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., ROBERT J. OSBURN JR. ESQ., GREGORY S. RAUB, ESQ.
MATTHEW W. BENNETT, ESQ., NISHA G. DESAI, ESQ., ANTHONY M. AMELIO, ESQ., ESQ.,
ROBERT S. GLUCKMAN, ESQ., TERI A. BUSSEY, ESQ., ANDREW R. BORAH, ESQ, 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
www.hurleyrogner.com

CASE NOTES

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CASE LAW SUMMARIES: March, 2005

WORKERS COMPENSATION IMMUNITY

Lluch v. American Airlines, Inc., 899 So.2d 1146 (3rd DCA March 16, 2005): The Claimant was employed by ABM performing janitorial work. Despite a contract between ABM and American Airlines specifying ABM was an independent contractor, the claimant was still considered a statutory employee of American Airlines. Claimant brought negligence action against airline for claimant's injuries. Circuit Court granted summary judgement for airline and claimant appealed.

DCA reversed and remanded holding there were genuine issues of material fact as to whether the claimant and baggage handler were involved in "unrelated works" within the exception to workers' compensation immunity and this precluded summary judgement.

However, an issue of material fact regarding whether the claimant and a potentially negligent employee for American Airlines were engaged in unrelated works precluded a summary judgment based on workers compensation immunity.

Contracts specifying an entity is an independent contractor as compared to a subcontractor are not binding on the determination of whether the employee of the alleged independent contractor is a statutory employee.

CONTROVERSY BETWEEN CARRIERS

Fla. Municipal Insurance Trust v. Sterling Cook, 898 So.2d 262 (Fla.1st DCA March 17, 2005): JCC's Order requiring carrier one to reimburse carrier two because carrier one failed to timely deny claim was error. Carrier two requested reimbursement in general terms and carrier one denied in general terms. Until specific bills were provided, carrier one could not deny. Case reversed for specific findings on merits of reimbursement claim.

Carriers must put carriers from whom they seek contribution on notice of specific bills and costs when seeking reimbursement.

REIMBURSEMENT OF MEDICAL BENEFITS PAID BY CLAIMANT

Myers v. Sherwin Williams Paint Co., 898 So.2d 264 (Fla.1st DCA March 17, 2005): Claimant made out of pocket payments to therapist under 440.13(2)(c). The JCC ordered the employer/carrier to reimburse claimant for 2/3 cost of her treatment with psychotherapist at applicable fee schedule and found the employer/carrier responsible for 2/3 cost of future psychotherapy. The Court held reimbursement by carrier only had to be made at fee schedule.

Carriers do not have to reimburse the claimant the full rate paid by the claimant when the claimant pays for care on their own.

IMPAIRMENT RATING

Pinellas County Schools v. Angell, 899 So.2d 356 (Fla.1st DCA March 21,2005): Claimant failed to meet burden of demonstrating impairment rating when physician testified that current impairment rating was an 8%, but rating would be reduced by further therapy. Claimant has the burden of proof on proving an impairment rating.

ATTENDANT CARE; INTERVENING ACCIDENTS

IMC Phosphates v. Prater, 895 So.2d 1263 (Fla.1st DCA March 10, 2005):

Attendant Care:

Medical necessity:

Physicians testimony that claimant was unable to ambulate without assistance and that his family had to help him get out of bed, go to the bathroom and bathe, and prepare meals; as well as physician's testimony that this was outside the scope of ordinary familial household duties constituted evidence of medical necessity.

Direction and control of physician:

This is care provided prior to 10/1/2003. For this care, absence of a prescription by a physician is not dispositive of the element requiring the care be under the direction and control of a physician. The court held the self-executing nature of Florida's Workers Compensation Law required the employer/carrier to monitor injury and treatment and provide benefits. The court affirmed that evidence was sufficient to put the employer/carrier on notice of need for treatment.

This case is important because when dealing with accidents prior to October 1, 2003, the absence of a prescription does not preclude the claimant from obtaining retroactive attendant care.

Intervening accident:

Facts:

Claimant had motor vehicle accident after leaving car dealer,

approximately 2 hours prior to appointment with authorized physician roughly 30 minutes away. Claimant testified they were traveling directly to the physicians office.

JCC Determines Credibility:

While the evidence could be determined against the claimant, the JCC found the claimant's testimony credible and such finding would not be reversed on appeal.

Substantial Deviation:

The trip did not constitute a substantial deviation as JCC accepted claimant's testimony that he was "traveling to" the physicians office for treatment related to the industrial accident.

Remedial Treatment:

The employer/carrier argued the claimant was not traveling to the physician's office for remedial treatment. The Court rejected this argument, accepting the claimant's testimony they were traveling to the physician to press for x-rays as the claimant did not feel he had made appropriate progress and was looking to determine a treatment approach.

Direct and Natural Consequence of Initial Injury:

As the claimant was traveling to the authorized physician for treatment related to the accident, there was no break in chain of causation so injury was compensable.

This case allows a finding for compensability of an intervening accident when the claimant is traveling to an authorized physician for treatment despite the fact the claimant was not traveling from his house to the physician and there were apparent inconsistencies in that even accepting the claimant's testimony, he would have arrived at the physician approximately two (2) hours prior to his appointment.

JURISDICTION

Marchenko v. Sunshine Companies, 894 So.2d 311 (Fla.1st DCA February 28, 2005). The JCC does not have authority to approve settlements under section 440.20(11)(c) or set aside or vacate settlements.

FRAUD/ADMISSIBILITY OF EVIDENCE

William Nelson v. Labor Finders, 897 So.2d 501 (Fla.1st DCA February 28, 2005). Claimant objected to production of medical records relating to drug and alcohol abuse asserting privilege under federal law.

The JCC correctly overruled the objection noting that the claimant waived the objection by denying the treatment and further found that good cause existed to order disclosure. Good cause does not require a risk of death or serious bodily harm. Good cause requires a finding that (1) other ways of obtaining the information are not available or would not be effective; and (2) The public interest and need for disclosure

outweigh the potential injury to the patient, the physician-patient relationship and the treatment services.

As the fraud defense is founded on important public policy considerations, disclosure was appropriate.

Therefore, carriers are permitted to obtain otherwise privileged information when such information is necessary to demonstrate a misrepresentation defense.