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

CASE NOTES

CASE LAW SUMMARY
August 2007

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

Vasquez v. Sorrels Grove Care, Inc. 2007 WL 2330926 (Fla. App. 2 Dist.)
In this case, the injury occurred to the son of an employee of Sorrels Grove. At the time of the accident, the injured individual had accompanied his father to his father's place of employment, Sorrel's grove. The employee's son was injured when a vehicle, owned by Sorrel's grove care Inc. and driven by another employee of Sorrel's grove Packing company, struck the employee's son causing serious injury.

The employee's son brought a personal injury action against the employer, the owner of the vehicle, and the driver of the vehicle. The trial court concluded that the employee's son made an election of remedies when he settled with the worker's compensation carrier and was therefore precluded by law from seeking further relief in a tort claim action. The second District court of appeal reversed and found that the

record did not support the trial court's finding that the employee's son had made an election of remedies.

The court arrived at this ruling be reasoning that the attorney for the employee's son filed a workers compensation action against Sorrel's grove packing company under a mistaken assumption that the employee's son was an employee of Sorrel's grove packing company. The packing company and it's worker's compensation carrier controverted the claim by denying that the employee's son was an employee.

After the worker's compensation case was denied, the attorney for the employee's son filed the tort claim in question alleging negligence on the part of the driver of the vehicle and vicarious liability on the part of both the Packing company and the Grove. The packing company and the Grove company defended this claim by asserting worker's compensation immunity, essentially alleging that the employee's son was an employee of Packing company. The driver of the vehicle, however, defended this claim by alleging that the employee's son was not an employee of the Grove and that he was in the grove for unknown reasons and was that the accident was thus caused by his unexpected presence in the grove.

The employee's son then entered into a negotiated settlement for his workers compensation claim and executed a release that specifically noted that the packing company and Grove care objected to the settlement and release and that the settlement was not intended to release the packing company or the grove from any liability in the tort claim.

After this settlement was approved by the JCC, the employee's son proceeded with the tort claim to which the Grove, the Packing company, and the driver of the vehicle filed a motion for summary judgement by saying that the employee's son had elected his remedy. The trial court granted summary judgement and the case was appealed. On appeal, the Second District Court of appeals disagreed and held that summary judgement should not have been entered because the employee's son did not elect his remedies. The court reasoned that because the employee's son did not demonstrate a conscious intent to choose the workers compensation benefits to the exclusion of his potential tort claim, he did not pursue that claim to a conclusion on the merits.

Lucas v. Englewood Community Hospital, 2007 WL 2384445 (Fla. App. 1 Dist) August 23, 2007

The claimant in this matter raised a constitutional argument on appeal that there is a disparate treatment between unrepresented and represented claimants in post-settlement proceedings. Specifically, the claimant challenged the different effects that Florida statute 440 has on claimants dependent upon whether they utilize the services of an attorney in prosecuting their workers' compensation claim.

The statutes in question where Florida Statute 440.20(7) and Florida Statute 440.20(11)(c). Florida Statute 440.20(7) provides that when compensation payable under a workers' compensation "award" is not paid within 7 days after it becomes due, there shall be added to such unpaid compensation an amount equal to 20 percent thereof. However, when an unrepresented claimant enters into a washout settlement, the amount payable under the settlement the amount payable under the settlement is an award of compensation for which the unrepresented claimant is entitled to the additional twenty percent specified by section 440.20(7) in the event of late payment.

On the other hand, Florida Statute 440.20(11)(c) provides that the amount payable under a washout settlement entered into by a represented claimant is not an award of compensation and, as a result, section 440.20(7) does not apply in connection with a washout settlement entered into by a represented claimant.

The court disagreed with the claimant's constitutional argument because the claimant did not demonstrate that this statutory distinction violated her rights under the constitution.

Liberty Mutual Insurance v. Steadman, 2007 WL 2428420 (Fla. 2 Dist.)

The issue in this case was whether Liberty Mutual and a liberty mutual claims adjuster who handled claimant's case are immune form suit by virtue of the workers' compensation immunity under chapter 440. The district Court held that in order to determine whether the trial court correctly rejected Liberty Mutual and the claims adjuster's claim of immunity, the court should inquire into whether the claimant/plaintiff's complaint states a cause of action for intentional infliction of emotional distress.

To state a claim for intentional infliction of emotional distress, a complaint must allege the following: (1)deliberate or reckless infliction of mental suffering; (2) outrageous conduct; (3) the conduct caused the emotional distress; and (4) the distress was severe. Essentially, the behavior must be so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency. The court will evaluate this conduct as objectively as possible.
In this case, the plaintiff's complaint listed various acts which were alleged to be "intentional and outrageous," however, the primary focus of the complaint is that the Carrier and the adjuster delayed in authorizing a double lung transplant even after the JCC had ordered this benefit. The gist of the complaint focused on the fact that the carrier was allegedly aware that the claimant was not expected to survive till the following year and that, as a result, the delay in providing this lung transplant would hasten the claimant's death. The court reasoned that this conduct, as alleged in the complaint, was "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency" and it therefore denied the motion to dismiss of liberty mutual and the claim's adjuster.

Huff v. Loral American Beryllium, 2007 WL 2456200 (Fla. App. 1 Dist.) (August 31, 2007)
The claimant in this matter began working for Loral American Beryllium in 1979 where he was regularly exposed to beryllium dust. He remained in this position until September 1996. In August of 2004, the Department of Labor offered to test the employees f Loral for potential blood disorders. The claimant testified positive for beryllium sensitivity. The doctors in this case all believed that the claimant had beryllium sensitivity, however, they differed in their belief as to whether the claimant had a more serious condition of beryllium disease.

Claimant filed a petition for benefits claiming entitlement to monitoring and treatment of beryllium sensitivity. The employers defended by asserting that the claimant did not yet have chronic beryllium disease and, therefore, had not suffered an injury for purposes of workers' compensation law.

In pursuing his claim, the claimant's counsel proceeded with the prolonged exposure

theory. This theory requires the claimant to satisfy the following three prongs: (1) the claimant must demonstrate a prolonged exposure; (2) the cumulative effect of this exposure is an injury or the aggravation of a pre-existing condition; and (3) the claimant was subjected to a greater hazard than to which the general public is exposed. The JCC determined that the second prong was not met in this case because the claimant did not have the pulmonary condition of chronic beryllium disease and therefore "no injury by accident had occurred."

The First District reversed and reasoned that there was unrefuted medical testimony and evidence that the beryllium sensitivity caused an objective and verifiable change in his body that required medical treatment and therefore did suffer "an injury by accident."