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

Rex A. Hurley*
William H. Rogner*†
Scott B. Miller*
Derrick E. Cox*
Michael S. Waranch*
Paul L. Westcott*
Gregory D. White*
W. Rogers Tuner, Jr.*
Paul L. Luger
Gregory S. Raub*
Anthony M. Amelio*
Matthew W. Bennett*
Andrew R. Borah*

Robert J. Osburn, Jr.
Teri A. Bussey*
Jonathan L. Cooley
Allison M. Twombly
Sandra D. Wilkerson
Timothy F. Stanton*
Zalman F. Linder
Matthew J. Troy
C. Bowen Robinson
Michelle Bayhi
Gina M. Jacobs
Julie C. Bixler
Kate E. Albin

Stephen G. Conlin
Of Counsel

*Florida Bar Board Certified Workers' Compensation
† Florida Bar Board Certified Appellate Practice
www.hrmcw.com

CASE NOTES
CASE LAW SUMMARY
2013

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

Smith v. Time Customer Service/Travelers,(Fla.1st DCA 1/31/12)
Summary Final Order/Res Judicata

The claimant was injured in a compensable repetitive trauma case in 2000. In October of 2010, her authorized doctor wrote separate prescriptions for an "orthopedic mattress" and a "Sleep i10 mattress with base" (hereinafter "i10"). Claimant filed a PFB in January of 2011 for an orthopedic mattress, which the E/C agreed to provide at mediation that March. In April, the claimant filed a PFB for the i10 mattress. Two months later, the parties attended a Merit Hearing, where the JCC reserved on the i10 PFB, finding that issue had not been mediated. A subsequent Merit Order awarded PTD and reserved on the i10 issue. The claimant thereafter withdrew the claim for the i10, cancelling a November 2011 merit hearing. In February of 2012, the same doctor wrote a new prescription for the i10, for which the claimant filed a new PFB. The E/C moved for a Summary Final Order, alleging that the issue of a mattress was *res judicata*, which the JCC granted in March of 2012. The DCA agreed with the claimant that the JCC erred. They reviewed the elements required for res judicata (Identity of the Thing at issue, Identity of the Cause of Action, Identity of the Parties and identity of the quality in the person for or against whom the claim is made). The court found that there had never been an adjudication of the specific benefit sought, in addition to the fact that the 2012 request post dated the 2011 dismissal. The court also reversed the denial of attorney fees and costs. **Click here to view Order**

Orange County/Alternative Service Concepts v. Wilder, (Fla.1st DCA 1/24/13)

Please direct replies or inquires to our Winter Park office

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

Pompano Beach Office
1280 SW 36th Ave
Suite 100
Pompano Beach, FL 33069
T (954) 580-1500
F (954) 580-1501

Fort Myers Office
4460 Camino Real Way
Suite 2
Fort Myers, FL 33966
T (239)939-2002
F (239) 939-2247

Firefighter Presumption/Burden of Proof

The JCC found the presumption claim compensable, noting that the E/C bore the burden, but failed to rebut that employment was not the cause of viral cardiomyopathy. The E/C asserted the E/C erred in failing to find they rebutted the presumption by showing that the cause of her cardiomyopathy was a virus. Citing the 2012 Walters case, which also considered a viral cardiomyopathy, the DCA noted that once the presumption is established (as was done in this case), "*the claimant is under no obligation to establish occupational causation redundantly by adducing evidence beyond what was necessary to give rise to the presumption in the first place*…". Agreeing that the JCC properly found the E/C did not sustain their burden, the DCA affirmed. **Click here to view Order**

Temporary Benefits/Sufficiency of Evidence

Massey Svcs/Sedgwick v. Knox, (Fla.1st DCA 1/16/13)

The DCA reversed the portion of the JCC's order awarding TP benefits from 4/25/11 to 5/10/11, noting there was no admissible medical testimony to support the finding that the claimant's accident was the MCC of restrictions during this period. **Click here to view Order**

Expert Medical Advisors

Quiroga v. First Baptist Church at Weston/Guideone Ins., (Fla.1st DCA 1/16/2013)

The DCA, while stopping short of calling the claimant's appeal frivolous, nevertheless completely rejected the argument that the JCC erred in failing to appoint an EMA (where the claimant did not request an EMA), and that in the absence of such an appointment, the JCC lacked jurisdiction to rule on the claim. Via Summary Affirmance (where the court says "Hey…don't bother writing briefs…") the DCA noted that case law clearly states a JCC's failure to appoint an EMA is not fundamental error, and that no support of any kind was offered for the (presumably subject matter) jurisdiction argument. The court also notes "*One need not pause long to think what Claimant's "jurisdictional" position would be had the JCC found in his favor (and for good reason).*" **Click here to view Order**