



Case Law Update

November 21, 2014

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This Update contains summaries of all relevant Appellate decisions for the preceding week, with comments on how a particular decision affects you. In addition, we review daily the Merit Orders posted on the DOAH website. This Update contains summaries and links to relevant JCC decisions for the past week.

Please feel free to contact Rogers Turner (rturner@hrmcw.com) or Matthew Troy (mtroy@hrmcw.com) with questions or comments on any of the listed cases.

In November 2013, HRMCWW obtained an Order in Palm Beach County finding the claimant violated F.S. s. 440.105. Recently, the claimant was convicted of WC Fraud, and sentenced to 18 months incarceration, 36 hours of community service, and ordered to pay back \$14,000 in restitution to the carrier.

District Court of Appeal Cases

No new DCA decisions since Nov. 17 edition of newsletter

Lane v. Workforce Business Solutions/American Zurich Insurance Co., (Fla. 1st DCA 11/12/14)
Applicability of 57.105 in WC proceedings/Awards of Taxable Costs

The JCC denied fees claimant sought under F.S.s.57.105. The DCA, consistent with their commentary during oral argument, rejected the claimant's notion that 57.105 fees applied to workers' compensation matters. The court repeated once again that Worker's Compensation law is a creature of statute, and one cannot simply apply statutory provisions outside of 440 to WC litigation. The opinion notes there are a "host" of sanctions contained in the WC law, including specific attorney fee sanctions contained in s. 440.32. Additionally, recent legislative amendments specifically applied s.57.105 to Chapter 120 proceedings, and if the legislature intended to make them applicable to chapter 440, they would have done so. The DCA rejected the claimant's argument that the Demedrano case, which considered paralegal fees under s.57.104, meant that 57.105 also applied to WC. Finally, the DCA reversed the JCC's denial of costs of video taped depositions incurred by the claimant, finding she used the wrong standard in rejecting those costs. [Click here to view Opinion](#)

****Castellanos/Supreme Court Fee Cases Update****

Following the recent oral argument in Castellanos, the Court entered an identical order in each of the three companion cases that had been stayed: Richardson v. Aramark, Louis Pfeffer, et al. v. Labor Ready and Diaz v. Palmetto General Hospital. The Order lifts the stays, accepts jurisdiction and dispenses with oral argument. They ordered the Petitioner's brief on the merits to be served on or before December 1, 2014; Respondent's brief on the merits is to be served twenty days thereafter; and Petitioner's reply brief served twenty days after service of Respondent's brief on the merits. The Clerk of the First DCA is to file the record on appeal before January 6, 2015. The record will include the briefs filed in the district court separately indexed. There will be no oral argument, and extensions of time on the briefs are unlikely to be granted. Richardson may make the most compelling argument regarding attorney fees; namely that the Legislature doesn't have to provide for prevailing party fees, but if it chooses to do so, the resulting fee cannot be so low that it is confiscatory of the lawyer's time and talents, particularly where the law also criminalizes the collection of a fee from the lawyer's own client, and particularly where the state constitution has a provision (Article 1 – Declaration of Rights, Section 2) guaranteeing the right to be rewarded for industry:

What we do know is that there will be no decision this year, and the Court will likely just write an opinion in one of the cases, with the others being affirmed or reversed with a simple citation to the primary case.

Please note that the DCA Opinions and Merit Orders contained in this newsletter are non-final until 30 days after their rendition. Until that time, they are subject to amendment, vacation, or other action which may remove or alter some or all of the decision. Please contact any HRMCWW attorney if you have a question as to the finality and applicability of an Opinion or Order. We endeavor to include any amendments or alterations to Opinions or Orders that may occur at a later date.

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