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CASE LAW UPDATE

1st DCA Limits Apportionment and Questions Constitutionality of the Florida Workers' Compensation Statute

In Staffmark v. Merrell, 2010 WL 3168130 (Fla. 1st DCA), the JCC denied an apportionment defense in the presence of multiple prior injuries and testimony of an EMA that about 40% of the disability and need for treatment was due to pre-existing conditions. These problems were shown by the Employer/Carrier to be related to industrial causes - prior on-the-job incidents or events. The 1st DCA defined "pre-existing condition" for the purposes of apportionment consistent with prior case law concerning major contributing cause under 440.09(1). In those cases, "pre-existing condition" meant causes unrelated to "employment accident." In Staffmark, the prior causes were due to prior accidents with other employers. The 1st DCA therefore upheld the JCC's award of benefits and explained that since there was no evidence of non-industrial causes, apportionment did not apply. Justice Webster, concurring, indicated that the apportionment sections reduce benefits sufficiently to question the constitutionality of the statute.

Discussion

The 1st DCA has limited apportionment. Care needs to be taken during background investigations to insure that non-industrial causes serve as a basis for apportionment. Further, the concurrence in Staffmark may be foretelling of what is to come in terms of future appeals.

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