



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 Tuner, Jr.*
 Paul L. Luger
 Gregory S. Raub*
 Anthony M. Amelio*
 Matthew W. Bennett*

CASE NOTES
CASE LAW SUMMARY
February 2011

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

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

Managed Care/Choice of Doctors

Diversified Systems Inc./Travelers v. Fuerte, (Fla. 1st DCA 2/28/2011)

The DCA reversed the JCC’s award of a PCP from the managed care list. The E/C offered the claimant the choice of three physicians. The claimant sought to choose a doctor from the entire managed care list, which the JCC awarded. The DCA found that the language of the managed care agreement controlled and the claimant must select from the three doctors provided. [Click here to view Order](#)

Stephen G. Conlin
 Of Counsel
 *Florida Bar Board
 Certified Workers’
 Compensation
 † Florida Bar Board
 Certified Appellate
 Practice
www.hrmcw.com

SDTF claims/Statute of Limitations

Special Disability Trust Fund v. Miami Airport Hilton/Hilton Hotels Corp., (Fla.1st DCA 2/22/2011)

The DCA reversed the JCC’s order awarding reimbursement from the SDTF. The facts were not disputed. The carrier filed a notice of claim (step 1 in the reimbursement process). The Fund responded in 12/96 that the claim was appropriate for reimbursement, and amended their response in 1/97 to include settlement of the claim. The fund received the carrier’s reimbursement request (step 2 in the reimbursement process) in 8/01. Thereafter, the Fund received nothing from the carrier until notifying them in 5/08 that their claim was now barred by the SOL. The JCC incorrectly equated

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

the two steps, and found the claim was not barred. The JCC relied on a prior case which was based on the Fund's failure to find the request for reimbursement appropriate. Here, the Fund found the claim appropriate for reimbursement in 2001. Thus, the four year statute of limitations began to run from that date, and the carrier's 2008 application for hearing was barred. [Click here to view Order](#)

Prevailing Party Costs/Attorney Fees for defending Fraud Defense

Carillo v. Case Engineering Inc/Claims Center, (Fla.1st DCA 2/11/2011)

The JCC denied PTD and PICA for his 1996 DOA. Although he denied the fraud defense, the JCC noted the claimant's testimony was evasive, unreliable and inconsistent. The JCC denied attorney fees, and awarded prevailing party costs to the E/C. The E/C confessed error, as the JCC may not award prevailing party costs to the E/C for dates of accident prior to 10/1/2003. The DCA reversed the denial of fees, finding the claimant attorney prevailed on the affirmative defense of compensability per 440.105 and 440.09(4). The DCA apparently finds entitlement for fees under F.S.s 440.34(3)(c) "*..a carrier or employer denies that an accident occurred...and the claimant prevails on the issue of compensability*", although prior court analysis of the 120 day rule and other sections defines "compensability" as simply the issue of whether an accident occurred or not. They noted that the claimant attorney preserved the claimant's right to ongoing medical benefits. The DCA discounted the E/C's reliance on distinctions made in the concurring opinion of Chandler v. Centex Rooney regarding subsections of 440.34, noting it was only a concurring opinion and not persuasive. However, they later quote from Centex to support the premise that fees are available for prevailing against the fraud defense. No guidance is provided as to how this ruling applies to post 7/1/09 DOAs, which has no hourly fee provision. [Click here to view Order](#)

Managed Care/Choice of Doctors

Diversified Systems Inc./Travelers v. Fuerte, (Fla. 1st DCA 2/28/2011)

The DCA reversed the JCC's award of a PCP from the managed care list. The E/C offered the claimant the choice of three physicians. The claimant sought to choose a doctor from the entire managed care list, which the JCC awarded. The DCA found that the language of the managed care agreement controlled and the claimant must select from the three doctors provided. [Click here to view Order](#)