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CASE NOTES
CASE LAW SUMMARY
2008

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

Acosta v. T.J. Pavement Corp., 3 D07-2190 (Fla. 3rd DCA 2008): Reversed summary final judgment in favor of employer which was based upon workers' compensation immunity. The case involved the estate of a worker killed when the five foot deep trench he was working in collapsed. The trench had standing water and no trench support. In reversing the summary final judgment, the Court took note of OSHA violations as well as the Trench Safety Act (ss. 553.60-64, Fla. Stat.) The Court also considered expert affidavits and testimony. The Court found genuine issues of fact existed that would allow the demonstration that the conduct of the employer was substantially certain to result in injury or death.
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Ruiz v. Bellsouth Credit and Collections, 1D07-6509 (Fla. 1st DCA 2008): The Court held that the Judge erred in finding the Claimant was at maximum medical improvement and denying a neurologist evaluation. The Claimant was not at MMI as the authorized physician testified the Claimant was at MMI based on his being unable to do anything more for the Claimant and contingent on MRI results and specialist evaluations. The Judge awarded evaluations with multiple specialists because they were necessary to determine whether there was a causal relationship between the Claimant's complaints and the compensable accident. However, despite a similar referral to a neurologist, the Judge had denied neurological care as the Claimant had pre-existing headaches and the referring physician could not relate the complaints to the industrial accident. The Court held the neurologist should have

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been awarded for the same reason the other specialists were awarded.
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Eaton v. Pinellas County School Brd/Johns Eastern, (Fla. 1st DCA November 21, 2008): The claimant, a school teacher, entered into a contract with the school board for a salary over ten months, although an "option agreement" was also signed spreading payment of her wages out over twelve months. The E/C asserted her AWW was 599.24 (the wages she **was paid** in the 13 weeks prior to her accident), while the claimant asserted her AWW was $740.57 (the amount claimant **earned** in the 13 weeks before the accident). JCC Remsnyder concluded the AWW should be based on the contract with the option agreement, basing the $599.24 AWW on the amount claimant was paid rather than what she earned. The DCA reversed and remanded, finding that the statute plainly and unambiguously states the AWW "shall be one-thirteenth of the wages earned in such employment…." , holding that the claimant earned $740.57 per week, regardless of when she chose to receive the money she earned. Click here to read case

M.D Transport/Gallagher Bassett v.Paschen, (Fla. 1st DCA November 21, 2008): The First DCA reversed and remanded JCC Hofstad's finding that a claim for psychiatric care was barred by the doctrine of res judicata. The Appellate Court also reversed and remanded the Judge's finding that language in section 440.25(4)(d) ("Any benefit due but not raised at the final hearing which was ripe, due or owing at the time of the final hearing is waived") was substantive and was not applicable to the claimant's claim. The claimant filed a PFB in 2004 seeking psychiatric care based upon a treating doctor's 2002 recommendation. The parties went to hearing in April of 2005 on a prior PFB, with mediation on the '04 pscyh claim scheduled after that date. The judge subsequently found the psych claim could be tried, asserting that issue was not "ripe" at the time of the prior hearing, as it had not been mediated. The DCA held the issue to have been "ripe" in 2002 when the prescription for psychiatric care was written, and that the claimant should have utilized one of various options available to him to get the issue before the JCC at the April 2005 hearing. The DCA rejected the JCC's reliance on prior case law suggesting that an E/C's knowledge of a yet to be litigated issue would prevent res judicata, limiting that holding to its particular underlying facts. The DCA dismissed the JCC's analysis that F.S. § 440.25(4)(d) was substantive (because "by possibly barring claims it substantively affected an injured worker's entitlement to benefits"). The DCA found that section only prescribes the means and methods with which a claimant must comply, and found it applicable to all dates of accident. Click here to read case