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FLORIDA LAW WEEKLY

Week of February 24, 2012

ESTOPPEL FROM ASSERTING WORKERS' COMPENSATION IMMUNITY

Mena v. J.I.L. Const. Group Corp., and Slorp Const. Co., Inc.,
37 Fla. L. Weekly D413 (Fla. 4th DCA February 15, 2012).

A general contractor in Davie, Florida subcontracted construction of homes to Slorp (Sub 1), who subcontracted work to J.I.L. (Sub 2). Sub 2 hired the Claimant. On December 4, 2004, the Claimant fell from a second floor roof truss sustaining multiple injuries. The Claimant filed for workers' compensation benefits with both Sub 2 and Sub 1. Sub 1 denied the entire claim on the grounds that the Claimant was employed by Sub 2. Sub 2 denied the entire claim stating no employer/employee relationship, and failure to report the injury timely.

The Claimant subsequently dismissed his Petitions for Benefits and filed a negligence suit against both Sub 2 and Sub 1. Sub 1 asserted the Claimant was acting in the course and scope of employment, and therefore the claim was barred as a

result of workers' compensation immunity under § 440.11, Fla. Stat. Sub 2 also asserted the claim was barred by workers' compensation immunity. Both Employers also listed defenses of comparative negligence and assumption of the risk.

The Claimant moved for partial summary judgment alleging the Employers were not entitled to the affirmative defenses under § 440.11(1)(a), Fla. Stat. This motion was denied. Sub 2 and Sub 1 moved for summary judgment under workers' compensation immunity. Sub 2 acknowledged it was the Claimant's Employer. The Claimant contended that the Employers were estopped from asserting immunity because of the previous denials. The trial court granted summary judgment for both Employers, finding the general denials were not inconsistent with their claims of entitlement to the immunity.

The court reviewed *de novo*, finding that when an employer denies a claim for benefits based on the fact that the injury did not occur in the course of scope of employment or if there was no employer/employee relationship, the employer may be estopped from asserting immunity in a later tort action. Estoppel is only available when an employer attempts to take inconsistent positions. Here, Sub 2's denial suggested that it was asserting that the Claimant was not its employee. At the later tort action, Sub 2 claimed immunity. Therefore, issues of material fact remained with whether Sub 2 asserted inconsistent positions which would estop it from claiming immunity.

Sub 1 maintained consistent positions. Sub 1 denied the Claimant's workers' compensation claim alleging it was employed by Sub 2. The affirmative defense of immunity noted that the Claimant was acting in the course and scope of employment performing work subcontracted to Sub 2. Therefore, there was no inconsistency and no estoppel as to Sub 1. Because Sub 1 was the Claimant's statutory employer, it was immune from the tort action. The court also held that an employee's claim does not need to be decided by a JCC before bringing a claim in civil court where the employer denies the claim as outside the course and scope of employment.