



Case Law Update

December 2016

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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) with questions or comments on any of the listed cases.

District Court of Appeal Cases

Medina v. American Airlines/Sedgwick CMS
Discovery/Privileged Items

(Fla. 1st DCA 12/21/2016)

The claimant attended the E/C's IME with a videographer. Later, the parties deposed the E/C IME, and the E/C asserted that the claimant attorney's questions relied upon the video. The deposition was suspended while the E/C sought disclosure of the video. The JCC ordered production, indicating that video was being used to cross examine the IME and that it would be used at trial. The DCA reversed, relying upon claimant's response that the questions on cross did not indisputably rely upon the video, and that it was not certain it would be used at trial. Generally, a party cannot assert work product for any item it plans to use at trial. The DCA agreed that production of this (at present) work product privileged video would cause irreparable harm. They noted that if the claimant chooses to use the video at trial the work product protection will disappear. Finding the privilege at this point had not been waived, the DCA quashed the JCC's order requiring production of the video. [Click here to view Opinion](#)

Soto v. C-Worth Corp./Summit Holdings-claims Ctr.
Settlement enforcement, failure to negotiate all terms at mediation.

(Fla. 1st DCA 12/1/16)

The claimant filed a motion to enforce settlement agreement after the E/C attempted to back out of the settlement. E/C and the claimant entered into a mediated agreement which included the settlement and general release. E/C drafted the paperwork and sent it to the claimant's attorney. The written agreement added references to several circumstances where the claimant would "indemnify and hold

harmless” the E/C. The claimant struck through those terms and returned the settlement paperwork. E/C objected to the settlement being entered because it did not include the indemnification language. At the motion to enforce settlement agreement, the JCC found the indemnification language was an essential term to the agreement and there was not a meeting of the minds and denied the motion. The appellate court relied on Bonagura v. Home Depot, 991 So. 2d 902 (Fla 1st DCA 2008), where a general release was not negotiated during the mediated settlement and E/C subsequently attempted to add the general release in the paperwork. The appeals courts found the indemnification had not been negotiated and including it in the necessary paperwork exceeded the scope of the written agreement. The 1st DCA reversed and remanded ordering enforcement of the settlement agreement without the indemnification language. [Click here to view Opinion](#)

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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