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CASE NOTES

CASE LAW SUMMARY JULY 2007

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COSTS:

Eshlibi v. Consolidated Box Mfg., 2007 WL 2174854 (Fla. 1st DCA, July 31, 2007)

The First DCA held that when a represented claimant enters into a lump-sum settlement with E/C that under 440.20(11)(c), Fla. Stat. (2006), that section only requires JCC approval of the attorney's fees paid by claimant to claimant's attorney. A JCC lacks statutory authority to deny the attorney's fees based upon costs charged to the claimant.

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ATTORNEY FEES:

Minerd v. Walgreens, 2007 WL 2089045 (Fla. 1st DCA, July 24, 2007)

JCC awarded attorney's fees to claimant and claimant appealed arguing that

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the JCC erred in his calculation of hours and hourly rate. In this case, the JCC concluded that \$200.00 was a reasonable hourly rate, yet there was no competent, substantial evidence in the record to support this conclusion. The evidence on hourly rates came from claimant's attorney, who opined that a reasonable rate was \$265.00 per hour, and from E/C's attorney who opined that a reasonable rate was \$225.00 hour. There was no other evidence on hourly rates.

In addition, the JCC concluded that the claimant's counsel only expended 18 hours on establishing entitlement to attorney's fees despite the only evidence on hours worked being time sheets submitted by claimant's counsel in the amount of 112 hours. The JCC made reductions and deletions to entries in the time sheets based on what he deemed to be non-attorney tasks or unrelated to benefits secured, or excessively billed in relation to tasks claimed. However, there was no competent, substantial evidence to support these reductions nor did the E/C cross-examine claimant's counsel or present any evidence on the matter.

DCA therefore held that JCC cannot make reductions and deletions based solely on the JCC's own subjective and personal experience of what he deemed reasonable and not on competent, substantial evidence. DCA reversed both the hourly rate and hours expended.

ENFORCING SETTLEMENT AGREEMENTS:

Chavez v. Bonnie Tile Corp., 2007 WL 1946532 (Fla. 1st DCA, July 6, 2007)

JCC granted E/SA's motion to enforce a settlement and directed that washout papers be filed with JCC within ten days of the date of the order. Claimant then executed the washout settlement papers which the JCC approved. E/SA then mailed checks to claimant's counsel in the full amount provided by the settlement. After the settlement checks were negotiated, claimant filed a notice of appeal. Claimant argued that case should not be dismissed simply because he complied with the JCC's order and that if he had failed to comply with the order he would have found himself in contempt of court. The DCA was unpersuaded by Claimant's argument, finding that he should have filed a motion to stay compliance with the order pending appeal.

DCA found that because claimant failed to pursue any alternative remedy and instead accepted the proceeds of settlement, he was estopped from appealing. The appeal was dismissed as moot.

SOCIAL SECURITY OFFSET:

State Marine Patrol v. Clifton, 2007 WL 1946162 (Fla. 1st DCA, July 6, 2007)

The First DCA held as a matter of first impression, that social security dependent benefits received by claimant's children, due to claimant's disability, were benefits from a collateral source that could be included within employer's offset calculation.

Claimant was injured in compensable accidents in 1994 and received permanent total disability (PTD) benefits from the E/C, in-line-of-duty disability retirement benefits, and social security disability benefits. E/C offset claimant's PTD benefits so that the amount he received from his employer and collateral sources did not exceed his average weekly wage. Thereafter, the Social Security Administration began paying social security dependent benefits to claimant's two minor children due to claimant's disability. E/C then recalculated the offset. Claimant filed a PFB to determine the correct offset and amount. The JCC reasoned that because claimant's children and not claimant received the dependent benefits, they could not be used in

a *Grice* offset.

The DCA disagreed with the JCC, finding a critical distinction between indemnity benefits that are received because of one's disability versus retirement benefits which are received because of old age. Court found that the social security dependent benefits were received solely because of claimant's disability. As such, the fact that the benefits had to be used for the use and benefit of children did not render the benefits ineligible to be included in the *Grice* offset. Claimant benefitted indirectly from the funds, in that if his children did not receive the benefits, he would have been forced to spend a greater portion of his own benefits for his children's care. Accordingly, the benefits were allowed to be included in the *Grice* offset.

EMPLOYEE LEASING :

Blue Stone Real Estate v. Ward, 2007 WL 2066144 (Fla. 1st DCA, July 20, 2007)

Claimant was hired by a plumbing company. Subsequently the plumbing company contracted with an employee leasing company. Claimant then became an employee of the leasing company who was "leased" to the plumbing company. After a few months with a shortage of work, the plumbing company (consisting of the owner and claimant) moved to New York for a few months to work. The plumbing company was under the impression that its agreement with the leasing company had not terminated but was only inactive and that workers' compensation insurance would reactivate upon returning to Florida. The leasing company maintained that it did not continue contracts with companies operating outside of Florida nor provide workers' compensation insurance to those companies. After several months in New York, the plumbing company returned to Florida and attempted to reactivate its account with Matrix. The plumbing company experienced a few issues with payroll when it returned, but believed the insurance was in full effect.

Claimant was the injured on the job site when a wall on which he was standing collapsed beneath him. The plumbing company notified the leasing company of the accident and the leasing company initially provided benefits. Subsequently the leasing company filed a notice of denial claiming that the claimant's employment terminated when claimant moved to New York.

JCC found that the leasing company had severed its employment relationship with the claimant upon the move to New York and that the claimant had actual notice of the termination. JCC found that the employer at the time of the accident was the general contractor. Both claimant and general contractor appealed the JCC's order arguing no competent, substantial evidence to support the finding of termination of employment or that the claimant had no notice of the termination.

The First DCA reversed the JCC, finding that the leasing company failed to provide claimant with sufficient notice of termination as required under 468.525(4)(f) Fla. Stat. (2004). That statute requires leasing companies to provide notice to their clients and to each employee they intend to terminate. Notice to the client company without notice to the claimant is ineffective to terminate claimant's employment.

LIABILITY AND WORKERS' COMPENSATION:

Ufer v. State Auto Ins. Co., 2007 WL 1988838 (Fla. 4th DCA, July 11, 2007)

This case was about attorney's fees for an underlying liability claim and defense claim. The underlying claim was a wrongful death action by a wife whose

husband, a mechanic, was shot and killed during a robbery. The wife sought and collected workers' compensation benefits relying on her husband's status as an employee. Subsequently, she filed a wrongful death action against the insured alleging that her husband had been a business invitee. The wrongful death action was barred under workers' compensation immunity and the suit for coverage and fees continued between the insured and State Auto. The DCA found that insured was not entitled to attorney fees because it ultimately lost the coverage issue against State Auto.