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CASE NOTES
CASE LAW SUMMARY
December 2008

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

Temporary Benefits/Multiple Accidents/Available Weeks of Benefits
Auman v. Leverocks/Spectrum HR/Providence Property, (Fla. 1st DCA Dec. 16, 2008) The DCA reversed an Order of JCC Spangler which found the claimant was limited to only 11 weeks of temporary benefits. The claimant injured her knees in her first accident with the employer, returned to work, and ten days later slipped again, injuring her elbow. The claimant was taken off of work for her elbow injury. While out of work for that injury, an MRI of her knee led to a surgical recommendation and a medical opinion of no work. At the time of hearing, the E/C argued that the claimant had only 11 weeks of eligible benefits, arguing that the overlapping TT status would not serve to entitle the claimant to 104 weeks of available benefits for each injury. The court looked to the statutory definition of "disability", noting it is defined as "incapacity, because of the injury"(emphasis added), suggesting a natural separation between distinct injuries. The court noted the opinion did not apply to separate injuries to the same body part or subsequent manifestations of an original injury. The opinion notes the court's prior rejection of the "window" of benefits theory versus the "bank" of benefits. In concurring, Judge Webster noted that the JCC's analysis of overlapping disability makes common sense, and that the legislature may have not intended the result, but the language of the statute dictates the decision. Click here to read case

Jennings v. National Linen Services, 1D08-2480 (Fla. 1st DCA 2008)

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Attorney Fees/Provision of Medical Benefits

The Court affirmed the Judge's denial of attorney fee entitlement and cost entitlement as the carrier had voluntarily furnished the claimant with care and treatment.

After receiving the referral for a physiatrist, the carrier attempted to locate, without success, a physiatrist who would treat the claimant. The pain management physician who recommended the physiatrist continued to provide appropriate care while the carrier attempted to find a physiatrist. By the time of the hearing, the carrier had not identified a physiatrist who would treat the claimant. The JCC entered an Order granting the request for a physiatrist but denying attorney's fees and costs as "the intervention and efforts of Claimant's attorney have secured no benefit not otherwise being provided Claimant by the E/C."

The Court held that the E/C did not refuse to furnish benefits or unreasonably delay Claimant's receipt of care and treatment. The Order merely confirmed a benefit he was already receiving. Consequentially, the Claimant gained nothing from litigation.

Specifically, the Court noted, "To award Claimant attorney's fees, this Court would have to interpret s. 440.34(3)(a) as holding that fees would be due whenever an E/C agrees to provide a requested treatment, particularly one that may be rare or limited, and the treatment or the services cannot be provided before a hearing can be held. Such a holding would essentially re-write the statue and discourage the self-executing nature of the worker's compensation system."

In certain areas of the state, it is often challenging to find a specialist who is willing to agree to evaluate and treat. This case clearly shows the need for carriers to not only diligently attempt to secure medically necessary treatment for claimants, but meticulously document those efforts to show that any delay or failure to locate a provider was out of the adjuster's control, and not due to negligence. Click here to read case

Acosta v. T.J. Pavement Corp., 3 D07-2190 (Fla. 3rd DCA 2008): Reversed summary final judgment in favor of employer which was based upon workers' compensation immunity. The case involved the estate of a worker killed when the five foot deep trench he was working in collapsed. The trench had standing water and no trench support. In reversing the summary final judgment, the Court took note of OSHA violations as well as the Trench Safety Act (ss. 553.60-64, Fla. Stat.) The Court also considered expert affidavits and testimony. The Court found genuine issues of fact existed that would allow the demonstration that the conduct of the employer was substantially certain to result in injury or death. Click here to read case

Silva v. General Labor Staffing/AIG, (Fla. 1st DCA Dec.2, 2008)
Compensability/Going and Coming Rule/Premises Exception
The 1st DCA affirmed JCC Hogan's finding that claimant's injuries were not compensable under any premises rule exceptions to the going and coming rule. Claimant and a friend worked for a labor pool, whose office was located in a strip mall. The claimant or his friend would report to the office, wait for other laborers to show, and then be paid to drive additional people to work. While waiting for his

friend to get a job ticket, claimant went to a lunch truck parked in the strip mall lot to get coffee. While there, he was robbed and shot in the cheek. Claimant urged his injuries were compensable under exceptions (2) "travel between two parts of the employer's premises and (3) area where injury occurred actually used by employer for his purposes. The claimant did not urge nor did the evidence show the employer owned the parking lot. The DCA held he was not "traveling between" as his friend was the driver that day, and thus he was not obligated to be at the office before going to the job site. As there was no evidence that the parking lot was controlled by or used by the employer, the DCA denied that exception (3) applied as well. The court noted that workers waiting to be transported were to sit on benches inside the office.
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