



**HURLEY ROGNER**  
MILLER, COX, WARANCH & WESTCOTT, P.A.

Rex A. Hurley\*  
William H. Rogner\*†  
Scott B. Miller\*  
Derrick E. Cox\*  
Michael S. Waranch\*  
Paul L. Westcott\*  
Gregory D. White\*  
W. Rogers Turner, Jr.\*  
Paul L. Luger  
Gregory S. Raub\*  
Anthony M. Amelio\*  
Matthew W. Bennett\*

**CASE NOTES**  
**CASE LAW SUMMARY**  
**May 2011**

If you have any questions regarding Case Law Summaries, please contact W. Rogers Turner, Jr. : [rturner@hrmcw.com](mailto:rturner@hrmcw.com)

Robert J. Osburn, Jr.  
Teri A. Bussey\*  
Andrew R. Borah\*  
Jonathan L. Cooley  
Allison M. Twombly  
Sandra D. Wilkerson  
Timothy F. Stanton\*  
Kimberly De Arcangelis  
Julie C. Bixler  
Zalman F. Linder  
Matthew J. Troy  
Geoffrey C. Curreri  
C. Bowen Robinson  
Michelle Bayhi  
Gina M. Jacobs

**Notice of Litigated Claim/Ability of JCC to Award Benefits**

**Clay Co. Bd. Of Co. Comm./Scibal and Associates V. Bramlitt, (Fla. 1<sup>st</sup> DCA May 23, 2011)**

Revised opinion reverses the award of out-of-pocket medical expenses. The claimant did not file a PFB seeking reimbursement and the DCA reversed the JCC's finding that the E/C had stipulated to a determination of the issue. [Click here to view Order](#)

**Motion for Rehearing/Sufficiency of Evidence**

**Feacher v. Total Employee Leasing, (Fla. 1<sup>st</sup> DCA May 23, 2011)**

Reversed and remanded the JCC's denial of TTD and TPD prior to an IME. The DCA found that the JCC either overlooked or misinterpreted the unrefuted claimant's IME opinions on work status and remanded for the JCC to consider the opinion or provide a legal basis for rejecting it. [Click here to view Order](#)

Stephen G. Conlin  
Of Counsel  
  
\*Florida Bar Board  
Certified Workers'  
Compensation  
† Florida Bar Board  
Certified Appellate  
Practice

[www.hrmcw.com](http://www.hrmcw.com)

Please direct replies or inquires to our Winter Park office

**Winter Park Office**  
1560 Orange Avenue  
Suite 500  
Winter Park, FL 32789  
T (407) 571-7400  
F (407) 571-7401

**Ft. Pierce Office**  
603 N Indian River Dr  
Suite 102  
Ft. Pierce, FL 34950  
T (772) 489-2400  
F (772) 489-8875

**Tallahassee Office**  
253 Pinewood Drive  
Tallahassee, FL 32303  
T (850) 386-2500  
F (850) 222-5553

**Pompano Beach Office**  
1280 SW 36<sup>th</sup> Ave  
Suite 100  
Pompano Beach, FL 33069  
T (954) 580-1500  
F (954) 580-1501

**Fort Myers Office**  
4460 Camino Real Way  
Suite 2  
Fort Myers, FL 33966  
T (239) 939-2002  
F (239) 939-2247

## **Medical Benefits/Attendant Care**

### **Bronson's Inc./ Travelers v. Mann, (May 18, 2011)**

The DCA reversed the award of a life care plan and attendant care. The JCC found in his order that the life care plan benefits were not ripe, due, or owing, but awarded them anyway. The DCA also rejected the award of a life care plan as it was not a specific benefit under workers compensation. The DCA reversed an award of attendant care benefits as there was no specific prescription for the benefits from a physician. [Click here to view Order](#)

## **Burden of Persuasion/Admissibility of Medical Evidence**

### **Stokes v. Schindler Elevator/Broadspire, (Fla.1<sup>st</sup> DCA 5/9/2011)**

The DCA reversed and remanded the JCC's denial of death benefits. The claimant sustained a compensable ankle injury which required surgery. Six weeks post-surgery, the claimant required a wound care nurse as his ankle incision was swollen and malodorous. While still under the care of a wound care nurse, the claimant developed a bacterial heart infection and died. The Coroner and the claimant's IME opined that the heart infection was caused by a bacterial infection at the surgical site. The JCC deemed those two medical opinions "insufficient as a matter of law", relying on the E/C's non MD toxicologist's opinion that causation opinion required either a culture from the ankle as well as the heart, or that epidemiological studies existed to show an ankle infection can cause a heart infection. The DCA found the JCC erred in accepting the toxicologist as to causation, and that she erred in rejecting the admissible medical evidence, based upon the non MD's opinions as to what could or could not form a sufficient foundation for medical opinion testimony. A concurring opinion also discusses whether the appropriate burden of persuasion at the JCC level is competent substantial evidence or preponderance of the evidence. [Click here to view Order](#)

## **Evidence/Records of Regularly Conducted Business**

### **German v. Ryta Food Corporation (Fla.1<sup>st</sup> DCA 5/9/2011)**

The DCA reversed the JCC's award of a medical bill and costs and attorney fees related to that bill, as the claimant failed to properly authenticate the bills. To authenticate records under F.S. 90.803(6), it must be shown that the records were: 1) made at or near the time of the event recorded, 2) by, or from information transmitted by a person with knowledge, 3) kept in the course of a regularly conducted business activity, and 4) it was the regular practice of that business to make such a record. The E/C objected at deposition and at trial to authenticity and hearsay. The DCA found the testimony relied upon by the JCC failed to prove the first and second elements. As it was error to admit the records, the DCA reversed the award of the bill and the attendant award of fees and costs. [Click here to view Order](#)