



## Case Law Update

September 18, 2015

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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.

### ***NO NEW DCA DECISIONS SINCE 9/11 NEWSLETTER***

#### ***District Court of Appeal Cases***

##### **Gutierrez v. The Port Royal Club, Inc./FCCI Ins. Co.**

(Fla. 1<sup>st</sup> DCA 9/9/15)

##### **Powers of JCC/ Abuse of Discretion**

The case holds simply that the JCC erred in compelling a psychological evaluation of the claimant where that issue was not submitted for judicial determination. Such a ruling violates due process and goes beyond the scope of issues to be tried. [Click here to view Opinion](#)

##### **Grabel et. al v. Roura**

(Fla. 4<sup>th</sup> DCA 9/9/15)

##### **Discovery of Expert Witness Financial Information**

After considering a prior discovery dispute last year, the trial court found the defense's medical expert's deposition answers and interrogatory answers conflicted regarding expert fees. He then allowed Plaintiff to subpoena 20 non party insurers for information on the doctor, including tax records. The DCA found this violated Fl.R.Civ.P. 1.280(b)(5)(A)(iii)4 which limits discovery to an approximation of the expert's involvement as an expert witness. The Rule specifically provides discovery shall not require the expert to disclose his or her earnings as an expert witness, except in "unusual or compelling circumstances" (falsification, misrepresentation or obfuscation) which did not exist here. [Click here to view Opinion](#)

**Summary Judgement/Statutory Employer/ WC Immunity**

The DCA reversed the circuit court's summary judgment in favor of Sun N' Fun. Plaintiff worked for U.S. Security during an airshow in Lakeland. A tornado during the airshow picked up the guard shack with the Plaintiff inside injuring her. She received WC benefits from her direct employer, and then sued Sun N' Fun, the company that put on the air show. Sun n' Fun argued that Ms. Slora's claim for WC benefits provided by U.S. Security were the exclusive remedy for her injuries because, although Sun 'n Fun was not Ms. Slora's direct employer, section 440.10(1)(b) extends immunity to a "contractor [that] sublets any part or parts of [its] contract work to a subcontractor or subcontractors." Sun 'n Fun's theory was that, under the undisputed facts, section 440.10(1)(b) entitled it to immunity because the certificates of waiver issued by the FAA constituted a contract that imposed an obligation to provide security at the air show, which it subcontracted to U.S. Security. Ms. Slora responded, raising no dispute of fact but arguing that the certificates of waiver were not contracts and thus could not serve as the basis for concluding Sun 'n Fun was a contractor. The DCA agreed with the plaintiff and remanded the case. [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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