



HURLEY ROGNER
MILLER, COX, WARANCH & WESTCOTT, P.A.

Rex A. Hurley*
William H. Rogner*†
Scott B. Miller*
Derrick E. Cox*
Michael S. Waranch*
Paul L. Westcott*
Gregory D. White*
W. Rogers Turner, Jr.*
Paul L. Luger
Gregory S. Raub*
Anthony M. Amelio*
Matthew W. Bennett*

CASE NOTES
CASE LAW SUMMARY
August 2011

If you have any questions regarding Case Law Summaries, please contact W. Rogers Turner, Jr. : rturner@hrmcw.com

Penalties and Interest

Republic Waste Services Inc./East Bat Sanitation Services and CCMSI v. Ricardo, 1D10-5776 (Fla. 1st DCA 2011).

The First DCA held the Judge of Compensation Claims erred in denying penalties and interest on temporary partial disability benefits. The Carrier asserted no penalties and interest were owed as the Claimant had not returned DWC-19's. However, the Court noted the Carrier failed to demonstrate the forms had been provided to the Claimant. It is incumbent on the carrier to prove the DWC-19's were provided to the Claimant. No evidence was introduced at trial that the forms were provided to the Claimant. [Click here to view Order](#)

Presumption claims

LeBlanc v. City of West Palm Beach/Johns Eastern Co., (Fla.1st DCA August 25, 2011)

It was undisputed that the claimant was entitled to the presumption found in 112.18. The DCA reversed the JCC's finding that the E/C had introduced sufficient evidence to rebut the presumption. The JCC accepted the opinion that the cause of the claimant's condition was unknown. The DCA found that this eviscerated the presumption and reversed. [Click here to view Order](#)

Robert J. Osburn, Jr.
Teri A. Bussey*
Andrew R. Borah*
Jonathan L. Cooley
Allison M. Twombly
Sandra D. Wilkerson
Timothy F. Stanton*
Kimberly De Arcangelis
Julie C. Bixler
Zalman F. Linder
Matthew J. Troy
Geoffrey C. Curreri
C. Bowen Robinson
Michelle Bayhi
Gina M. Jacobs
Stephen G. Conlin
Of Counsel
*Florida Bar Board
Certified Workers'
Compensation
† Florida Bar Board
Certified Appellate
Practice
www.hrmcw.com

Please direct replies or inquires to our Winter Park office

Winter Park Office
1560 Orange Avenue
Suite 500
Winter Park, FL 32789
T (407) 571-7400
F (407) 571-7401

Ft. Pierce Office
603 N Indian River Dr
Suite 102
Ft. Pierce, FL 34950
T (772) 489-2400
F (772) 489-8875

Tallahassee Office
253 Pinewood Drive
Tallahassee, FL 32303
T (850) 386-2500
F (850) 222-5553

Pompano Beach Office
1280 SW 36th Ave
Suite 100
Pompano Beach, FL 33069
T (954) 580-1500
F (954) 580-1501

Fort Myers Office
4460 Camino Real Way
Suite 2
Fort Myers, FL 33966
T (239)939-2002
F (239) 939-2247

Prevailing Party Costs

Aguilar v. Kohl's Dep't Stores Inc./Sedgwick CMA, (Fla.1st DCA August 25, 2011)

The DCA reversed the JCC's denial of costs to the claimant. At hearing the JCC denied the claimant's requests for medical benefits but awarded TPD and fees. The JCC found neither party was the 'prevailing party' and denied costs. The DCA reversed noting that the ruling was inconsistent with the award of fee and the ruling was premature. The DCA also noted, "The unique nature of workers' compensation proceedings, ...creates the potential for a party to be both prevailing and non prevailing ... in the same proceeding." [Click here to view Order](#)

Temporary Indemnity/Providing Required Forms

Perdue v. Sebring Marine Ind. Inc./Sentry Claims Center, (Fla.1st DCA 8/4/2011)

The Court reversed the Judge of Compensation Claims' denial of temporary partial disability benefits. The Judge denied the temporary partial benefits based upon the failure of the Claimant to submit completed DWC-19's. Otherwise, the Claimant had met her prima facie burden of proving entitlement to temporary partial. However, the evidence established that the DWC-19s had not been sent to the Claimant. The Court held the Carrier has the burden to prove it sent the forms to the Claimant. The Court held that "Clearly, the carrier's provision of the forms is a condition precedent to the claimant's duty to return the DWC-19 forms within twenty-one days of their receipt." [Click here to view Order](#)

Prevailing Party Costs/Controlling Date of Accident

Reynolds v. Commercial Carrier Corporation/Gallagher Bassett Services, Inc.; (Fla.1st DCA 8/4/2011)

The Court reversed the Judge of Compensation Claims' award of costs to the carrier as prevailing party on a 1996 date of accident. The ability of the JCC to award taxable costs to the carrier is a substantive right, which did not exist prior to the amendment of s. 440.34(3). Therefore the award of costs was error. [Click here to view Order](#)

Final Orders/Jurisdiction

Jacksonville Sheriff's Office v. Smith, (Fla.1st DCA 8/4/2011)

The Court dismissed the appeal for lack of jurisdiction, finding the JCC's Order to be Non-Final. The Judge found the Statute of Limitations did not bar the Claimant's Petition, but indicated all other issues would be heard at a subsequent proceeding. [Click here to view Order](#)