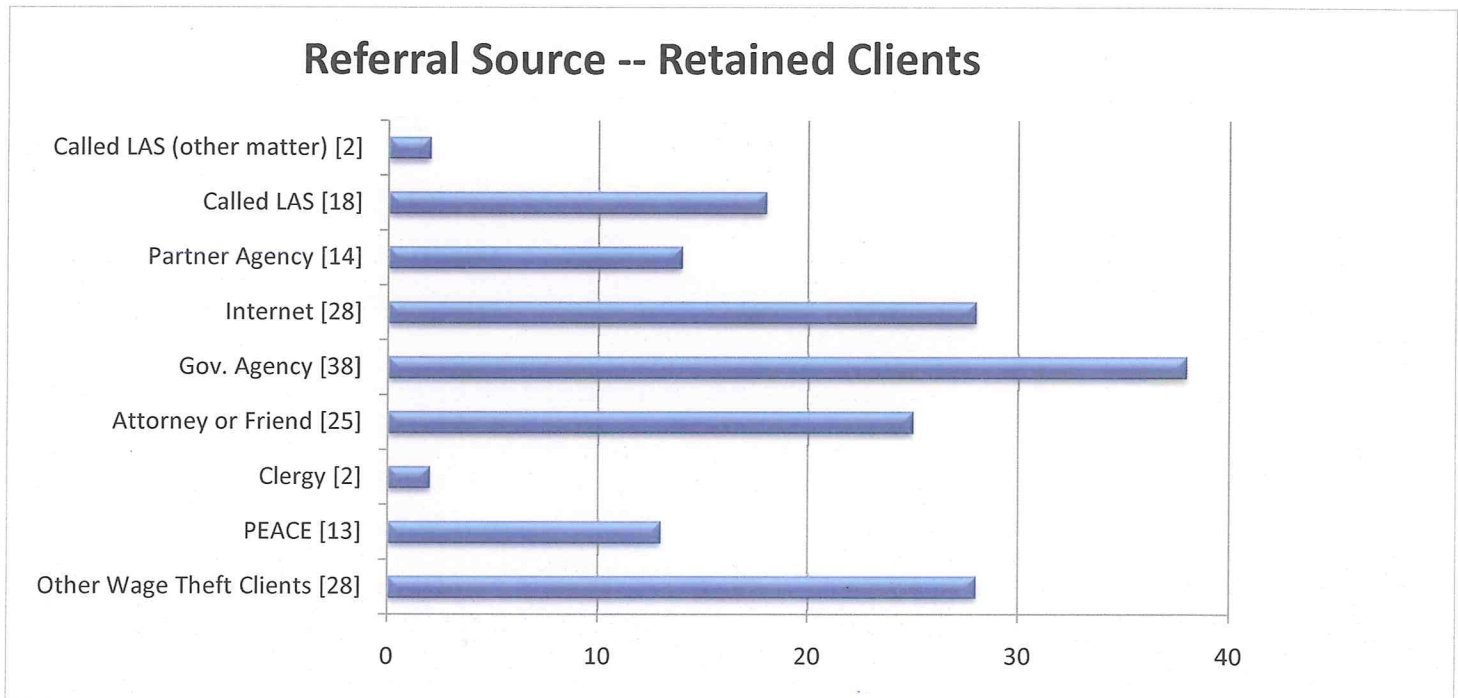


Other than the “Unknown” group, the next largest grouping of potential clients (15%) contacted LAS directly after learning about the Wage Theft Project through LAS efforts (attorney/friend recommendations). The next three largest categories, each respectively representing 15%, 14% and 13% of potential clients was Government agency referrals; the Internet, and calls to LAS due to general knowledge of its existence and services provided in the community. Government agency referrals came from a variety of local, state, and federal sources, predominantly Palm Beach County Courthouse, Palm Beach County OEO, and the U.S. Department of Labor.

8% of potential clients were referred through a combination of Clergy (2%) and PEACE (6%) outreach efforts.

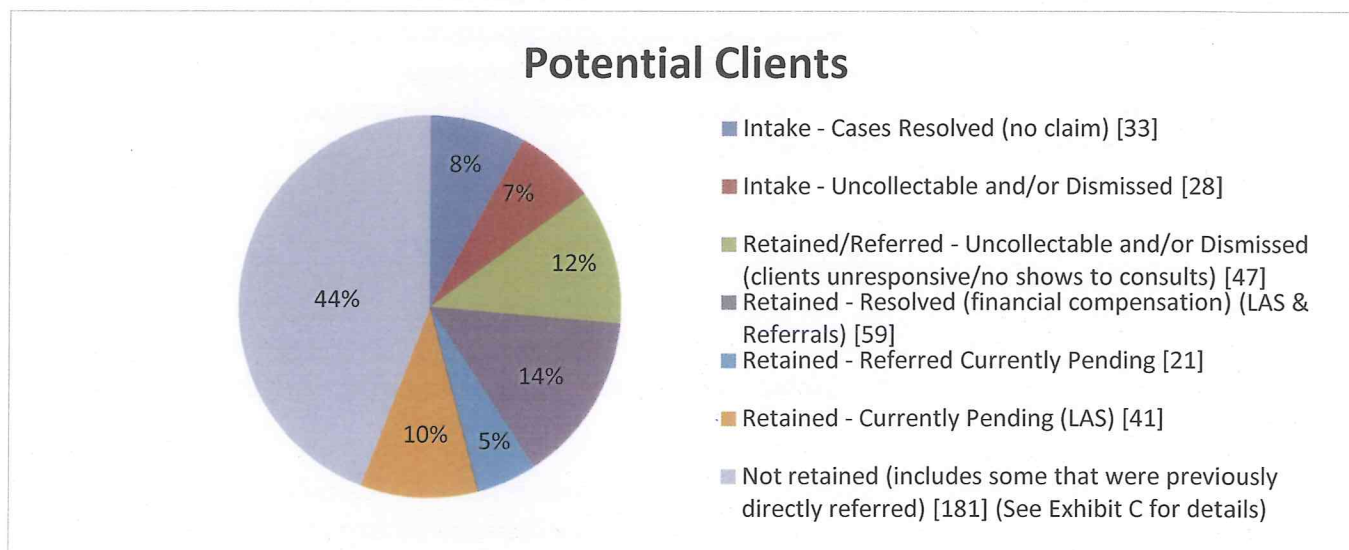
The sixty-five (65) potential clients (16%) with “unknown” referral sources were classified as such because those clients did not return LAS’s phone calls and never provided referral information or their issue was not wage theft related and was therefore not applicable; these potential clients were obviously 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 58% of potential clients came in for an intake and of that number, 238 total clients, 71% (168) 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.

Currently 37% (62) of retained and referred clients' cases are pending.

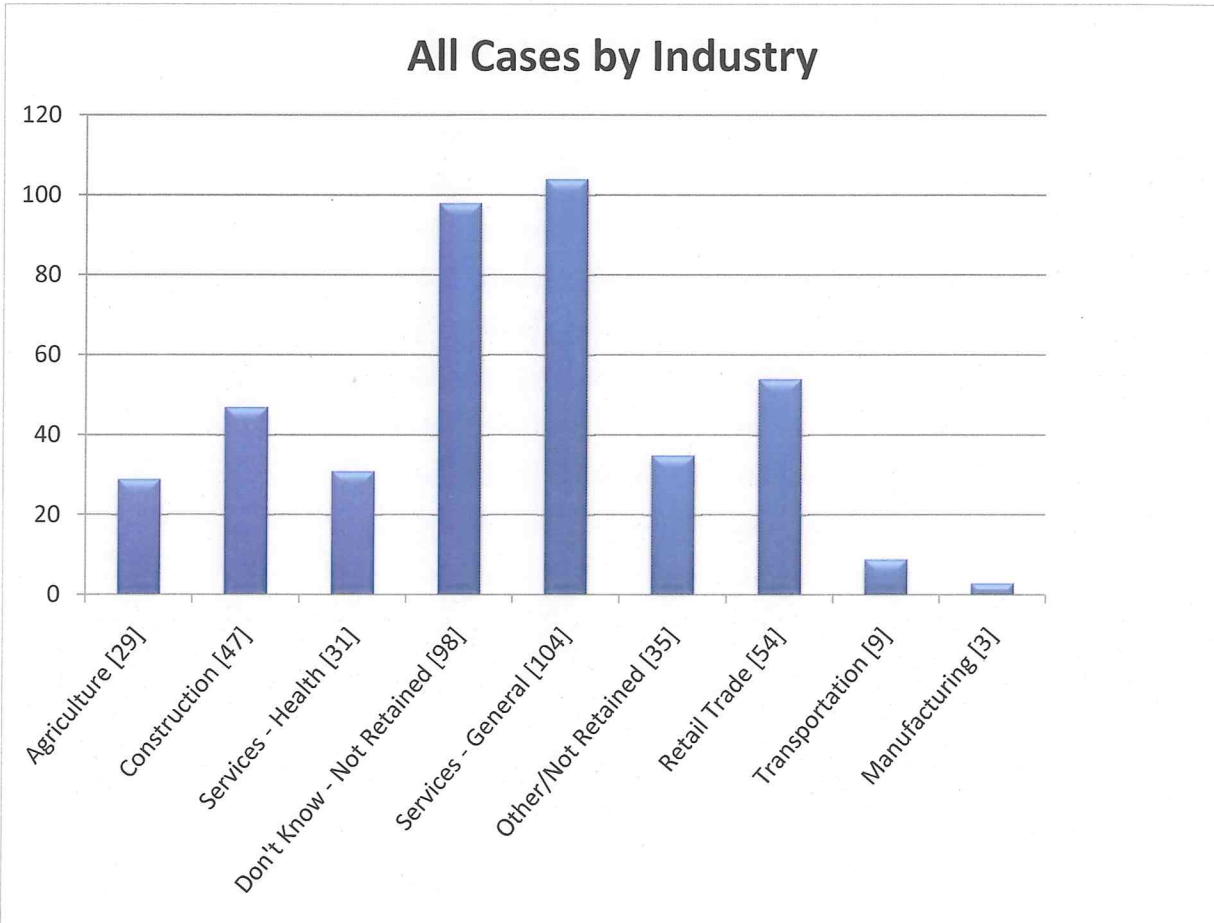
To date 31 (LAS) and 28 (Pro Bono Referrals) of the clients retained (35%) have been compensated thus far, typically with settlements for full wages legally owed.

For some of the Retained/Referred-Uncollectable and/or Dismissed group (including some of the Intake cases), 7 cases were found to be without merit/no legal basis, 5 cases the company had gone out of business (bankrupt), 3 cases the employer did not meet enterprise coverage under the FLSA, 1 case the client disappeared during the litigation phase, 28 either were unresponsive or did not show up for pro bono attorney consultation appointments, 4 clients no longer wanted to pursue legal action, 3 the employers disputed claims and/or could not be located, 1 LAS case was closed due to irreconcilable differences with the client, 1 the company was never reached after multiple attempts, 1 case was without merit, and 2 cases were previously referred to Miami-Dade Wage Theft Project and are now officially closed from the LAS Wage Theft Project data.

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. Also included in this group are clients that were directly referred to pro bono attorneys due to either a conflict of interest or due to the fact that they worked for the same employer as other current wage theft project clients who had already been referred after non-response from the employer following an initial wage theft project demand letter. (See Exhibit C for more detail)

**FIGURE 3.1**

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

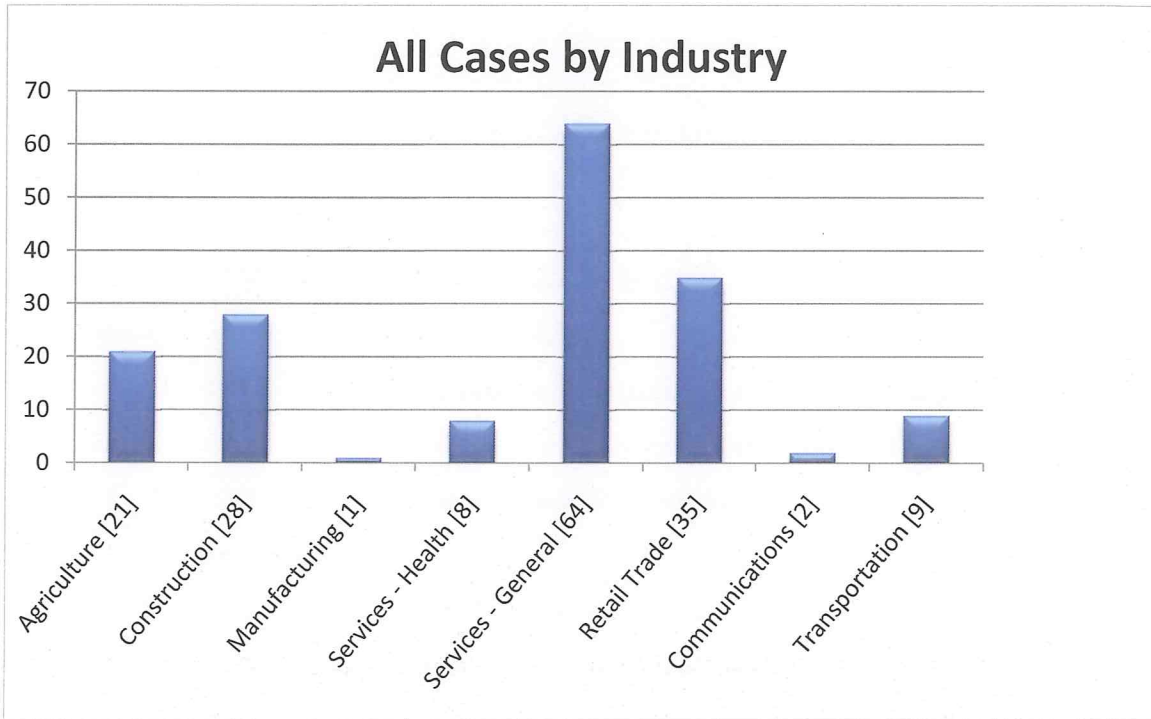


The most represented single industry was services, divided into two categories, general and health, representing a total of 33%, which included services such as: housecleaning/housekeeping, laundry, beauty salons, recreational facilities, animal shelter/humane society, as well as home healthcare companies and medical offices. Next was retail trade (9%), and construction (11%) which also included HVAC services. Retail trade included the following: restaurants/bars, general and specialty food supermarkets.

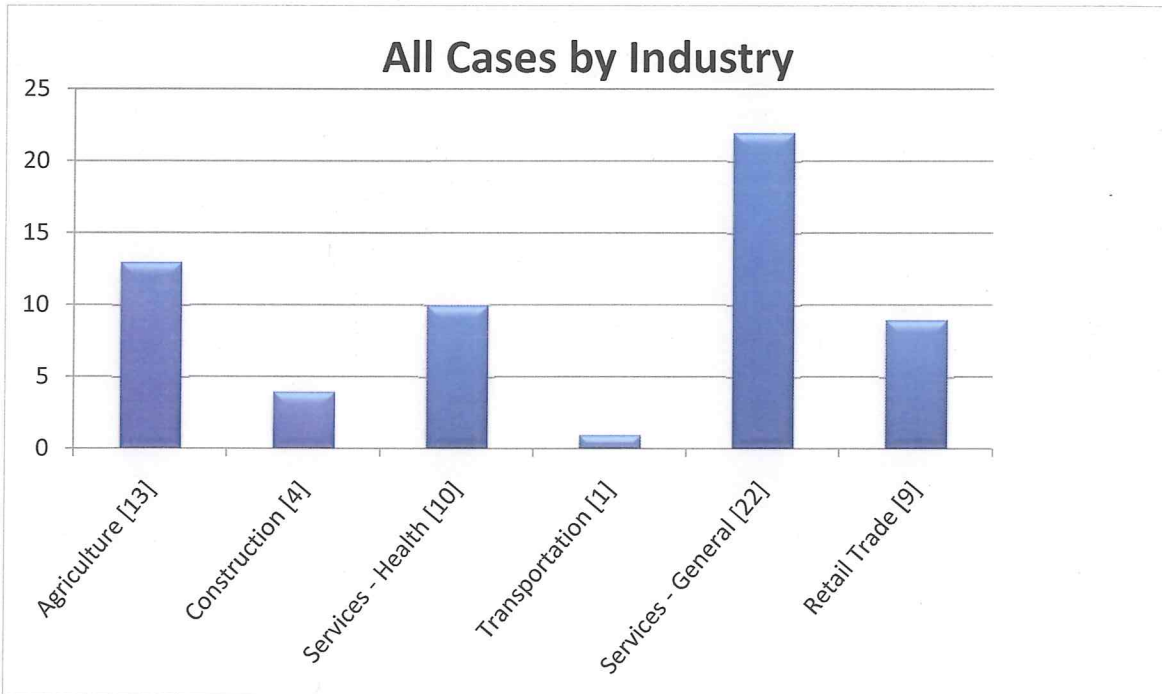
The thirty-five (35) cases classified as "Other/Not Retained" encompassed a wide array of professions. This classification included, but was not limited to, general administration, telemarketing, housekeeping and recreational services, transportation, and real estate.

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 clients work where claims were paid or resolved?





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

INDUSTRY CATEGORIES	PLACES OF EMPLOYMENT
<p style="text-align: center;"><b>Agriculture</b>            Division A            Major Group 071-078</p>	<p>2 Farms (Fruits and Vegetables)            1 Produce Market            1 Fruit Market            4 Nurseries with Landscaping Services            21 Specialized Landscaping Services</p>
<p style="text-align: center;"><b>Construction</b>            Division C            Major Group 15-17</p>	<p>3 Handyman/General Repairs            4 Stone/Mason Company for Large Construction            5 Air Conditioning Companies            1 Private Residence            30 General Construction Company (including painting)            1 Granite Company            1 Tile and Flooring Company            1 Roofing            1 Electrical</p>
<p style="text-align: center;"><b>Services – Health</b>            Division I            Major Group 80</p>	<p>1 Medical Management Company (Group 80)            1 Medical Testing Company            22 Home Healthcare Companies (Group 80)            87 Medical/Dental            8 Practitioner’s Office (Group 80)</p>
<p style="text-align: center;"><b>Other/Not Retained</b></p>	<p>1 General Administration            2 Real Estate            4 Construction (general)            8 Housekeeping (services) &amp; general services            2 Recreational Facility (services)            4 Restaurant (retail)            1 Specialty Food Store (retail)            3 Home Healthcare (services)            1 Inside Sales            1 Outside Sales            1 Aviation Management Company            7 General Services            2 Health Services            2 Transportation (trucking)            101 Don’t Know (no follow-through)</p>
<p style="text-align: center;"><b>Services</b>            Division I            Major Group 70-88</p>	<p>1 Entertainment/Games- Slots (Group 79)            3 General Administration/Nonprofit (Group 83)            4 Security Company (Group 73)            1 Equestrian Sports (Group 79)            14 Marketing/Mgt/PR and Staffing (Group 87)            2 Teacher (Educational – Group 82)            4 Beauty (Nail and Beauty Salons and Spa) (Group 72)            1 Health/Fitness (Gym) (Group 79)            2 Hotel (Group 70)            2 Laundromats (Group 72)            3 Dry Cleaner and Alterations (Group 72)            12 Housecleaning Services (Group 73)            1 Housekeeper (private household) (Group 88)            1 Babysitter/House and Dog sitter (Group 88)            7 Janitorial Services (Group 73)            1 Country Club (Group 79)</p>

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

<b>INDUSTRY CATEGORIES</b>	<b>PLACES OF EMPLOYMENT</b>
<p style="text-align: center;"><b>Services</b>            Division I            Major Group 70-88</p>	<p>1 Recreational Campground (Group 70)            9 Mechanics and Auto Tinting (Group 75 )            1 Parking Services            1 Cellular/Energy Sales Phone Company            1 Attorney's Office            1 HOA Company (maintenance services)            7 Human Society/Animal Shelter (Group 86)            4 General Administration (Groups 73 and 87)            1 Road Cleaning Services (Group 73)            1 Pool Services            1 Polling Services            1 Debt Consolidation Services            1 Business Consulting Company (Group 73)            1 Party Planning Services</p>
<p style="text-align: center;"><b>Retail Trade</b>            Division G            Major Group 52-59</p>	<p>31 Restaurants (Group 58)            1 Window Company (Group 52))            1 Specialty (Imported) Food Store(Group 54)            1 Department Store (Group 57)            2 Clothing Boutiques            1 Gold Auction Store            6 Specialty (Latin) Supermarket (Group 54)            1 General Supermarket (Group 54)            1 Retail Store (Pets) (Group 59)            2 Flower Shops            1 Mattress Company            1 Car Sales</p>
<p style="text-align: center;"><b>Transportation</b>            Division E            Major Group 40-49</p>	<p>1 moving company (local) (Group 42)            7 trucking company (OTR) (Group 47)            1 Aviation Company            1 Communications Company (Group 48)</p>
<p style="text-align: center;"><b>Manufacturing</b>            Division D            Major Group 20-39</p>	<p>1 Sign Company (Group 39)            1 Ice Cream Manufacturing Facility</p>

**EXHIBIT A-2**  
**Industry Details (intake clients)**  
**(Grouped by Current SIC Codes)**

INDUSTRY CATEGORIES	PLACES OF EMPLOYMENT
<b>Agriculture</b> Division A Major Group 071-078	1 Farm (Fruits and Vegetables 1 Produce Market) 1 Fruit Market 21 Specialized Landscaping Services
<b>Construction</b> Division C Major Group 15-17	3 Handyman/General Repairs 4 Stone/Mason Company for Large Construction 5 Air Conditioning Companies 1 Private Residence 22 General Construction Company (including painting) 1 Electrical 1 Granite Company 1 Tile and Flooring Company
<b>Services – Health</b> Division I Major Group 80	1 Medical Management Company (Group 80) 8 Home Healthcare Companies (Group 80) 8 Medical/Dental Practitioner’s Office (Group 80)
<b>Other/Intake-Not Retained</b>	1 General Administration (services) 2 Real Estate (Division H: Real Estate) 2 Housekeeping (services) 2 Recreational Facility (services) 1 Restaurant (retail) 1 Specialty Food Store (retail) 1 Home Healthcare (services) 1 Inside Sales (services) 1 Outside Sales (services)
<b>Services</b> Division I Major Group 70-88	1 Entertainment/Games- Slots (Group 79) 11 Marketing/Mgt/PR and Staffing (Group 87) 2 Communications/Sales 2 Teacher (Educational – Group 82) 1 Administrative (School – Educational – Group 82) 1 Attorney’s Office 2 General Administration/Nonprofit (Group 83) 3 Security Company (Group 73) 4 Beauty (Nail and Beauty Salons and Spa) (Group 72) 1 Health/Fitness (Gym) (Group 79) 1 Hotel (Group 70) 2 Laundromats (Group 72) 3 Dry Cleaner & Alterations (Group 72) 12 Housecleaning Services (Group 73) 7 Janitorial Services (Group 73) 1 Housekeeper (private household) (Group 88) 1 Babysitter/House and Dog sitter (Group 88) 1 Country Club (Group 79) 1 Road Cleaning Services (Group 73) 1 Pressure Cleaning Company 1 Party Planning + 1 Polling Services 1 Recreational Campground (Group 70) 9 Mechanic & Auto Tinting (Group 75) 1 Parking Services 1 Debt Consolidation 1 Business Consulting Company (Group 73) 1 Cellular/Energy Sales Phone Company 1 HOA (Maintenance) 7 Humane Society/Animal Shelter (Group 86)

**EXHIBIT A-2**

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

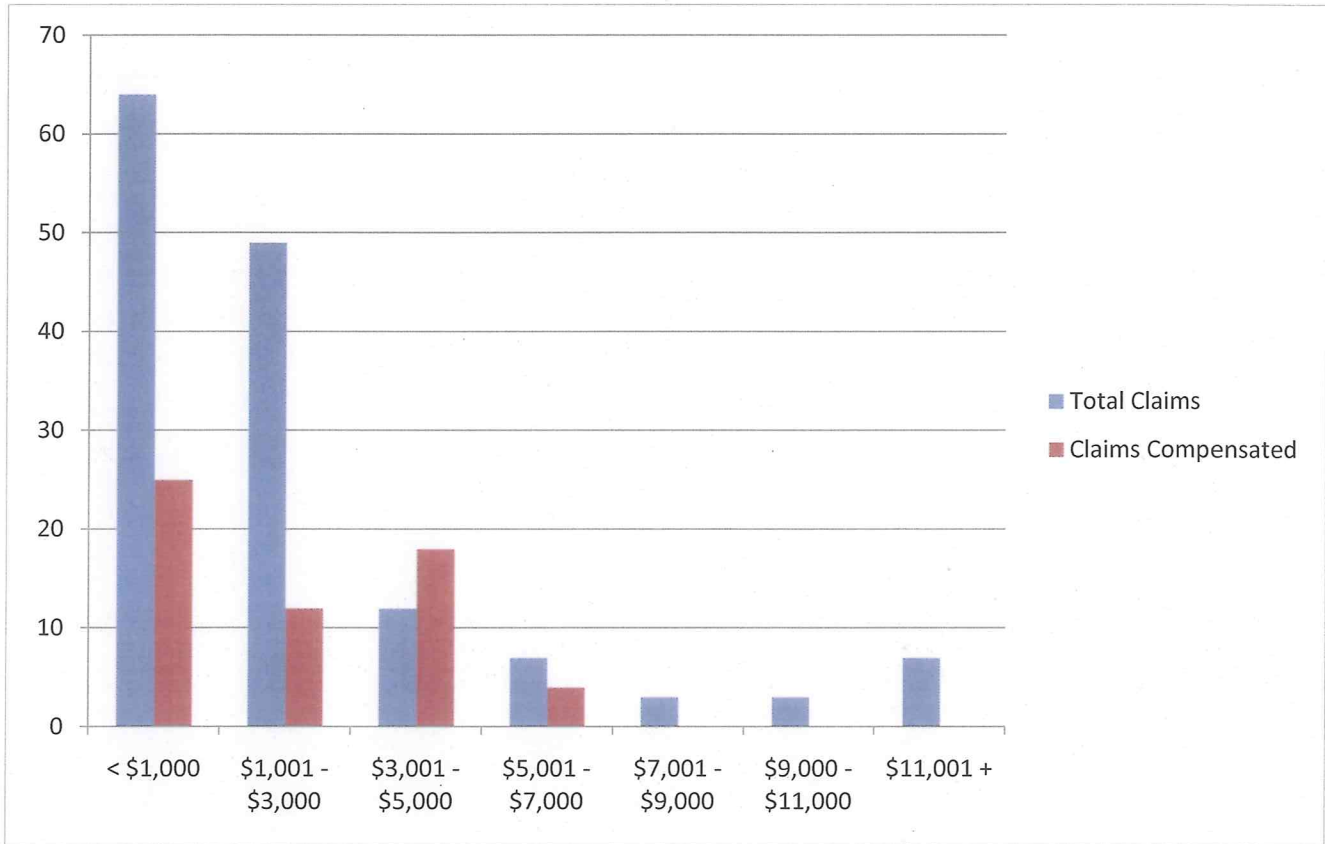
<b>INDUSTRY CATEGORIES</b>	<b>PLACES OF EMPLOYMENT</b>
Retail Trade Division G Major Group 52-59	30 Restaurants (Group 58) 2 Specialty (Imported) Food Store(Group 54) 6 Specialty (Latin) Supermarket (Group 54) 1 Plants and Produce (Group 543) 2 Flower Shops 1 Mattress Company 1 Food Catering Company 1 Window Company 1 Car Sales
Transportation Division E Major Group 40-49	2 moving company (local) (Group 42) 7 trucking company (OTR) (Group 47) 1 Aviation Company 1 Communications Company (Group 48)
Manufacturing Division D Major Group 20-39	1 Sign Company (Group 39) 1 Ice Cream Manufacturing Facility

**EXHIBIT A-3**

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

<b>INDUSTRY CATEGORIES</b>	<b>PLACES OF EMPLOYMENT</b>
Agriculture Division A Major Group 071-078	12 Specialized Landscaping Services 1 Trees and Landscaping Company
Construction Division C Major Group 15-17	2 Air Conditioning Company 1 General Construction Company (including painting) 1 Door Company
Services – Health Division I Major Group 80	1 Medical Office (Hearing Aid Center) (Group 80) 3 Medical Office (Mental Health) 1 Dental Office 5 Home Healthcare
Services Division I Major Group 70-88	1 Entertainment/Games- Slots (Group 79) 3 Marketing/Mgt/PR (Group 87) 1 General Administration/Nonprofit (Group 83) 3 Security Company (Group 73) 2 Laundromats (Group 72) 2 Janitorial/Cleaning Services (Group 73) 1 Road Cleaning Services (Group 73) 7 Animal Shelter 1 Beauty Salon 1 Mechanic Shop
Retail Trade Division G Major Group 52-59	3 Restaurants (Group 58) 1 Restaurant/Night Club 1 Specialty (Imported) Food Store(Group 54) 1 Retail Store (Pets) (Group 59) 2 Retail (general merchandise) Store 1 Retail (produce and plants/food) Store
Transportation (Div E)	1 Moving Company

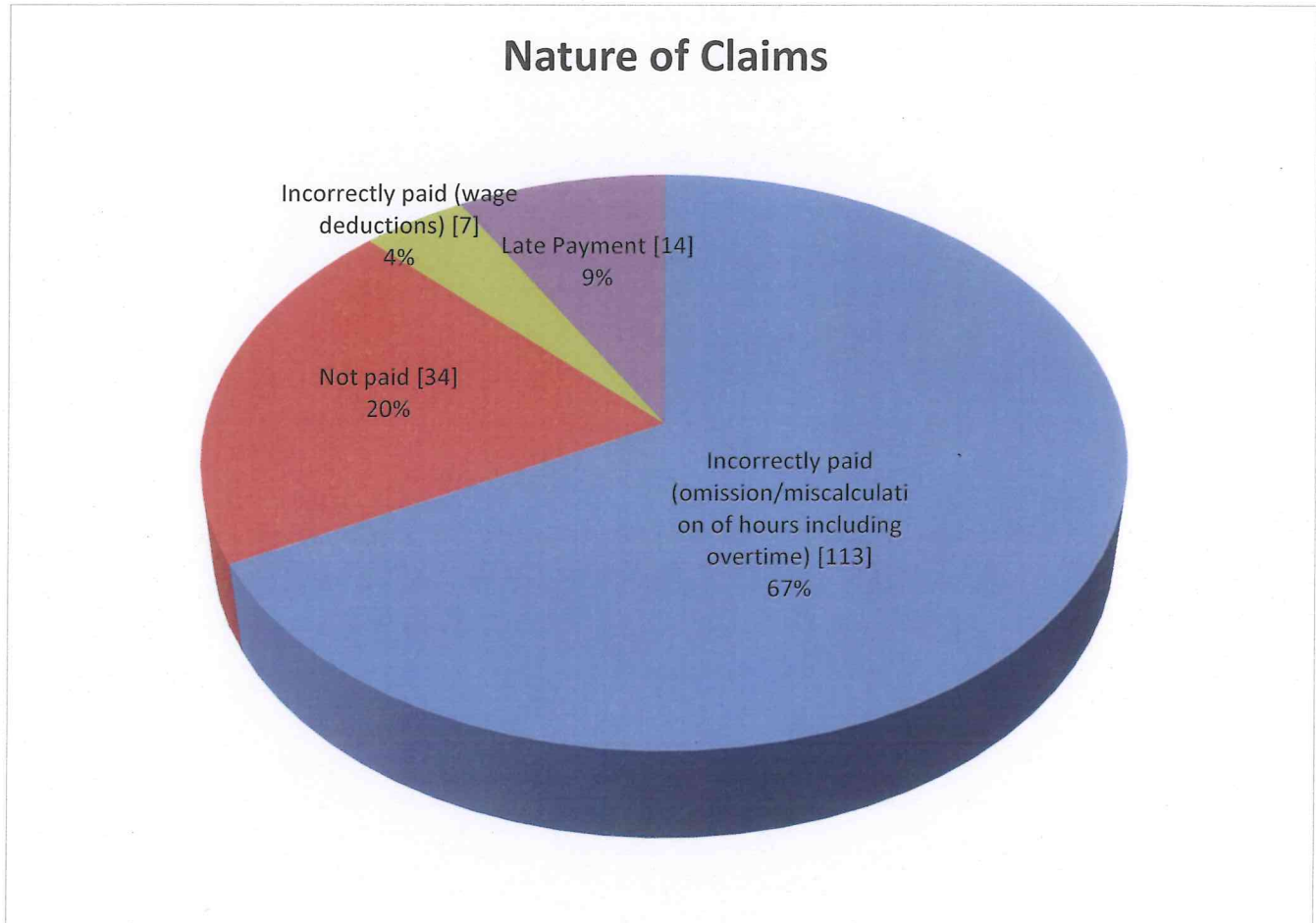
**FIGURE 4**  
**What amounts were owed to retained clients?**



The above chart includes the claims of most (currently some are not included as they have yet to be determined) of the 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 November 16, 2012 had claims ranging between \$46.00 and \$1,120.00.

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



The majority of retained clients (113) (67%) 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-time hours. Nonpayment of wages accounted for 20% of claims (34).

The majority of claims between August 2012 and November 16, 2012 involved non-payment of last few paychecks including some incorrect payment of wages, including overtime, and/or late payment of wages, and two claims involved total non-payment of wages.

See Exhibit B below for additional details regarding the nature of claims (includes 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>
	• Correctly Paid by Contractor, but Subcontractor took cut of wages	4
	• Not Paid Minimum Wage	5
	• Omission or Miscalculation of Hours ( <i>includes: adjustment of timesheets, off-the-clock work, disagreement about hours worked, and wage deductions</i> )	95
	• Miscalculation of Hours – Employee Mistaken/Confused	4
	• Not Paid Overtime	29
	• Employer Behind in Payment of Wages	1
	• Partially Incorrect Pay	1
	• Commissions Unpaid	1
	• Employer Out of Business – Last Paycheck Not Paid	26
	• Employer did not pay out accrued vacation pay	1

**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>
	• Employer Out of Business	3
	• Employer Having Financial Difficulties	24
	• Employee Termed/Resigned-Employer Refuses to Pay	18
	• Employer Withholding Wages in Exchange for Return of Company Property or Completion of Paperwork	2
	• Employer refusing to pay due to broken equipment	1
	• Employer Refused to Pay (no reason given)	14
	• Employer does not have records of employee working during that time-frame (part-time employee)	1
	• Employee on FMLA – allegedly owed PTO/Sick/Vacation Time	1

**FIGURE 6**

How long did it take to resolve cases?

<i>Client Number (Includes LAS Cases and Pro Bono Referred Cases)</i>	<i>Business Days Between Demand Letter and Payment</i>
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
21	30
22	15
23	7
24	30 (paid before demand letter)
25	60
26	120
27	150
28	120



<i>Client Number (Includes LAS Cases and Pro Bono Referred Cases)</i>	<i>Business Days Between Demand Letter and Payment</i>
29	120
30	120
31	120
32	120
33	120
34	120
35	120
36	120
37	390
38	390
39	390
40	390
41	120
42	120
43	120
44	120
45	120
46	120
47	120
48	60
49	41
50	49
51	13
52	180
53	365
54	365
55	365
56	90
57	60
58	8
59	15

**FIGURE 7**  
Final Summary

<b>Number of potential clients</b>	410
<b>Number of clients that came in for intake</b>	238
<b>Number of retained clients (demand letter sent out)</b>	168
<b>Total of wage theft claims</b> (not including cases referred before claims established)	\$463,933.35
<b>Number of cases settled (LAS Clients (31) and Pro Bono Referral Clients (28))</b>	59
<b>Total amount recovered</b>	<b>\$115,915.38</b>
<b>Number of cases currently pending</b>	62
<b>Cases dismissed, uncollectable or closed at attorney's discretion</b> (for retained clients) (See Exhibit C-1)	47
<b>Number of retained cases where employees were paid in cash</b>	21
<b>Estimate of Mailing Costs including Certified Letters</b>	\$1,437.06

The Legal Aid Society of Palm Beach County performed intakes with 238 clients that came in with wage theft complaints between February 2, 2011 and November 16, 2012. 168 (71%) of those clients were actually retained.

59 (31 LAS cases and 28 Pro Bono Referral cases) (35%) of the 168 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 390 days.

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

21 of the retained clients were paid in cash by their employers, representing 12%.

Of the current 62 cases pending, 41 are LAS clients and 21 have been referred to partner pro bono attorneys, and are either awaiting more client information, a response from the employer following the initial demand letter/complaint, and/or may be litigated soon.

### 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/disappeared	4
• Client Did Not Follow Up with Pro Bono Attorneys	14
• Pro Bono Attorney closed case – chose not to proceed with litigation	2
• LAS Attorney closed case – chose not to proceed (irreconcilable differences)	1
• LAS Attorney closed case – employer not reached after multiple attempts	1
• Client changed mind	4
• No Merit (no legal basis)	7
• Company went bankrupt – Pro Bono Attorney closed case	2
• Not in Palm Beach County – referred to Miami-Dade Project	2

\*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	60
• Issue Completely Unrelated to Wage Theft	56
• Independent Contractors (referred to small claims or reduced fee panel)	29
• Matter Resolved without Legal Assistance Required (after client called)	9
• Company bankrupt – referred to small claims or private attorney	3
• Not in Palm Beach County – referred	2
• Directly referred to pro bono attorneys	45

### EXHIBIT C - 3

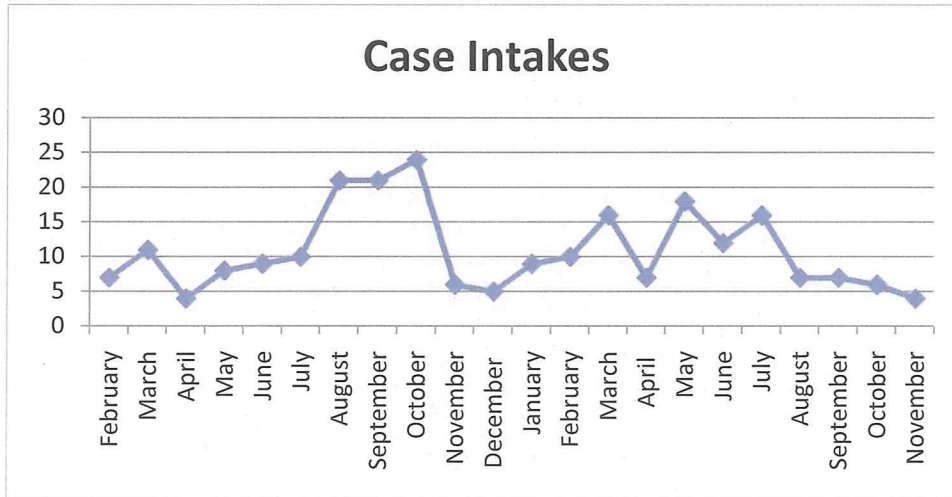
#### Cases Dismissed/Determined to be Uncollectable (Intake Clients)

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)	6
• No Show to Intake/No Follow-Up	20
• Client Changed Mind/Wants to Wait	2
• 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 November 16, 2012

<i>Month</i>	<i>Number of Case Intakes</i>
February 2011	7
March 2011	11
April 2011	4
May 2011	8
June 2011	9
July 2011	10
August 2011	21
September 2011	21
October 2011	24
November 2011	6
December 2011	5
January 2012	9
February 2012	10
March 2012	16
April 2012	7
May 2012	18
June 2012	12
July 2012	16
August 2012	7
September 2012	7
October 2012	6
November 16, 2012	4

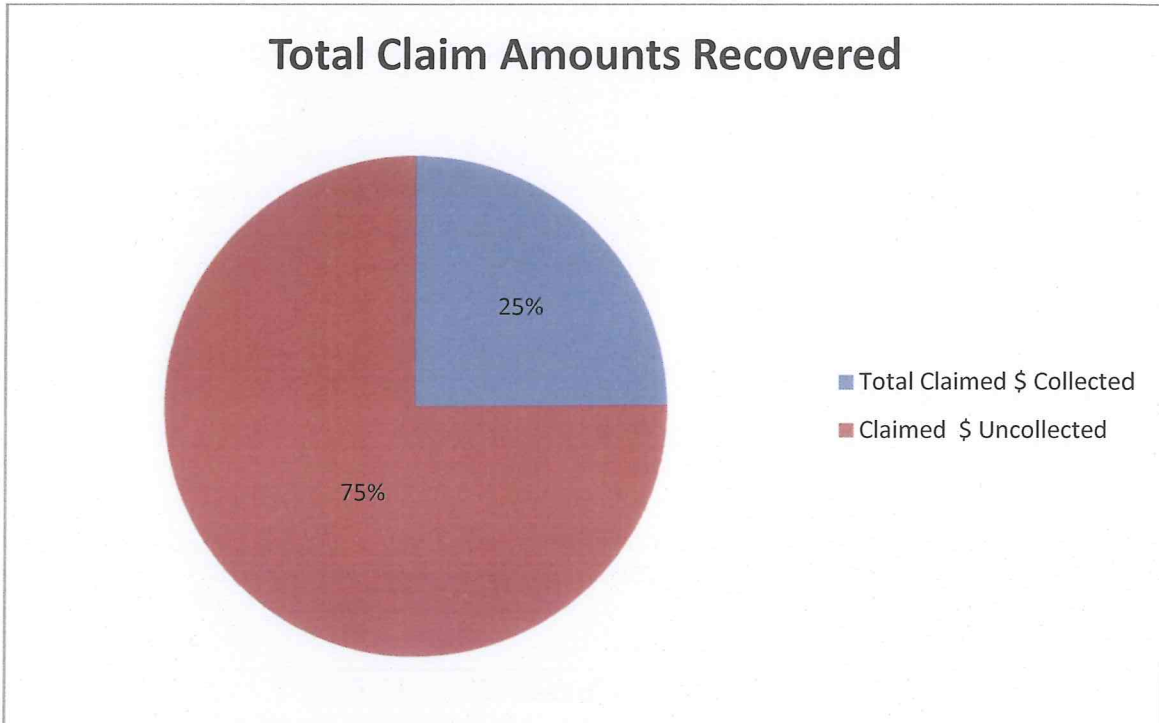
**FIGURE 8.2**  
Case Intake Numbers by Month  
February 2, 2011 through November 16, 2012



**FIGURE 9**  
Partner (Pro Bono) Attorney Referred Cases – Status Report  
February 2, 2011 through November 16, 2012

NUMBER OF CASES	STATUS
9	Closed/Uncollectable
2	Closed/Attorney decided to not litigate
3	Closed/Employer didn't meet Enterprise Coverage
40	Closed/Clients Unresponsive/Missed Intakes/E Disputed or could not be Located
7	Closed/Client Changed Mind
5	Lawsuit Filed – Pending
28	Closed/Settled
21	Currently Pending

**Figure 10**  
Total Compensated Claims (February 2, 2011 to November 16, 2012)



A total of fifty-nine (59) wage theft clients have received compensation to date, averaging approximately \$1,964.67 per client.

# Wage Recovery Project



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

**Appendix to November 16, 2012 Update**

In their updated Legal Aid report it is stated that 55 cases were resolved and 87 cases are pending, 52 of those cases are pending with pro bono attorneys.

**Question one:** Of the 55 resolved cases how many were concluded through the small claims court process?

**Answer:** None

**Question two:** Of the 52 pending cases with pro bono attorneys, how many are awaiting hearings in the small claims court?

**Answer:** None

**Question 3:** How many of the 28 cases settled by pro bono attorneys were mediated and settled by the pro bono attorneys without proceeding to a hearing?

**Answer:** 15 (Note: definitely 14, but awaiting to hear back from one pro bono attorney for 1 case)

**Question 4:** For each of the 55 cases that have been resolved, can we have a breakdown (not only of time taken from first demand letter to payment) but amount of payment involved as well.

**Answer:** See attached document entitled "Resolved Wage Theft Data Details – 11-21-12"

**Question 5:** For each of the 87 pending cases, can we have a breakdown of time taken (from first demand letter), and amount involved.

**Answer:** See two attached documents entitled "Pending Pro Bono Referrals from 8-31 WT Report- Status as of 11-21-2012" and "Pending LAS Cases from 8-31 WT Report- Status as of 11-21-2012"

**Question 6:** Since the total number of retained cases are 151, what has happened to the 9 cases? (since 55 resolved + 87 pending = 142)

**Answer:** 6 were retained and the cases were subsequently closed since the clients changed their minds, and 3 were retained and pro bono attorneys made decisions to close cases since the employers did not meet enterprise coverage.



## Pending LAS Cases

CLIENT NUMBER	DEMAND LETTER(S) SENT DATE	CURRENT STATUS	AMOUNT OF CLAIM
1	3/2/12 & 8/14/12	Client unresponsive – will likely close case	\$87.00
2	11/4/11	Unable to contact employer after multiple attempts – may close case	\$80.00
3	N/A	Case without merit – attorney made decision to close case on 9/24/12 after initial intake on 3/23/12	Unable to accurately establish
4	Letter not yet sent	Pending – awaiting more client information since intake on 4/16/12	\$2,750.00
5	Letter not yet sent	Pending – awaiting more client information since intake on 4/19/12	Not yet established
6	Letter not yet sent	Pending – awaiting more client information since intake on 4/24/12	\$1,225.00
7	Letter not yet sent	Pending – awaiting more client information since intake on 5/3/12	Not yet established
8	6/8/12	Employer unresponsive – referred to pro bono attorney 11/19/12	\$6,237.89
9	6/1/12	Employer made partial payment on 7/2012. Awaiting final payment	\$88.00
10	N/A	Intake 6/8/12. Phone negotiations. Client received partial payment of \$800 on 8/2012. Awaiting final payment.	\$2,100.00
11	7/24/12	Employer unresponsive – may refer to pro bono attorney soon	\$10,872.00
12	8/29/12	Employer unresponsive - referred pro bono attorney on 10/15/12	\$630.84
13	11/7/12	Awaiting response from employer	\$5,440.00
14	7/6/12 & 8/3/12	Settled for full amount on 9/13/12	\$45.38
15	7/6/12	Awaiting response from employer	\$240.00
16	9/19/12	Awaiting response from employer	\$3,450.00
17	9/19/12	Awaiting response from employer	\$676.73
18	8/2012	Employer unresponsive – referred to pro bono attorney 10/22/12	\$1,336.51
19	9/6/12 & 9/21/12	Awaiting response from employer	\$1,760.00
20	9/6/12	Just settled on 9/14/12 for more than amount requested (\$1,120.00)	\$1,145.00
21	9/6/12	Employer unresponsive – referred to pro bono attorney 10/9/12	\$6,348.00
22	9/6/12	Awaiting response from employer	\$430.90
23	8/9/12	Awaiting response from employer	\$16,238.68
24	8/9/12	Awaiting response from employer	\$7,741.44
25	8/9/12	Awaiting response from employer	\$13,036.80
26	8/9/12	Awaiting response from employer	\$23,904.00
27	9/19/12	Awaiting response from employer	\$632.00
28	11/19/12	Awaiting response from employer	Not able to get figure
29	N/A	Pending – awaiting more client information since intake on 8/3/12	\$896.00
30	9/19/12	Employer unresponsive – referred to pro bono attorney 10/22/12	\$4,700.00

## Pending LAS Cases

31	8/29/12	Client claimed \$324.14 but accepted lower settlement 9/13/12	\$181.57
32	10/24/12	Awaiting response from employer	\$630.90
33	10/11/12	Awaiting response from employer	\$2,829.00
34	10/3/12	Awaiting response from employer	\$1,732.50
35	10/3/12	Awaiting response from employer	Not able to get figure

## Pending Cases (Referred to Pro Bono Attorneys)

CLIENT NUMBER	REFERRED (by LAS to Pro Bono Attorney Office)	DEMAND LETTER(S) SENT DATE	CURRENT STATUS
1	7/21/11		Client unresponsive after multiple contact attempts
2	8/19/11	8/25/11	Lawsuit filed – Federal court 9-12-11– settled 9/12/12
3	8/19/11	8/25/11	Lawsuit filed - Federal court 9-10-11– settled 9/12/12
4	8/19/11	8/25/11	Lawsuit filed - Federal court 9-12-11– settled 9/12/12
5	11/14/11		Closed file – client # disconnected
6	2/14/12	2/20/12	Lawsuit filed – Federal court 5-23-12 - pending
7	5/18/12		Client unresponsive
8	12/30/11	1/15/12	No response to demand letters – client contact info disconnected
9	3/7/12	3/20/12	Closed case – client didn't want to pursue
10	1/27/12		Client unresponsive
11	1/27/12		Client unresponsive
12	3/15/12		Client unresponsive
13	3/23/12		Client unresponsive
14	2/28/12		Closed – client didn't want to pursue
15	2/28/12		Closed case – couldn't locate company
16	3/5/12		Closed case – ER disputed
17	4/3/12	4/12/12	Lawsuit filed – Federal court 11-7-12 - pending
18	3/30/12	4/12/12	Lawsuit filed – Federal court 11-7-12 – pending
19	3/30/12	4/12/12	Lawsuit filed - Federal court 11-7-12 – pending
20	4/3/12	4/12/12	Lawsuit filed - Federal court 11-7-12 – pending
21	4/10/12	4/30/12	Sent 2 demand letters, no response – will discuss filing will client
22	4/3/12	4/25/12	Sent 2 demand letters, no response – clients deciding on filing
23	4/3/12	4/25/12	Sent 2 demand letters, no response – clients deciding on filing
24	4/3/12	4/25/12	Sent 2 demand letters, no response – clients deciding on filing
25	5/7/12		Clients unresponsive
26	5/7/12		Clients unresponsive

## Pending Cases (Referred to Pro Bono Attorneys)

27	5/7/12		Clients unresponsive
28	5/7/12		Clients unresponsive
29	5/7/12		Clients unresponsive
30	5/7/12		Clients unresponsive
31	5/7/12		Clients unresponsive
32	5/7/12		Clients unresponsive
33	5/9/12		Couldn't locate ER – closed case
34	6/21/12	6/30/12	Sent 2 demand letters, no response – client deciding about filing
35	7/10/12		Attempted to contact client about consult but didn't get a response
36	7/25/12		Attempted to contact client about consult but didn't get a response
37	7/12		Client unresponsive
38	5/9/12		No-show for consult
39	5/9/12		No-show for consult
40	5/9/12		No-show for consult
41	8/14/12		Still attempting to contact client
42	7/30/12		Client unresponsive
43	8/14/12		Still attempting to contact client
44	6/11/12		No-show for consult
45	6/11/12		Client didn't want to pursue at this time
46	7/25/12		No-show for consult
47	7/25/12		No-show for consult
48	6/21/12		No response from ER – closed file
49	8/14/12		Still attempting to contact client
50	7/31/12		Client declined to move forward at this time
51	7/31/12		Offered representation – contacted multiple times but no response
52	7/23/12	Awaiting response from PB attorney	May be litigated shortly in Federal court if attorney cannot settle

## Resolved Wage Theft Case Data Details

CLIENT NUMBER PB Attorney Clients	REFERRED (by LAS to Pro Bono Attorney)	DEMAND LETTER(S) SENT DATE	HOW CASE RESOLVED	AMOUNT RECOVERED
1	2/27/12	3/5/12	Settled pre-litigation on 7-6-12 for full amount	\$971.65
2	8/19/11	8/25/11	Lawsuit filed – Federal court 9-12-11– settled 9/12/12	\$4804.00
3	8/19/11	8/25/11	Lawsuit filed - Federal court 9-10-11– settled 9/12/12	\$2400.00
4	8/19/11	8/25/11	Lawsuit filed - Federal court 9-12-11– settled 9/12/12	\$1705.00
5	9/28/11	N/A	Negotiated by phone with employer –settled 10/31/11 for full amount	\$1099.00
6	11/4/11	N/A	Settled pre-litigation on 4/2012 for lesser amount	\$20.00
7	1/24/12	2/9/12	Settled pre-litigation on 3/7/12 for full amount	\$1225.00
8	8/31/11	9/10/11	Settled pre-litigation for full amount	\$5724.23
9	4/21/11	5/10/11	Settled pre-litigation on 2/3/12	\$21,500.00 (4 clients same employer)
10	4/21/11	5/10/11	Same as above	
11	4/21/11	5/10/11	Same as above	
12	4/21/11	5/10/11	Same as above	
13	10/3/11	10/10/11	Lawsuit filed in federal court 11/2011 <b>but ended up settling out of court on 2/2012</b>	\$23,426.49 (7 clients same employer)
14	10/3/11	10/10/11	Same as above	
15	10/3/11	10/10/11	Same as above	
16	10/3/11	10/10/11	Same as above	
17	10/3/11	10/10/11	Same as above	
18	10/3/11	10/10/11	Same as above	
19	10/3/11	10/10/11	Same as above	
20	9/23/11	10/2011	Lawsuit filed in federal court 11/11/11 and settled on 2/27/12	\$35,000.00 (9 clients same employer)
21	9/23/11	10/2011	Same as above	
22	9/23/11	10/2011	Same as above	
23	9/23/11	10/2011	Same as above	
24	9/23/11	10/2011	Same as above	
25	9/23/11	10/2011	Same as above	
26	9/23/11	10/2011	Same as above	
27	9/23/11	10/2011	Same as above	
28	9/23/11	10/2011	Same as above	

## Resolved Wage Theft Case Data Details

CLIENT NUMBER LAS Clients	REFERRED (by LAS to Pro Bono Attorney)	NO. DAYS BETWEEN DEMAND LTR & PAYMENT	HOW CASE RESOLVED	AMOUNT RECOVERED
29	N/A	9	LAS conciliation	\$107.50
30	N/A	5	LAS conciliation	\$260.66
31	N/A	Paid before D.Ltr	LAS conciliation	\$648.00
32	N/A	11	LAS conciliation	\$1225.25
33	N/A	22	LAS conciliation	\$702.03
34	N/A	Paid before D.Ltr	LAS conciliation	\$72.00
35	N/A	27	LAS conciliation	\$786.38
36	N/A	33	LAS conciliation	\$480.00
37	N/A	28	LAS conciliation	\$800.00
38	N/A	Paid before D.Ltr	LAS conciliation	\$350.00
39	N/A	12	LAS conciliation	\$777.96
40	N/A	10	LAS conciliation	\$325.81
41	N/A	9	LAS conciliation	\$1082.25
42	N/A	95	LAS conciliation	\$1032.50
43	N/A	150	LAS conciliation	\$839.50
44	N/A	45	LAS conciliation	\$526.54
45	N/A	15	LAS conciliation	\$500.00
46	N/A	21	LAS conciliation	\$811.80
47	N/A	30	LAS conciliation	\$352.00
48	N/A	2	LAS conciliation	\$300.00
49	N/A	30	LAS conciliation	\$103.66
50	N/A	15	LAS conciliation	\$362.70
51	N/A	7	LAS conciliation	\$522.16
52	N/A	60	LAS conciliation	\$2261.00
53	N/A	41	LAS conciliation	\$1081.07
54	N/A	49	LAS conciliation	\$125.00
55	N/A	13	LAS conciliation	\$200.00

## Attachment 3

October 31, 2012

Brad Merriman  
Assistant County Administrator  
Palm Beach County  
301 North Olive Avenue  
West Palm Beach, FL 33401

Re: Wage Recovery Issue

This letter is in response to your request for comment from the Business Community regarding the wage recovery item pending before the Palm Beach County Commission. Thank you for the opportunity to once again address this issue.

We have been dealing with the topic of wage recovery in Palm Beach County for over two years now. The item was first introduced in October 2010 with representatives from PEACE and the Business Community offering testimony in support of and opposition to an ordinance. The county requested that the sides meet to determine whether or not there was a middle ground that we could agree on. The business community responded enthusiastically to the request and its representatives have been willingly at the table for the last two years with open minds.

It is two years later now and we are still at the same discussion phase of this issue – is a county wage recovery ordinance necessary. We stand by our initially conveyed belief that it is not. We have studied the issue and reviewed existing Federal and State laws and administrative rules and know that without a doubt there is no need for additional legislation.

One of the first things the business community did in this process was to reach out to Palm Beach County Legal Aid Services (LAS) to see if they could be of assistance to those in need. We think everyone can agree at this point that the LAS Pilot Program has offered tremendous assistance to those with wage recovery claims. In addition to the benefits of their overall service to the community, LAS has provided invaluable information and reporting on the wage recovery process in Palm Beach that has helped to educate us all.

First, it has been confirmed that there are sufficient laws already in place that allow for LAS to assist those with wage recovery claims no matter if they are owed \$1 or \$1,000.

Second, LAS has demonstrated that there are services available in addition to theirs that are successfully being utilized by victims with wage recovery claims. They have shown that pro bono attorneys are willing to assist claimants, that claimants can represent themselves in small claims court, and that in all situations fees for victims can be waived when necessary to do so.

Third, they have shown that the occurrence of wage theft is not as widespread as was initially conveyed.

Fourth, there continues to be confusion surrounding the Miami-Dade model under consideration for adoption. This is not for lack of effort to secure hard facts as the county and LAS have sent representatives to meet with Miami-Dade and the business community has issued official requests for

information. Yet the following questions and concerns remain. We don't know and can't assess the true costs of the Miami-Dade program. They don't seem to be able to assess their true costs. We have identified flaws in their reporting which can only lead us to question their reporting structure in general and we continue to hear that the numbers being reported are incorrect.

We remain at the same place as where we started -- a wage recovery ordinance is unnecessary and will be confusing, duplicative, and costly for Palm Beach County. It is simply not prudent for the county to create an entirely new layer of government to assist those who are already being or can be assisted by existing programs and services.

Therefore, we propose that the county codify the good work of the LAS Pilot Program through resolution and designate the funding being discussed for an ordinance to LAS. Their work has proven to be incredibly effective and by supporting their efforts in a more formal way the county refrains from having to develop a new division and incur all the costs associated with that process. By supporting LAS the county eliminates any interruption in coverage or available services and the additional support to LAS can only bolster their efforts.

We recommend that that County fund LAS for two years during which time LAS must continue reporting back to the Commission on this issue. If the LAS model continues to produce the quality results already being seen, then the County can fund LAS again at the end of two years. If at the end of two years PEACE believes LAS is not working the business community is more than happy to sit down at the table to again review the merits of a County ordinance.

In addition to codifying the role of LAS, we encourage the county to launch an educational effort to support outreach to the community. This can be done at no additional cost to the county. We have previously offered that the county can designate a portion of their webpage to the topic of wage recovery where they can explain the issue, provide information as to existing laws, statutes and remedies, provide information on where residents can get assistance and host the reporting form utilized by LAS.

The business community is against wage theft. Theft is illegal and should be appropriately dealt with. Employees who aren't paid what they are owed should be able to recover those funds and should have information and access to services that can assist them. However, at this point, we feel there are far too many unknowns surrounding an ordinance for it to be an appropriate action taken by the commission. The groups remain conflicted about how an ordinance would look, who might be exempt from coverage, how it will be implemented and what it will truly cost the county.

We believe the LAS program is working, is working well, and can work even better if more formally supported by the commission.

Respectfully,

The Business Community Representatives  
Associated Builders and Contractors – Carol Bowen  
Business Forum – represented by Christine Hanley  
Community and Economic Development Council – Skeet Jernigan  
Florida Atlantic Builders Association – Kevin Ratteree





**PEOPLE ENGAGED IN ACTIVE COMMUNITY EFFORTS, INC.**

100 N. Palmway  
Lake Worth, FL 33460

TELEPHONE: (561) 882-0403; FAX: (561) 882-0407

November 5, 2012

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First United Methodist  
Church of Jupiter / Tequesta  
Harvest AME  
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Hurst Chapel AME  
Jesus and You (JAY)  
Community Church  
Macedonia AME  
Mt. Calvary  
Missionary Baptist  
Mt. Zion AME  
New Bethel AME  
Our Lady Queen of Peace  
Catholic  
Payne Chapel AME  
Pentecostal COGIC  
St. Andrew's Episcopal  
St. Ann Catholic  
St. Christopher's Episcopal  
St. John First  
Missionary Baptist  
St. Luke's United Methodist  
St. Patrick's Episcopal  
St. Paul AME (Boynton  
Beach)  
St. Paul AME (Delray Beach)  
St. Paul AME  
(West Palm Beach)  
St. Paul's Episcopal  
Tabernacle Missionary  
Baptist  
Unitarian Universalist  
Fellowship of Boca Raton

Brad Merriman

Assistant County Administrator, Palm Beach County

301 N. Olive Avenue

West Palm Beach, FL 33401

Dear Brad:

We write to reiterate our position that a Wage Recovery Ordinance is sorely needed in Palm Beach County, and to urge staff to recommend to the County Commission that they adopt a Wage Recovery Ordinance on December 4. County staff worked very hard over these months to draft a proposal that reflects a consensus; we all thought we were working in good faith towards that end, but at the end, it appears that those who spoke for at least part of the Business Forum were intent on not agreeing to anything. The excellent work of County staff should be considered by the County Commissioners.

**SCOPE OF THE PROBLEM**

As we have stated from the beginning, the scope of the problem of wage theft in Palm Beach County is overwhelming right now. We remain puzzled over the Business Forum's assertion that wage theft is not as widespread as initially conveyed. The independent study recently completed by Florida International University's RISEP, reports from the federal Department of Labor, and reports from El Sol have all documented that the number of wage theft complaints in Palm Beach County is likely in the thousands (and according to the RISEP study, this is very likely only the "tip of the iceberg," given that many cases go unreported). Furthermore, there are national studies like *Wage Theft in America* (Kim Bobo), *Broken Laws, Unprotected Workers* (Bernhardt & Milkman), *Unregulated Work in the Global City* (Brennan Center for Justice) – all of which point out a clear trend that wherever there is a predominance of low wage industries, low wage workers, and casual labor (as in Palm Beach County), such violations are commonplace.

**NEED FOR AN ORDINANCE**

To date, here is what has taken place with regard to addressing these commonplace violations in Palm Beach County. In November of 2010, approximately six months after we first brought our concerns around wage theft to the County Commissioners, representatives of the Business Forum expressed their opposition to the idea of a Wage Theft Ordinance. At this time, they engaged the Legal Aid Society (LAS) in addressing wage theft claims, in an effort to prove an Ordinance unnecessary. We would like to note that while they claim to have sat at the table since that time with an "open mind," engaging LAS was really the only "movement" in their position that they accomplished; their arguments against an Ordinance have remained the same since that time despite these arguments being consistently proven wrong (example -

they have persisted in saying that there are sufficient laws on the books. LAS's latest report asserted that 54 out of 221 cases (page 6) that came in for intake were governmental referrals from local, state and federal sources. If the laws were sufficient, why were these governmental entities not able to pursue them independently of LAS?) Our position, on the other hand, has evolved in relation to the facts which have come in, and we have demonstrated an ongoing willingness to compromise.

One way in which our position has evolved is with regard to LAS's work. We have come to recognize and acknowledge the value of LAS's work with regard to Wage Theft as it relates to the early stages of addressing claims (conciliation). We remain steadfast in our assertion that an Ordinance is very much needed, that will establish a "Special Master" process for claims not resolved by conciliation.

Our evidence for believing so is the following - at the present time, out of a total of 151 cases taken, LAS has resolved 55 cases while 87 cases remain pending (58%). If one looks at the data available (and we do have a pending request with LAS made nearly a month ago, for a breakdown of cases which will give us much needed additional data), it is clear that there are many cases which are taking quite a long time to resolve (the cases resolved by pro-bono attorneys are taking as long as 390 business days to resolve, to date, with many more still pending in the system).

#### **WHY SMALL CLAIMS COURT IS NOT A VIABLE OPTION**

At our last meeting, representatives of the Business Forum indicated that these cases could be taken to small claims court, and that statutorily these cases must be resolved within 110 days. This is something that we had researched at the beginning of our efforts, and found to be simply unworkable. In consultation with various attorneys familiar with small claims court, as well as the courts themselves, in actual practice cases can take up to three years to be heard. This of course is due to an extremely overloaded system. Furthermore, there are other obstacles for likely wage theft victims within this system which make it an unviable option. As we have said from the beginning, one of the primary reasons an Ordinance is needed is so that victims can have a relatively quick way of recovering their wages - one which is in no way currently available through the courts.

#### **ORDINANCE, NOT A RESOLUTION**

It has been put forward that perhaps a resolution "codifying" LAS's work would be an appropriate solution. Adopting a resolution would "codify" nothing. A resolution is merely an expression of intent, and does not carry with it the force of law. An ordinance that does indeed carry with it the force of law is the vehicle by which the County can successfully set up the much needed Special Master process.

#### **REPORTS FROM MIAMI-DADE**

Regarding the Business Forum's assertion that Miami-Dade County has an inability to report data correctly, we take issue. The fact is that Miami Dade and LAS keep different records. LAS has been engaged in a study of the Wage Theft issue in Palm Beach County, and is producing analysis appropriate for such a study. The program at LAS has satisfactorily resolved 55 cases in 20 months. Miami-Dade is keeping records appropriate for an ongoing governmental program, which is processing a large volume of cases. Miami-Dade has processed 1,500 cases in 22 months. Miami-Dade tracks: number of case intakes, number of cases resolved by conciliation, claim dollars recovered by conciliation, number of cases referred to administrative hearing, number of cases resolved by administrative hearing, and claim dollars awarded in administrative hearings. They are currently instituting a system for tracking claim dollars recovered by clients in the administrative hearings.

Miami Dade reports costs associated with the hearing examiner, court reporter, and translator in the administrative hearings. They do not have information on their personnel costs because employees devote only portions of their time to administration of the Wage Theft Ordinance Process. The pro-rating of their time has not been calculated or reported.

**PALM BEACH COUNTY LEFT BEHIND?**

Finally, on October 23, Broward County passed (7-2) a Wage Recovery Ordinance nearly identical to that of Miami-Dade County. The very same people opposing an Ordinance here in Palm Beach County opposed an Ordinance in Broward, and were very vocal with the Commissioners and staff in Broward County regarding their opposition. The fact that the Ordinance passed in Broward County, despite this, is worth noting – another County's staff and Commission felt as we do, that these arguments simply do not stand up to the overwhelming need for an Ordinance to address this grave problem. Palm Beach Commissioners will not be going out on a limb or breaking new ground to adopt a Wage Recovery ordinance, to protect workers of Palm Beach County who are the victims of unscrupulous employers, who want to compete on a very uneven playing field.

Sincerely,

The PEACE Wage Theft Committee

Attachment 5



THE CIRCUIT COURT OF THE  
**FIFTEENTH JUDICIAL CIRCUIT**  
OF FLORIDA

CHAMBERS OF  
**PETER D. BLANC**  
CHIEF JUDGE

PALM BEACH COUNTY COURTHOUSE  
205 NORTH DIXIE HIGHWAY  
WEST PALM BEACH, FLORIDA 33401  
561/355-1721

November 29, 2012

Robert Bertisch, Esq., Director  
Legal Aid Society of Palm Beach County, Inc.  
423 Fern Street, Suite 200  
West Palm Beach, FL 33401

Re: Wage Dispute Docket

Dear Bob:

I am writing to summarize our recent discussions on the issue of the Legal Aid Society's involvement in wage dispute claims and the potential involvement of the court in assisting in the resolution of those claims. As I understand the current situation, you currently have an informal agreement with Palm Beach County to represent individual workers in disputes regarding unpaid wages. Those you represent are primarily people who, based upon economic circumstances and other relevant factors, often have difficulty accessing the courts in an effort to resolve these claims. It appears that you have been quite successful not only in negotiating resolutions, but also in collecting the agreed upon disputed funds on behalf of your clients. Nonetheless, there are still a significant number of cases which do not resolve and, ultimately, result in lawsuits being filed here in Palm Beach County. You have asked if I believe there is a way for the courts to be of assistance in fairly, effectively, and efficiently assisting in the resolution of these disputes.

I have some familiarity with the wage theft ordinance of Miami-Dade County. I have spoken with Eleventh Circuit Chief Judge Joel Brown who has been helpful to me in explaining both the benefits and the drawbacks of such an ordinance. One of the primary benefits as I understand it is a timely resolution of the dispute. One of the primary drawbacks is the lack of a mechanism for actually collecting the funds in dispute on behalf of the claimant. It is my understanding that a similar ordinance is being considered here in Palm Beach County.

Let me be clear that I do not intend this letter to be construed either as support for or opposition to a local wage theft ordinance. Although, I would imagine that such an ordinance, by diverting cases from the court, might actually result in a slight reduction in the court's workload, I take no position on a proposed ordinance. However, because I believe that the courts are here to serve all people and that reasonable and equal access for all despite their circumstances is a cornerstone of the court's role in our

system of justice, I would like to suggest a potential role for the courts which I believe could be tremendously effective in the timely resolution of these disputes and in the ability of the aggrieved parties to actually recover the disputed funds to which they are entitled.

As a first step in dispute resolution, I propose that one or more court mediators be recruited to serve as volunteers to handle pre-suit mediations in wage dispute cases involving claims under \$5,000. Based upon what you described to me, I believe that would cover the majority of the wage dispute claims and would also allow the rules of small claims court to apply. Your office would send a letter to the employer advising of your intent to file suit and specifying a pre-suit mediation date provided to you by the court. If successful, the pre-suit mediation would eliminate the need to file suit and incur the associated filing fee. Of course, the parties would be free to negotiate on their own before mediation in an effort to resolve the claim and if the negotiations are successful, the mediation date could be canceled. If the parties are unsuccessful, the mediation date is already set and there is no delay.

If pre-suit mediation is successful, it would result in a written agreement signed by the parties specifying the settlement terms. If mediation is unsuccessful, the plaintiff would be able to immediately file suit in the small claims division of the Palm Beach County Court. Florida Small Claims Rule 7.090 requires that a pretrial conference be held no more than 50 days from the filing of the action. Mediation would again take place at the pretrial conference. Pursuant to subsection (d) of the same rule, if mediation is unsuccessful, the trial date should be set not more than 60 days from the date of the pretrial conference. Therefore, if the case doesn't resolve during the course of the litigation, there should still be a final resolution no more than 110 days from the date of filing.

Should trial result in the entry of a judgment for plaintiff, it is recordable, unlike those judgments entered pursuant to the Miami-Dade Wage Theft Ordinance and is, therefore, collectable under any of the methods recognized by law. I believe this would be a distinct advantage over the collection options associated with an ordinance.

I believe there are several other advantages that this process may offer. First, the court should be able to dedicate a specific docket to wage theft cases. Parties filing lawsuits are required to fill out a civil cover sheet which identifies the type of case in question. Although we don't currently have a category of wage dispute, I believe one could be created. That would allow us to direct those cases to the appropriate docket and all parties would benefit from the expertise developed by the judge assigned to that docket.

I believe the creation of an automatic process to direct wage disputes to a dedicated docket would also be of benefit to pro se litigants representing themselves. This would lend the expertise of the mediator and the court to the potential resolution of their claims as well. The courts are, therefore, able to provide greater access and more timely resolution to a broader group of litigants.

Currently, in small claims court, we use the services of volunteer mediators who are trained and certified through a program approved by the Florida Supreme Court. These mediators do not charge for their services and they are tremendously effective in resolving a broad variety of small claims cases that come to court. All mediators have continuing education requirements and I am fairly confident that the mediators we recruit would be willing to undergo any appropriate training necessary to develop an expertise in these types of cases.

Another practical consideration is this. In small claims court, corporations may not represent themselves but must be represented by counsel. Volunteer mediators are again made available at the time of the pretrial conference. I would speculate that many attorneys representing corporations would advise their clients that it is more cost effective to resolve this type of dispute at mediation than it would be for the clients to pay their attorneys to litigate the matter. In that way, employers would have two cost effective methods of resolving these disputes early on. First, they could resolve at pre-suit mediation with no additional expense. Second, if pre-suit mediation is unsuccessful, they would have a second opportunity at the pretrial conference after they have received advice of their counsel and information regarding the cost they will incur to litigate the dispute. It is noteworthy that these two opportunities for resolution do not in any way delay further legal proceedings if they become necessary.

The success of this type of a program should not be measured in the number of judgments entered, but in the amount of funds collected and received by the aggrieved parties. If we go forward with this proposal, we should keep a record of the funds recovered as a measure of success. I can tell you with certainty that there is a much higher collection rate in cases that have settled than in cases that have gone to judgment. Finally, as I mentioned previously, settlements that are breached can always go to judgment so there is no real risk to the aggrieved employees.

Bob, this letter should be construed only as a draft of a proposal and a work in progress. I assume there are several more details that would need to be resolved by the courts and I also assume that the additional involvement of your office in court proceedings would create some funding concerns for you. Nonetheless, I offer this as a starting point for further discussion. I take no offense if, for some reason, you determine that this initial draft proposal is unworkable. If we do not go forward, it will create no negative impact on the court. However, I offer it for your consideration because I know your office, like the court, is concerned with equal access and justice for all. Let me know if you wish to continue these discussions and I will be happy to continue working with you.

Sincerely



Peter D. Blanc  
Chief Judge

PDB:sal