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WORKERS' COMPENSATION

Florida Supreme Court clarifies triggering of workers' comp exclusive remedy doctrine

by Elizabeth Hogan Webb

In our January 2005 issue, we surmised that recent changes in the Florida Workers' Compensation Act would prompt employees' attorneys to file creative companion lawsuits to their clients' workers' comp claims, including claims for retaliation, discrimination, and liability for intentional conduct. In our May 2006 issue, we discussed a case in which a Florida appeals court allowed a teacher who was attacked by a special education student to sue the Palm Beach County School Board for her injuries. The court ruled that the exception to workers' comp immunity for an employer whose conduct is "objectively substantially certain to result in injury" applied because there was evidence that the school system knew about the student's violent tendencies. Recently, the Florida Supreme Court clarified the circumstances that bar an employee from filing a lawsuit because he has elected to benefit from the exclusive provisions of the workers' comp system. Let's examine what the court said.

Injury leads to dispute over caregiving benefits

Curtis Jones suffered third-degree burns over most of his body when an explosion occurred at his workplace on May 1, 2001. His injuries were so severe that he didn't regain consciousness until nearly two and a half months after the accident. Ultimately, he had to endure 24 surgeries and the amputation of all his fingers and both thumbs. His employer, Martin Electronics, voluntarily provided workers' comp coverage from the outset. Eventually, however, there was a dispute over the hourly rate that should be paid for the attendant care provided by his wife. Jones filed a petition with the Office of the Judges of

Compensation Claims in February 2001 to alter his attendant care benefit.

Before the hearing on his petition, Jones was given a preprinted standard form stipulation that asked him to circle "yes" or "no" to the statement "[A]ccident or occupational disease accepted as compensable." He chose "yes." On January 29, 2003, the workers' comp judge entered an order granting his petition and awarding additional benefits for his wife's attendant care services while also adopting the parties' stipulation that the injury was compensable under the Workers' Compensation Act.

While receiving workers' comp benefits, the Joneses filed a lawsuit against Martin Electronics claiming damages for intentional conduct that was "substantially certain to result in injury or death." The company asked the court to dismiss the case based on the law that makes the

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workers' comp system the exclusive remedy for injuries sustained at work. In essence, Martin Electronics claimed the Joneses were barred from recovering damages in any civil action because they had elected to use the workers' comp system.

The court disagreed with Martin Electronics, denied its request for dismissal, and allowed the case to proceed. The company then appealed the trial court's order, and the appellate court reversed it, saying that Jones had elected his remedy under the workers' comp statutory scheme. Still, the appellate court certified the question to the Florida Supreme Court as one of "great public importance." (That typically happens when different appellate districts have applied the laws differently or when the courts want clarification on a law.)

Court's decision prevents double recovery

In considering this case, the Florida Supreme Court recognized that an employer's immunity under the workers' comp system *doesn't* extend to workplace injuries caused by conduct so egregious that it's tantamount to an intentional tort, or wrongful act. The court explained that earlier decisions have established that employees aren't barred from filing a claim for their employer's egregious actions simply because some workers' comp benefits have been paid. Consequently, the importance of this case lies in the supreme court's discussion of what effect litigating certain aspects of a claim has under the workers' comp system.

So when have aspects of a claim been litigated to a point that a court will decide the workers' comp system has been invoked, thus effecting immunity from suit? The court looked back to a standard set forth in earlier case law that states, "[T]o constitute an election of remedies[,] the [workers'] compensation remedy must be pursued to a determination or conclusion on the merits. . . . There must be evidence of a conscious intent by the claimant to elect the compensation remedy and to waive his other rights." Applying that standard to this case, the court held that Jones' petition for an adjustment in his attendant care benefits didn't amount to a pursuit to a conclusion on the merits of his workers' comp claim. Therefore, it didn't constitute an inconsistent election of remedies.

The court based its decision on the key fact that Martin Electronics voluntarily made workers' comp payments to Jones. Because of that, his entitlement to benefits in the first place was never litigated. Similarly, because the sole issue in his petition was the value of his attendant care benefits, the workers' comp hearing didn't constitute litigation to a conclusion on the merits of his workers' comp case. Viewed as a whole, his workers' comp petition didn't demonstrate a conscious attempt to choose workers' comp benefits as his exclusive remedy. As a result, the court held that he was free to pursue his lawsuit for injuries allegedly caused by Martin Electronics' intentional conduct.

The court emphasized, however, that its decision won't permit employees to receive double recovery under the

workers' comp system and the court system. The law allows workers' comp carriers to file a notice of payment that operates as a lien against any later judgment that includes damages similar to benefits paid under workers' comp. *Jones v. Martin Electronics, Inc.*, 2006 WL 1641944 (Fla.).

The moral? Court requires conscious intent

Like the case we discussed in our May issue, the supreme court's decision in this case doesn't mean the employee won his lawsuit. Rather, it simply means that he will have his day in court. As we've often said in the past, it's extremely important to take proactive measures to ensure workplace safety. Your best defense is a good offense when it comes to potential liability. Still, when an accident can't be avoided, make sure the methodology you use to deal with workers' comp claims recognizes that the immunity found in the law isn't universal.

Find out more about promoting workplace safety in HR Quick List, 3rd Edition. Updated for 2006, this handbook guides you to a fast, confident, legally compliant decision whenever you tackle any of 61 common HR dilemmas. For more information, call Customer Service at (800) 274-6774 or visit www.HRhero.com/hrquicklist.shtml. ♦