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IMMUNITY

Abella v. Montenay Power Corporation, (Fla.App. 3rd Dist.) 39
Fla. L. Weekly D783

The plaintiff appealed the trial court's ruling of summary judgment in favor of the defendants based on workers' compensation immunity. The 3rd DCA affirmed with respect to two of the defendants as there was no genuine issue of disputed fact related to those two defendants. However, the 3rd DCA reversed and remanded the entry of summary judgment in favor of the third defendant as premature. The contract between Miami-Dade and Florida Power & Light may establish that Miami-Dade County was the statutory employer of plaintiff although that contract was not part of the evidence before the Court when the summary judgment order was entered.

PERMANENT TOTAL DISABILITY

Sarasota County School Board v. Roberson, (Fla.App. 1 Dist.) 38
Fla. L. Weekly D793

The employer/carrier appealed the JCC's order awarding permanent total disability benefits. In the appealed order, the JCC found that the claimant's psychiatric condition remained compensable and that the claimant was entitled to permanent total disability benefits. The decision of the 1st DCA focuses on the employer/carrier argument that the JCC erred in considering the claimant's psychiatric limitations in deciding entitlement to permanent total disability.

The Court focused on the legislature's limitation of temporary benefits for a compensable mental or nervous injury for no more than six months after the date of physical maximum medical improvement. There was no similar limitation on payment of permanent total disability benefits in relation to a psychiatric condition. The Court noted that the claimant had a compensable psychiatric condition that was related to a physical injury. The current language of Florida Statute §440.15(1)(b) noting that, "The employee must establish that he or she is not able to engage in at least sedentary employment within a 50-mile radius of the employee's residence due to his or her physical limitations" does not preclude consideration of psychiatric limitations. The Court also noted that affirming the JCC's decision was consistent with Ferrell Gas v. Childers, 982 So.2d 36, 37 (Fla. 1st DCA 2008).