

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.,
ROBERT S. GLUCKMAN, ESQ., TERI A. BUSSEY, ESQ., ANDREW R. BORAH, 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

TO RECEIVE CASE NOTES VIA EMAIL,
PLEASE SEND REQUEST TO hurleyrogner@hrmcw.com

CASE LAW SUMMARIES: November 2003

APPEALS

Valerio v. Lee Memorial Health Systems, 28 FLW D2634 (Fla. 1st DCA, Nov. 13, 2003). The claimant settled a workers' comp claim on February 5, 2001. The claimant became dissatisfied and moved to vacate the order approving the award of attorney's fees. The JCC entered a second order on April 18, 2002, in which Judge Turnbull found he did not have jurisdiction to consider the motion. The 1st DCA agreed, stating that orders approving attorney's fees are not reviewable orders. Therefore, the 1st DCA lacked jurisdiction.

MEDICAL BENEFITS

CEM Enterprises, Inc. v. Thompson, 28 FLW D2638 (Fla. 1st DCA, Nov. 17, 2003). The claimant was awarded a handicap accessible van. The E/C appealed this award, based on the fact they had requested an offset or credit based on the value of the claimant's current vehicle. However, the 1st DCA ruled that a medically necessary medical apparatus is not apportionable. In this case, the proper standard of review was competent, substantial evidence. Two separate physicians, along with separate individuals who evaluated the vehicle, believed the van was medically necessary. The 1st DCA affirmed the award.

AVERAGE WEEKLY WAGE

Karnes v. City of Boca Raton, 28 FLW D2639 (Fla. 1st DCA, Nov. 17, 2003). The claimant appealed the JCC's order that the proper AWW to be used must be determined from the claimant's actual wages for the 13-weeks prior to his injury. The claimant suffered a non-occupational disease in jury in 1989. The claimant's AWW was calculated based on 13 weeks prior to his accident. The claimant continued to work for the employer through 2001. In September of 2001, the claimant requested recalculation of the average weekly wage. The 1st DCA ruled the proper average weekly wage should be based on the 13 weeks prior to his injury, as this was a non-occupational disease case.

INDEPENDENT MEDICAL EXAMINATION

Chavez v. J&L Drywall & Travelers Ins. Co., 28 FLW D2667 (Fla. 1st DCA, Nov. 19, 2003). The E/C requested one of their own attorney's at the claimant's independent medical examination. The JCC granted the employer/carrier's request. The 1st DCA reversed, holding that where there is no reasonable basis for the E/C's request, it should be denied.

MEDICAL BENEFITS

Florida Power Corp. v. Brown, 28 FLW D2682 (Fla. 1st DCA, Nov. 21, 2003). The JCC awarded medical monitoring to the claimant, based on the claimant's exposure to asbestos as this exposure would be qualified as a disablement, resulting from an occupational disease, according to Fla. Stat. Sect. 440.151(1)(a). This section would be applicable if the claimant had suffered a disability. Here, the claimant was only diagnosed with the disease, but did not suffer a specific injury. The claimant did not suffer any disability. Therefore, the 1st DCA reversed the award of medical monitoring, as the claimant did not actually suffer from a "disability."

CASE NOTES

Case Notes is published by Hurley, Rogner, Miller, Cox, Waranch & Westcott, P.A. to update our clients on significant appellate court decisions and developments which warrant your review. The topics contained in this newsletter are abridged from appellate court decisions and are not to be construed as legal advice or opinions on specific facts. If you have any questions or need further information pertaining to any of the topics in the newsletter, then please give one of our attorneys a call at (407) 571-7400.