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CASE NOTES

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CASE LAW SUMMARIES: December, 2005

RELEASES:

Patco Transport, Inc. V. Estupinan, 30 Fla. L. Weekly D2797 (1st DCA 2005)

A release executed by the Claimant in settlement of a circuit court case against the employer, derived from a work related motor vehicle accident, barred a subsequent claim filed for workers' compensation benefits where the language of the release waived all claims of any nature based on tort, contract or other theories of recovery.

Estupinan, an employee of Patco Transport, sustained injuries when a truck driven by another Patco employee hit the truck driven by Estupinan. Nearly two years post accident, Estupinan filed a complaint in circuit court against Patco and others based on negligence.

The complaint stated claims for "bodily injury resulting in pain and suffering, permanent injury, permanent aggravation of a pre-existing condition, disfigurement, disability, mental anguish, loss of capacity for enjoyment of life, expenses of hospitalization, medical and nursing care and treatment and loss of earnings. Patco did not assert workers' compensation immunity as an affirmative defense.

The parties settled the civil suit and Estupinan executed a "General Release With Indemnification" in April of 2004. The Circuit Court subsequently dismissed the claim with prejudice. The language of the release waived "any and all past, present or future claims, demands, obligations, actions, rights, damages, costs, losses of services, expenses and compensation of any

nature whether based on tort, contract or other theories of recovery which the claimant now has or which may hereafter accrue or otherwise be acquired on account of, or may in any way grow out of, or which are the subject of the Complaint.”

Three weeks after settlement of the circuit claim, Estupinan filed a Petition for Benefits alleging entitlement to benefits as a result of injuries to the back, neck and head sustained in the motor vehicle accident. Patco argued the release barred the worker’s compensation claim. (Patco did not assert the Statute of Limitations defense.) The Judge of Compensation Claims rejected Patco’s argument.

The First District Court of Appeal reversed the Judge. The Court held that the release was sufficiently broad to constitute a Release of Workers’ Compensation Benefits. As the Claimant was represented by counsel, the claimant could waive his entitlement to workers’ compensation benefits in exchange for a lump sum payment. No special language is required.

TEMPORARY INDEMNITY:

Fardella v. Genesis Health, Inc., 2005 30 Fla. L. Weekly D2851 (1st DCA 2005):

The Statutory provision barring TPD entitlement if the claimant is terminated from post-injury employment based on misconduct may not be applied retroactively. The Employer/Carrier may deem earnings based upon the amount the Claimant is able to earn.

The First District Court of Appeal held that the s. 440.15(4)(e) Florida Statutes (2003), which bars an employee from TPD benefits if he or she is terminated from post injury employment based on the employee’s misconduct was substantive and could not be applied to dates of accident prior to October 1, 2003.

The First District Court of Appeal additionally held that s. 440.15(6), Florida Statutes, which bars an employee from entitlement to any compensation during the continuance of the employee’s refusal of suitable employment only applies during the period of the refusal. After a claimant has been terminated from their employment, the carrier can not assert a defense that the claimant has refused employment.

However, the Court did allow the employer/carrier to apply a deemed earnings analysis based upon language in s. 440.15(4)(a) noting this statute allows the carrier to compute TPD benefits based upon what the claimant is able to earn, rather than what he or she actually earns.

MEDICAL AUTHORIZATION:

St. Augustine Marine Canvas & Upholstery, Inc. V. Lunsford, 30 Fla. L. Weekly D2853 (1st DCA 2005)

The provision of authorized care, and offer of qualified alternatives fulfills the

Employer/Carrier's statutory responsibility to provide care. The Claimant is not entitled to a specific physician as the Employer/Carrier selects the initial physician and them must provide qualified alternatives upon request.

Claimant sustained a lifting injury in March of 2002. The Employer/Carrier provided treatment at the Healing Arts Urgent Care Center and then with Dr. Tod Northrup, an orthopedic surgeon who referred the claimant to Dr. Patel for pain management, who was also authorized.

The Claimant's attorney filed a Petition in July of 2002 seeking authorization of Dr. Graham-Smith, an orthopedic surgeon. The employer/carrier refused to authorize Dr. Graham Smith, but advised the claimant she was entitled to an IME and to a list of three physicians from which to select alternative orthopedic care.

Claimant's counsel scheduled an appointment with Dr. Graham-Smith. Dr. Graham-Smith requested a prepayment and authorization from the carrier. The Employer/Carrier advised that Dr. Graham-Smith was not authorized to treat the claimant.

The claimant requested a second opinion with Dr. Graham-Smith which was denied as it was not a managed care claim.

The claimant filed a third petition seeking a one time change to Dr. Graham-Smith and a second opinion. The Employer/Carrier agreed to a one-time change and provided three names (not Dr. Graham-Smith) to the claimant from which they could select. A second opinion was again denied. At mediation, the names of three orthopedists were offered to claimant.

Subsequently, the claimant obtained a letter from Dr. Northrup referring the claimant to Dr. Graham-Smith and another Petition for benefits was filed. The referral was not provided to the carrier prior to the filing of the Petition. The carrier again offered a list of three physicians for a change in physicians and advised the claimant she could take an IME.

Ultimately, Dr. Graham-Smith saw the claimant, despite not being authorized. He then began treating and performed a spinal fusion.

The First District Court of Appeal held that as the carrier had provided treatment as required by statute and offered three alternatives. The carrier was not responsible for the bills of Dr. Graham-Smith. As the claimant failed to designate Dr. Graham-Smith as an IME, and as he was unauthorized and not an EMA, his testimony was inadmissible.

This case specifically notes the carrier has the right to select the initial treating physician. Additionally, the claimant does not have a right to a specific doctor when qualified alternatives are offered by the carrier.

PERMANENT TOTAL DISABILITY:

G. Pierce Wood Memorial Hospital v. Griffis, 2005 WL 3543900 (1st DCA 2005):

The First District Court of Appeal reversed the Judge of Compensation Claims denial of PTD benefits as there was not sufficient evidence that the Claimant maintained a substantial earning capacity.

IMMUNITY:

Woodson v. Ivey, 2005 WL 3555572 (5th DCA 2005):

Immunity prohibits civil suit where decision by manager was for a business purpose and did not rise to the level of an intentional tort, culpable negligence or serious criminal misconduct.

Woodson owns and operates Keepit-Safe Security Systems. Woodson employed Christopher Ivey as a helper. Helpers were paid hourly for their work and travel time between company offices and moving locations. Woodson's personal vehicle was a motorcycle.

On the date of accident, Christopher's services were no longer needed at the job site. Woodson told Christopher to return to the office and suggested Christopher take the motorcycle. Ivey did not have a motorcycle endorsement on his drivers' license, which was on file with the employer. Ivey died in an accident when he drove the motorcycle into the path of an oncoming truck. Ivey's estate argued that Woodson had a statutory duty to ensure Ivey had a motorcycle endorsement and that failure to do so constituted negligence.

The Jury found the death arose in the course and scope of employment, but that there was negligence on the part of Woodson that caused the death. The Jury also found negligence on the part of Ivey.

The Fifth District Court of Appeal held that the Workers' Compensation Act is interpreted broadly to provide immunity from suit, even in the face of sometimes egregious acts by employers and managers, as long as those acts fall short of intentional torts, culpable negligence or serious criminal misconduct.

The Court held that the focus of the analysis is on the business purpose of the act, not necessarily the means utilized to accomplish the act. In this case, sending Ivey to the office had a business purpose. While Woodson's decision to have him use the motorcycle was a poor decision, it was a managerial decision and immunity applied.

CASE NOTES

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