HURLEY, ROGNER, MILLER,
COX, WARANCH & WESTCOTT, P.A.
REX A. HURLEY, ESQ., WILLIAM H. ROGNER, ESQ., SCOTT B. MILLER, ESQ., DERRICK E. COX, ESQ., MICHAEL S. WARANCH, ESQ., PAUL L. WESTCOTT, ESQ., GREGORY D. WHITE, ESQ., W. ROGERS, TURNER, JR., ESQ., PAUL L. LUGER, ESQ., GREGORY S. RAUB, ESQ, ANTHONY M. AMELIO, ESQ., ESQ., ROBERT J. OSBURN JR. ESQ.,. MATTHEW W. BENNETT, ESQ., ROBERT S. GLUCKMAN, ESQ., TERI A. BUSSEY, ESQ., ANDREW R. BORAH, ESQ, JONATHAN L. COOLEY, ESQ., ALLISON M. TWOMBLY, ESQ., SANDRA D. WILKERSON, ESQ.
1560 Orange Avenue, Suite 500, Winter Park, FL 32789 * Phone (407) 571-7400 * FAX (407) 571-7401
603 North Indian River Drive, Suite 102, Ft. Pierce, FL 34950-3057 * Phone (561) 489-2400 * FAX (561) 489-8875
257 Pinewood Drive, Tallahassee, FL 32303 * Phone (850) 222-1200 * FAX (850) 222-5553

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CASE NOTES

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CASE LAW SUMMARIES: June, 2006

RES JUDICATA

Olmo v. Rehabcare Starmed, 31 FLWD 1487 (Fla. 1st DCA, May 31, 2006)

The claimant injured her back on May 29, 2001. In February 2004, the claimant filed a petition requesting authorization of surgery as well as indemnity benefits. The claimant exhausted her 104 weeks of indemnity before the date she filed her February 2004 petition. The claimant took her surgery claim to trial on December 7, 2004. The judge awarded the surgery.

On February 20, 2005, the claimant filed another petition seeking permanent total disability benefits. At the final hearing on the PTD claim, even though the parties stipulated that the claimant had not reached maximum medical improvement, the JCC ruled that the claimant's permanent total disability claim was barred by the doctrine of res judicata since the claimant had not made the claim at the prior December 7, 2004 merits hearing.

The First DCA overruled the JCC's decision. Even though a claimant can file for PTD benefits before he/she reaches maximum

medical improvement, the claimant is not required to do so. Since the claimant had yet to reach maximum medical improvement at the time of the prior December 7, 2004 final hearing, she was not required to file a PTD claim at that time. Therefore, the claimant's PTD claim should have been heard at the August 5, 2005 final hearing and not been barred by application of res judicata.

ELECTION OF REMEDIES

Jones v. Martin Electronics, Inc., 31 FLWS 380 (Fla. Supreme Ct., June 15, 2006)

The claimant suffered third degree burns in an on the job explosion. The carrier voluntarily provided workers' compensation benefits. A dispute arose between the parties concerning the hourly rate of attendant care. Following a merits hearing, the JCC entered an Order awarding additional monies for the attendant care services the claimant received.

The claimant filed a complaint in circuit court alleging that his injuries were the result of intentional conduct on the part of the employer that was substantially certain to result in injury or death. The employer moved for summary judgment on the basis that the claimant had elected workers' compensation as his remedy for the injuries alleged in his circuit court action.

The trial court ruled that the employer was not entitled to workers' compensation immunity based upon the facts of the claim. The First DCA reversed, and held that since the claimant sought and obtained an order granting an increase in the rate of attendant care benefits, the claimant's actions constituted a conscious intent to choose compensation benefits over a tort action.

The Florida Supreme Court disagreed with the First DCA's holding. Since the sole subject matter of the contested hearing was regarding the rate for attendant care services and not whether the claimant's injuries were compensable or caused by neglect or intent, the Supreme Court ruled that the merits order that was entered did not constitute litigation to a conclusion on the merits of the claimant's workers' compensation claim and therefore, did not constitute an election of remedies.

This case has generated a lot of confusion and concern among employers and carriers in Florida. Claimants have always been able to sue employers for intentional torts. The election of remedies issue

should not have even been addressed in this case and that is what led to the confusion. Election of remedies typically applies in cases where the employer does not have workers' compensation coverage and the employee elects to sue the employer in tort or for workers' compensation benefits.

EMPLOYER/CARRIER PAID FEES AND COSTS

Tucker v. Fed Ex, 31 FLWD 1636 (First DCA June 14, 2006)

The claimant's attorney took a second deposition of a medical expert for the sole purpose of determining the value of treatment the physician previously recommended in order to calculate an attorney's fee the claimant was entitled to. The JCC denied the claimant's request that the employer/carrier pay the fees and costs resulting from this medical expert's second deposition. The First DCA affirmed the JCC's decision and reasoned that it is well settled in workers' compensation that the employer/carrier is not obligated to pay expert witness fees charged by an attorney testifying as to the reasonableness of a requested attorney's fee in a workers' compensation case. The First DCA saw no reason why this rule should be applied differently to medical expert witnesses.

INVOLUNTARY IMPOSITION OF LIEN

Sunshine Towing, Inc., v. Fonseca,31 FLWD 1637 (First DCA June 14, 2006).

The claimant was rendered a quadriplegic as a result of his workers' compensation accident. The employer/carrier agreed to modify the claimant's home to meet his medical needs. The employer/carrier sought to impose a lien to prevent unjust enrichment as a result of the claimant selling his home and financially benefitting from the modifications the employer/carrier paid for. The First DCA ruled that the employer/carrier is not entitled to involuntarily impose a lien because there is no statutory authorization for a home modification lien under Florida Statute 440.13(2)(a).

ATTORNEY'S FEES

Lundy v. Four Seasons Ocean Grand Palm Beach, 31 FLWD 1653 (First DCA June 20, 2006).

The claimant and the employer/carrier entered into a Joint Stipulation where the employer/carrier agreed to pay the claimant

$1700.00 for past due indemnity benefits. The employer/carrier also agreed to pay the claimant's counsel $1900.00 for securing such benefits. The JCC denied approval of the stipulated fees since it was in excess of the fees allowed by Florida Statute 440.34(1). Instead of approving the stipulated fees, the JCC entered an Order approving a statutory fee of $240.00.

On appeal, the claimant first argued that Florida Statute 440.34(1) allows a "reasonable" attorney's fee and the statutory fee of $240.00 is not reasonable. Following the decision rendered in the Wood v. Florida Rock Industries case, the First DCA ruled that the specific language in Fla. Stat. 440.34(1) states that an injured worker's attorney is only entitled to a statutory fee.

The claimant also challenged the constitutionality of Fla. Stat. 440.34(1) on numerous grounds. The First DCA ruled that Fla. Stat. 440.34(1) did not violate the separation of powers doctrine as the legislature may limit the amount of fees that the claimant's attorney may charge because the state has a legitimate interest in regulating attorneys fees in workers' compensation cases. The legislature is charged with setting forth the criteria it deems will further the purpose of the workers' compensation law and will result in a reasonable fee.

The First DCA also did not believe Fla. Stat. 440.34(1) violated the equal protection clause or the due process clause. The First DCA reasoned that Fla. Stat. 440.34(1) is not discriminatory, arbitrary, or oppressive, because it applies to all claimants in workers' compensation proceedings and sets forth a definite formula in determining attorneys fees so as to protect a claimant's interest in obtaining a substantial portion of the benefits secured.

The First DCA also denied the claimant's argument that Fla. Stat. 440.34(1) impermissibly restricts the claimant's right to freely contract. A statute restricting an individual's right to contract will not be invalidated if the restriction was an act to protect the public's health, safety, or welfare. According to the First DCA, the restrictions set forth in Fla. Stat. 440.34(1) were enacted to protect the public's welfare by ensuring that a worker is able to obtain a substantial portion of awarded benefits so as to prevent the burden of support for that worker from being cast upon society.

Lastly, the First DCA rejected the denial of access to courts argument. The First DCA addressed this argument even though the claimant abandoned it during oral argument. The claimant argued in his brief that the statute denies access to courts because it impairs a

claimant's ability to retain counsel. The First DCA rejected such argument because it lacked evidentiary support. The claimant failed to demonstrate that this statute had unduly burdened the claimant's ability to retain counsel in order to secure workers' compensation benefits.

ENFORCEMENT OF MEDIATION SETTLEMENT AGREEMENT

Gudiono v. Oasis Outsourcing, 31 FLWD 1666 (First DCA, June 20, 2006)

The JCC enforced the terms of the mediation settlement agreement. The First DCA affirmed this decision since the record supported the JCC's determination that the parties intended the mediation settlement agreement to be a full washout settlement of a workers' compensation case.

ENFORCING SETTLEMENT AGREEMENT

Hale v. Shear Express, Inc., 31 FLWD 1666 (First DCA, June 20, 2006).

The First DCA reversed the JCC's decision to enforce a settlement agreement since the settlement agreement did not reflect all essential terms. The First DCA did not indicate in the opinion what essential terms were left out.

REIMBURSEMENT OF GUARDIAN FEES

Florida Cypress Gardens v. Lavoy, 31 FLW 1699 (Fla. First DCA, June 22, 2006).

The claimant was totally incapacitated by a work related injury. A guardian was appointed. The guardian performed a variety of services for the claimant in addition to pursuing her claim for workers' compensation benefits. The circuit court awarded the guardian $8534.25 for her services from the guardianship estate.

The guardian filed a Petition for Reimbursement with the JCC. The employer/carrier agreed to pay for the services the guardian rendered in connection with the claimant's workers' compensation claim, but would not provide reimbursement of other fees and expenses that were unrelated to the workers' compensation claim. The JCC agreed with the claimant and approved most of the fees and costs related to the guardian's services including those that were not related to the pursuit of workers' compensation benefits.

The First DCA reversed the JCC's ruling and found that the employer/carrier is obligated to pay for the services of a guardian only to the extent that those services are incurred in and about the handling of the claimant's rights, duties, and responsibilities under Chapter 440.

MANAGED CARE AND INDEMNITY BENEFITS

American Panel Corporation v. Smith, 31 FLWD 1728 (Fla. First DCA, June 27, 2006).

The JCC denied a couple of weeks of indemnity benefits since the lost time from work was due to attending unauthorized physicians' appointments and the claimant did not follow the managed care provisions in place to seek such care. The First DCA overruled the JCC's decision stating that a claimant is not barred from seeking indemnity benefits merely because he or she refuses to participate in the employer/carrier's managed care arrangement. The existence of a managed care arrangement is relevant to a claim for medical treatment, but not to a claim for indemnity benefits.

PENALTIES

Office Depot v. Ortega, 31 FLWD 1732

Since the employer/carrier did not file a Notice of Denial within 14 days of its receipt of the Petition for Benefits, the First DCA ruled that the JCC committed error in failing to award the claimant penalties.