

RISSMAN, BARRETT, HURT,
DONAHUE & McLAIN, P.A.
ATTORNEYS AT LAW

STEVEN A. RISSMAN
ROBERT C. BARRETT
JENNINGS L. HURT III
ROBERT A. DONAHUE
JOHN E. McLAIN III
RICHARD S. WOMBLE
JOHN P. DALY
STACIE B. GREENE
THEODORE N. GOLDSTEIN
RAYMOND A. LOPEZ
VANCE R. DAWSON
RICHARD B. MANGAN JR.
HENRY W. JEWETT II
DANIEL M. POLLACK
ART C. YOUNG
NICOLE D. RUOCCO
DANIEL T. JAFFE
BEATRIZ E. JUSTIN
J. GREGORY GIANNUZZI
DAVID K. BEACH
F. DEAN HEWITT
EDWARD M. COPELAND IV
DAVID R. KUHN
G. WILLIAM LAZENBY IV
R. CLIFTON ACCORD II
ROBERT D. BARTELS
JILL M. SPEARS
JEFFREY J. KERLEY
KARISSA L. OWENS

OF COUNSEL
ROBERT J. JACK

EXECUTIVE DIRECTOR
W. SCOTT PETERSON

201 EAST PINE STREET
15TH FLOOR
P.O. BOX 4940
ORLANDO, FLORIDA 32802-4940
TELEPHONE (407) 839-0120
TELECOPIER (407) 841-9726
ORLANDO@RISSMAN.COM

TAMPA COMMONS
ONE NORTH DALE MABRY HIGHWAY
11TH FLOOR
TAMPA, FLORIDA 33609
TELEPHONE (813) 221-3114
TELECOPIER (813) 221-3033
TAMPA@RISSMAN.COM

207 SOUTH SECOND STREET
FT. PIERCE, FLORIDA 34950
TELEPHONE (772) 409-1480
TELECOPIER (772) 409-1481
FTPIERCE@RISSMAN.COM

AMY L. BAKER
DEREK J. BUSH
SEAN M. CROCKER
CHRISTOPHER E. DENNIS
SARAH E. EGAN
JAMES E. FAVERO III
JOSHUA T. FRICK
SUSAN R. FULLER
PAUL B. FULMER
JANNINE C. GALVEZ
ELISE J. GEIBEL
CHRISTOPHER A. HANSON
VICTORIA S. LUNA
LAURA F. LYTLE
ERIC F. OCHOTORENA
JEREMY T. PALMA
JEFFREY M. PATNEAUDE
WENDY L. PEPPER
MEGHAN C. REDDY
D. BLAKE REHBERG
KELLEY A. RICHARDS
RICHARD B. ROBBINS
JUAN A. RUIZ
BRYAN R. SNYDER
LARRY D. SPENCER
MEREDITH M. STEPHENS
ELIZABETH M. STUART
F. PAUL TIPTON
NICOLETTE E. TSAMBIS
JASON R. URBANOWICZ
CHRISTINE V. ZHAROVA

WWW.RISSMAN.COM

PLEASE REPLY TO: ORLANDO

FLORIDA LAW WEEKLY

Week of August 12, 2011

CHAPTER 27: Appellate Review

Jacksonville Sheriff's Office/City of Jacksonville Risk Management
v. Gerald Smith, 36 Fla. L. Weekly D1701 (1st DCA August 4, 2011)

At trial, the JCC found that the Statute of Limitations did not bar the claimant's Petition for Benefits and indicated that all other issues would be heard at a subsequent hearing. Thereafter, the Employer/Carrier filed an Appeal which was dismissed by the First DCA for lack of jurisdiction, as the JCC's Order was not a Final Order, as it did not depose of all matters presented to the JCC for adjudication. In addition, the Order did not contain the certification required by Florida Rule of Appellate Procedure 9.180(b)(1)(C).

Chapter 11- Attorney's Fees and Costs

Stephen M. Reynolds v. Commercial Carrier Corporation and Gallagher
Bassett Services, Inc., 36 Fla. L. Weekly D1702 (1st DCA August 4,
2011)

At trial, the JCC entered an Order awarding prevailing party costs to the Employer/Carrier. The claimant appealed to the First DCA.

The First DCA reversed the JCC's ruling, as the claimant's date of accident was 1996, which was before the 2003 Amendments to Section 440.34(3) (which now allows both a prevailing claimant and prevailing employer/carrier to recover its "reasonable costs"). As the claimant's accident occurred before this Amendment took effect and since the right to costs are substantive, the Amendment is not retroactive and only applies to dates of accident after the Amendment took effect on 10/1/03.

Chapter 4 - Temporary Partial Disability

Amie Perdue, as personal representative of the Estate of Lorna Gayle Perdue (deceased) v. Sebring Marine Ind. Inc. and Sentry Claims Center, 36 Fla. L. Weekly D1708 (1st DCA 8/4/11)

At trial, the JCC found that the claimant met her burden of proving entitlement to TPD benefits. However, the JCC denied the claimant's request for TPD benefits as the claimant did not submit a DWC-19 Employee Earnings Report to the Carrier. In making its decision, the JCC, relied on Jack Feagin Electric v. Hallmark, 894 So. 2nd 1083 (Fla. 1st DCA 2005), which held that TPD benefits were not due because the claimant failed to submit a DWC-19 form to the Carrier. However, in Hallmark, there was no finding made as to whether the Employer/Carrier had provided the DWC-19s to the claimant. Accordingly, and in light of Hallmark, the JCC concluded that the E/C was not required to prove that the forms were actually provided to the claimant.

The First DCA reversed and indicated that the JCC erred in this conclusion and held that the Hallmark case must be read to require that the forms be returned in order to establish entitlement to payment of TPD benefits **only** in those instances where the forms are actually provided to the claimant, as the carrier's provision of those forms is a condition precedent to the claimant's duty to return them.

In this case, the claimant argued that there was no evidence that the DWC-19 forms for the relevant time periods were ever sent. Further, the adjuster actually testified at trial that the forms were never sent to the claimant. Because the Employer/Carrier sought to avoid payment of the requested TPD benefits on the sole ground that the forms had not been completed, the Employer/Carrier had the burden to prove that it actually sent the forms to the claimant. As it failed to do this, the First DCA reversed with instructions that an Order be entered awarding the claimed TPD benefits to the claimant.