



Case Law Update

Weeks of May 13 & 20, 2019

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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.

DCA Cases

Telfer, Faherty & Anderson, P.A. v. Kelly Caplick & Southeastern Grocers/Sedgwick CMS, (Fla. 1st DCA 5/16/19)

Attorney Fee Liens/Quantum Meruit

Attorney Hawkins initially represented the claimant when she was employed with the TFA law firm. She subsequently left for another firm, and the claimant went with her. TFA filed a charging lien, and when the case settled, alleged that TFA should get 91% of the fee (because Hawkins had a 9% ownership interest while at TFA) or, alternatively, that it should receive 50% of the fees under quantum meruit. Hawkins argued there was no agreement as to how fees should be split and the JCC should determine the percentage share under quantum meruit. The JCC declined to consider the equity agreement, and ruled TFA was entitled to 10% of the fee and Hawkins 90%. In rejecting TFA’s appeal, the DCA stated the JCC was correct to ignore the equity agreement between TFA and Hawkins and that CSE supported the JCC’s 90/10 split. The DCA confirmed that JCC’s have jurisdiction to determine such attorney fee disputes. If the disagreement arises from contractual fee agreements between unaffiliated law firms, then the circuit court would have jurisdiction. [Click here to view Opinion](#)

Izaguirre v. Beach Walk Resort/Travelers,

(Fla. 1st DCA 5/16/19)

Independent Medical Examiners/Mandatory Exclusion of IME findings

The claimant conceded she did not provide the required 15 day notice of her independent medical examination per F.S. s. 440.13(5)(a), but argued the JCC erred in striking her IME for such failure. The claimant argued that the JCC should have analyzed discretionary factors, such as prejudice to the opposing party. The DCA rejected this argument, noting the statute states failing to comply “shall preclude the requesting party from submitting the findings of such IME in a proceeding before a [JCC]”. Where a statute is written with mandatory “shall” language, followed by a sanction, this “leads inevitably to the conclusion that the provision is not amenable to an exercise of discretion”. [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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