

# *The Law Offices of Bolton and Helm, LLP*

## CASE LAW UPDATE

### Employer Liability Avoidance

In Petro Shopping Centers v. Gall, \_\_\_ So. 3d \_\_\_ WL 4720460 (Fla. 5<sup>th</sup> DCA, 12/11/09), Petro claimed it was immune from liability for the tort claims of Gall pursuant to Florida's workers' compensation law. A circuit court complaint against Petro alleged that Gall was injured while operating a meat tenderizer owned by Petro. Gall claimed that Petro's general manager, was aware that the tenderizer was inherently dangerous because its safety guard had been intentionally removed. Gall however had filed a workers' compensation petition and the parties entered into a mediated settlement of all issues. Nonetheless, the circuit court denied Petro's motion for summary judgment, finding that Petro had failed to demonstrate that Gall had elected the receipt of workers' compensation benefits as her exclusive remedy. The 5<sup>th</sup> DCA reversed. Interestingly, the appellate court explained that the instant at which a worker's actions constitute an election of workers' compensation to the exclusion of a civil action is not entirely clear and a determination of same is based upon the worker's intent to elect workers' compensation as the sole and exclusive remedy. Acceptance of some benefits is not enough. Instead, there must be a choice and pursuit of benefits to full satisfaction on the merits. In this case, the mediation satisfied all of the pending claims thus an election could be considered to have occurred.

**Discussion:** Insurers should protect the employer's interests at the time of mediation/settlement by requiring a stipulation that the claimant has made an informed decision to elect workers' compensation as the sole, exclusive remedy.

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