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Notice of Injury

Gomez Lawn Service, Inc., and Gomez v. The Hartford, 37
Fla. L. Weekly D2290 (Fla. 1st DCA September 28, 2012).

The claimant, along with his wife, were the owners of Gomez Lawn Service. The claimant was president and his wife was the corporate secretary. The claimant and his brother performed the services provided by the corporation and they were also paid as employees. The claimant did not exempt himself from workers' compensation coverage.

On July 13, 2010, the claimant was in a motor vehicle accident that resulted in injuries to his cervical and lumbar spine. When the claimant's wife was notified of the accident, she reported it to the employer's motor vehicle insurer, which opened a personal injury claim under the PIP provisions of the policy. The claimant treated through the summer and fall under the PIP insurance. The claimant treated with a neurologist who diagnosed him with a herniation at L5-S1 and surgery was discussed.

When the claimant's PIP benefits ran out, he filed a workers' compensation claim against The Hartford. A Petition for Benefits was eventually filed and the carrier denied it citing a lack of timely notice pursuant to 440.185. The JCC eventually denied the claim finding that the claimant and the employer were in fact the same party and did not notify the carrier of the injuries until 90 days after the accident.

The 1st DCA began its analysis by indicating that F.S. Section 440.41(1) indicates that notice or knowledge of the employer is also notice to the carrier. As such, the claimant was only required to report his injuries to the employer within 30 days of the accident and nothing more. The Court stated that when the legislature developed the statute, it was aware that small corporations often have shareholders and corporate officers that are also employees. The legislature did not see fit to implement any specialized rules regarding notice when the employee has some ownership interest in the corporate employer. The Court stated it is the job of the legislature, not the Court, to construct such specialized rules.

The carrier also made 3 separate jurisdictional/procedural arguments. First, the Court lacked subject matter jurisdiction because the interest of the employer and carrier were identical. Second, the employer lacked standing to file an appeal because the Order was favorable to it. Third, the employer did not preserve for appellate review its argument that the JCC erred in not applying Section 440.185(9). The Court dismissed the first argument as the carrier's denial of benefits created potential liabilities for the employer and as such, their interests diverged. The Court next stated that the Order was not wholly favorable to the employer because although it may benefit the employer because its premiums would not be affected, it also exposed them to other liabilities and employer remained liable for the claimant's injuries. As such, the Order was not wholly favorable to the employer. Finally, the Court rejected the carrier's premise that the issue was not preserved as the employer was not asking the JCC to impose the remedy in Section 440.185(9), and as such, there was no need to preserve the argument.

The Court then reversed the Order of the JCC and ruled the claimant properly gave notice to the employer within 30 days of the accident.

Attorney's Fees

The Department of Corrections v. Ferguson, 37 Fla. L. Weekly 2D308 (Fla. 1st DCA October 2, 2012).

The employer/carrier appealed an Order of the JCC arguing that the JCC erred in calculating the claimant's AWW, erred in awarding attorney's fees on a medical billing issue and erred in awarding a separate attorney's fee for time spent proving entitlement to a fee. The first two issues were affirmed, however, the Court dismissed for lack of jurisdiction the portion of the appeal challenging the hourly fee as the JCC reserved jurisdiction to determine the amount of the fee. The basis for the dismissal was an Order adjudicating entitlement to an attorney's fee but reserving jurisdiction on the amount was neither a Final Order nor an appealable Non Final Order.