



## Case Law Update

May 27, 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](mailto:rturner@hrmcw.com)) or Matthew Troy ([mtroy@hrmcw.com](mailto:mtroy@hrmcw.com)) with questions or comments on any of the listed cases.

NCCI's 5/27/16 filing to the Office of Insurance Regulation estimates that the first year impact of Castellanos will be an increase in overall Florida workers' compensation system costs of 15%. This estimate does not include the following:

- Impact of Miles decision re: claimant-paid fees;
- The entire unfunded liability of the retroactive nature of Castellanos;
- Impact of 1.8% in response to updates to the Florida Workers' Compensation Health Care Provider Reimbursement Manual.
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For additional information please visit: [NCCI Estimates on First Year Castellanos Impact](#)

### *District Court of Appeal Cases*

**Cory Fairbanks Mazda/PMA v. Minor**  
**Misconduct as a Defense to Payment of Indemnity**

**(Fla. 1<sup>st</sup> DCA 5/23/16)**

The DCA affirmed the JCC's award of indemnity, which denied the E/C's misconduct defense. The claimant worked at a car dealership and was injured in two separate incidents where the same co-worker opened a door into her. During a discovery motion hearing, her attorney described that the claimant was becoming "increasingly angry and hostile" and having homicidal and suicidal thoughts, among other things. That evening the employer terminated the claimant and obtained a "no trespass" warrant against her. Two psychiatrists ultimately evaluated the claimant and although she indicated

she had thought about “punching the lights” out of the individual, they discounted her statements as blowing off steam. However, the E/C asserted a misconduct defense under F.S. s. 44015(4)(e) in relation to a pending TPD claim. The DCA reviewed the definition of misconduct in F.S. 44002(18) which includes, but is not limited to, the following:

*(a) Conduct evincing such willful or wanton disregard of an employer’s interests as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of the employee; or*

*(b) Carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design, or to show an intentional and substantial disregard of an employer’s interests or of the employee’s duties and obligations to the employer.*

They found the only evidence presented by the E/C was the claimant’s unsupported allegations of her mental state, which did not show the requisite intent to act upon her “ideations.” They noted that is not to say that such thoughts, if they become known to an employer, may not constitute good cause for taking appropriate disciplinary action; they do not, however, constitute “misconduct” by operation of law. [Click here to view Opinion](#)

**O’Connor v. Indian River County Fire Rescue/Johns Eastern**  
**Appellate Practice/Attorney Fees**

**(Fla. 1<sup>st</sup> DCA 5/20/16)**

Bill Rogner

The DCA awarded our client appellate attorney fees from the claimant’s trial and appellate counsel, to be determined by the JCC. The case arose out of a claimant’s appeal of the imposition of prevailing party costs. The notices of appeal purported to argue only that issue, however the claimant’s arguments were similar to Miles regarding approval of a retainer for claimant paid fees, in addition to other constitutional arguments. The court noted “...the sole purpose of this appeal was not to challenge the ancillary cost order identified in the notice of appeal, but to use it as a pretext for making constitutional arguments about the fee statute despite the fact that counsel knew or should have known that the retainer and fee order was not reviewable in an appeal of an order arising out of an ancillary proceeding”. The claimant has filed a Motion for Rehearing. [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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