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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

Motions for Summary Final Order/Due Process/Service

San Pedro v. Taco Bell/Gallagher Bassett, (Fla. 1st DCA 5/19/09) The JCC granted a motion for summary final order filed by the E/C. The claimant moved to vacate, alleging they did not receive the Motion (with a 5/19/08 Date of Service) until June 24, 2008. Parties are required to respond to a motion for summary final order within 30 days (plus five days for mailing) under the Q Rules. The court reversed and remanded, finding the JCC erred in not addressing the claimant’s motion to vacate.

[Click here to read case](#)

Appeals/Timely Filing

Vargas v. Conway Southern Express/Travelers, (Fla.1st DCA 5/19/09) PCA opinion cites to cases finding that filings after 5 p.m. are deemed filed the next day, and that jurisdictional rules cannot be altered by the court or agreement of the parties. Re enforces the need to made decisions about whether to appeal immediately upon receipt of an Order, as toying with appellate deadlines is generally ill advised. [Click here to read case](#)

Indemnity Benefits/Admissibility of Medical Evidence

Boggs v. USA Water Ski, Inc./Claims Center, (Fla. 1st DCA 5/13/2009) The First DCA affirmed the JCC as to several issues, but reversed the JCC’s denial of separate periods of TTD. The facts of the case showed the claim was initially accepted under the 120 day rule, but later denied. The claimant subsequently sought treatment on her

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own and had surgery. The JCC found the treatment with the surgeon to be reasonable and medically necessary. He also ordered the E/C to pay for the treatment. However, a large part of his denial of TTD was due to his rejection of the admissibility of that doctor's testimony, finding him to not be an authorized treater, IME or EMA physician per F.S. § 440.13(5)(e)(2006). The DCA noted that in such circumstances, the JCC is obliged to not exclude the testimony and records of an unauthorized doctor, citing Florida Distillers v. Ruud. For another period of TTD, the DCA reversed, finding the Order did not contain requisite findings indicating the claimant knew or should have known they were to return to work. [Click here to read case](#)

Overpayments/Standard for Writ of Certiorari

PepsiCo/Sedgwick v. Underwood, (Fla. 1st DCA 5/7/09) The claimant (who was never represented at any stage of litigation) had a compensable back injury. The claimant left the employer, and began working for a new employer. During this time, the carrier overpaid the claimant approximately six months of TTD. After realizing their overpayment, the carrier filed a motion seeking repayment of the TTD, and asserting the SOL had run. The JCC granted their motion, but ordered the E/C to pay for an exam from the treating surgeon, reasoning that as the claimant had never been placed at MMI or been given a PIR, that such PIR benefits may offset the overpaid TTD. The carrier filed the Petition for Writ of Certiorari. For non-Final orders, the petitioner is required to show the order departs from the essential requirements of the law, and causes irreparable harm. The DCA rejected the carrier's assertion that the evaluation would toll the SOL, and irreparably harm them, as the evaluation would not be treatment to toll the statute. [Click here to read case](#)