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Case Law Update

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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.

District Court of Appeal Cases

Mathis v. Sacred Heart Hospital, (Fla. 1st DCA 3/24/2016)
WC Immunity/Issues of Fact re. Contractual Duties precluding Summary Judgment

The plaintiff's injury occurred at Sacred Heart Hospital while employed with a separate cleaning company. After collecting WC benefits, she filed suit against the hospital. The hospital sought immunity under F.S.§440.10(1)(b) as a statutory employer. That section provides immunity where the hospital was performing "contract work" for a third party to which it sublet part of its duty under the contract. The hospital argued its patients were the third party for whom it sublet contract work. However, citing to the 1997 Rabon case and subsequent cases, the DCA noted no evidence of any contract between the hospital and a third party existed in the limited record. Summary Judgment was reversed and the case remanded. **Click here to view Opinion**

Fuentes/Estate of Escalera v. Sandel, Inc./Rolling Shield, Inc., (Fla. 3d DCA 3/23/2016)
Negligence/Duty owed to subcontractors by property owners

Rolling Shield leased a warehouse from Sandel. Shield hired a contractor to paint the warehouse roof, who subcontracted the work to a business owned by Escalera. Evidence showed that Escalera was familiar with the warehouse and skylights and worked previously on roofs. The record also showed he met with the owner and contractor on the day of the accident and he was specifically warned about the dangers of stepping on the skylights and that he was not to paint them. The contractor testified when he left the roof on the date of the accident, Escalera and another man were wearing safety harnesses. Shortly thereafter though, Escalera fell through a skylight without a harness on and died. His widow sued alleging multiple counts of negligence including failure to maintain and guard the roof/skylight and failure to warn. The DCA affirmed summary judgment for the defendants. Property owners are generally not liable for injuries suffered by subcontractors on their premises, with two exceptions: (1) liability may attach where the property owner actively participates in the work or exercised direct control over the work and failed to exercise that control with reasonable care, or (2) the property owner fails to warn the contractor about concealed dangers he or she had actual or constructive knowledge, and were unknown to the contractor or couldn't have been discovered through reasonable care. The DCA analyzed these issues and affirmed summary judgment. They also struck plaintiff's expert architect's affidavit that was "permeated with improper legal conclusions". **Click here to view Opinion**

THG Rental and Sales of Clearwater/Summit Holdings - Claims Center v. Arnold
(Fla. 1st DCA 3/17/16)
Misrepresentation/Scope of Defense and Pleading with Specificity

The claimant alleged injury to his back and right knee. After the third (of five) PFBs, the E/C responses denied benefits solely "based on misrepresentation." The E/C clarified on the Pre-Trial, stating "misrepresentation per 440.09(4) and 440.105 –physical abilities and post accident earnings". At trial the claimant sought benefits only for the right knee. For the first time two days before the trial, the claimant objected the E/C's defense lacked the specificity required under 60Q-6.113(2)(h). The E/C presented video and medical testimony related to alleged misrepresentations regarding the back condition. The JCC denied the specificity objection and denied the misrepresentation defense, finding the misrepresentations concerned the back, which was not an issue at the time.

Both parties cross appealed. The DCA agreed that the misrepresentation defense need not address a specific body part, and that if the JCC determines any misleading statements were made with the intent to secure benefits, all benefits must be denied. They further agreed that the E/C's defense did not specifically "detail the conduct" forming the basis of the misrepresentation. However, the rule allows the party to amend within 10 days of such objection. As the objection came two days prior to trial, the E/C did not have sufficient time to amend the defense. The case was reversed and remanded to allow the E/C to amend and the claimant to respond, and thereafter the JCC will consider the defense without limitation as to the specific right knee injury. Finally, the opinion dismissed outright the E/C's position that the claimant needed to offer evidence of an unsuccessful job search to be entitled to TPD. **Click here to view Opinion**

Gonzalez v. St. Lucie County Fire Dist./Fla. Municipal Ins. Trust / Fla. League of Cities **(Fla. 1st DCA)**

F.S. s 112.18 Presumption/Findings to overcome presumption

The JCC denied the claim, finding the E/C successfully rebutted the presumption of occupational causation. Claimant was a firefighter who experienced light headedness and a racing heart while engaged in fighting a fire. He was diagnosed with AVNRT, a heart disease involving a congenital abnormality which causes rapid heart rate when there is a triggering event. Some people with AVNRT may never experience rapid heart rate. Claimant's IME testified the triggering event was the adrenaline from exertion while at work. The E/C IME testified there was nothing claimant did at work that would cause the AVNRT. He went on to testify that aging may contribute but the triggering event is often unknown. The DCA examined the JCC's ruling that the E/C rebutted under both the competent evidence and clear and convincing standard. As the claimant did not rely solely on the presumption however, the E/C had to establish either that the trigger was non-occupational or that there was a specific non-occupational cause for it. The DCA noted the JCC did not have the benefit of the recent (2/23/2016) Mitchell II decision, which holds that medical evidence of a congenital condition is sufficient to rebut the presumption, but because the presumption does not disappear when the presumption is rebutted, the E/C also bears the burden of overcoming the presumption by competent evidence that the trigger is also non occupational. The case was remanded for the JCC to make specific findings as to whether the E/C overcame the presumption by establishing that there is one or more possible non-occupational causes for the trigger or that there are no occupational causes. **Click here to view Opinion**

Caterpillar Logistics Services v. Amaya **(Fla. 3d DCA 3/2/16)**

F.S. s. 440.205 Retaliation Claim/Legal Cause of Damages

A jury awarded Plaintiff Amaya back pay and front pay on his claim that Caterpillar unlawfully retaliated against him for filing a workers' compensation claim in violation of F.S. s. 440.205, Florida Statutes (2008). After a post trial reduction for TTD benefits paid, the amount was $571,883.64. At trial, Plaintiff's psychologist testified that the Plaintiff suffered from depression related to the retaliation, and this condition did not allow him to work. The jury rejected his claims that the retaliation caused these conditions or resulted in any psychological condition or need for psychological treatment. The DCA found that because Amaya was not physically able to work prior to and after Caterpillar's alleged retaliation (including through the date of trial), Caterpillar's retaliation could not be the legal cause of any of Amaya's economic damages. The DCA reversed the final judgment and remanded with directions to enter judgment in favor of Caterpillar. **Click here to view Opinion**

Lowe's Home Centers/Sedgwick CMS v. Beekman, (Fla. 1st DCA 3/4/2016)

Admissibility and presumption of correctness of EMA opinions outside scope of JCC assignment

On 2/5/15 the JCC appointed Dr. Vega as an EMA regarding the issue of authorization of shoulder surgery. The JCC's letter posed two questions to Dr. Vega asking him to address (1) medical necessity and (2) causal relationship of the proposed shoulder surgery. The same day, the parties filled out a Pre-Trial where the E/C for the first time asserted the affirmative defense of apportionment. Several months later, the EMA testified the shoulder injury was an aggravation of a pre-existing condition. The JCC subsequently granted the claimant's motion to strike these opinions, noting no party had requested that issue be addressed, nor did the EMA's report address that issue. The DCA reversed in a lengthy opinion discussing the history and scope of an EMA's appointment. Noting that the Evidence Code generally favors consideration of otherwise admissible, relevant evidence along with prior decisions (allowing admission of an authorized treater's opinions for conditions they were not specifically authorized to treat) the DCA held such EMA opinions are admissible, but only those opinions that address already identified disagreements carry the presumption of correctness. The opinion also allowed the parties to re-open the evidence on the issue of apportionment. **Click here to view Opinion**