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February 6, 2014

FLORIDA LAW WEEKLY

Week of January 31, 2014

WORKERS' COMPENSATION IMMUNITY:

Peña v. Design-Build Inter American, Inc., 39 Fla. L. Weekly D209, (Fla. 1st DCA January 22, 2014).

Child court entered summary judgment in favor of defendants ("DBI"), finding no genuin issues of material fact and that defendants were entitled to workers' compensation immunity.

In 2008, DBI served as a general contractor and construction manager at a project at a lease processing plant. Royal Plumbing was a plumbing subcontractor and One-Stop Plumbing Supply supplied the plumbing parts to Royal Plumbing. Joe Gonzalez was the president of both Royal Plumbing and One-Stop Plumbing and both companies operated out of the same location. The Claimant worked as a plumbing supply delivery man for either Royal Plumbing or One-Stop Plumbing or both.

While in the course and scope of employment, the Claimant delivered a steel pipe to the construction site. Once there, a

Royal Plumbing employee advised him to take the steel pipe to an upper level location. The Claimant helped carry the pipe up to the second level and held it in place while it was installed. As he was walking to the lift to return down to the lower level, he stepped on a false ceiling and fell from the upper level 20 feet to the ground causing serious injury, leaving him in a persistent vegetative state. The Claimant's wife, as guardian, filed a lawsuit against DBI and Royal Plumbing for negligence and loss of consortium.

Prior to filing suit, the Claimant's wife (and presumably the Claimant) received workers' compensation benefits from State Farm, the workers' compensation insurer for both Royal Plumbing and One-Stop Plumbing. Both companies asserted workers' compensation immunity as an affirmative defense and filed Motions for Summary Judgment on this basis.

The issue presented regarding the motions was whether the Claimant was an employee of Royal Plumbing or One-Stop Plumbing. The Claimant asserted that there were main genuine issues of disputed facts in this regard precluding summary judgment and that exceptions existed to any claim for workers' compensation immunity. The trial court granted the motions and found the Claimant was the employee of Royal Plumbing and entered summary judgment in favor of DBI and Royal Plumbing.

The court pointed out that if Royal Plumbing was the Claimant's employer, all of DBI and Royal Plumbing defendants would be entitled to immunity, absent application of any statutory exception. However, if the Claimant was employed by One-Stop Plumbing, a supply company and not a subcontractor, none of the defendants would be entitled to immunity.

The evidence presented to support the Claimant was an employee of Royal Plumbing included an employment application on Royal Plumbing letterhead; W-2 forms listing Royal Plumbing as the employer; a new hire reporting form for the State of Florida from Royal Plumbing referencing the Claimant's hiring; weekly pay stubs from Royal Plumbing to the Claimant; testimony from the Claimant's wife that Royal Plumbing employed the Claimant; the Petition for Benefits signed by the Claimant's wife listing Royal Plumbing as the Claimant's employer; interrogatories where

the Claimant's wife named Royal Plumbing as the Claimant's employer; testimony from an employer representative of Royal Plumbing that it was the Claimant's employer on the date of accident; testimony by the same employer rep that One-Stop Plumbing had its own separate driver for delivering supplies and that the Claimant only delivered supplies for Royal Plumbing; an affidavit by the president of both Royal Plumbing and One-Stop Plumbing that the Claimant was employed only by Royal Plumbing and never by One-Stop Plumbing.

The evidence presented to support One-Stop Plumbing was the Claimant's employer include the following: deposition testimony by the president of Royal Plumbing and One-Stop Plumbing that the Claimant was employed by One-Stop Plumbing; testimony from a State Farm representative that based on auditors reports, the Claimant was designated as an employee of One-Stop Plumbing; testimony from an employee of Royal Plumbing that the Claimant made plumbing supply deliveries to job sites in a company truck with a Royal Plumbing logo, but that Royal Plumbing and One-Stop Plumbing are "the same thing;" testimony from another Royal Plumbing employee that the Claimant delivered plumbing materials in both Royal Plumbing and One-Stop Plumbing vehicles.

Based on this, although there is substantial evidence to support the Claimant was a Royal Plumbing employee, there are still genuine issues of material fact in regards to this dispute and, consequently, summary judgment was not properly granted. The 1st DCA then reversed and remanded.

The court also briefly discussed that the president of both Royal Plumbing and One-Stop Plumbing would be entitled to immunity under either scenario, unless one of the exceptions is met (i.e. substantially certain standard).

COMPENSABLE ACCIDENTS:

Jose v. Goodwill Industries and Gallagher Bassett Services, Inc., 39 Fla. L. Weekly D212, (Fla. 1st DCA January 23, 2014).

In 2011, while loading barrels of clothing into a machine at Goodwill, the Claimant leaned forward to operate a switch on the machine, fainted, and fell to the ground.

Two IMEs occurred. The Claimant's IME, neurologist, Dr. Suite, initially opined that all conditions he diagnosed the Claimant with were probably related to the fall based on the Claimant's description of the accident. When asked for objective medical findings to support his diagnosis, Dr. Suite admitted that some of the diagnosis were based solely on the Claimant's subjective complaints and confirmed that diagnostic testing done at the hospital detected no injuries. The remaining diagnoses were based on observing the Claimant. Ultimately, Dr. Suite conceded there was no objective medical evidence connecting the conditions to any injuries sustained in the fall. The Employer/Carrier's IME, Dr. Danski, could not connect the Claimant's symptoms to the fall, as the hospital reports did not note some of the complaints and the Claimant could not tell him when exactly they started. Dr. Danski affirmed that some of the pain the Claimant experienced resulted from the fall, but did not identify a specific fall-related injury that was causing the pain. Although a CT scan taken at the hospital did reveal a hematoma and some hemorrhaging, neither Dr. Suite nor Dr. Danski was asked whether these conditions constituted objective medical evidence of an injury related to the fall. Consequently, no admissible medical testimony was presented by the Claimant that, within a degree of medical certainty, the CT scan showed he suffered an injury from the fall. Consequently, the JCC correctly denied the Petition and his decision was affirmed.

JEF/dbd