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CASE NOTES
CASE LAW SUMMARY
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Discovery/Work Product Privilege

Heartland Express Inc., of Iowa v. Torres, (Fla.1st DCA 6/25/12)

Although a liability case, this case is instructive regarding privileges available to corporate representatives in deposition. The Plaintiff deposed the Defendant’s corporate representative, and asked a number of questions regarding information gathered in the course of the risk manager’s investigation of the accident, the preventability of the accident and the speed at which the driver was traveling. The Defendant’s attorney asserted timely objections and instructed the deponent not to answer. Following a hearing on Plaintiff’s Motion to Compel and Defendant’s Protective Order, the judge ordered the corporate rep to answer the questions. On Petition of Certiorari, the DCA determined the trial court erred, as the answers sought by Plaintiff are protected by work product privilege. Work product privilege applies to both *fact work product* (information relating to the case gathered in anticipation of litigation) and *opinion work product* (the attorney’s mental impressions, conclusions, opinions and theories concerning the litigation). The court noted that information received by attorneys in anticipation of trial by investigators and non attorneys has been deemed work product. They noted this privilege also extends to information gathered in an investigation in anticipation of litigation by corporate non-attorney employees, including those in corporate risk management. There need not be a lawsuit filed for the privilege to apply. As these questions asked for information gathered during the risk manager’s investigation, and

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because Plaintiff made no showing of need or undue hardship, the court quashed the order compelling their answers. [Click here to view Order](#)

Repetitive Trauma/Burden of Proof

Rose v. Geico/Broadspire, (Fla. 1st DCA 6/13/12)

The JCC denied compensability of claimant's 2010 carpal tunnel injury. The claimant previously brought claims for carpal tunnel in 1999 and 2008. The JCC found that claimant failed to offer any evidence of a change in her condition in relation to 2010 injury and therefore did not carry her burden to prove a new accident or injury or an aggravation or exacerbation of a pre-existing condition. The DCA held that the JCC erred in requiring claimant to prove a change or worsening of her carpal tunnel condition. Where the claimant remained employed with the same employer, and her job remained substantially the same, every new exposure (work activity) to the trauma is a new "accident." A claimant can suffer a new repetitive trauma each time she performs the job (typing, data entry, etc...). The claimant proved new repetitive trauma injury and proved compensability of the 2010 date of accident. [Click here to view Order](#)

Constitutionality of Limiting PTD payments

Berman v. Dillard's/ESIS, (Fla.1st DCA 6/14/2012)

The DCA affirmed the JCC's denial of PTD benefits for the claimant. Claimant's injury occurred when she was 72 years old in 2004. The carrier administratively accepted her as PTD when she was 75. Five years thereafter, they terminated her PTD payments pursuant to F.S.s 440.15(1)(b)(2003). The DCA rejected the claimant's arguments that this section is unconstitutional as it discriminates on the basis of age, and because it allegedly limits access to courts. When considering constitutional challenges to a law, the court must first address the level of scrutiny with which it will examine the law. The DCA determined this section is subject to the rational basis test, rather than the heightened strict scrutiny standard. Generally, an age limitation will survive the rational basis test if the age classification is reasonably related to a permissible government objective. The access to court issue did not involve a privacy right, so rational basis also applied to that claim. Having decided the proper standard, the court found neither argument violated the rational basis test, and affirmed the JCC's denial under the applicable statute. [Click here to view Order](#)

Firefighter Presumption/Compensability

Williams v. City of Orlando/City of Orlando Risk Management, (Fla.1st DCA 6/13/2012)

The JCC denied compensability of hypertension, finding the claimant failed to establish the fourth requirement under F.S. s 112.18 that their condition be one of those (Tuberculosis, heart disease or hypertension) listed in the statute. Previous decisions held such hypertension must be "arterial or cardiovascular". The JCC rejected the claimant's unrefuted medical testimony that her "essential" hypertension is the same thing as "arterial" hypertension, finding it conflicted with the Bivens and Thomas

decisions. The DCA noted that although a JCC may reject unrefuted medical testimony, Bivens does not hold as a matter of law that “essential” hypertension is not covered under s. 112.18. Rather, Bivens dealt narrowly with a claimant who presented no record evidence that the hypertension was either arterial or cardiovascular. As this claimant produced evidence, and the JCC misconstrued the applicable case law, the DCA reversed and remanded for entry of an Order awarding compensability. [Click here to view Order](#)