HURLEY ROGNER
MILLER, COX, WARANCH & WESTCOTT, P.A.



# CASE NOTES

# CASE LAW SUMMARY
## January 2007

If you have any questions regarding Case Law Summaries, please contact W. Rogers Turner, Jr. : rturner@hrmcw.com

**Medical Evidence**

**Lemmer v. Urban Electrical, Inc., 2007 WL 173914(1st DCA 2007) - Judge Terlizzese**

The 1st DCA held that the JCC's findings were not supported by competent, substantial evidence, where the Judge made an assumption based on his reading of the medical records that the claimant had reached MMI for his back condition. The Claimant was injured in a compensable motor vehicle accident. The JCC accepted Dr. Desai's MMI date of February 24, 2004 for the claimant's compensable right knee injury. As for the Claimant's compensable back injury, the JCC noted that the claimant had not returned to his authorized treating physician since March 7, 2005 or sought any remedial care for his back. The Order stated that "[o]ne can only assume



**Winter Park Office**
1560 Orange Avenue
Suite 500
Winter Park, FL 32789
T (407) 571-7400
F (407) 571-7401

**Ft. Pierce Office**
603 N Indian River Dr
Suite 102
Ft. Pierce, FL 34950
T (772) 489-2400
F (772) 489-8875

**Tallahassee Office**
257 Pinewood Drive
Tallahassee, FL 32303
T (850) 386-2500
F (850) 222-5553

**Ft. Lauderdale Office**
1451 W Cypress Creek Rd
Suite 300
Ft. Lauderdale, FL 34950
T (954) 958-0323
F (954) 958-0322

the claimant's condition was fairly stable, that he had neither the inclination nor the need for remedial care during that time, and had for a prolonged period of time had reached MMI." The Court reversed, stating that the question of whether a claimant has reached MMI is a medical question and should be based on clear, explicit expression in the medical records or medical opinion testimony, citing Kilbourne & Sons v. Kilbourne, 677 So.2d 855, 859 (Fla. 1st DCA 1995).

**Jurisdiction**

**Hazealeferiou v. Labor Ready, 2007 WL 29236 (1st DCA 2007) - Judge Remsynder**

The claimant appealed the JCC's Order dismissing his petition for benefits for failure to establish jurisdiction under chapter 440. The 1st DCA affirmed the dismissal, finding competent substantial evidence to support the JCC's finding that the claimant's employment was principally localized in Alabama, and the subject employment agreement was made in Alabama.

The claimant was vice president and owned 49% of the stock in P & H Stucco and Construction, Inc. ("P & H") based in Florida and operating in several southeastern states. P & H entered into an agreement with an employee leasing company, appellee Labor Ready, Inc. ("Labor Ready"), through Labor Ready's Florida branch. P & H dealt exclusively with the Labor Ready's Alabama branch thereafter. The claimant entered into an employment agreement with Labor Ready at the inception of the employee leasing agreement between P & H and Labor Ready. The claimant's employment documentation was transmitted between the claimant in Florida and Labor Ready's Alabama office. In September 2003, P & H contracted to perform work in Alabama. The claimant traveled to the job site when the project began in October 2003. During the Alabama job, Labor Ready's Alabama branch handled payroll and charged P & H workers' compensation premiums based on the Alabama location. The claimant's Alabama job continued until he was injured in December 2004.

The 1st DCA considered section 440.09(1)(d) Florida Statutes, which provides that a claimant injured in an employment accident outside of Florida is entitled to compensation only if one of the following two factors are established: (1) the contract of employment was made in Florida or (2) the claimant's employment was principally localized in Florida. In addressing the first factor, the 1st DCA noted that the relevant employment agreement was the contract between claimant and Labor Ready, not the employee leasing agreement between P & H and Labor Ready. The Court found the contract at issue was made in Alabama. As to the second factor, the Court found no substantial evidence in the record to establish that claimant's employment was principally localized in Florida. The Court noted that the relevant consideration under the second factor was the principal location of the claimant's employment, not of the employer's business.

**Vera Lane v. Sims Portex/Smiths Group and Broadspire - Judge Turnbull**

1st DCA dismissed the Claimant's appeal for lack of jurisdiction because the notice of appeal was not filed within 30 days after the date of mailing of the order at issue. Counsel for the appellant blamed the untimely filing on a clerical error by her staff, to which the Court responded it was not at liberty to overlook the jurisdictional defect arising from the untimely filing. The 30 day period to file a Notice of Appeal is strictly jurisdictional, and failure to file within this period is fatal to an appeal.

**Arnold v. Florida's Blood Centers, Inc. and AIG, WL 162148 (1st DCA 2007) - Judge Terlizzese**

The 1st DCA reversed the JCC's denial of temporary partial disability benefits on the grounds that the claimant left her employment voluntarily. The Court held that the judge's finding that the claimant left her employment voluntarily lacked any substantial support because of the employer's concerns that the claimant's new work restrictions would complicate scheduling, refused to allow her to continue working, and did not accept her resignation when she rescinded it.