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CASE NOTES
CASE LAW SUMMARY
July 2013

If you have any questions regarding Case Law Summaries, please contact W. Rogers Turner, Jr. (rturner@hrmcw.com) or Matthew Troy (mtroy@hrmcw.com)

Travelers/Ann Taylor v. Anderson, (Fla.1st DCA 7/9/13)
Expert Medical Advisors/Clear and Convincing Evidence to Reject EMA

The E/C appealed the JCC’s Order awarding surgery, arguing it did not contain requisite findings of clear and convincing evidence to reject the EMA. The Judge’s Order found it “notable” the EMA avoided questions regarding the necessity of surgery. However, his EMA report clearly indicated that he did not recommend surgery. The judge also rejected the EMA, noting that the E/C selected a doctor whose opinion differed with the EMA, but failed to articulate how that would serve to reject the EMA opinion. Finally, the JCC found the opinions of the authorized doctor were most logical and comported more closely with reason, but failed to state how or why he reached this conclusion. The DCA reversed and remanded the award of surgery and attendant attorney costs and fees. [Click here to view Order](#)

Stroman v. H.T.Hackney and Dallas National Insurance, (Fla.1st DCA 7/9/13)
Managed Care Alternate PCP/Statutory One Time Change

The DCA reversed and remanded the JCC’s Order denying a one-time change and attorney fees and costs. The JCC based the denial on the fact that the claimant had been awarded an alternate PCP under the managed care statute. The DCA noted that alternate PCP available in that section of the statute (where the employer is operating under a valid managed care arrangement) is separate and in addition to the independent right under F.S.§440.13 to a statutory one time change in physician. [Click here to view Order](#)

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Smith and Smith, Feddeler and Smith v. Schryver
Attorney Fees/Discovery

(Fla. 1st DCA 7/1/13)

The JCC denied a Motion to Compel records of the hours billed by Attorney #2 devoted to reaching a settlement. The JCC then valued Atty #1's lien based upon that attorney's hours at an hourly rate. The DCA reversed, noting that the requested discovery could be useful in valuing prior counsel's lien. The opinion cites to prior fee lien cases that require a JCC to apportion fees subject to a lien, and that "totality of circumstances" factors such as recovery sought, skill required and result obtained should also be considered in to determination of the lien amount, versus a straight accounting of hours in the file. [Click here to view Order](#)

Torres v. Costco/Liberty Mutual,
Dispute Triggering IME/Overutilization/Sufficiency of Pleadings

(Fla.1st DCA 7/1/2013)

Claimant injured her lumbar spine in 2001. The authorized treating doctor placed her at MMI with a 6% rating on 7/10/03. The E/C obtained an IME in 2003, but that IME did not address pain management. The claimant continued to treat with the authorized pain management doctor, and in 2012, the E/C sought to compel the claimant to attend a pain management IME with a second examiner. The DCA reversed the Order requiring the claimant to attend, analyzing the need to allege sufficient facts for a requisite dispute and the elements of an overutilization review. The claimant argued that the alleged overutilization was speculative, that the E/C's first IME is a pain management physician and that under Lehoulier, the E/C seeking to compel the IME bears the burden to allege sufficient facts for a dispute. The DCA agreed, noting that although the E/C's overutilization allegations could "potentially" amount to a dispute under the IME statute, their motion to compel did not sufficiently describe how the 12 years of treatment amounted to overutilization. As such, the order compelling the IME with the second pain management doctor departed from the essential requirements of the law. [Click here to view Order](#)

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