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## Case Law Update

November, 2018

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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*

**Napoli v. Bureau of State Employee's WC Claims,**  
**Motion to Enforce/Meeting of the Minds/Parol Evidence**

**(Fla. 1<sup>st</sup> DCA 11/30/2018)**

**Bill Rogner**

The authorized doctor wrote a prescription for a bed. The parties later deposed the doctor, and at mediation agreed to provide “the requested bed”, but did not incorporate the prescription into the agreement. The E/C then attempted to deliver a brand of bed that was different than that in the original prescription. The JCC considered the claimant’s Motion to Enforce, and accepted parol evidence that the information from the doctor’s deposition constituted an amendment to the written prescription, upon which the E/C could rely. The DCA affirmed the JCC’s admission of parol evidence, which showed that each parties’ reading of “the requested bed” was reasonable. As such the claimant could not prove that both parties meant the same thing, and the DCA affirmed denial of the claimant’s motion to enforce. [Click here to view Opinion](#)

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**Marraffino v. Stericycle/Sedgwick CMS,**  
**Jurisdiction of JCC/Pending Appeals**

**(Fla. 1<sup>st</sup> DCA 11/30/2018)**

The claimant filed a PFB seeking TP from 8/18/17 “and continuing”. On 1/22/18, the JCC awarded nine days of TPD, but denied further TPD, finding the claimant reached MMI on 8/28/17. The claimant appealed that Order (Marraffino I) and that appeal is pending. The claimant then filed a PFB seeking TPD from 8/28/17 and continuing. Although claimant conceded dismissal was proper as to TPD prior to the date of the appealed Order, the JCC dismissed the entire claim for lack of jurisdiction, reasoning that considering that PFB would require him to resolve the same issue (MMI) that is on appeal from the first Order. The DCA held the JCC erred, as the JCC’s conclusion was based on the flawed premise that once a claimant is at MMI, he must forever be at MMI. A claimant may, for example, show a change of condition after MMI. The DCA noted the JCC could ultimately find the Claimant has not met his burden to prove entitlement to TPD to a subsequent period not covered by the prior Order, but that does not mean he lacks the jurisdiction to do so. A footnote explains that Marraffino I will largely control, because the prior Order considered whether further knee treatment (i.e. injections) will be remedial or palliative and the argument in this case by the claimant was that the injections have always been remedial. [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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