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

Dismissal of Actions/Temporary Benefits

Mieses v. Applebees/Chubb Group, (Fla. 1st DCA 6/30/09) The claimant filed multiple PFBs in 2004 seeking temporary benefits and penalties and interest from the date of accident to the present and continuing. In 2006 the claimant filed a one page dismissal of all pending PFBs. Thereafter the claimant filed further PFBs seeking the same benefits from the date of accident to the present. At trial, the JCC awarded several distinct periods of penalties and interest. The court noted these were due even though no temporary benefits were awarded, as P and I can be due with or without an award. The E/C argued at trial that the dismissal of earlier PFBs barred the claims under the "two dismissal Rule 6.116(2). The JCC rejected their argument, finding the dismissal at issue was only a "single" notice of dismissal. The First DCA rejected the JCC's interpretation as "overly literal", finding that the dismissals of multiple PFBs barred the awards of P and I for periods prior to the dismissals. However, the DCA declined to hold that the dismissal barred claims for periods of time awarded after the claimant's dismissals, reasoning that P and I for late payments subsequent to the dismissal would not have been ripe, due, and owing. Click here to read case

Discharge of Counsel

Walker v. River City Logistics/CNA Claims Plus(Fla.1st DCA 6/12/09) The claimant filed a Petition for Writ of Certiorari, alleging the JCC abused his discretion in disqualifying or discharging the claimant attorney from the case. The opinion

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indicates the claimant attorney was discharged relative to alleged privileged documents. The District Court found that the E/C's provision of these documents to claimant's Public Defender (which they did not allege was inadvertent) waived any privilege that may have been asserted. As the Order departed from the essential requirements of the law and caused irreparable harm that could not be remedied upon appeal of a final order, the petition was granted, quashing the order of the JCC. Click here to read case

Penalties on Late Settlement Payments

Raban v. Fed EX/Sedgwick (Fla.1st DCA 6/8/09) The parties entered into a settlement agreement for 200k. The agreement was specifically contingent upon excess carrier agreement. Although the claimant agreed to execute a release, that agreement was ultimately not found to be a condition precedent. The JCC entered an Order on 10/15/07 which specifically stated that penalties and interest would be due upon late payment. On 10/18/07, the carrier issued a check stating "per JCC order 10/15/07. (Though not noted, this check was possibly for a side attorney fee rather than the washout). This check was not sent, however, until December, when the claimant ultimately executed the release. The DCA analyzed multiple issues. They found both parties, represented by counsel, negotiated penalties and interest for late payment. They found that although there was no statutory entitlement to penalties and interest, the JCC could order such penalties where the parties had agreed to that item. The court rejected the carrier's argument that they were not served with a copy or otherwise on notice of the Order, specifically noting the quoted language above on the check. As the check was not issued to the claimant timely, and the court found penalty and interest issue was a bargained for term, the Court reversed the JCC's order denying P and I. Interestingly, the Order indicating penalties and interest would be due, did not specify what those would be. As the DCA opinion indicates, there is no statutory entitlement to penalties or interest, it will be interesting to see how the JCC can now define that term for the parties. Click here to read case

Settlement Agreements/Interpretation of MSA provisions

Ferreira v. Home Depot/Sedgwick (Fla.1st DCA 6/8/09) The parties entered into a settlement where the claimant would receive seed money and self administer the MSA. Ten months after the agreement was reached, the JCC signed the order approving fees. The parties also received word back from CMS that the MSA amount was sufficient, but the funds necessary to annually fund the MSA were deficient. The agreement provided that the claimant would be responsible for funding any overage amounts. The E/C had not purchased an annuity which they agreed to do. The E/C filed a motion for repayment of seed money, alleging they had overpaid the claimant. The JCC seemingly tried to rectify the problem of the E/C failing to purchase an annuity, reasoning that the seed money paid to the claimant should be used to fund the difference between what the annuity would have cost prior to CMS issuing their opinion. The DCA reversed, finding the JCC impermissibly rewrote the contract between the parties. The DCA found the annuity amounts were clear and unambiguous, and were not subject to change by CMS. Click here to read case

Engler v. American Friends of the Hebrew University, 1 D08-4794 (Fla. 1st DCA 2009). The First District Court of Appeals reversed the decision of the Judge of Compensation Claims that found the compensable accident was no longer the major contributing cause of the claimant's condition and need for treatment. The Judge had previously entered an order finding that the claimant's industrial accident was the

major contributing cause of the claimant's injuries and awarded medical treatment. The carrier provided the new treating doctors with records regarding prior accidents and injuries that had not been presented to either the medical experts or the JCC prior to the final hearing. The treating doctors opined the industrial accident was not the major contributing cause of the claimant's need for treatment and condition and the Judge accepted that testimony. The Court found the Judge misapplied *City of Ocoee v. Trimble*. The Court held, "Once compensability is established, an E/C can no longer contest that the accident is the MCC of the injuries at issue. It can only contest the connection between a claimant's need for specific treatment or benefits, and the industrial accident." The court also found that the Judge's reliance on the opinions based on records that could have been presented to the experts who testified in the prior hearing was error. Click here to read case