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September 3, 2024

What's New In Our Workers' Compensation Industry
Florida

January 1, 2025 - NCCI Workers' Compensation Premium Rate Filings

On August 23, 2024, the National Council on Compensation Insurance presented an overview of its filing for 2025 workers' compensation rates to insurance and business representatives. The following are bullet points presented:

- NCCI has proposed a -1.0% overall rate decrease.
- If approved by OIR, the cumulative rate decrease since 2003 would be -77.7%.
- The two most recent policy years' experience and the medical and indemnity trends components of the filing result in a -6.1% decrease.
- This decrease is offset by the benefit changes (physician fee increases) in SB 362, which result in an increase of +5.7%.(See discussion below concerning medical cost increases.)
- Minor changes in expense provisions and the profit and contingency factor make up the other components of the filing.
- Without the benefit changes, the rate change would have been -6.4%.
- Claim frequency decreased another 4% in the experience period. Claim frequency has decreased 38% since 2011 in relation to premium.
- Claim severity for indemnity and medical remained flat although the latest policy year reflects a 1% increase in medical severity.

Bottom line: Florida's work comp market is still healthy. The continued growth in Florida's payroll combined with safer workplaces continues to produce lower claim frequency.

Medical Fee Schedules

After holding a public workshop or hearing on July 25, 2024 in Tallahassee, the Department of Financial Services, Division of Workers' Compensation (Department), indicated that they would hold additional public hearings and discussions regarding proposed revisions to the Florida Workers' Compensation Health Care Provider Reimbursement Manual, (Provider Manual) incorporated by Rule at 69L-7.020, F.A.C. Recent legislative changes to the specific, non-facility (hospital) reimbursements in §440.13(12), F.S. (Payments to physicians were discussed in previous 2024 Legislative Updates referenced in Firm Newsletters.) The Department also indicated that there would be a review of the policy and procedural portions of the Manual. More extensive rule workshops are planned as referenced below.

The Department has already posted the new Physician/Provider Fee Schedule of Maximum Reimbursement Allowances (MRAs), which go into effect January 1, 2025. Initially, the Department's goal was to revise the entire Provider Manual to reflect the new MRAs, and any new policy language, by January 1, 2025. Initially, the Department wanted to remove some of the procedural rule requirements from the Provider Manual and put them in a separate rule. However, the initial proposed revision did not transfer the rules, but merely struck major portions of the manual. Public comments at and following the July 25, 2024 public hearing reminded the Department of the value of the current Manual to all sectors of the industry. In particular, major portions of medical reimbursement processes are not covered by the general workers' compensation statute, and a wholesale 'cut' from the Manual without a review and rulemaking transfer would produce chaotic reimbursements in some sectors, and encourage new versions of previously limited price gouging schemes.

The Department has announced another public meeting with an option for the public to attend electronically, allowing industry stakeholders to listen, ask questions and provide comments on any suggested changes. See below. The current version of the Health Care Provider Manual, was developed over many years, if not decades, and was the product of industry-wide consensus, which is often difficult to achieve in this system. We encourage all industry participants to monitor and attend these public hearings on these Reimbursement Manual and Proposed Rule Revisions. For more information, contact Ralph Douglas in our Tallahassee office at (850) 510-3940.

Workshop on Health Care Provider Reimbursement Manual

The Florida Division of Workers' Compensation has announced a virtual Workshop for Rule 69L-7.020, F.A.C., Florida Workers' Compensation Health Care Provider Reimbursement Manual. The Workshop will be held on Thursday, September 12, 2024 at 10:00 a.m. – 12:00 p.m. Eastern Time. The meeting will not be held in person. See attached Notice of Workshop for information to connect to this meeting electronically.

Department of Justice (DOJ) Announces New Pilot Program

Beginning August 1, 2024, the U.S. Dept. of Justice (DOJ) launched a new initiative to "crack down on corporate crime." The Corporate Whistleblower Awards Pilot Program was reportedly designed to fill in gaps not covered by other programs, including but not limited to "health care fraud schemes targeting private insurers as well as domestic corruption involving companies. As part of this pilot program, DOJ encourages submission of "original information" to the DOJ, with the promise that any asset forfeiture tied to successful prosecution, as a result of such submission may result in an award equal to 30% of any forfeiture, for qualifying events.

We cannot say whether or to what extent this program will impact state workers' compensation claims. DOJ's primary focus has been Medicare, Medicaid and TRICARE fraud, all federally funded programs. However, other recent DOJ announcements suggest they may also investigate health care fraud schemes running parallel to state workers' compensation systems, typically when such schemes cross state lines, or violate federal law. This suggests

DOJ may be open to expanding their purview of appropriate investigation of alleged wrongdoing, otherwise falling within their jurisdiction. For more information, visit: www.justice.gov/CorporateWhistleblower. See also, https://www.justice.gov/criminal/criminal-fraud/recent-national-enforcement-actions.

Florida Case Law Summary Presented at the 2024 WCI Conference

Lou Stern, Managing Attorney in the firm's Sarasota office, moderated a panel discussion at the recent WCI Conference in Orlando, Florida, concerning appellate court decisions recently rendered by Florida's Appellate Court. Case summaries were prepared by Firm Partner Laura Buck in the Gainesville office. The following summary of cases were those that were discussed at this year's conference.

ATTORNEY'S FEES

Michael Rudolph v. Darien Smith, The Home Depot U.S.A., Inc./Liberty Mutual Ins. Co.
377 So. 3d 1186
1/24/24

This appeal stems from an Order on Attorney Fees filed following the settlement of this claim dating back to 1993. The claim settled for $13.5 million, and a Motion was filed for the JCC to approve attorney's fees of $1,330,000.00 to resolve all fees and costs, including those of the Claimant's prior attorneys. In this case, a statutory fee would have been $2,025,750.00; however, all attorneys involved agreed to the lower fee. The fees owed to the Claimant's former attorneys were approved by the JCC. The Claimant's current attorney, Rudolph, filed a Motion for Approval of his fee of $805,000.00, and the JCC reduced the fee to $123,000.00, citing the hourly rate requested was unreasonable. This appeal ensued. The Claimant's attorney argued there were no exceptional circumstances to warrant the JCC's downward departure from a guideline fee, or even a less than guideline fee. The DCA agreed, focusing on the JCC's finding that the hourly rate created by the fee was unreasonable. The DCA cited the *Alderman* case where it was found a JCC can consider the hourly fee, but it cannot be the only reason for a downward departure. The JCC's order was reversed, and the originally stipulated fee of $805,000.00 was found reasonable.

COMPENSABILITY

East Coast Waffles, Inc. d/b/a Waffle House/Brentwood Mgmt. Svcs, Inc. v. Jonathan L. Haselden
373 So. 3d 916
10/4/2023

The Claimant worked as a grill cook for the Employer. On 6/5/19, after working a 17-hour shift with no real breaks, he began to experience low back pain. He reported the pain to his manager, who suggested he (the manager) perform a manipulation to the low back to relieve the pain. The Claimant agreed, and it would seem this worsened his pain. The Claimant filed Petitions for Benefits seeking compensability of a low back injury as a result of the manipulation performed by the manager, as well as medical and indemnity benefits. The E/C denied same. The JCC

found the claim to be compensable on the basis that the Claimant sustained an injury from either working the 17-hour shift, or from his manager manipulating his back, and that either was within the course and scope of the Claimant's employment. The E/C appealed, and the DCA reversed finding the Claimant failed to prove his injuries arose out of his employment.

The DCA found the Claimant never pled the 17-hour shift was the cause of the injuries. The PFB clearly stated the accident description was the manager's manipulation of the Claimant's back. The Claimant never alleged the issue with the double shift, or a repetitive trauma type injury, nor did he meet the burden of repetitive trauma. With regard to an injury because of the manager manipulating the low back, the DCA pointed out Chapter 440 covers "work-caused injuries," not "workplace injuries." The injury must flow from the employment, and there must be a causal connection. In this case, the Claimant's injuries caused by the manipulation of his back were not the result of an employer-provided task, or part of his duties as a grill cook.

Normandy Ins. Co. y v. Mohammed Bouayad and Value Car Rental, LLC
372 So. 3d 671
8/16/23

The Claimant, Bouayad, was shot multiple times by an unidentified shooter, while working for the Employer, Value Car Rental. He was on shift walking in between buildings. The parties stipulated the shooting occurred in the course and scope of his employment. At issue was whether the injuries sustained arose from the work performed for the Employer. The JCC found in the affirmative, and awarded benefits. The DCA reversed, and set aside the JCC's Order.

In the opinion, the DCA found it was the Claimant's burden to prove an occupational cause of the shooting, and he failed to do so. The DCA seemingly ignored the conflicting evidence presented at trial as to whether the shooting was premeditated and caused by a conflict between the possible shooter and the Claimant's son, or due to the fact the Claimant worked in a high-crime area. Instead, the DCA pointed out that the Claimant must show the cause of his injury arise from the work performed, specifically, he was shot as a direct result of him walking from one building to another. The DCA reviewed fundamental cases related to this matter, and found that in prior cases where an injury is caused by a tortfeasor, there is an occupational connection. In *Strother v. Morrison Cafeteria*, the Claimant was targeted by assailants who knew she carried cash deposits for the employer home each night, and evidence showed they had watched the Claimant for a few nights to confirm this. In *Santizo-Perez v. Genari's Corp.*, the Claimant, a grocery store employee, was killed in the parking lot when an assailant ran him over with his car. The Claimant was specifically targeted because the assailant thought the Claimant was sexually harassing the assailant's girlfriend, who was the Claimant's co-worker. In that case, the dispute that caused the death stemmed from work.

In Bouayad's case, he failed to show an occupational cause to the shooting, and the JCC's Order was reversed. The DCA did certify the following question to the Florida Supreme Court: Notwithstanding S*trother v. Morrison cafeteria*, when an act of a third-party tortfeasor is the sole cause of an injury to an employee who is in the course and scope of employment, can the tortfeasor's act satisfy the occupational causation element, as defined by section 440.02(36), necessary for compensability under the workers' compensation law?

Normandy Ins. Co. v. Mohammed Bouayad and Value Car Rental, LLC
372 So. 3d 671
10/20/23
Following the opinion, the Claimant filed a Motion for Rehearing en Banc. A vote from all regular active service 1st DCA judges was requested, and the Motion was denied.

COSTS

Palm Beach County School Board/Sedgwick CMS v. Frances Smith
49 Fla. L. Weekly D1105a
5/22/24

The JCC denied the E/C's Verified Motion for Prevailing Party Costs related to petitions filed in 2019 and 2020. Costs were awarded on the 2020 PFB, and same was affirmed by the DCA. Costs were denied by the JCC for the 2019 PFB, and this was reversed by the DCA. The DCA found the E/C did not waive any right to seek costs as prevailing party, as a result of a joint stipulation between the parties. The Joint Stipulation resolved Claimant's Attorney's fee and cost entitlement, but was silent on E/C prevailing party costs. This did not act as waiver on the E/C's party. Further, the DCA found that in workers' compensation matters a party can be both a prevailing party and a non-prevailing party. Pursuant to *Aguilar v. Kohl's*, costs can be sought by a party that prevails and loses on a matter.

EMPLOYER-EMPLOYEE RELATIONS

Miami-Dade County v. Keisha Guyton
48 Fla. L. Weekly D1500a
8/2/23

The Claimant suffered a work-related injury in 2017, and received workers' compensation benefits. A year after her accident, she was formally dismissed by the County for long-term absenteeism. The Claimant sued the county for violation of 440.205 because she was terminated due to her filing of a valid workers' compensation claim. The County asserted the termination was due to an inability to return to work for over a year after her injury. After the trial court denied the County's Motions for Summary Final Order and Directed Verdict, a jury found in favor of the Claimant, and awarded damages. The County appealed, arguing there was no evidence to support her termination was causally related to her workers' compensation claim or a pretext for her termination. The DCA opined that the evidence presented on trial must be viewed in a light most favorable to the non-moving party, or the Claimant, in this case. The evidence supported the jury's verdict, and the denial of the County's motions for directed verdict and summary final order.

Mathieu Francios v. JFK Medical Center Limited Partnership
370 So. 3d 324
8/30/23

The Claimant worked as a mental health technician at JFK Medical. He worked in a behavioral health unit that cared for patients with mental or emotional health needs, and was required to

follow crisis prevention de-escalation techniques when caring for patients. On 9/1/20, he was involved in two altercations. One was with a patient who attacked a nurse, and the Claimant sustained an injury to his left wrist. It is unclear if he reported this accident or incident in compliance with the hospital's procedures. The second incident involved another patient attacking a nurse. The Claimant took the patient to the ground, and witnesses claim the Claimant struck the patient. A review of video footage by the security director found excessive force was used. This was confirmed by multiple other entities within the hospital, in compliance with set procedures for investigating such incidents. The Claimant was then terminated. He sued the hospital under 440.205 stating he was terminated for his work-related injury. JFK moved for summary judgement, and the trial court agreed, as no evidence was presented that the firing was due to worker's compensation.

The Claimant appealed, arguing the trial court erred by applying the business judgement rule, and the dispute over whether he used excessive force remained a material fact at issue, precluding summary judgment. The business judgment rule precludes courts from second-guessing the business judgment of employers, and makes the relevant inquiry only whether the employer believed in good faith that the employee engaged in actions that led to discipline of the employee. This rule does apply to workers' compensation retaliation cases, and applying it here, summary judgment remains correct. The Claimant failed to meet his burden showing a dispute of material fact. He presented no evidence showing the reason for his termination was his workers' compensation accident.

FIREFIGHTER CANCER BENEFITS BILL

Christy Siena v. Orange County Fire Rescue/CCMSI
373 So. 3d 6
10/25/23

The issue present is whether receiving medical, indemnity, and death benefits under Florida Statutes, Section 112.1816 precludes receipt of death benefits under Florida Statutes, Section 440.16. In this case, the widow of a firefighter, who died of brain cancer, received benefits under 112.1816. The widow then sought benefits under 440.16, and same were denied by the E/C, arguing that 112.1816 was essentially the sole remedy. The JCC agreed, explaining that receive of benefits under Chapter 112 was the remedy elected, and benefits under Chapter 440 are not awardable.

In overruling the JCC, the DCA analyzed the language of 112.1816, 112.191(2), and 440.16(1). The DCA found that in reaching all provisions together, 112.1816 applies to the initial cancer diagnosis, and provision of medical benefits and a one-time cash payout. 112.191(2) applies upon the death of a firefighter, and the statutory language specifically states it is "in addition to any workers' compensation benefits." 440.16(1) addresses payment of death benefits if death results from the compensable accident within five years. The DCA noted that 112.1816(2) is an alternative to pursuing workers' compensation benefits under Chapter 440 for the firefighter; however, in this case, upon the firefighter's death, 112.1816 no longer applied, and the widow could receive both the death benefit payout under 112.191(2) and 440.16(1).

HEART & LUNG STATUTE

North Collier Fire Control and Rescue District/PGCS v. John David Harlem
371 So. 3d 368
8/9/23

The Claimant, a firefighter, was diagnosed with a thoracic aortic aneurysm, and underwent surgery for same. He sought compensability of his condition under 112.18, arguing it was caused by his occupation as a firefighter. He argued the aneurysm was heart disease, as outlined in 112.18, and the JCC agreed. The E/C argued before the JCC and on appeal that an aneurysm is not heart disease, and the statutory presumption did not apply. The DCA agreed, and reversed the JCC's opinion.

In doing so, the DCA addressed the definition of heart disease and the *City of Venice v. Van Dyke* case, as well as utilizing illustrations of the structures of the heart. While the *Van Dyke* court found thoracic aortic disease to be heart disease, it noted the surgery and treatment underwent by that claimant involved re-implantation of the aortic valve, one of the structures of the heart, and the holding was declared to be narrow and limited. The court stated that "under a different set of facts this court might be called upon to provide a more exacting definition of heart disease to exclude conditions which are not properly designated as such."

Ultimately, the DCA in this case determined the definition of heart disease, when the statute was enacted is the correct tool to determine what qualifies as heart disease for purposes of 112.18. The definition of heart disease is a type of disease affecting and weakening the heart muscle through a degradation of the vessels or the valves, and which was prevalent as major cause of death in the US in the 1950s and 1960s. This definition must be used when determining if a condition qualifies as heart disease. The Claimant's thoracic aortic aneurysm does not constitute as heart disease, as such, the presumption does not apply. Since the Claimant presented no evidence of an occupational cause for the aneurysm, the claim is not compensable.

Robert Friesen v. State of Florida Highways Patrol/Division of Risk Mgmt
364 So. 3d 1051
6/21/23

The Claimant, a law enforcement officer, sought compensability for his hypertension and heart disease under 112.18, or the heart-lung statute. The JCC found the Claimant was a member of a protected class; had a protected condition; and passed his pre-employment physical. The crux of the argument was whether there was evidence of a disability as a result of the condition. The JCC determined no disability occurred, and the DCA agreed, in an order outlining the history of the statutory and caselaw definitions of disability dating back to 1963. The DCA ultimately determined that as the law stands now, a disability can be shown by proof of actual wage loss, or an incapacity to earn the same wages received at the time of the accident. That incapacity must stem from treatment for the condition, and the work restrictions must create the incapacity to earn.

In this case, the Claimant argued that in the course of his diagnosis with hypertension, his doctor "held" him in the office for 10-15 minutes to monitor medication effects, and this constituted an

incapacity to earn. The doctor never provided actual work restrictions during or after the appointment. The DCA agreed with the JCC that there was no evidence of a disability, as such the claim for compensability was denied.

Seminole County, Florida/Johns Eastern Company, Inc. v. Chad Braden
378 So. 3d 637
12/13/23

At Final Hearing in this presumption claim, the E/C stipulated that 112.18 applied, and the Claimant was entitled to the statutory presumption his heart disease was work related. The E/C attempted to rebut the presumption by showing a non-work related cause of the heart disease, specifically, the Claimant's preceding COVID19 diagnosis. Both parties presented evidence to support their argument as to where the Claimant contracted COVID19. The Claimant argued he contracted it from his co-workers at work, therefore, making the diagnosis work-related. The E/C argued it was contracted outside of work. Utilizing the testimony of three physicians and the timeline of the Claimant's COVID19 diagnosis and activities, the JCC found COVID19 was contracted at work. Therefore, the cause of the heart disease being COVID19, and that being work-related, the E/C failed to rebut the statutory presumption, and the claim is compensable.

The DCA agreed with the JCC noting there was competent substantial evidence to support the JCC's findings. The DCA stated that because the E/C stipulated to the application of 112.18, they had to show a non-work related event or exposure. The JCC found they failed to do that, and the evidence supported the decision. The DCA did not address the E/C's constitutional challenge to 112.18, where it applies to first responders who have heart disease as a result of COVID19.

120-DAY PAY & INVESTIGATE

Daniel Murphy v. Polk County BOCC/Commercial Risk Mgmt
49 Fla. L. Weekly D1214a
6/5/24

In this opinion that referenced *Checkers Rest. v. Wiethoff*, the DCA noted the 120-day pay and investigate provision does not prevent the E/C from denying benefits on the basis that the injuries from the work accident are not the major contributing cause of the need for further treatment or surgery. In the case at bar, the E/C argued the Claimant was not entitled to further medical care for the work accident, specifically treatment with pain management. This was supported by testimony from multiple physicians. While the accident and initial treatment were compensable, once the Claimant reached MMI, and with the evidence presented, no further treatment was necessary as a result of the accident.

PERMANENT TOTAL DISABILITY BENEFITS

Gulf Management, Inc./Gallagher Bassett Services, Inc. v. Talmadge Wall
375 So. 3d 296
11/29/23

The DCA reiterated a common statement in recent orders, that they will not re-weight the evidence, but instead that is left to the JCC, as finder of fact. The standard is whether competent substantial evidence supports the decision, not whether it is possible to recite evidence supporting rejected arguments.

In addressing the PTD claim, and with regard to the *Blake* case, the DCA stated 440.15(1)(b) still determines if an injured worker qualifies for PTD. The three categories of proof outlined in *Blake* are guidelines for what a JCC may consider sufficient proof to prove PTD, and bring together findings from past cases. The JCC has flexibility in considering the factors when evaluating the evidence presented in a PTD claim. While the outcome of the case at bar may have differed if a different JCC presided over same, there was evidence to support the award of PTD benefits, and the decision is affirmed.

PROCEDURE

In re: Amendments to the Florida Rules of Appellate Procedure
49 Fla. L. Weekly S199a
10/12/23

As it pertains to workers' compensation appellate proceedings, Rule 9.180 of the Florida Rules of Appellate Procedure was amended to align with 440.25(5)(b). Verified Petitions to be relieved of appellate costs must be filed within 15 days after service of a notice of estimate costs, and any objections must be filed within 20 days of service of the petition. Estimated costs must be deposited within 16 days after service of notice of estimated costs, and any objection to a court reporter or transcriptionist must be filed within 15 days after service of the notice of selection. A party's failure to submit the required filing fee is not a jurisdictional defect.

REMEDIAL TREATMENT

Kelly Girardin v. An Fort Myers Imports, LLC d/b/a Autonation Toyota Fort Myers/Gallagher Basset
49 Fla. L. Weekly D990a
5/8/24

The DCA reversed the JCC's award of payment of attendant care services provided by the Claimant's husband for a fixed period of time. The DCA noted the services performed by the Claimant's husband fell under the umbrella of household duties or "other services normally and gratuitously provided by family members." The testimony showed the Claimant previously handled most, if not all, of the household chores and activities related to the family; however, since the accident, the husband was performing most chores, such as cooking, laundry, and taking care of the kids. The DCA did note that the husband's activities of carrying the Claimant

upstairs, bathing her, and transporting her to medical visits may be considered attendant care, but the JCC failed to ensure the award of attendant care payments was for those activities only.

STATUTE OF LIMITATIONS

American Airlines Group, American Airlines/Sedgwick CMS v. Alejandro Lopez
49 Fla. L. Weekly D1103a
5/22/24

The E/C argued the statute of limitations had run on the claim involving an 8/8/19 accident. The last medical benefits were paid on 9/22/20, and last indemnity paid on 11/13/20. A 7/24/20 Petition was fully resolved via a fee stipulation reached on 4/28/21. Then on 12/1/21 the Claimant filed a Petition for Benefits, and the E/C alleged the statute of limitations defense. Another Petition was filed on 6/6/22. The statute of limitations defense was again raised. The JCC found the fee and cost reservation on the 7/24/20 Petition tolled the statute of limitations until it was resolved on 4/28/21. The DCA disagreed noting that the plain language of 440.19 does not toll the one-year statute of limitations when attorney's fees and costs are pending. They have previously found the payment of attorney's fees is not a payment of compensation or furnishing of medical treatment, as such, it is not an event that will extend the statute of limitations. With the accident occurring on 8/8/19, and the last benefit being provided on 11/13/20, both the two year provision of 440.19(1) and the one year provision of 440.19(2) were met, as such, the 12/1/21 and 6/6/22 Petitions are barred by the statute of limitations.

WORKERS' COMPENSATION IMMUNITY

Fernando Galue v. Clopay Corporation, et. al.
48 Fla. L. Weekly D1740a
8/30/23

Clopay leased property from KTR SF II LLC, and hired Florida Fire Safety (FFS) to perform a fire safety inspection. The Claimant, Galue, worked for FFS, and performed the inspection. During the inspection, Claimant was injured when boxes being moved by an employee of Clopay fell on top of him. He received workers' compensation benefits from FFS. He then sued Clopay and the employee for negligence and vicarious liability. Clopay moved for summary final order arguing they were immune from liability because they are the statutory employer under 440.10(1)(b). They argued that the agreement with KTR created an obligation to perform a job or service, i.e. maintain fire safety of the building, and in hiring FFS, they were the statutory employer. The DCA overturned the summary final order in favor of Clopay, stating the relationship between Clopay and KTR did not create a contract to perform a job or service, and Clopay was not a contractor within the meaning of 440.10(1)(b). As such, Clopay, and their employee, are not entitled to immunity from the lawsuit filed by the Claimant.

Bottling Group, LLC v. Giovanni E. Bastien
49 Fla. L. Weekly D906a
4/24/24

While employed by Bottling Group, Bastien was shot by a co-worker, who was upset over union activities. Bastien notified management he intended to seek workers' compensation benefits, and was informed he was not entitled to benefits. The Carrier for Bottling Group filed a Notice of Denial denying the claim as it was not a compensable accident or injury, and the injury did not occur in the course and scope of employment. Bastien then filed a tort lawsuit against Bottling Group. Bottling Group asserted workers' compensation immunity, while Bastien argued they were estopped from asserting immunity. The trial court found Bottling Group was prohibited from raising immunity as a defense at trial, and the DCA affirmed.

The DCA discussed multiple cases on point, with similar facts and circumstances – *Coastal Masonry, Inc. v. Gutierrez; McNair v. Dorsey;* and *Ocean Reef Club, Inc. v Wilczewski*. This line of cases finds that an employer may be estopped from raising workers' compensation immunity if the employer denies the employee's claims by asserting the injury did not occur in the course and scope of employment. Essentially, an employer cannot take inconsistent positions by denying an injury occurred in the course and scope of employment, but they are also entitled to immunity from a tort action due to Chapter 440.