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Florida Law Weekly  
Week of December 9, 2011

**PERMANENT TOTAL DISABILITY**

Matrix Employee Leasing, Inc. v. Hadley, 36 FLA. L. WEEKLY D2625  
(Fla. 1st DCA November 29, 2011).

The employer/carrier appealed a final order awarding the claimant permanent total disability benefits. The Judge of Compensation Claims awarded permanent total disability benefits on the basis that the claimant remained totally disabled at the time that his 104 weeks of temporary benefits expired. The claimant had not yet reached maximum medical improvement according to the authorized doctor.

The majority opinion reviewed the test outlined in City of Pensacola Fire Fighters v. Oswald, 710 So.2d 95 (Fla. 1<sup>st</sup> DCA 1998) case. In order to demonstrate entitlement to permanent total disability benefits prior to maximum medical improvement, the claimant must show that the total disability continued at the expiration of the 104 weeks and will continue even after maximum medical improvement. The court confirmed that remained the appropriate standard for demonstrating entitlement to permanent

total disability benefits prior to maximum medical improvement. The court reversed the Judge of Compensation Claims' award of permanent total disability benefits to the claimant.

**TEMPORARY PARTIAL DISABILITY BENEFITS/PENALTIES AND INTEREST**

Rucker v. Just Brakes, 36 FLA. L. WEEKLY D2663 (1st DCA December 2, 2011).

The claimant appealed a final order to the extent it denied penalties and interest on awarded temporary partial disability benefits. The Judge of Compensation Claims denied penalties and interest on the basis that the claimant failed to return Employee Earnings Reports that were forwarded to the claimant's attorney. The employer/carrier never raised that defense. The First DCA found that the JCC violated the claimant's due process rights. Considering the defense based upon the Employee Earnings Reports that was not properly raised deprived the claimant of the right to present evidence on that issue. The First DCA reversed the JCC's order and directed payment of penalties and interest to the claimant.