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 Tuner, Jr.*
Paul L. Luger
Gregory S. Raub*
Anthony M. Amelio*
Matthew W. Bennett*

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
Zalman F. Linder
Matthew J. Troy
Geoffrey C. Curreri
C. Bowen Robinson
Michelle Bayhi
Gina M. Jacobs

Stephen G. Conlin
Of Counsel

*Florida Bar Board Certified Workers' Compensation
† Florida Bar Board Certified Appellate Practice

www.hrmcw.com

CASE NOTES
CASE LAW SUMMARY
SEPTEMBER 2011

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

Compensability/ "Arising out of" element of causation

Sentry Insurance Co./Express Scripts Inc. v. Hamlin, (Fla.1st DCA 9/22/2011) (William H. Rogner)

In August of 2011, the First DCA heard oral argument on two appeals at an "adjuster breakout" during the Workers' Comp convention. Bill Rogner argued this case. The DCA issued a lengthy, 15 page opinion adopting the E/C arguments that the "arising out of " element of causation had not been met in this situation, and that a "course and scope" analysis alone is insufficient. The opinion soundly rejected the claimant's theories, and provides much needed guidance for claims professionals in determining whether or not to accept claims where the risk causing injury is neutral, ie. without an particular employment character or connection.

The claimant was injured attempting to retrieve personal property from a car which his lender was repossessing from the employer's parking lot. The parties agreed the claimant was in the course and scope of employment, but disagreed as to whether the injuries were "arising out of the work performed" pursuant to F.S. s. 440.09(2008). The claimant argued his injury was compensable (1) under the premises rule as he was injured on premises preparing to perform work; (2) because it occurred during a paid break; (3) because he was ministering to personal comfort, or otherwise involved in a momentary deviation and; (4) because retrieving his property was an emergency

pursuant to 440.092(3)(2008). The court rejected the premises theory, as the occurrence at the workplace was merely fortuitous and had no connection to the employer's work or business. They dismissed the personal comfort theory, as it did not meet the traditional elements of (a) being a traditional or routine part of the work place experience (b) the employee's participation in the activity produced no benefit to the employer and (c) the injury resulted from either a work created or neutral risk. Similarly, the emergency standard was rejected as no objective emergency existed in retrieving the property.

The court repeated that "arising out of" means the injury must (1) be causally connected to the employment, (2) have had its origin in some risk incident to or connected to employment, or (3) flow from employment as a natural consequence. As the claimant was on a purely personal mission having no relationship to work, he was unable to demonstrate he suffered an accidental compensable injury arising out a risk of his employment.

Temporary Benefits/Penalties/Ripeness

<u>West v. University of Miami/Gallagher Bassett</u>, (Fla. 1st DCA 9/16/2011)
Substituted Opinion for 7/22/2011 Opinion
The DCA denied the claimant/Appellant's Motion for Rehearing, but granted the E/C /Appellee's Motion for Rehearing. The substituted opinion minimally deviates from the earlier opinion. As in the prior opinion, the DCA reversed an award of TPD, as MMI existed prior to that date. The court reversed a denial of penalties for properly awarded late payments, finding such penalties mandatory rather than discretionary. The prior opinion noted the JCC erred in denying a claim for authorization of a plastic surgeon, finding the E/C "never asserted ripeness as a defense." The substituted opinion states only that the JCC erred in determining whether the plastic surgery issue was properly before him, and removed the "ripeness as a defense" language. If the JCC finds the issues are properly before him, he is to rule on that issue on remand. **Click here to view Order**

Settlements/Converted Funds

<u>Norvell-Murphy v. The Place at Vero/Cambridge Integrated Svcs.</u>, (Fla.1st DCA 9/8/2011) PCA without written opinion.

Two days after Bill Rogner argued the case, the First DCA issued this PCA affirming the JCC's order. Tony Amelio previously settled this case, and forwarded the settlement checks to the claimant attorney to hold in trust. The claimant attorney (subsequently disbarred) stole the funds and they have never been repaid. After initially indicating she had fully intended to settle, the claimant later argued that no meeting of the minds or agreement had ever been reached, due to alleged duress by her attorney. The JCC's affirmed Order found the parties had a binding agreement, and the E/C acted properly in forwarding the funds and had no further responsibility to the claimant.
Click here to view Order