

**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
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
GREGORY GIANNUZZI
DAVID K. BEACH
F. DEAN HEWITT
EDWARD M. COPELAND IV
DAVID R. KUHN
G. WILLIAM LAZENBY IV
R. CLIFTON ACORD II
JILL M. SPEARS
JEFFREY J. KERLEY
KARISSA L. OWENS
JOHN P. DALY

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

709 SEBASTIAN BOULEVARD
SUITE B
SEBASTIAN, FLORIDA 32958
TELEPHONE (772) 228-3228
TELECOPIER (772) 228-3229
SEBASTIAN@RISSMAN.COM

WWW.RISSMAN.COM

PLEASE REPLY TO: ORLANDO

AMY L. BAKER
AMANDA L. BRUS
STEVEN B. BURRES
DEREK J. BUSH
JEFFREY A. CARTER
SEAN M. CROCKER
CHRISTOPHER E. DENNIS
AARON E. EAGAN
JAMES E. FAVERO III
SUSAN R. FULLER
PAUL B. FULMER
JANNINE C. GALVEZ
ELISE J. GEIBEL
CHRISTOPHER A. HANSON
RYAN W. HOYLE
VICTORIA S. LUNA
LAURA F. LYTLE
ERIC F. OCHOTORENA
JEREMY T. PALMA
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
MEGHAN C. WHISENHUNT
MICHAEL C. WOODARD
CHRISTINE V. ZHAROVA

Florida Law Weekly

December 20, 2013

**Chapter 1 - Accidents Arising Out of and in the Course and
Scope of Employment**

Omar Lopez v. All Star Investigations, Inc. and Travelers
Insurance Company, 38 FLW D2639 (1st DCA December 17, 2013)

The claimant, who worked as an armed security guard for the employer, fell while engaged in work activities on April 19, 2012, sustaining injuries to his right elbow, right shoulder and right knee. Three days prior, the claimant fell while at a shopping mall (not work-related), injuring his left knee. The E/C denied the claim, asserting that the April 19, 2012 accident was caused by an "idiopathic" condition, namely the left knee injury. It was undisputed by the E/C that the claimant suffered a fall at work and while he engaged in work activities. The E/C also did not dispute that they had the burden of proving a pre-existing condition existed which caused the April 19th fall and argued at trial that they met that burden. The JCC's Order noted

that the issue was whether the claimant was credible when he claimed that he fell as a result of slipping on grease or gravel and determined that he was not credible, finding for the E/C and denying compensability.

On appeal, the 1st DCA reversed, stating that the JCC failed to complete the necessary legal analysis and determine whether the claimant's April 19th accident was caused by a pre-existing condition. Pursuant to Ross v. Charlotte County Public Schools, 100 So 3d. 781 (Fla. 1st DCA 2012), if there is no pre-existing condition that contributed to the accident or injury, and the accident occurred while the claimant was engaged in work activities, then the claimant has established occupational causation. The case was reversed and remanded for further proceedings consistent with the above.

Chapter 16- Medical

Daniel Stahl v. Hialeah Hospital and Sedgwick CMS, 38 FLW D2646 (1st DCA December 17, 2013)

The claimant filed a writ of certiorari review of the JCC's order granting E/C's Motion to Compel an IME with Dr. Hyde. The writ was accepted by the 1st DCA, as the required findings for obtaining same were met. Claimant objected to the IME on 2 bases: 1) that there was no dispute; and 2) the E/C already had an IME with Dr. Diaz.

The 1st DCA rejected the claimant's first argument that there was no dispute as the Pre-trial Stipulation prepared by the parties confirmed evidence of a dispute regarding disability and payment of indemnity benefits. However, the second objection regarding the IME examiner had merit, as the E/C already had an IME with Dr. Diaz, a psychiatrist. Pursuant to §440.13(5)(a), the parties are only entitled to one IME per accident and not one IME per specialty. The E/C did not put forth any evidence to invoke the provisions of §440.15 (5)(b), which would allow for an additional IME. The mere fact that Dr. Diaz is a psychiatrist did not establish that he is unqualified to render an opinion on the claimant's physical condition as a matter of law. Consequently, the writ was granted and the Order on the Motion to Compel was quashed.