

**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

March 21, 2014

Chapter 19- Practice and Procedure

Flagler Hospital Inc. v. Association Insurance Company, and
Department of Financial Services, Division of Workers'
Compensation of the State of Florida, 39 Fla. L. Weekly D548
(Fla. 1st DCA March 12, 2014)

In this reimbursement dispute, Flagler Hospital challenged a final order from the Workers' Compensation Division of the Department of Financial Services which found that it lacked subject matter jurisdiction over the claim. The 1st DCA affirmed holding that the Department lacks jurisdiction over a medical billing dispute until compensability of the claim is established. Compensability was at issue and had not been determined at the time this claim was filed. The constitutional challenges raised by Flagler Hospital regarding access to courts was also denied as the hospital failed to show that all other avenues of redress had been exhausted.

Chapter 7- Heart Cases

Johns Eastern Company and Indian River County BCC v. Jerald Bellamy, 39 Fla. L. Weekly D553 (Fla. 1st DCA March 12, 2014)

The E/C appealed an order of the JCC finding that the claimant, a firefighter/paramedic, was due benefits for his compensable hypertension and premature ventricular contractions. The 1st DCA affirmed the JCC's finding on whether the claimant satisfied the pre-requisites for the occupational causation presumption outlined in Section 112.18(1)(a) without comment. However, the 1st DCA reversed and remanded the case back to the JCC to clarify what standard of proof it applied when determining whether the E/C rebutted the presumption.

As outlined in Punsky v. Clay County Sheriff's Office, 18 So.3d 577 (Fla 1st DCA 2009), an employer who seeks to rebut the presumption afforded by Section 112.18 is subject to two different standards of proof, depending on whether the claimant solely relies on the presumption to prove occupational causation. If no supporting evidence is presented by the claimant, then the E/C can rebut the presumption by "competent substantial evidence". Alternatively, if evidence supporting the presumption is presented and accepted as credible by the JCC, then the E/C can rebut the presumption by "clear and convincing evidence".

Here, the JCC did not cite any independent medical evidence of occupational causation in its order. Therefore, the applicable standard should have been competent substantial evidence. However, the JCC cited both standards of proof in the order. Therefore, the case was remanded for clarification and for application of the appropriate standard of proof.

Chapter 11- Attorney's Fees

Tressy Jones v. Shadow Trailers, Inc./USIS, 39 Fla. Law Weekly D574 (Fla. 1st DCA March 18, 2014)

The Claimant's attorneys appealed an order of the JCC denying their motion for a "medical only" fee pursuant to Section 440.34(3)(a), Florida Statutes. The parties agreed that the E/C conceded to the claimant's entitlement to the requested

medical benefit 8 days after the Petition for Benefits was filed. The claimant relied on the case of Allen v. Tyrone Square 6 AMC Theaters from 1999 which held that when a specific request for reasonable and necessary medical care is made, the employer is under an obligation to provide the benefits within a reasonable time, whether a Petition is ever filed or not.

However, the Allen case was decided prior to the 2002 amendments to Section 440.34(3), which now provides that attorney's fees shall not attach under this subsection until 30 days after the date the Employer or Carrier receives the Petition. The 1st DCA held that this amendment was substantive and applies to all dates of accident which occur after the effective date of the statutory change and supersedes the rule announced in Allen. The amendment also created a bright line rule for the attachment of E/C paid attorney's fees under every sub-subsection of 440.34(3). Therefore, the JCC's order denying attorney's fees was affirmed.