



## 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](mailto:rturner@hrmcw.com)) with questions or comments on any of the listed cases.

### *District Court of Appeal Cases*

**Palma v. American Airlines/Sedgwick, \_\_\_ So. 3d \_\_\_ (Fla. 1<sup>st</sup> DCA 11/15/2017)**  
**Attorney Fees/Presumption of Mailing**

The DCA reversed and remanded the JCC's denial of attorney fees claimed for late payment of TPD. A 2/2014 PFB sought two allegedly unpaid periods of TPD from the month before. The E/C responded several days later indicating the checks had been mailed. The adjuster testified the checks were initially timely mailed in January but were returned as "undeliverable". She then indicated upon receipt of that news in late January and early February, respectively, she immediately mailed new checks. These checks "went missing". She testified she did not learn of that fact until mid-April, at which point she sent checks that reached the claimant. Claimant did not receive the checks until late April of that year. She testified all checks went by computer to the same address. In analyzing the claimant attorney's claim for fees, the JCC determined that the benefits were provided when mailed, using the presumption of mailing. This provides that "mail properly addressed, stamped and mailed was received by the addressee, and proof of general office practice satisfies the requirement of showing due mailing" (emphasis in original). The DCA noted the presumption is rebuttable. They found the JCC's analysis unclear, as he apparently found the benefit was paid, but also found the claimant did not receive the missing checks. Further, his "fault based analysis" (claimant's failure to receive the checks was not the fault of the carrier) was error as this is not an element of the mailing presumption. On remand, the JCC is to apply the proper standard, reconcile inconsistencies and determine entitlement to prevailing attorney fees and costs. [Click here to view Opinion](#)

**Gladden v. Fisher Thomas, et. al., \_\_\_ So. 3d \_\_\_ (Fla. 1<sup>st</sup> DCA 11/15/2017)**

**W/C Immunity/Contractors and Sub-Contractors**

The DCA affirmed the circuit court’s grant of tort immunity to both general and subcontractor, as well as the employee of another subcontractor, albeit for a different reason than articulated. Gladden owned his own carpeting business and elected to be exempt from workers’ compensation benefits pursuant to section 440.02(15)(b)1. He subsequently entered into a sub-subcontractor agreement with Wilson Floor (WF), who was also a subcontractor hired by general contractor Green-Simmons (GS). Both WF and GS carried required workers’ compensation coverage. The appellant provided an exempt certificate to WF but never to GS. After getting injured on the job, (allegedly through the negligence of an employee of a third subcontractor) Gladden brought a tort claim against general contractor GS and a third party claim against subcontractor WF. Gladden argued that because he had elected for the exemption as a corporate officer under 440.02, he did not qualify as an “employee”, had taken himself out of the workers’ compensation system, and thus opened the door to actions in tort. The Court disagreed, rejecting Gladden’s argument that his exemption “opened the door to tort actions against individuals who would otherwise be immune. They noted this interpretation “asks too much” and that the exemption statute makes it clear that the quid pro quo for reduced WC premiums associated with the exemption is that officer may not recover WC benefits. Thus, they concluded the proper analysis isn’t whether Gladden qualified as an “employee” for the purposes of workers’ compensation, but rather the context in which it is used in the section granting employers and employees immunity from liability claims. In doing so, the court relied on *Weber v. Dobbins*, 616 So. 2d 956 (Fla. 1993), (*a corporate officer who elected the exemption under 440.02 and could not file a claim for workers’ compensation benefits was still afforded tort immunity under section 440.11*). Therefore, the Court affirmed the trial court’s decision granting tort immunity to both WF, GS and the allegedly negligent employee, because Gladden’s exemption from workers’ compensation coverage did not equate to his ability to circumvent immunity protections granted by section 440.11. [Click here to view Opinion](#)

**Gomez v. Frank Crum/Broadspire, \_\_\_ So. 3d \_\_\_ (Fla. 1<sup>st</sup> DCA 11/6/2017)**

**Attorney Fees/JCC’s consideration of evidence/power to reform agreements**

**Bill Rogner/Paul Luger**

In this matter, and an almost identical case issued jointly ([Banegas v. ACR Environmental/Berkley Underwriters](#)), the DCA reversed and remanded the same JCC’s Orders on Attorney Fees. In each case, the parties stipulated to an E/C paid fee. The JCC rejected the proposed hourly fee, awarded a statutory fee on benefits obtained, and required the excess amount to be directed back to the claimant. In both cases, the DCA noted that a JCC may not reduce a claimant attorney’s sworn affidavit of time solely based upon only argument of counsel or upon the JCC’s subjective or personal experience as to the reasonableness of a fee. Similarly, the DCA found that a JCC does not possess the authority to redirect moneys from a proposed claimant attorney fee to the claimant as an exercise of plenary equitable jurisdiction. Each case was reversed and remanded. [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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