

**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 ACORD II  
ROBERT D. BARTELS

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 S. 2<sup>nd</sup> STREET  
FT. PIERCE, FLORIDA 34950  
TELEPHONE (772) 409-1480  
TELECOPIER (772) 409-1481  
FTPIERCE@RISSMAN.COM

WWW.RISSMAN.COM

PLEASE REPLY TO: ORLANDO

March 7, 2011

SEAN M. CROCKER  
CHRISTOPHER E. DENNIS  
SARAH E. EGAN  
JONATHAN D. EICHELBERGER  
JOSHUA T. FRICK  
SUSAN R. FULLER  
PAUL B. FULMER  
JANNINE C. GALVEZ  
ELISE J. GEIBEL  
CHRISTOPHER A. HANSON  
JEFFREY J. KERLEY  
VICTORIA S. LUNA  
LAURA F. LYTLE  
DARIEN M. MCMILLAN  
ERIC F. OCHOTORENA  
KARISSA L. OWENS  
JEREMY T. PALMA  
JEFFREY M. PATNEAUDE  
WENDY L. PEPPER  
JONATHAN K. POLK  
D. BLAKE REHBERG  
KELLEY A. RICHARDS  
JUAN A. RUIZ  
BRYAN R. SNYDER  
JILL M. SPEARS  
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MEREDITH M. STEPHENS  
ELIZABETH M. STUART  
F. PAUL TIPTON  
NICOLETTE E. TSAMBIS  
JASON R. URBANOWICZ  
CHRISTINE V. ZHAROVA

**FLORIDA LAW WEEKLY**

Week of February 18, 2011

**APPEALS - NON-FINAL ORDERS.**

KGW Services, Inc. and Norguard Insurance Co. v. Kenneth Wilder,  
36 Fla. L. Weekly D339, (Fla. 1ST DCA February 11, 2011).

Appeal dismissed because the Order to Show Cause is a non-appealable, non-final order as it specifically reserved jurisdiction on ripe claims for adjustment of the average weekly wage and temporary disability benefits.

**COSTS AND ATTORNEY'S FEES.**

Carrillo v. Case Engineering, Inc. and The Claims Center, 36 Fla. L. Weekly D339 (Fla. 1ST DCA February 11, 2011).

The claimant was injured in a construction accident on August 27, 1996. Subsequently he was paid temporary partial disability benefits which had long since been paid in full. He was also receiving medical benefits when the Petition for Benefits at issue, for permanent total disability benefits, attorney's fees, interest, and costs was filed.

The JCC denied the claimant's claims for PTD, attorney's fees, interest, and costs and ordered him to pay taxable costs to the employer.

As for costs, the First DCA agreed that the law on the date of accident did not authorize such an award for costs and, therefore, reversed the JCC's award of costs to the employer.

As for attorney's fees, the claimant's Petition for Benefits claimed attorney's fees. The employer/carrier subsequently amended the pretrial stipulation to raise a fraud defense.

The First DCA held that the claimant was entitled to attorney's fees as a result of defeating the employer/carrier's affirmative defense of fraud. This was because raising the affirmative defense of fraud placed compensability at issue. Defeating the affirmative defense preserved the claimant's right to ongoing medical benefits, which he was still receiving at the time the affirmative defense was raised. Thus, the First DCA reversed the JCC's Order denying all of the claimant's attorney's fees because the claimant prevailed on the issue of compensability.

JEF/vdw