CONSTITUTIONAL CHALLENGES TO THE 2003 WORKERS' COMPENSATION LAW

By: William H. Rogner

Following passage of SB-50 after the 2003 special legislative session, a lament heard statewide, primarily by those representing the interests of injured workers, was, "It's unconstitutional!" It is true that the 2003 law eliminated, restricted, or reduced both benefits and attorneys' fees. It is also true that the law increased the claimant's burden of proof and, with limited exceptions, made the law less favorable to injured workers. And while there may be some legitimate constitutional challenges to the new law, it is this author's opinion that the vast majority of the law will survive constitutional challenges.

It must be remembered that "unfair" is not equivalent to "unconstitutional." Unconstitutional is not synonymous with "difficult", "burdensome", or "distasteful." While many use these adjectives to describe this new law, a constitutional challenge must be based first on a constitutional provision, and then on judicially created standards for addressing that constitutional provision. This article will summarize the possible constitutional challenges and focus on those with the greatest potential for success. Many of the challenges that some practitioners would like to raise will be unsuccessful.

Several areas of the new law (already 1.5 years old!) provide possibilities for a constitutional challenge. First, the provision granting horizontal immunity to subcontractors has a valid access to court concern. Second, the heightened major contributing cause standard has been successfully challenged in Oregon under an access to court theory. Third, a Colorado court invalidated, on due process grounds, a law limiting admissible testimony to physicians authorized by the carrier or independent medical examiners paid for by the claimant. Fourth, an Ohio decision recently overturned a statutory amendment excluding coverage for certain mental injuries on an equal protection theory. Finally, a provision restricting benefits payable to older individuals has been successfully challenged in Montana under an equal protection theory. Each of these recent cases addressed statutes very similar to provisions adopted in Florida in 2003. As will be discussed below, however, one area where the courts are unlikely to look favorably on a constitutional challenge is in connection with attorneys' fees.

AVENUES OF APPEAL:

In general, an Appeal in a Workers' Compensation matter must come from a "final order".[1] A final order is one that reserves jurisdiction on nothing other than attorney's fees.[2] It may be appealed as a matter of right to the First DCA. A constitutional challenge need not be preserved before the JCC as the JCC has no jurisdiction to address constitutional issues.[3]

A non-final order generally is not appealable until the rendition of a final order on the merits. A non-final order may be appealed only if it meets the specific requirements of Rule 9.180(b)(1), F.R.A.P. Appealable non-final orders are those that address jurisdiction, venue, or, in limited situations, compensability.[4] For a non-final order addressing compensability to be appealable, the order must find that an injury occurred within the course and scope of employment and that the claimant is entitled to receive benefits in some amount, and must also contain a certification that determination of the exact nature and amount of benefits due to the claimant would require substantial expense and time.[5] Otherwise, a non-final order, no matter how aggrieved the party may feel, is simply not appealable until the later issuance of a final order.

A non-appealable, non-final order is not beyond appellate review. A party may invoke the original jurisdiction of the First District Court of Appeal in order to obtain review of a non-final order. Essentially, three extraordinary writs may be issued by the First District that result in the review of a non-final workers' compensation order.[6] Certiorari is used to review an action by the judge of compensation claims where that judge has acted in excess of his or her jurisdiction or has otherwise departed from the essential requirements of law.[7] Mandamus is used to enforce an established legal right by compelling the judge of compensation claims to perform a non-discretionary duty required by law.[8] Prohibition is used to prevent the judge of compensation claims from exercising a judicial power beyond his or her authority or jurisdiction.[9]

An appeal from a final order is a matter of right. An appeal from a non-final order that meets the requirements of Rule 9.180(b)(1) is also as of right. A petition for a writ which invokes the original jurisdiction of the appellate court is not a matter of right, but rather is within the discretion of the district court. The court will only accept jurisdiction where failure to do so will result in irreparable harm that would not be correctable on an appeal from an ultimate final order.[10] The issuance of a writ, allowing review of a non-final order, is an extraordinary remedy, and one that is seldom granted.

THEORIES OF CONSTITUTIONAL CHALLENGE:

ACCESS TO COURT

One of the most common historical challenges to the workers' compensation law involves an alleged denial of access to court. Article I, section 21, of the Florida Constitution guarantees its citizens the right to access to court in a civil matter. Judges of compensation claims are not Article V judges. They are not part of the judicial branch. They are executive branch officers. Thus, on its surface, it would appear that injured workers are, in fact, denied access to court.

Generally, of course, the workers' compensation system is constitutionally sound. The

workers' compensation system is a valid replacement for the common law right to sue in tort and results in a trade off between labor and industry.[11] Employees forego the right to sue their employers and employers forfeit all of their common law defenses. Employees receive a guaranteed menu of benefits and employers receive protections from the unpredictability of law suits and potentially large jury verdicts.

A challenge based on an alleged denial of access to court must involve an abrogation of a common law right of action.[12] Limitations to the receipt of benefits do not impair one's right to access to court.[13] All challenges to prior workers' compensation amendments which resulted in reductions in benefits have been upheld, as the system remains a viable alternative to civil litigation, and the courts have resisted making judgments as to the quantum or the quality of the benefits provided by the law.[14]

There are two identifiable areas of concern with regard to the new workers' compensation statute and an access to court challenge. The first involves the new horizontal immunity provision found at section 440.11(1)(e), Fla. Stat. (2003). The prior version of the statute specifically stated that subcontractors on the same job were not entitled to the exclusiveness of remedy provisions protections in the law. The new version of the statute provides horizontal immunity between subcontractors. Previously, the injured employee of a subcontractor could sue another subcontractor in tort. Under the current version of the statute, all subcontractors on the same job have immunity as to those injuries (assuming the subcontractor has purchased workers' compensation insurance and was not grossly negligent). Thus, while a common law right of action has now been abrogated by this horizontal immunity provision, it has not been replaced with another remedy. Something has been taken away, and nothing has been given in return. This is the precise situation where the Courts have found unconstitutional denials of access to court.[15]

A second area of concern involves a 2001 decision from the Supreme Court of Oregon. It must be remembered that Florida's original major contributing cause standard was adopted from the Oregon law.[16] While Oregon decisions have no precedential authority in Florida, they may be persuasive. Furthermore, the Oregon case simply makes sense. Unlike in Florida, the Oregon courts originally interpreted the major contributing cause standard as a "greater than 50%" standard. In Smothers v. Gresham Transfer, Inc., 332 Or. 83 (Or. 2001), a claimant was denied workers' compensation benefits because he failed to establish major contributing cause under that standard. The claimant then sought to sue his employer in tort. The case was defended based on the exclusive remedy provision of the Oregon Workers' Compensation Law.

In a very lengthy decision the Supreme Court of Oregon held that under the state constitution's remedy clause, the exclusive remedy provision was unconstitutional as applied to Mr. Smothers. Since he was denied benefits under the workers' compensation law because of the major contributing cause standard, he could not thereafter be denied the right to sue in tort. Otherwise, he

would be left without a remedy or access to court. While the Oregon "remedy" clause is not identical to the Florida "access to court" clause, the two provisions are quite similar.[17] The 2003 Florida Workers' Compensation Law has now codified the "greater than 50%" standard.[18] A legitimate area of constitutional concern is whether that new major contributing cause standard can be constitutionally reconciled with the exclusive remedy provision.[19] If those two provisions combined essentially preclude a remedy then a potentially successful access to court challenge could be mounted.

PROCEDURAL DUE PROCESS

Workers' compensation benefits are not a matter of privilege, but involve a property interest.[20] A right to compensation accrues by the happening of an injury, and the property and contract rights arising from that injury may not be legislatively impaired.[21] Property rights are substantive rights which are protected by the Florida Constitution.[22] An injured workers' right to receive compensation must be protected by procedural safeguards including notice and opportunity to be heard.[23] To qualify under due process standards, the opportunity to be heard must be meaningful, fair, and not merely colorable or elusive.[24] Generally, proceedings before a judge of compensation claims satisfy procedural due process requirements.[25]

An example of a potentially valid challenge comes from the Supreme Court of Colorado. In Whiteside v. Division of Workers' Compensation, 67 P.3d 1240 (Colo. 2003) the Supreme Court of Colorado invalidated a provision that restricted admissible medical testimony in a workers' compensation proceeding. As in Florida, the Colorado law restricted medical testimony to those physicians authorized by the employer/carrier and independent medical examiners for whom each party was required to pay. Indigent claimants were joined in a class action challenging the law. The Supreme Court of Colorado held that the law denied procedural due process to those indigent claimants as they were effectively denied the right to challenge carrier decisions. It was the inability to pay for the independent medical examination that resulted in the denial of due process.

Prior to the 1994 Florida workers' compensation law the claimant had no right to an employer/carrier paid independent medical examination. However, there were no restrictions on the admissibility of medical testimony. Therefore, the claimant could present the testimony of any physician when challenging a denial of benefits. Between 1994 and 2003 the claimant was entitled to an independent medical examination at the expense of the employer/carrier. At the same time, medical testimony was limited to independent medical examiners, physicians authorized by the employer/carrier, and court appointed expert medical advisors.[26]

The current law, while maintaining the restrictions on admissible testimony, requires a claimant not enrolled in a managed care arrangement to pay for his or her own independent medical examination if the claimant desires to challenge the opinions of the employer/carrier authorized

physician.[27] The right to an independent medical examination is also limited to one evaluation, in only one specialty, for any one date of accident. The same claimant, in the presence of a conflict in opinions between two physicians, may request a court appointed expert medical advisor, but the claimant must pay for the cost of the examination.[28] Under nearly identical circumstances the Whiteside court held that, at least for indigent claimants, such a requirement resulted in the taking of a property interest without due process of law. The indigent claimants, who could not pay for the independent medical examination, were prevented from challenging a denial of workers' compensation benefits based on the opinions of the employer/carrier chosen physician.

EQUAL PROTECTION

Absent the involvement of a suspect class, a challenged statute need only bear a reasonable relationship to a legitimate state interest.[29] Mere inequality or imprecision does not render the statute invalid. Social legislation, such as a workers' compensation act, is subject to the rational basis analysis. Therefore, challenged statutory classifications will be upheld if there appears to be any plausible reason for the legislature's action, even if that plausible reason was not expressed by the legislature.[30] Limiting chiropractic treatment to eighteen visits does not deny equal protection or due process.[31] However, limiting death benefits to non-resident aliens violates equal protection as alien status is a suspect class.[32] Having different exemption rules for those involved in the construction industry does not violate equal protection because construction company owners are not a suspect class.[33] On the other hand, denying permanent total disability benefits, but not other indemnity benefits, to incarcerated claimants with no dependents, violates equal protection. Although the challenged statute was subject to the rational basis test, there was no rational basis to deny benefits only to the most seriously injured incarcerated workers.[34]

Generally, limitations on mental injuries do not violate equal protection. The state has a legitimate interest in limiting the types of injuries that are compensable. Limitations on mental injuries bear a reasonable relationship to that interest.[37] Nonetheless, a successful equal protection challenge to the 2003 law could be possible in connection with mental injuries. The new statute limits the calculation of impairment benefits based on an otherwise compensable psychiatric injury to those payable for a a 1% permanent impairment.[38] Thus, even if the psychiatrist assigned a 25% rating according to the Florida Impairment Guides, the claimant could only be compensated as if he or she received a 1% rating. At the same time, a claimant who received a 25% rating for a compensable physical injury would receive full compensation. In order to challenge that provision under an equal protection theory, one must argue that it is irrational to treat an impairment rating from a compensable mental injury differently from an identical impairment rating from a compensable physical injury. If both conditions are legitimate, medically recognized, and otherwise compensable under the workers' compensation law, what rational basis would the state have for

treating them differently?

A recent appellate case from Ohio is of interest in connection with this issue. Ohio's workers' compensation statute precluded compensation for psychiatric injuries absent a physical component. In McCrone v. Bank One Corp., 2004 WL 1111021 (Ohio App. 5th. May 17, 2004)[39], the claimant argued that treating mental injuries differently from physical injuries resulted in an equal protection violation. That is, employees suffering physical injuries were compensated while those suffering psychiatric injuries alone were not. The court agreed with the claimant and held that disparate treatment of these two classes of injuries was irrational and therefore the statute at issue failed the rational basis test. The court noted that the only enunciated reason for disparate treatment of physical and mental injuries was financial. It was cheaper for the system to limit compensability of mental injuries. While excluding mental injuries from coverage certainly accomplished that goal, it did so with an irrational classification. As both types of injuries are equally 'real' from a scientific point of view it was irrational to treat them differently. In essence, the law was equivalent to one that would allow compensation for injuries to your right hand, but not to your left. The Supreme Court of Ohio has accepted jurisdiction to review the decision of the lower appellate court.[40]

The 2003 Florida law capped certain classifications of disability benefits at either age 62 or 75, contingent on the claimant's entitlement to receive social security retirement benefits.[41] In the past, the First District held that terminating certain benefits based on age was constitutionally permissible as age is not a suspect class, and caps serve the valid purpose of limiting costs in the workers' compensation system.[42] A new case from the Supreme Court of Montana, however, reached a contrary conclusion and merits consideration in light of the recent statutory revisions in Florida. In Reesor v. Montana State Fund, 103 P.3d 1019 (Mont. 2004), the statute at issue restricted benefits to those injured workers who reached age 65. The court noted that, as in Florida, age was not a suspect class so the rational basis test applied to the challenge. The court further found that limiting benefits and therefore costs to the system, along with preventing 'double dipping', were valid governmental purposes. Nonetheless, the court invalidated the age based cap because the court found the classification to be irrational. First, the court compared the purposes of workers' compensation disability payments and social security retirement benefits. The former are intended to compensate the injured for loss of earning capacity while the latter relate to a retirement system paid irrespective of injury. The court further looked to the 2000 Senior Citizens Freedom to Work Act[43] which allows seniors to work and still receive full social security benefits. The court concluded that while it was rational to offset workers' compensation *disability* benefits based on social security *disability* benefits, it was irrational to offset or totally eliminate workers' compensation *disability* benefits based on social security *retirement* benefits. Therefore, the statute was invalidated on equal protection grounds.

RIGHT TO PRIVACY

Workers' compensation claimants have no legitimate expectation of privacy vis-a-vis the employer/carrier regarding medical records relating to the claimed injury. Absent a legitimate expectation of privacy, there is no right of privacy. Thus, statutes allowing ex parte conferences with authorized physicians cannot violate a right that the claimant does not have.[44]

DOUBLE JEOPARDY AND EXCESSIVE FINES

Complete forfeiture of benefits for making a false, fraudulent, or misleading statement with the intent of obtaining workers' compensation benefits violates neither double jeopardy nor the excessive fines provisions of the Florida and U.S. Constitutions. Double jeopardy is not implicated because the workers' compensation proceeding is not a criminal proceeding. The excessive fines clause is not implicated because the forfeiture of benefits is not the payment of a fine to a sovereign.[45]

SEPARATION OF POWERS

A workers' compensation claimant has no right to an Article V judge. The legislature permissibly vested the judges of compensation claims with the power to adjudicate workers' compensation claims. That power includes the ability to determine that the claimant has forfeited benefits for fraudulent activities.[46] Because judges of compensation claims are executive branch officials, the legislature may not abrogate the governor's authority to appoint or reject candidates for judge of compensation claims.[47]

THE RIGHT TO COUNSEL AND TO PRESENTATION OF A CASE

These more amorphous rights invoke both the United States Constitution and various provisions of the Florida Constitution.[48] Generally, the Florida workers' compensation system's limitations on the admissibility of medical testimony are constitutionally sound.[49] If, however, a provision of the workers' compensation law makes it impossible for the party to obtain testimony then that provision could result in a denial of the party's constitutional right to present a case.[50] In AT&T Wirelss Services, Inc. v. Castro, Case No. 1D03-1264 (Fla. 1st DCA February 22, 2005) the court expressly recognized a constitutional right to the presentation of a workers' compensation case. The court found that right violated in connection with the exclusion of a witness. In Castro, the judge of compensation claims excluded the testimony of an independent medical examiner who charged in excess of the then maximum allowable charge. The employer/carrier demonstrated, however, that it was not possible to obtain an independent medical examination, in the required specialty, for that maximum charge. The court held that the exclusion of the physician's testimony deprived the employer/carrier of its constitutional right to present its case.

Nonetheless, claimants in workers' compensation matters do not have a constitutional right to a lawyer in the same way that criminal defendants have such a right. The right to counsel protections, which exist in criminal cases, do not extend without limit to civil parties.[51] A civil party does not have the unfettered right to an attorney in regard to any matter and at any time. Civil litigants simply have fewer constitutional protections with regard to the right of counsel than do criminal defendants. A workers' compensation claimant has no constitutional right to be represented.[52] A constitutional challenge, based the inability to retain counsel, will be unsuccessful in all likelihood. The First District has already indicated that a workers' compensation claimant has no constitutional right to be represented.[53] In criminal matters defendants are entitled to representation while civil litigants are not. In short, there is a constitutional right to present a case, but no constitutional right to have a lawyer present it for you.

ATTORNEY'S FEES AND CONSTITUTIONALITY

Workers' compensation claimants are not a suspect class. A challenge involving an attorney's fee statute invokes the rational basis test. Legislation restricting the right to contract is valid if enacted to protect the public's health, safety, or welfare.[54] The state has a legitimate interest in regulating fees in workers' compensation cases. For example, statutes regulating fees and prohibiting fees other than those approved by judges of compensation claims have been held to be constitutionally sound.[55] Nonetheless, dicta found in a variety of cases seems to suggest that legislatively imposed restrictions on fees might not be valid in all cases.

An award of fees must balance the interest of the employer/carrier and the claimant. A statute requiring that fees be awarded against a carrier who wrongfully denies benefits serves the societal purpose of punishing a recalcitrant carrier and of encouraging competent counsel to represent otherwise indigent injured workers.[56] In addition, the Supreme Court of Florida has recognized its inherent implied authority to assess the reasonableness of fees in workers' compensation cases.[57] Finally, the courts have recognized fundamental principles of fairness when addressing attorneys' fee awards. In Davis v. Bon Secours-Maria Manor, 29 FLW D2793 (Fla. 1st DCA Dec. 15, 2004) the judge of compensation claims awarded a guideline fee to the claimant's attorney. The total fee award was $576.79, and on an hourly basis the attorney was paid $4.48. In reversing the judge of compensation claims the court held that the award was manifestly unfair and ordered the judge to award an equitable fee.

A look to the law of other states and of the federal courts does not provide much encouragement for those seeking to mount a constitutional challenge to the current workers' compensation fee statute. According to the United States Supreme Court a statute limiting fees in workers' compensation cases does not violate the due process clause of the United States Constitution. States may attach conditions to the license to practice law which are deemed necessary

for the protection of the public.[58] Those conditions may include caps on attorneys' fees. According to the highest court in Mississippi, a law requiring that all fees be approved by a board is constitutionally sound even where the plaintiffs argued that application of the law prevented claimants from obtaining the assistance of counsel.[59] An Alabama cap on an attorney's fee limiting the fee to 15% of the award was upheld. The court reasoned that claimants must be protected from making bad deals with their lawyers.[60] The right to contract with a lawyer is subject to the state's police power. Laws regulating attorney's fees are within that police power. Challenges to those laws are subject to the rational basis test. New York fee limitations that apply only to claimants passed that test because claimants need protection from unfair contracts made with lawyers while employers and carriers need no such protection.[61] It is rational to protect claimants, but not carriers, from excessive fees. Fees may be capped and cannot exceed what is approved by a board charged with determining reasonable fees, according to the Virginia Supreme Court.[57]

The West Virginia Supreme Court held that the legislature can reduce workers' compensation fees retroactively. Such retroactive limitations do not unconstitutionally impair contract rights as fee contracts are subject to close regulation and because attorneys have an ongoing obligation to charge only reasonable fees. The legislature is permitted to change the definition of what is reasonable.[58] A District of Columbia statute limiting fees and prohibiting contingency fees was held to be constitutionally sound. The law was upheld despite a variety of anecdotal evidence offered to show that lawyers would no longer take cases. The court held that the plaintiffs failed to demonstrate, with sufficient evidence, that 1) the claimants could not obtain counsel; and 2) the unavailability was due to the fee scheme. The court suggested that a contrary ruling might be possible with the right evidentiary showing.[59] A Pennsylvania fee cap setting the fee at no more than 20% of the award was upheld, and it did not violate separation of powers concerns or the Pennsylvania Supreme Court's authority to regulate the practice of law.[60] A New Mexico appeals court held that caps on fees are facially valid, and may be successfully challenged only if the caps are so devoid of rational support, and serve no valid governmental interest, as to amount to mere caprice.[61]

Some limited encouragement for those desiring to challenge the fee statute's constitutionality can be found from the Courts of Delaware and Minnesota. A Delaware Court invalidated an award of a guideline fee without the taking of evidence. The award violated due process as it denied the claimant the right to be heard about the reasonableness of the fee award.[62] In Minnesota, the courts hold that caps on fees imposed by the legislature are facially valid, but are subject to final review by the Minnesota Supreme Court who maintains the ultimate authority and responsibility to regulate the practice of law.[63] For the most part, however, constitutional challenges to attorneys' fees limitations in workers' compensation cases have failed. Challenges to the attorneys' fees statute are more likely to succeed on construction arguments rather than on constitutional ones.

CONCLUSION

The 2003 Florida Workers' Compensation Law was a dramatic reordering of the rights and responsibilities of Florida employers and their employees. Many debate the wisdom and fairness of the law, but the law's constituents must sort out the law's meaning and soldier on. Although the appellate courts will no doubt impact the scope and effect of many provisions of the act, the act as a whole will survive legal challenges, particularly those based on the U.S. and Florida Constitutions. Horizontal immunity for subcontractors, the heightened major contributing cause standard, claimant funded independent medical examinations, restrictions on benefits for mental injuries, and limitations on benefits payable to older workers all present constitutional concerns. Less likely, but possible nonetheless, is a constitutional challenge to the attorneys' fee restrictions. More likely than not, however, the statute will survive substantially intact, at least until the next 'crisis' and the inevitable rewriting of the law once again.

ENDNOTES

1. Rule 9.180(b)(1), F.R.A.P.

2. *North River Ins. Co. v. Wuelling,* 674 So.2d 881 (Fla. 1st DCA 1996).

3. *Sasso v. Ram Prop. Mgmt.,* 431 So.2d 204 (Fla. 1st DCA 1983), *approved,* 452 So.2d 931 (Fla. 1984).

4. Rule 9.180(b)(1), F.R.A.P.

5. Rule 9.180(b)(1)(c), F.R.A.P.

6. Rule 9.100, F.R.A.P.

7. *Reeves v. Fleetwood Homes of Fla.,* 889 So.2d 812, 822 (Fla. 2004).

8. *Adams v. State,* 560 So.2d 321, 322 (Fla. 1st DCA 1990).

9. *English v. McCrary,* 348 So.2d 293 (Fla. 1977).

10. *Bd. Of Regents v. Snyder,* 826 So.2d 382, 387 (Fla. 2nd DCA 2002).

11. *Sasso v. Ram Prop. Mngt, supra.*

12. *Strohm v. Hertz Corp.,* 685 So.2d 37 (Fla. 1st DCA 1997).

13. See, e.g., *Newton v. McCotter Motors,* 475 So.2d 230 (Fla. 1985) (restrictions on death benefits are valid).

14. See, e.g., *Newton v. McCotter Motors, supra; Sasso v. Ram Prop. Mgmt., supra; Bradley v. The Hurricane Restaurant,* 670 So.2d 162 (Fla. 1st DCA 1996).

15. See, e.g., *Kluger v. White,* 281 So.2d 1 (Fla. 1973); *Mitchell v. Moore,* 786 So.2d 521 (Fla. 2001); *Psychiatric Associates v. Siegel,* 610 So.2d 419 (Fla. 1992).

16. *Closet Maid v. Sykes,* 763 So.2d 377 (Fla. 1st DCA 2000).

17. "[E]very man shall have remedy by due course of law for injury done to him..." Article I, Section 10, Oregon Constitution; "The courts shall be open to every person for redress of any injury..." Article I, Section 21, Florida Constitution.

18. Section 440.09(1), Fla. Stat. (2003).

19. Section 440.11, Fla. Stat. (2003)

20. *DeAyala v. Fla. Farm Bureau,* 543 So.2d 204, 206 (Fla. 1989).

21. *Fla. Forest and Park Service v. Strickland,* 18 So.2d 251,254 (Fla. 1944).

22. *Dept. of Law Enforcement v. Real Property,* 588 So.2d 957, 964 (Fla. 1991).

23. *Dept. of Law Enforcement v. Real Property, supra.*

24. *Metropolitan Dade County v. Sokolowski,* 439 So.2d 932, 934 (Fla. 3rd DCA 1983).

25. *Jones v. Chiles,* 638 So.2d 48 (Fla. 1994).

26. 440.13(5), Fla. Stat. (1994); *Kimmins Corp. v Collier*, 664 So. 2d 299 (Fla. 1st DCA 1995)

27. 440.13(5)(a), Fla. Stat. (2003).

28. 440.13(9)(f), Fla. Stat. (2003).

29. *Acton v. Ft. Lauderdale Hosp.,* 440 So.2d 1282, 1284 (Fla. 1983).

30. *B&B Steel Erectors v. Burnsed,* 591 So.2d 644, 647 (Fla. 1st DCA 1991).

31. *Strohm v. Hertz Corp., supra.*

32. *DeAyala v. Fla. Farm Bureau, supra.*

33. *B&B Steel Erectors v Burnsed, supra.*

34. *Walker v. City of Tampa,* 520 So.2d 66 (Fla. 1st DCA 1988).

37. *Hensley v. Punta Gorda,* 686 So.2d 724 (Fla. 1st DCA 1997).

38. Section 440.15(3)(c)(2), Fla. Stat. (2003).

39. Check Ohio Supreme Court rules regarding weight of legal authority for unpublished opinions.

40. *McCrone v. Bank One Corp.,* 103 Ohio St.3d 1461, 815 N.E.2d 677 (Ohio 2004).

41. Section 440.15(1), Fla. Stat. (2003)(note: such benefits may continue beyond age 75 if the claimant is injured after age 70).

42. *Harrell v. Fla. Construction Specialists,* 834 So.2d 352 (Fla. 1st DCA 2003).

43. 42 U.S.C. section 402.

44. *S&A Plumbing v. Kimes,* 756 So.2d 1037 (Fla. 1st DCA 2000).

45. *Wright v. Uniforms for Industry,* 772 So.2d 560 (Fla. 1st DCA 2000).

46. *Medina v. Gulf Coast Linen, supra.*

47. *Jones v. Chiles, supra.*

48. These rights relate to state and federal concepts of due process, equal protection, and access to court.

49. *City of Riviera Beach v. Napier,* 791 So.2d 1160 (Fla. 1st DCA 2001); *Alpizar v. Star Styled Dancing Co.,* 808 So.2d 1129 (Fla. 1st DCA 2002).

50. *Thompson v. Awnclean USA,* 849 So.2d 1129, 1132 (Fla. 1st DCA 2002).

51. *Bova v. State,* 410 So.2d 1343 (Fla. 1982); *Perry v. Leeke,* 488 U.S. 272 (1989).

52. *McDermott v. Miami-Dade County,* 753 So.2d 729 (Fla. 1st DCA 2000).

53. *McDermott v. Miami-Dade County, supra.*

54. *Khoury v. Carvel Homes South, Inc.,* 403 So.2d 1043 (Fla. 1st DCA 1981).

55. *Samaha v. State of Florida,* 389 So.2d 639 (Fla. 1980).

56. *Ohio Casualty v. Parrish,* 350 So.2d 466 (Fla. 1977).

57. *Tampa Aluminum Products v. Watts,* 132 So.2d 414 (Fla. 1961).

58. *Yeiser v. Dysart,* 267 U.S. 540 (1925).

59. *Mississippi Employment Security Comm. v. Wilks,* 156 So.2d 583 (Miss. 1963).

60. *Sokoll v. Humphrey, Lutz & Smith,* 337 So.2d 362 (Ala. Civ. App. 1976).

61. *Crosby v. State W.C. Board,* 85 A.D.2d 810 (N.Y. App. Div. 1981).

57. *Hudock v. Virginia State Bar,* 355 S.E.2d 601 (Va. 1987).

58. *Hicks v. Wilson,* 391 S.E.2d 350 (W.Va. 1990).

59. *Cornelius v. D.C. Employees' Compensation Bd.,* 704 A.2d 853 (D.C. Cir. 1997).

60. *Lawson v. Workers' Compensation Appeal Bd.,* 857 A.2d 222 (Pa. Commw. Ct. 2004).

61. *Mieras v. Dyncorp.,* 925 P.2d 518 (N.M. Ct. App. 1996).

62. *Huff v. Industrial Accident Bd.,* 430 A.2d 796 (Del. Super. Ct. 1981).

63. *Irwin v. Surdyks Liquor,* 599 N.W.2d 132 (Minn. 1999).

William H. Rogner is a shareholder in the firm Hurley, Rogner, Miller, Cox, Waranch & Westcott, P.A. with offices in Winter Park and Ft. Pierce, Florida. He graduated, with honors, from the College of Business Administration and the Levin College of Law at the University of Florida. Mr. Rogner is Florida Bar Board Certified in both Appellate Practice and Workers' Compensation law.