

**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  
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 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

July 25, 2011

AMY L. BAKER  
AMANDA L. BRUS  
STEVEN B. BURRES  
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  
GREG R. SCHMITZ  
BRYAN R. SNYDER  
LARRY D. SPENCER  
MEREDITH M. STEPHENS  
ELIZABETH M. STUART  
F. PAUL TIPTON  
NICOLETTE E. TSAMBIS  
JASON R. URBANOWICZ  
CHRISTINE V. ZHAROVA

**FLORIDA LAW WEEKLY**

**Week of July 15, 2011**

**Application of EMA statute**

Snider v. Mumford, Inc., 36 Fla. L. Weekly D1477 (Fla. 1st DCA July 7, 2011).

The claimant was injured on the job in 1982. In 2009 she filed a PFB seeking authorization for non-professional attendant care. Due to disagreement as to the medical necessity of attendant care between the authorized treating psychiatrist and a psychiatrist independently sought by the claimant, the E/C requested appointment of an EMA pursuant to § 440.13(9). The E/C argued that because 440.13 addressed the procedure whereby a claimant is provided medical care, any changes to that section were procedural and applied retroactively.

The First DCA held that § 440.13(9), providing for appointment of an EMA, was substantive rather than procedural and, thus, could not be applied retroactively. The court noted that "cases addressing whether a change in the law should be viewed as substantive or procedural have routinely treated the

entitlement to a service, and the source of payment therefor, as a matter of substance."

In their analysis, the court analogized *Southern Bakeries v. Cooper*, which held that the 1994 amendment to § 440.13(5) creating a new IME procedure was substantive because "it alter[ed] the parties' obligation to pay for the claimant's [IME]." 659 So. 2d 339, 341 (Fla. 1st DCA 1995).

Although the EMA procedure did not exist prior to the 1994 statutory amendments, "tie-breaker" provisions similar to the EMA procedure have long existed in chapter 440. The statute in effect on the 1982 date of accident provided that a claimant was not required to pay for an examination ordered by the deputy commissioner at the claimant's suggestion.

When § 440.13(9) was amended 10/1/03 to require a claimant to pay for the "tie-breaker" examination if she made the request, a significant shift took place in a party's burden to bear the cost of the examination. Since the EMA provision in § 440.13(9) affects the substantive rights of the parties, it cannot be applied retroactively. In accordance with this finding, the court also held that it was error for the JCC to rely on the presumptively correct opinion of the EMA in denying attendant care.

### **Transportation Costs**

Williams v. Onyx Waste Servs. of Fla., 36 Fla. L. Weekly D1480 (Fla. 1st DCA July 7, 2011)

The First DCA reversed the denial of transportation to medical appointments because the JCC improperly required the claimant prove that transportation was medically necessary. The claimant conceded that he was physically capable of driving, but filed a PFB for transportation because he lacked reliable transportation.

Florida Law Weekly  
Week of July 15, 2011  
July 25, 2011  
Page 3

Since travel is incidental to medical care it is well-settled law that a workers' compensation carrier must either furnish transportation to authorized medical appointments or pay the reasonable cost thereof. Accordingly, transportation to medical appointments does not have to be independently medically necessary.