

# **Section A: Administration of the Florida Workers' Compensation System**

## **The Florida Division of Workers' Compensation**



Governor David Sholtz signing into law House Bill 29, which created the Florida Industrial Commission, on May 23, 1935

### ***Vision***

*A self-executing workers' compensation system that meets or exceeds the needs of employers and employees*

### ***Mission***

*To ensure prompt, accurate benefit payments and appropriate and timely services to injured workers to facilitate their gainful re-employment at a reasonable cost to employers*



***Goals***

*Accessibility to customers, suppliers, and process partners to inform and remove barriers that inhibit the self-execution of the system*

*Efficient and effective operations*

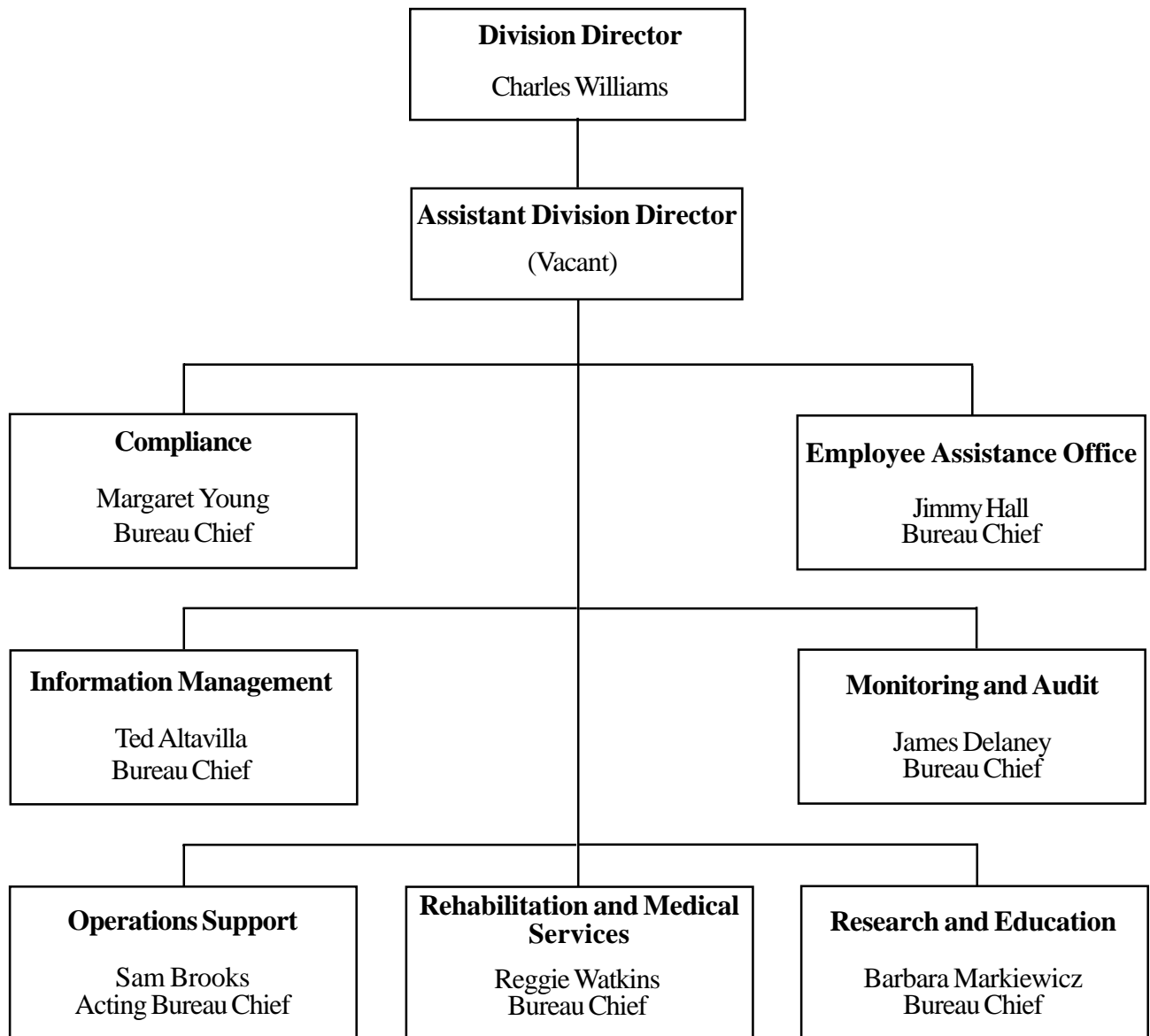
*Accurate benefit payments and appropriate and timely services to injured workers*

*Return of injured workers to gainful employment*

*Equitable distribution of cost to employers to ensure a viable workers' compensation marketplace*

**Figure A0.1**

***The Division of Workers' Compensation  
Organizational Chart***



## Assessments and Funding

The Division of Workers' Compensation manages two trust funds: the Workers' Compensation Administration Trust Fund (WCATF) and the Special Disability Trust Fund (SDTF). Both funds are supported by annual assessments against workers' compensation insurance premiums, actual or estimated. For insurance companies, self-insurance funds, the Joint Underwriting Association, and assessable mutual insurance companies, assessments are based on actual premiums; for self-insured employers, assessments are calculated on the premium for comparable coverage from commercial insurers.

### *Workers' Compensation Administration Trust Fund (WCATF)*

Prior to the implementation of significant statutory changes passed by the 2000 Florida Legislature, the Division of Workers' Compensation, in accordance with section 440.51, F. S., determined the funding level for a fiscal year based upon the administrative expenses for the previous fiscal year. Assessments were calculated by prorating these total expenses among insurance companies, self-insurance funds, assessable mutuals, the Workers' Compensation (WC) Joint Underwriting Association, and self-insurers. The assessment was identified as a percentage of net premiums collected or net premiums calculated for self-insurers, not to exceed 4%.

For fiscal year 2000, the assessment rate was 3.48%, a .73 percentage-point increase from the previous year's 2.75%. Table A1.1 shows the assessment rates and revenues collected for the WCATF,

by fiscal year, since 1986. The elevated assessment rate for fiscal year 2000 increased revenues by almost \$21 million (25.1%) from 1999 levels, resulting in the highest revenues over the 15-year period: \$103.7 million.

The passage of Senate Bill 2532 on the last day of the 2000 legislative session substantially modified the calculation of funding for the WCATF. By July 1 of each year, the division is required to notify carriers and self-insurers of the assessment rate for the next *calendar* year. Assessments are based on the anticipated expenses of administering the workers' compensation statute during that calendar year. The prorating of expenses among insurers remains unchanged.

Notably, Senate Bill 2532 achieved important equity goals relative to assessments for the WCATF and the Special Disability Trust Fund (SDTF), which is described below. By clarifying the definition of "net premium," the bill removed long-standing confusion surrounding that term and helped to ensure greater uniformity throughout the industry of the premium base used to figure assessments for both trust funds. The bill also closed the large deductible policy loophole for the WCATF created when many former self-insured employers purchased large deductible commercial policies, thereby exempting all of their deductible premium dollars from assessment by the division. Beginning July 1, 2001, all large deductible policyholders must pay on the deductible amount of the policy as well as the nondeductible amount. The expanded premium base resulting from the greater equity of assessments will allow a reduction in assessment rates across the board, benefiting the vast ma-

**Table A1.1**

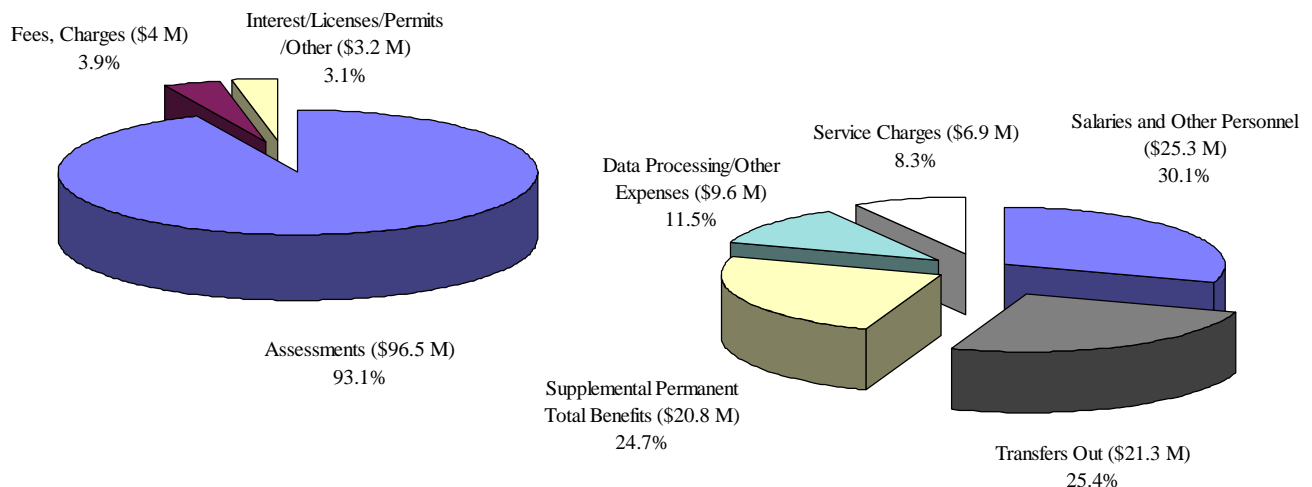
**Workers' Compensation Administration Trust Fund  
Assessment Rates and Total Revenues  
(Fiscal Years 1986-2000)**

Fiscal Year	Assessment Rate	Revenues
1986	2.40%	\$34,631,889
1987	2.00%	\$34,918,694
1988	1.40%	\$35,867,800
1989	1.40%	\$37,322,264
1990	1.40%	\$43,556,000
1991	1.60%	\$55,000,000
1992	1.50%	\$53,000,000
1993	1.40%	\$51,000,000
1994	1.66%	\$62,017,600
1995	3.22%	\$93,436,220
1996	3.15%	\$98,710,066
1997	2.50%	\$90,165,687
1998	2.40%	\$92,485,615
1999	2.75%	\$82,953,596
2000	3.48%	\$103,738,676

Source: Division of Workers' Compensation, Bureau of Operations Support

**Figure A1.1**

**Workers' Compensation Administration Trust Fund  
Revenue Sources and Disbursements\*  
(Fiscal Year 2000)**



\*Percentages may not equal 100 due to rounding.

Source: Division of Workers' Compensation, Bureau of Operations Support

majority of Florida employers who purchase workers' compensation insurance. SB 2532 inscribes the anticipated savings into law with the statutory assessment cap on the WCATF lowered from 4% to 2.75%, effective January 1, 2001.

Revenues derived from assessments are used to cover expenses for the Division of Workers' Compensation (administrative and Permanent Total supplemental benefit payments), the Office of Judges of Compensation Claims, a portion of the Agency for Health Care Administration, and a small portion of the Department of Insurance's Bureau of Workers' Compensation Fraud and the Workers' Compensation Insurance Purchasing Alliance. Figure A1.1 illustrates the breakout of revenue sources and disbursements for fiscal year 2000.

### *The Special Disability Trust Fund (SDTF)*

Annual assessments for the SDTF are used primarily to provide reimbursement to self-insurers and carriers for costs generated whenever a covered worker with a previous impairment sustains a second work-related injury, while a small portion of the assessments fund administrative operations in the division required to make the reimbursements. Having been prospectively abolished by the Legislature, the SDTF does not accept new claims for injuries sustained after December 31, 1997.

As dictated by section 440.49, F. S., the annual assessments are calculated to produce an amount during the ensuing fiscal year that, when combined with any fund balance in excess of \$100,000 on June 30 of the current fiscal year, is equal to the average of:

- a. the sum of disbursements from the fund during the previous three calendar years, and
- b. two times the disbursements of the most recent calendar year.

A 1993 SDTF audit conducted by the Auditor General determined the 'balance in the fund' should be defined as the cash balance less any approved liabilities rather than the simple cash balance used to calculate assessment rates in prior years. The determination has had a negligible effect on the assessment rate for the fund, since legislation has capped the SDTF assessment rate at 4.52% since 1995.

As in the WCATF, the assessment rate is prorated among insurance companies, self-insurance funds, the Joint Underwriting Association, assessable mutuals, and self-insurers. The assessments are expressed as a percentage of net premiums written or net premiums calculated for self-insurers. Although the statutory cap remains at 4.52% following recent legislation, large deductible policyholders may continue to avoid assessments on the deductible portion of the policy for purposes of assessment for the SDTF.

The assessment rates and revenues for the SDTF since 1986 are listed in Table A1.2. Note that total revenues for fiscal year 2000 rose by almost \$5.7 million (4.3%) despite the unchanged assessment rate. Breakouts of fund revenues and disbursements during fiscal year 2000 are displayed in Figure A1.2. It is instructive to note that nearly nine of every ten dollars expended from the fund (89.7%) went to reimbursements for carriers and self-insurers.

**Table A1.2**

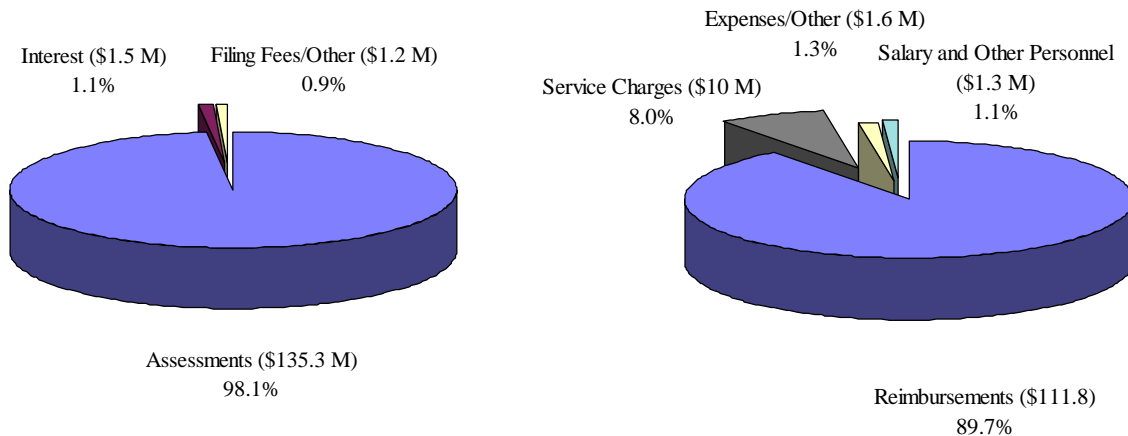
**Special Disability Trust Fund  
Assessment Rates and Total Revenues  
(Fiscal Years 1986-2000)**

Fiscal Year	Assessment Rate	Revenues
1986	2.15%	\$31,185,050
1987	2.15%	\$35,564,193
1988	1.30%	\$32,347,672
1989	1.20%	\$32,167,773
1990	2.00%	\$48,403,436
1991	2.00%	\$76,663,778
1992	2.14%	\$70,708,906
1993	2.72%	\$95,946,973
1994	3.36%	\$115,380,449
1995	4.52%	\$166,827,717
1996	4.52%	\$172,868,903
1997	4.52%	\$139,176,056
1998	4.52%	\$140,898,077
1999	4.52%	\$132,339,956
2000	4.52%	\$138,006,002

Source: Division of Workers' Compensation, Bureau of Operations Support

**Figure A1.2**

**Special Disability Trust Fund  
Revenue Sources and Disbursements\*  
(Fiscal Year 2000)**



\*Percentages may not equal 100 due to rounding.

Source: Division of Workers' Compensation, Bureau of Operations Support

## Division Accomplishments in Fiscal Year 2000

In order to accomplish its mission, the Division of Workers' Compensation (DWC) has defined five goals that guide the strategies it implements and decisions about allocation of scarce resources. Division accomplishments are best understood in the context of these goals, which are listed below:

- Accessibility to customers, suppliers and process partners to inform and remove barriers that inhibit the self-execution of the system
  - Efficient and effective operations
  - Accurate benefit payments and appropriate and timely services to injured workers
  - Return of injured workers to gainful employment
  - Equitable distribution of cost to ensure a viable workers' compensation marketplace

### *Accessibility to Customers, Suppliers and Process Partners to Inform and Remove Barriers that Inhibit the Self-execution of the System*

■ In response to customer requests, the following division documents are now available on the Internet: a list of all insurance carriers providing workers' compensation coverage and their addresses, the division's audit policies, all research publications, exemption application forms, and the hospital reimbursement manual (avoiding \$29,000 in printing and mailing costs). A website search engine is another feature added to assist customers in locating information.

■ Despite an active educational program, many system participants have remained unaware of the division and its services to customers. To rectify this situation, the division is mounting an aggressive promotional effort. A first step was the development of public service announcements (PSAs) to be aired on television stations throughout the state. The first PSA was seen by 452,000 viewers in Tallahassee in March 2000 and by 221,000 viewers in Orlando in May 2000.

■ One thousand and fifty recently injured workers responded to a detailed telephone survey, providing the division with important information about injured workers' experiences with service providers and about the consequences of their workplace injuries.

### *Efficient and Effective Operations*

■ The employee assistance program has been modified by decreasing the amount of staff time devoted to the ineffective process of investigating every Request for Assistance (RFA) and increasing the proportion of staff time devoted to the Early Intervention Program. If an insurance carrier shows an interest in investigating and resolving issues on RFAs, EAO staff facilitates that process. Efforts of EAO associates are directed toward preventing disputes by calling injured workers shortly after their injury.

■ Forty-seven employer and insurance carrier partners submit First Reports of Injury or Illness within a few days of the workplace injury. As a result

of 28,233 early notices, the division had personal contact with 5,002 injured workers. Preliminary results of the Early Intervention Program (EIP) indicate that just 6.5% of contacted cases submitted petitions for benefits, compared to 12% of non-contacted injured workers. (See Chapter 1 for a comprehensive description and analysis of the EIP.)

■ EAO's Early Intervention Pilot project won a Sterling Quality Achievement Award from the Florida Sterling Council for its innovative strategies involving employers, carriers, and third-party administrators as partners in the early intervention process.

■ In an attempt to reduce the liabilities of the Special Disability Trust Fund (SDTF) through case closure, the division has approached insurance carriers about closing inactive cases and settling active ones. Insurance carriers have agreed to close 551 cases, while final settlement is being pursued for 119 cases. These settlements and case closures eliminate a portion of the potential financial drain on the SDTF.

■ By the end of the fiscal year, all exemption applications were being processed within 30 days of receipt.

■ The division's integrated data system is now in production. This system allows associates to access all information about a particular workers' compensation injury while providing customer assistance regarding that case.

### *Accurate Benefit Payments and Appropriate and Timely Services to Injured Workers*

■ To ensure that injured workers employed by self-insured employers receive appropriate benefits even if their employer goes bankrupt, security deposits for these employers have been gradually in-

creased. From January 1997 to the end of fiscal year 2000, security deposits rose by \$106,808,730, an average increase of \$1,695,377 for 63 employers.

■ The number of injured workers receiving Permanent Total supplemental benefits from the division through electronic transfer of funds has increased each year (see figure below). By January of fiscal year 2000, 46% of recipients received these payments electronically.

■ Workers' compensation coverage was extended to 13,174 employees as a result of the division's compliance efforts. A total of \$21,655,925 in additional premium was generated through the division's compliance efforts.

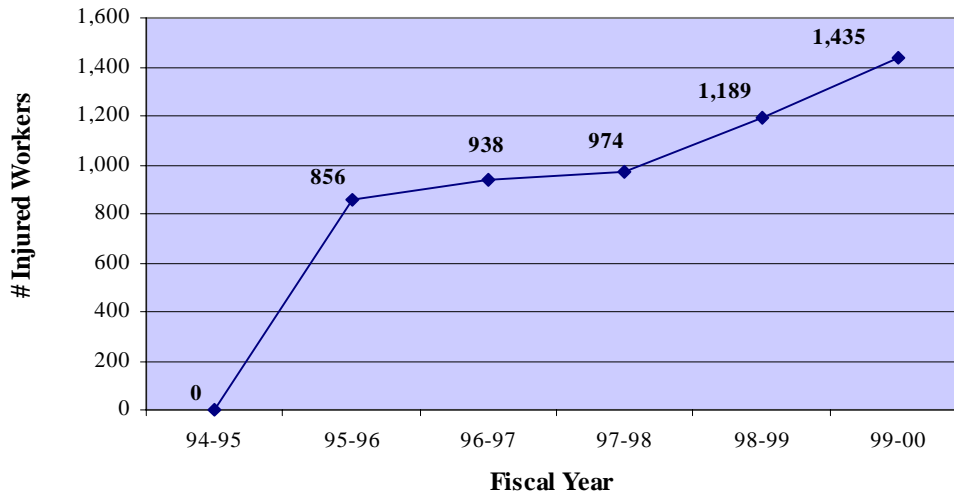
### *Return of Injured Workers to Gainful Employment*

■ As a result of proactive efforts to provide services to injured workers earlier and to work with potential employers, 84% of cases closed this fiscal year that received re-employment services returned to work. This is an improvement of 12 percentage points over last year's results and represents an increase of 331 workers returning to work.

■ The results of a pilot demonstration project in the Miami-Dade area over the past few years show increased annual earning capacity of 46 injured workers to be \$354,225 with additional earnings of \$95,707 due to earlier than expected return to work. The pilot project achieved these successes by providing employment skills training shortly after injured workers attended orientation sessions. As a result, many of them attained re-employment without requiring the division to provide costly evaluation and re-employment services. This pilot project methodology will be implemented statewide to improve earnings of injured workers.

**Figure A2.1**

**Number of Injured Workers Receiving Permanent Total Supplemental Benefits Electronically from DWC  
(as of June of each Fiscal Year)**



Source: Bureau of Operations Support, Division of Workers' Compensation

**Equitable Distribution of Cost to Ensure a Viable Workers' Compensation Marketplace**

■ The division conducted 36,539 employer investigations to determine compliance with coverage requirements.

■ The division issued 1,264 Stop Work Orders to employers found to be out of compliance with workers' compensation coverage requirements. These stop work orders were instrumental in obtaining coverage for the 13,174 workers mentioned above.

■ A total of \$21,655,925 in additional premium was generated through the division's compliance efforts.

## Division Goals for Fiscal Year 2001

By the end of fiscal year 2001, the division will move closer to accomplishment of its overall goals by achieving specific results in the five major areas below.

### *Accessibility to Customers, Suppliers and Process Partners to Inform and Remove Barriers that Inhibit the Self-execution of the System*

- The number of partners faxing First Reports of Injury or Illness (DWC-1s) to the division for purposes of early intervention will more than double to reach 100.

- Early intervention will be provided to every injured worker by January 2001.

- At least three partners in private industry will actively promote billboards and public service announcements developed by the division.

- The Bureau of Compliance will conduct at least six training and outreach seminars for exemption process customers.

- The proof of coverage database will be current, accurate, and available to the public via the Internet by June 1, 2001.

- The Bureau of Rehabilitation and Medical Services will develop an e-mail address list for quick electronic distribution of bulletins and manuals.

- The division will implement a consistent method for obtaining customer feedback.

- The division will implement a division-wide methodology for handling complaints from customers.

### *Efficient and Effective Operations*

- The quality of medical data collected by the division will increase with respect to baseline measures of medical data quality. Data quality will be monitored quarterly by the Data Quality Audit Consulting Team using prescribed indicators.

- Docketing orders and orders of the Judges of Compensation Claims will be transmitted through electronic document management.

- Compliance coverage documents that are not submitted electronically will also be managed through electronic imaging.

- The number of claims documents submitted electronically will increase by 3%.

- The average cost per carrier audit will be reduced by 5%.

- The average time to process an exemption form will decrease by 10%.

### *Accurate Benefit Payments and Appropriate and Timely Services to Injured Workers*

- The number of workers newly protected by workers' compensation insurance will increase by 3% over fiscal year 2000 figures.

- To encourage better carrier performance, a new section will be added to audit reports that will include data showing the three-year performance of the audited carrier in relation to the comparable performance of all carriers.

■ The average time between receipt of a Petition for Benefits in the division and transmission to a judge's office will decrease by 10%.

■ Security deposits for self-insured employers will be raised to 80% of the value of outstanding claims.

to improve return-to-work rates.

*Equitable Distribution of Cost  
to Ensure a Viable Workers'  
Compensation Marketplace*

*Return of Injured Workers to  
Gainful Employment*

■ The successful Miami-Dade return-to-work pilot project, which provided early training in re-employment skills, will be implemented statewide

■ The number of Special Disability Trust Fund claims closed as result of investigations and settlements will increase by 10-20% by December 31, 2001.



## Case Law Update

During fiscal year 2000, the courts issued more than 50 opinions that clarified various issues and exerted a significant impact on the State of Florida's workers' compensation system. Although the First District Court of Appeal (First DCA) is the jurisdiction for handling appeals from the various Judges of Compensation Claims (JCCs), the second, third, fourth and fifth districts addressed a number of workers' compensation issues in adjudicating appeals of decisions made by circuit court judges. Also, the Florida Supreme Court answered three certified questions. This article will first summarize the certified cases, then review the more significant appellate court decisions in three broad areas: medical issues, jurisdictional issues and attorney fees, and compensability issues.

### *Summary of Certified Cases*

*Otis Lee Dean, Jr., v. Quantum Resources Inc., et al*, 24FLW S489a, Florida Supreme Court

This case was accepted by the Florida Supreme Court from the 2<sup>nd</sup> DCA, Hillsborough County. The higher court addressed the following certified question:

Does a self-insured public utility which undertakes, pursuant to s. 440.571, F.S. (1991), (now s. 624.46225, F.S.) to provide workers' compensation coverage to a subcontractor working on its property, obtain the benefit of workers' compensation immunity provided in s. 440.11, F.S. (1991), as to injuries sustained by an employee of the subcontractor resulting from the negligence of the public utility?

In this case the utility, Florida Power and Light Company, had agreed to insure the injured worker's employer, Quantum Resources, however the Florida Supreme Court ruled that a self-insured public utility that provides coverage to a subcontractor on its property does not obtain the benefits of immunity provided in s.440.11, F.S. (1991).

*City of Clearwater v. Judi Acker, et al*, 24FLW S567c, Florida Supreme Court

In this case, the Florida Supreme Court was asked to answer the following question from the First DCA:

"Where an employer takes a workers' compensation offset under s. 440.20(15), F.S. (1985), and initially includes supplemental benefits paid under s. 440.15(1)(e)(l), F.S. (1985), is the employer entitled to recalculate the offset based on the yearly 5% increase in supplemental benefits?"

In the underlying case the First DCA reversed the JCC's order that yearly increases in permanent total disability supplemental benefits should be included in the disability pension offset saying that recalculating the social security offset annually to account for the 5% increase in supplemental benefits frustrates the intended purpose of these benefits; namely, to protect recipients from the long-term effects of inflation. The Florida Supreme Court agreed with the appellate court's reasoning and answered "no" to the certified question.

*Debra Ann Turner, et al, v. PCR Inc.*, 25 FLW S174a, Florida Supreme Court

In this case, the widow of an employee killed in an explosion and another injured employee brought a wrongful death and personal injury action in Alachua County Circuit Court. The circuit court granted summary judgement in favor of the employer and the First DCA affirmed. The district court, however, certified the following question to the Supreme Court of Florida:

"Is an expert's affidavit expressing the opinion that an employer exhibited a deliberate intent to injure or engage in conduct substantially certain to result in injury or death to an employee, sufficient to constitute a factual dispute, thus precluding summary judgement on the issue of workers' compensation immunity?"

The Supreme Court accepted jurisdiction but declined to address the certified question and quashed the district court decision. In doing so, they reaffirmed the existence of an intentional tort exception to an employer's immunity

and held that the conduct of the employer must be evaluated under an *objective* standard. They added that intentional tort exception includes an objective standard to measure whether the employer engaged in conduct that was substantially certain to result in death. Applying this standard to the experts' affidavits and other proof submitted to them, they found there was a genuine issue of fact and remanded the case for further proceedings consistent with their opinion. It was also noted that the appellants retain the ultimate burden of demonstrating to a fact finder that the employer, PCR, Inc., engaged in conduct that was substantially certain to result in injury.

### *Medical and Related Issues*

During the past fiscal year, the First DCA was again faced with a variety of medical care and treatment issues, including attendant care, communication with health care providers, major contributing cause, sufficiency of medical evidence, utilization review, and expert medical advisors. These rulings reaffirmed previous rulings by the court and clarified new issues.

#### *Ernest Faulkner v. Asplundh Tree Expert Co., et al*, 24FLW D1856a, 1<sup>st</sup> DCA

In this case, the employer/carrier (E/C) requested the appointment of an expert medical advisor (EMA) and the Judge of Compensation Claims agreed, ordering one be appointed. The high court reversed the order because first, the E/C was merely seeking to use the EMA process for its own investigation and second, there was no dispute for resolution and no petition for benefits outstanding.

#### *Nordic Track and the Hartford v. Norma Zimmerman*, 24FLW D2408d, 1<sup>st</sup> DCA

The JCC awarded Permanent Total (PT) benefits to the injured employee; however, the appellate court reversed, as the award was based on medical restrictions that were not related to the compensable injury to a "reasonable degree of medical certainty." The employee sustained an injured upper right arm then later complained of right-side chest-wall pain. The authorized physician stated that he did not have a "strong feeling" the new complaint was related to the work injury.

#### *Forming Contractors, et al, v. Fulgencio Castro*, 24FLW 2596c, 1<sup>st</sup> DCA

The court reversed the JCC's award of prescription and equipment costs related to the injured employee's bronchial asthma. The employee sustained back and ulner nerve damage when he fell from a ladder and, in addition, the E/C later authorized nasal surgery. The court stated that although the E/C authorized the nasal surgery, nothing in the medical record suggests a causation between the accident and any breathing difficulties.

#### *Closet Maid et al, v. Wallace D. Sykes*, 25FLW D459a, 1<sup>st</sup> DCA

The JCC awarded benefits to the injured employee stating that the workplace accident was the major contributing cause of the employee's need for back surgery. The E/C appealed and the First DCA affirmed the JCC. The court defined the major contributing cause requirement and stated that coverage is available if the workplace accident contributes more to disability or need for treatment than any other single cause and it is not required that the workplace accident be a greater cause than all other causes combined. They added that finding of major contributing cause can be supported by medical or lay testimony or both.

#### *Walt Disney World Company v. Charlene McCrea*, 25FLW D1001b, 1<sup>st</sup> DCA

The JCC awarded indefinite 24 hours of daily attendant care to be provided by the injured employee's mother and *stepdaughter*. The E/C appealed stating that attendant care is limited to 12 hours daily by a combination of family members. The employee cross appealed contending the JCC erroneously considered the stepdaughter to be a family member subject to the "12 hour combination by family members" portion of s.440.13(2)(b)(2), Florida Statutes (1997). The appellate court reversed the JCC stating that a stepdaughter is *not* a family member for purposes of this statute and is not subject to the "combination of family members" limitation. They also noted that the terms "child" and "stepchild" are legally distinct. The court affirmed the award of 24 hours of attendant care but added that the order should not have been for indefinite care. The award is construed as awarding 24 hours of attendant care only so long as nature of claimant's injury or process of recovery may require.

#### *Terners of Miami et al v. Elisa Busot*, 25FLW D1495, 1<sup>st</sup> DCA

In this case the court was asked to determine whether section 440.13(2)(d), Florida Statutes (1997), eliminates the role of the JCC in determining whether the E/C acted appropriately in transferring the care of a claimant to

another physician over the claimant's objection. The section under review states in pertinent part:

The carrier has the right to transfer the care of an injured employee from the attending health care provider if an independent medical examination determines that the employee is not making appropriate progress in recuperation.

The court decided that while the E/C has the authority under the statute to unilaterally transfer the care, the JCC still has the ability, after the fact, to determine whether the deauthorization was in the claimant's best interests.

### *Jurisdiction of the Judges of Compensation Claims (JCCs), Attorney Fees and Other Procedural Issues*

The First and Fifth DCAs rendered a number of procedural and jurisdictional decisions during the year, covering issues such as workers' compensation immunity, wrongful discharge and statute of limitations. The First DCA also issued a number of opinions dealing with attorney fees.

#### *McDonald's Restaurant #7160, et al, v. Mary Ann Montes, 24 FLW D1599b, 1<sup>st</sup> DCA*

The First DCA reversed the JCC who had denied attorney fees to the injured employee's attorney. The court stated that the E/C did not respond to the petition for benefits within 14 days after receiving it. The E/C paid benefits within 14 days after receiving the treating chiropractor's report but not within 14 days of receiving petition. Thus attorney fees were due.

#### *Ivo Vilches v. City of Dunedin, et al, 24FLW D 1670c, 1<sup>st</sup> DCA*

In this case, the E/C did not pay permanent total (PT) benefits and supplemental benefits within 21 days of receipt of the injured employee's Request for Assistance, but the EC did voluntarily accept him as PT within 21 days after receiving the Petition for Benefits. The Judge of Compensation Claims (JCC) denied the request for attorney fees and the 1<sup>st</sup> DCA affirmed. The court, in affirming the JCC ruling noted that the Request for Assistance could not, by itself, trigger the injured employee's right to attorney fees

and does not legally constitute a "claim" for this purpose.

#### *Ruben Arboleda v. Premier Beverage Co., et al, 24FLW D1882a, 1<sup>st</sup> DCA*

The injured employee received care from an unauthorized doctor and the E/C later paid for this care. The employee filed a petition for benefits for additional care more than two (2) years from the date of the last treatment but within two (2) years of the E/C's payment of the medical bills of the unauthorized physician. The court reversed the JCC stating that the employee was within the two (2) year statute of limitations as set forth in s.440.19 (1) F.S. The controlling factor was that the E/C didn't authorize the last medical treatment, and the statute did not run until the carrier authorized treatment in the form of paying the bill.

#### *General Crane Inc., et al v. Grady McNeal, et al, 24FLW D2212b, 4<sup>th</sup> DCA*

The injured employee worked for Form Works Inc. His employer contracted to lease a crane and operator from General Crane Inc. The employee was injured by the leased crane and received workers' compensation from his employer, Form Works, Inc. He sued General Crane and the driver in circuit court. General Crane company argued workers' compensation immunity as outlined in s.440.11, F. S., and claimed the crane operator was the "borrowed servant" of Form Works, Inc. The trial court rejected this argument and directed a verdict in favor of the injured employee. The Fourth DCA agreed.

#### *Limerock Industries, Inc., v. Riley James Pridgeon, et al, 24FLW D2462e, 1<sup>st</sup> DCA*

This appeal came from the Circuit Court where the injured employee filed a tort (a private or civil wrong) action alleging negligence by the employer. The employer had erroneously classified the injured employee as an independent contractor and the circuit court ruled the employer was not entitled to workers' compensation immunity as defined in s.440.11, F.S. because the employer "failed to secure coverage" on the employee. The appellate court reversed, stating that the employer did have a policy of workers' compensation in effect and the injured employee, even though he was classified incorrectly, was indeed an employee and was covered by the policy.

#### *Claims Management, Inc., v. George Philip, 24FLW 2755c, 1<sup>st</sup> DCA*

The employee was injured on February 17, 1995. The E/C last furnished remedial medical care and treatment on April 17, 1995. The injured employee filed petitions for benefit March 24, 1997 and August 18, 1997. The E/C denied

benefits and argued the claim was barred because the petition for benefits was filed more than one year after the last date remedial care was furnished as defined in s.440.19(1), F.S., and more than two years after the date of injury as per s.440.19(2), F.S. The JCC ruled in favor of the injured employee who argued that when payment for indemnity benefits is made or remedial care is furnished, one year should be added to the time which had not expired under the 2 year limitation period. The First DCA reversed, stating that because he did not file his petition for benefits either within two years of the date of injury or within one year after the furnishing of remedial treatment, his claim was barred.

*Brenda Diana Chase v. Walgreen Company, 24FLW D2819a, 5<sup>th</sup> DCA*

The injured employee filed an action in circuit court claiming she had suffered adverse retaliation by the employer as defined under s.440.205, F. S., because she filed a valid workers' compensation claim. The circuit court ruled in favor of the employer and dismissed the claim with prejudice stating that she had no cause of action because she had not been discharged (terminated) by the employer. The Fifth DCA reversed the circuit court ruling stating that the plain language of s.440.205, F.S. creates a cause of action not only for discharge, but also for threatening to discharge, intimidating, and coercing the employee because of her workers' compensation claim.

*Arthur Leslie Clements, et al, v. Wildlife Conservation Society, 25FLW D245b, 5<sup>th</sup> DCA*

The Wildlife Conservation Society loaned a seven foot crocodile to the St. Augustine Alligator Farm. The injured employee of the alligator farm was cleaning the pool drains when the crocodile jumped the fence and seized the employee's left arm in its jaws. The arm was eventually amputated. The employer had workers' compensation coverage and immunity from a tort action; however, the employee filed an action in circuit court against the Society. The lower court ruled that the Society was also immune from a tort action. They stated that the owner of a dangerous instrumentality (in this case the crocodile) enjoys the same limited liability or immunity from a tort action as the employer of an employee injured by the instrumentality where it is leased to, and under the control of the employer. The First DCA affirmed.

*Andrew Smith v. Burke Painting and FTBA, 25FLW D350a, 1<sup>st</sup> DCA*

The injured employee filed a Request for Assistance seeking an increase in his average weekly wage (AWW) based on prior employment in the industry and then filed a Petition for Benefits seeking this relief. The carrier filed a Notice of

Denial in response, agreeing to increase the AWW but stating they would continue to verify wages with the prior employer and would adjust the AWW if appropriate. The day after the Notice of Denial was filed, the carrier issued the injured employee an indemnity check reflecting the requested increase. The injured employee sought attorney fees and the JCC denied the request. The First DCA affirmed, stating that neither the filing of nor the denial of request for assistance entitles the JCC to award attorney fees because there must be a successful prosecution of a claim.

*Charles N. Silvers v. Timothy J. O'Donnell Corp., a/k/a/ O'Donnell Corp., 25FLW D503a, 5<sup>th</sup> DCA*

In this case, the injured employee brought suit against the employer in the Circuit Court for Orange County for violation of s.440.205, F.S., which provides: "No employer shall discharge, threaten to discharge, intimidate, or coerce any employee by reason of such employee's valid claim for compensation or attempt to claim compensation under [this law]." The lower court entered a directed verdict in favor of the employer. The Fifth DCA reversed stating that, although it was minimal and largely circumstantial, the injured employee presented sufficient evidence to merit submission to the jury that the employer and supervisors knew he was applying for workers' compensation when they fired him. The court noted that the employee was injured on December 12, called in sick on December 13, came to the employer's business office and was referred for medical care on the morning of December 14. When he returned from receiving his medical care at noon on the 14<sup>th</sup> with a work release slip, he was fired for allegedly being late on previous occasions, and this reason for his discharge was disputed in the record. They also noted that it appeared that at least three other employees had allegedly been fired after they filed workers' compensation claims.

*Pamela G. Holderbaum, et al, v. Itco Holding Company Inc., 25FLW D634b, 3<sup>rd</sup> DCA*

The deceased employee, Stacy Holderbaum, was a supervisor for Itco Tire Company and informed an employee, Quinones, who was under his supervision, that he, Quinones, was laid off from his job at the tire company. Quinones, in front of other supervisory employees, threatened Holderbaum's life and carried out the threat that same day by murdering Holderbaum with a pistol the other supervisors knew Quinones kept at the workplace. The widow and child of Holderbaum filed a tort action in the Circuit Court of Dade County. The lower court entered a summary judgement in favor of the employer upholding the employer's workers' compensation immunity defense under s.440.11(1), F.S.

The Third DCA affirmed the summary judgement

order and stated that while the other (supervisory) employees may have been negligent, perhaps grossly or even culpably so, their mistakes, in failing to remove Quinones or his weapon from the premises or to warn Holderbaum prior to the shooting neither exhibited a deliberate intent to injure nor was substantially certain to result in injury or death so as to constitute an intentional tort and thus overcome the employer's immunity.

*Crawford & Co., and UNC Aviation Services v. Jodie Nash, 25FLW D756e, 1<sup>st</sup> DCA*

The JCC awarded attorney fees for securing PT benefits for the injured employee. The employee's attorney had filed a petition for benefits seeking PT Benefits on August 11, 1997, and the E/C accepted the employee as PT on April 8, 1998. The court, however, reversed the JCC, stating that there was no record of any evidence to show that the E/C should have accepted the employee as PT prior to the acceptance date and no evidence that the attorney secured any benefits.

*Miami-Dade County v. Ricardo Acosta, et al, 25FLW D906a, 3<sup>rd</sup> DCA*

Miami-Dade County owned the property where Miami International Airport was located and leased part of it to American Airlines. In their leasing agreement, the county agreed to remediate the leased premises of hazardous substances. The county contracted with OHM Remediation Services who, in turn, subcontracted with Resource Reclamation Services Industries to remove the hazardous substances. The contract between OHM and Resource Reclamation provided that Resource Reclamation would obtain and provide workers' compensation coverage for their employees, which they did. The employee of Resource Reclamation was injured and received workers' compensation benefits. He also filed suit against the county in the Circuit Court for Dade County. The county moved for summary judgement on the basis it was entitled to workers' compensation immunity. The judge denied the motion; however, the Third DCA reversed, ruling that the county was the statutory employer and was immune from tort liability where it had provided workers' compensation coverage.

*Rosalind Gerth as personal representative of Kenneth Gerth, deceased, v. Nelson J. Wilson, 25FLW D1281a, 2<sup>nd</sup> DCA*

This case was appealed from the Circuit Court of Sarasota County. The employee was killed when he fell down an improperly guarded open elevator shaft. The fall was the second one at the employer's business and resulted in an OSHA Federal violation, punishable up to six (6) months imprisonment. The trial court issued summary judgement in

favor of the employer. The Second DCA reversed the order and certified the following question of great public importance to the Florida Supreme Court:

"Does a violation of an OSHA regulation which causes worker injury abrogate the workers' compensation immunity if the same violation subjects the employer to imprisonment exceeding sixty days?"

*Shear Homes, Inc. v. George Sheppard, et al, 25FLW D1490, 1<sup>st</sup> DCA*

In this case the E/C appealed an order which required it to pay attorney fees and costs to the claimant's attorney. The E/C argued that the claimant had waived any right to recover attorney fees and costs when the claimant elected to seek benefits from the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) after the self-insured workers' compensation fund which had insured the employer became insolvent. The First DCA agreed with the E/C and reversed the order, citing the clear unambiguous language of Florida Statute section 631.929 which provides that an injured worker with a date of accident before January 1, 1994, may "elect to seek medical care, treatment, and attendance, and compensation..." from FWCIGA. However, if the claimant chooses to do so the claimant "forego(es) the remedy to seek benefits from his employer or the insolvent self-insurance fund" and "there shall be no entitlement to attorney's fees, penalties, interest, or costs."

*Parry v. South Miami Hospital, 25FLW D1500, 1<sup>st</sup> DCA*

In this case the court reversed an Order holding that the claim was barred by the statute of limitations. The court noted that the uncontradicted medical evidence demonstrated that the claimant was treated by her authorized treating physician for symptoms relating to her 1992 accident on February 14, 1992, October 26, 1993, October 25, 1994, and August 15, 1996. Thus, there was no two-year lapse between treatments before she filed her claim in March 1997. Consequently, her claim was not barred by the statute of limitations.

*Eligibility, Compensability and Indemnity Issues*

One of the most highly litigated issues is compensability, the determination of whether specific injuries occurred within the "course and scope" of em-

ployment. Compensability issues, along with issues of calculation and continuation of indemnity benefit payments, kept the First DCA very busy during the past fiscal year. Some of the key topics were: offsets, impairment income benefits and clarification of the “pay and investigate period.”

*Barbara Hunt v. Exxon Co., et al*,  
24FLW D2229a, 1<sup>st</sup> DCA

The E/C initially paid for the injured employee’s treatment and then denied after the 120 day “pay and investigate” period set forth in s.440.20(4), F.S., elapsed. The JCC ruled in favor of the E/C and dismissed the petition for benefits with prejudice, stating that the denial was not untimely and that the E/C established material facts that they could not have discovered within the 120 day limitation period. The First DCA reversed the JCC noting that the E/C did not, at any point during the 120-day period, ask the authorized physician’s opinion if the cubital tunnel syndrome was related to her employment. The case was remanded to the JCC to consider causal relationship between work activities and diagnosis and psychiatric care.

*Heriberto Olavarria v. Okeelanta Corporation, et al*,  
24FLW D2316a, 1<sup>st</sup> DCA

In this case, the JCC denied the injured employee PT and wage loss benefits. The JCC denied wage loss because the employer offered the employee a job, which he refused. The court affirmed the PT denial but reversed the wage loss denial for three (3) time periods in 1996 and 1997 because the employer’s own vocational expert said the offered job was not within the employee’s medical restrictions. The employer later modified the job after May of 1997, and, in addition, the court stated that the JCC was correct in ruling the modified offer was not sheltered employment.

*Workers of Florida, et al, v. Michael Williams*,  
24FLW D2365a, 1<sup>st</sup> DCA

The JCC awarded an injured employee who was receiving temporary total disability (TTD) a \$2,000 cash advance and the E/C appealed, arguing that a precondition to a cash advance is proof that the employee must achieve in the reasonable foreseeable future, some type of permanent disability status. The court affirmed the JCC and said they could find nothing in s.440.20(12)(c), F.S., requiring this proof and that an advance not exceeding \$2,000 is simply allowed upon the employee showing he or she has suffered either a substantial loss of earning capacity or a permanent impairment.

*HRS District II, et al, v. Ann L. Pickard*,  
24FLW D2368a, 1<sup>st</sup> DCA

The court clarified their original opinion in 24FLW D1749a regarding the 100% pre-injury average weekly wage (AWW) cap and offset of the combined social security disability, state disability retirement and workers’ compensation. They stated that the offset is applicable to benefits paid on or after May 1, 1997, the date of the Florida Supreme Court decision in *Escambia County Sheriff’s Department v. Grice*, 692 So. 2d 896 (Fla 1997) and should not be retroactively applied.

*Gracette Wilkins v. Broward County School Board, et al*,  
25FLW D278a, 1<sup>st</sup> DCA

During the attorney fee hearing before the JCC, a dispute arose regarding the calculation of permanent total supplemental benefits. The employee argued that these benefits should be only excluded between age 62 and 65 and she should be entitled to benefits after age 65 citing *Burger King Corporation v. Moreno*, 689 So. 2d 288 (Fla. 1<sup>st</sup> DCA, 1997). The JCC ruled that where an employee is injured and reaches permanent total disability prior to age 62, the employee is not entitled to supplemental benefits after age 65. The appellate court affirmed the JCC stating that the *Moreno* case was different in that *Moreno* was age 69 and was receiving social security retirement when she was injured. Section 440.15(1)(e)1, F.S. (1993) states that PT Supplemental benefits cease at age 62 if the employee is eligible for both social security retirement and social security disability. *Moreno* was not eligible for both social security retirement and social security disability and was awarded PT Supplemental benefits after age 65.

*Boynton Landscape, et al, v. James Dickinson*,  
25FLW D543b, 1<sup>st</sup> DCA

The employee was injured in 1979, accepted as PT in 1980. In 1986, the E/C began taking a social security offset. The injured employee filed claims for attendant care and hearings were held on these claims in 1987, 1989 and 1994. In 1997, another claim for attendant care benefits was filed along with a claim to recalculate the social security offset and refund all offsets taken since October 7, 1986. The JCC found that the offset should have been based on a weekly figure of \$60.81 instead of \$65.86 used by the E/C and ordered a refund of the entire amount offset between October 7, 1986 and January 8, 1998. The E/C argued that the doctrine of res judicata barred the claim because the claim was ripe for adjudication at the three- (3) previous merit hearings. The appellate court agreed and reversed the JCC. The injured employee argued that he had no way of knowing whether the E/C was correctly calculating the offset during this period of time but the court

added that he had equal access to the social security information, noting that the court failed to see how barring him from raising a claim more than ten years after the fact would result in any injustice to him.

*University of West Florida et al, v. William Mixson, 25FLW D544a, 1<sup>st</sup> DCA*

The First DCA reversed the JCC and stated that it was an error to cap the injured employee's total benefits at 100% of the average current earnings as computed under social security law rather than 100% of the average weekly wage as set forth in *Escambia County Sheriff's Department v. Grice*, 692 So. 2d 896 (Fla.1997). They also noted that the E/C contended that the cost-of-living increases to the injured employee's in-line-of-duty disability retirement benefits should have been included in the Grice offset calculations. The First DCA rejected this argument in *State v. Herney*, 24FLW D2467 (Fla. 1st DCA October 29, 1999) however, they certified the following question to the Florida Supreme Court, as they did a similar question in *Herney*, as a question of great public importance:

"When calculating the offset for disability retirement benefits pursuant to *Escambia County Sheriff's Department v. Grice*, 692 So. 2d 896 (Fla.1997) is the employer entitled to include cost-of-living increases to those benefits?"

*City of St. Petersburg v. Carlos Nasworthy, 25FLW D595d, 1<sup>st</sup> DCA*

The JCC awarded the injured employee impairment benefits as outlined in s. 440.15, F.S. (1995) The injured employee's average weekly wage (AWW) was \$1,249.96; 66-2/3% of the AWW was \$833.35. However, the maximum compensation rate payable for 1996 was capped at \$465.00 per s. 440.12 (2), F. S., per week. The JCC awarded 50% of \$833.35, 66-2/3% of the AWW. The E/C appealed, stating that the correct amount payable was 50% of the maximum compensation rate payable of \$465.00, which was \$232.50 per week. The court agreed with the E/C and reversed the JCC stating that impairment income benefits are payable weekly at rate of 50% of the employee's average weekly temporary total disability benefit and this benefit was the maximum compensation rate per s. 440.12 (2), F. S., or \$465.00 per week. Fifty (50) percent of this amount is \$232.50, the amount paid by the employer.

*Shiwana J. Irving v. Ametek, Inc., et al, 25FLW D882b1<sup>st</sup> DCA*

At the time the employee was hired, she completed a medical history questionnaire and stated that she had never had any arm, hand, or shoulder injury. She also answered

"no" to the question "have you ever had a workers' compensation injury" on the form. She was injured on her third day of work, November 18, 1995. A notice of injury was completed and she was referred for medical care. She never returned to work and filed a petition for benefits February 19, 1997.

The employer/carrier E/C denied the claim and the JCC also denied the claim primarily on the authority of *Martin Co. v. Carpenter*, 132 So. 2d 400 (Fla.1961). The appeal court affirmed the JCC's ruling stating that, as in *Martin*, the injured employee misrepresented her medical history at the time of initial hiring and there was a causal relationship between her injury (right shoulder) and a prior medical condition, a right shoulder injury in 1994 which occurred while moving boxes at a prior place of employment.

*Georgette Webber v. Volusia County Health, et al, 25FLW D1140b, 1<sup>st</sup> DCA*

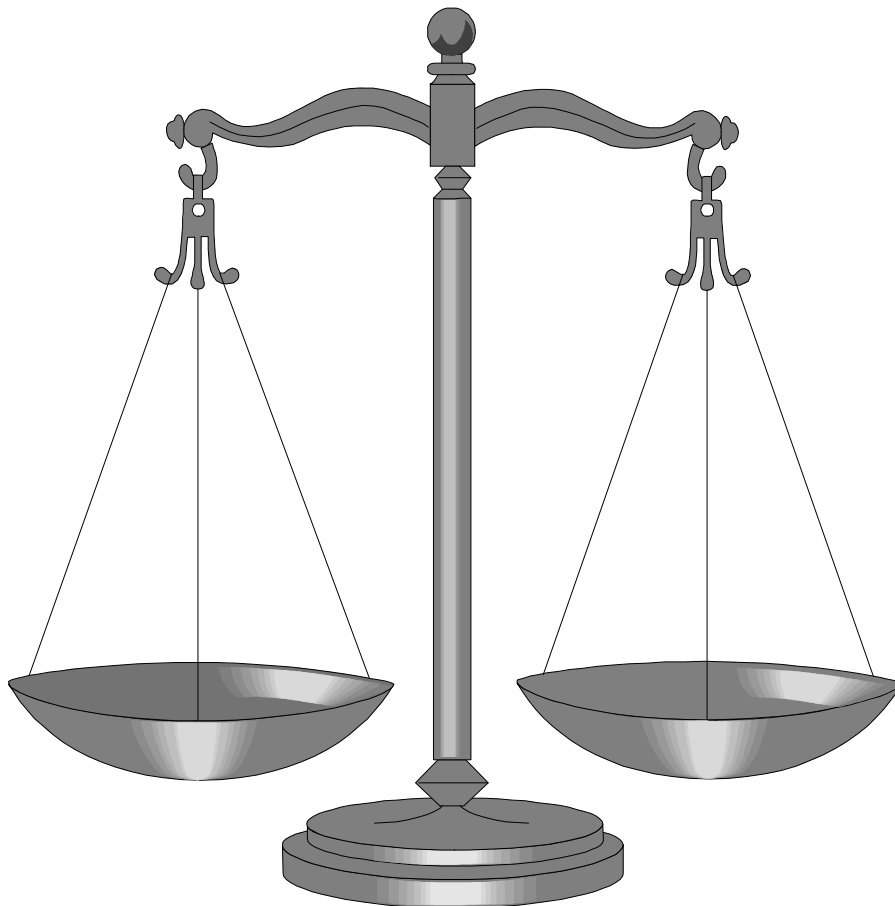
In this case, the court reversed the JCC's ruling. They stated that the E/C may *not* take an offset against the *cost of living adjustment* for the injured employee's state disability retirement benefits or health insurance subsidy the employee received in conjunction with state retirement benefits.

*Florida Power et al, v. Lloyd Van Loan, 25FLW D1489, 1<sup>st</sup> DCA*

In this case the claimant was injured and was accepted PTD in 1994. The claimant also began receiving social security disability benefits in 1994; however, the E/C did not begin taking a social security offset until 1998. When the E/C began taking the offset they used the supplemental benefits payable in 1998 in their initial calculation and once the offset amount was determined it was then subtracted from the maximum compensation rate in effect in 1994 to determine the amount due to the claimant. The claimant argued that the amount of supplemental benefits included in the offset calculation should be the amount of supplemental benefits payable during the year the claimant was accepted PTD, and not the year the E/C began the offset. The claimant also argued that the offset should not be deducted from the maximum compensation rate in effect in 1994 (\$ 444) but rather, it should be deducted from the claimant's "actual compensation rate" (66 2/3 % of the AWW which equaled \$507.37).

The First DCA agreed with the claimant's position regarding the number which is to be used in the offset calculation and held that offsets should be calculated using the supplemental benefits payable during the year in which the claimant is accepted PTD. However, the court agreed with

the E/C on the second issue and held that the offset should be applied against the maximum compensation rate in effect during the year of the accident, and not against the “actual compensation rate.”



# Workers' Compensation Oversight Board

## ***Mission of the Board***

The Workers' Compensation Oversight Board was created by the Legislature as part of the 1993 revisions to the Workers' Compensation Law (section 440.4416, F. S.). Modeled after successful labor-management boards in other states, the Oversight Board was created as a forum for consideration of workers' compensation issues and statutes by the two groups they most directly concern: employers and employees. The board's recommendations, reached by consensus, assist the Legislature in evaluating workers' compensation proposals and enacting those that reflect sound public policy. The board also advises the Division of Workers' Compensation and other state agencies on rules and policies, as well as administrative and legislative issues. Board members and staff are regularly invited to participate in conferences, panels, and groups dealing with workers' compensation issues.

The board held its first meeting in March 1994. Since that time it has met regularly in Tallahassee and, on occasion, in other locations. All meetings are open to the public. Meetings are occasions for board members to listen to presentations on current issues by persons with expertise in many areas of workers' compensation, for members of the public to bring their concerns to the board's attention, and for board members to discuss these matters.

In July 1999, the board began examining two issues. The first was whether exemptions from the workers' compensation law served a beneficial purpose in Florida's system, and if not, alternatives to their use. The Fraud and Noncompliance Commit-

tee, which was originally formed in 1997 to work for the passage of laws to strengthen Florida's fraud statutes, reconvened to examine this issue. It is also reviewing the effectiveness of the 1998 legislative changes related to the committee's earlier work.

The board also formed a Premiums and Benefits Committee that focused on the employee assistance process, and the alternatives that are being developed to give assistance to injured workers while enhancing the self-executing nature of the system.

In the coming year, the board will continue to examine the issue of workers' compensation fraud, and will begin to look at medical costs and reimbursement levels for physicians.

## ***Board Membership***

The board consists of 12 members from the private sector, six representing employers and six representing employees. They are selected as follows:

- Six members are chosen by the Governor. Two of these are employer representatives and four are employee representatives.

- Three members are chosen by the President of the Senate. One represents a contractor with ten or more employees; a second represents an employer with less than ten employees; and a third represents employees.

- Three members are chosen by the Speaker of the House. One represents a contractor

with less than ten employees; the second represents an employer with ten or more employees; and a third represents employees.

Board members are appointed to four-year terms. During fiscal year 2000, the chair of the board was Elaine Coffman, an employer representative. Preston Drummer, an employee representative, served as vice chair. For fiscal year 2001, Mr. Drummer will serve as chair and Claude Revels, an employer representative, will serve as vice chair. These offices are filled alternately by employer and employee representatives. The chair and vice chair serve one-year terms. The Insurance Commissioner and the Secretary of the Department of Labor and Employment Security are nonvoting board members. Julie Douthit, who had been the board's Executive Director since its inception, resigned early in fiscal year 2001. Her successor

is Carolyn M. Smith, who was appointed to the position in September 2000. A listing of board members can be found in Appendix A.

Funded from the Worker's Compensation Administration Trust Fund, the board employs staff and has offices in Tallahassee. Please address any board-related inquiries to:

Carolyn M. Smith, Executive Director  
Workers' Compensation Oversight Board  
100 Marathon Building  
2574 Seagate Drive  
Tallahassee, Florida 32399-2152  
(850) 487-2613

## Workers' Compensation Fraud

“A former bus driver and his wife allegedly bilked his insurance carrier for more than \$1.4 million, claiming for 10 years that he suffered from a disorder that made him revert at times to the mentality of a 5-year-old. The husband worked for Sun Coast Transit Authority in Pinellas County until he filed a disability claim in 1990 for a fall on the job three years earlier. Due to the fall, the couple claimed, the husband suffered from Conversion Disorder, was partially blind and paralyzed, and needed insurance benefits covering his disability and care by his wife. After an investigation revealed inconsistencies in his behavior, the couple was arrested on charges of workers' compensation fraud and first-degree grand theft. They are awaiting trial in Columbia County, where they now live.”

“An ongoing investigation by the fraud division's Public Employee Fraud Unit resulted in the arrests in June of 12 individuals throughout Florida on charges of workers' compensation fraud, forgery, perjury, and grand theft. Since November 1997, when the operation was launched, 36 individuals have been arrested—including one arrested twice. The operation is aimed at exposing and prosecuting cases of insurance fraud by state, county and city government employees.”

Each year the Department of Insurance (DOI) announces its Annual Top Ten Fraud list. For the 1999/2000 list, two of the ten fraud cases were the workers' compensation cases profiled above. The Coalition Against Insurance Fraud's latest estimate of overall fraud in Florida is \$6.5 billion annually, a decrease from \$6.9 billion in 1996. Nationally, estimates from

the U.S. Government Accounting Office, the Coalition Against Insurance Fraud, and the National Insurance Crime Bureau are between \$100 and \$120 billion. Workers' compensation claims fraud accounts for approximately \$150 million annually in Florida and \$3.5 billion nationwide. All other types of workers' compensation fraud, including misclassification of high-risk employees, premium fraud, and more complex types of criminal investigations, are estimated at \$400 million. Workers' compensation fraud is a serious offense that affects all Florida citizens. The violations translate into losses for consumers in lower wages, lost jobs, and higher prices for products and services. Employers' premiums must rise to cover the cost of fraud, and the industry loses revenues in lost premium and benefits paid that are fraudulent.

The Bureau of Workers' Compensation Fraud is a law enforcement agency within the Department of Insurance. The bureau investigates alleged violators of Chapter 440, Florida's workers' compensation law. The bureau has headquarters in Tallahassee and is supported by eight field offices located in Ft. Myers, Jacksonville, Miami, Orlando, Pensacola, Tallahassee, Tampa, and West Palm Beach. The bureau also includes a special unit known as the “440 Strike Force,” which focuses on workers' compensation premium fraud. Bureau investigators are sworn law enforcement officers who are empowered to execute search warrants, take sworn statements, make arrests and bear arms.

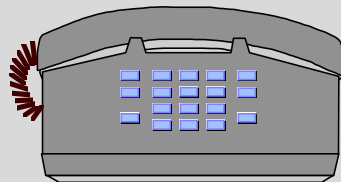
Any questions concerning the Bureau of  
Workers' Compensation Fraud may be addressed  
to:

Mike Ross, Bureau Chief  
Bureau of Workers' Compensation Fraud  
200 E. Gaines Street  
Tallahassee, FL 32399-0324

**To report suspected insurance fraud, you may call:  
Division of Insurance Fraud Hotline**

**800/378-0445, 8:00 am - 5:00 pm (weekdays)**

**TDD Hotline for the hearing impaired  
800/870-9950**



## 2000 Legislative Update

On May 5, 2000, the first legislative session of the new millennium came to an end, with mixed consequences for the Division of Workers' Compensation and the Department of Labor and Employment Security.

On a positive note, the division, working with the Executive Office of the Governor, was successful in having the legislature pass Senate Bill (SB) 2532. This bill accomplishes several goals that improve the equity of funding for the Workers' Compensation Administration Trust Fund and the Special Disability Trust Fund. The primary focus of the bill is the clarification of legislative intent concerning the definition of "net premium," which is the basis of assessment for both trust funds. The bill clarifies past legislative intent and states what net premium is to include for future assessments. This resolves a point of recent contention by expressly disallowing any reduction of assessable premium based on amounts ceded to an insurance company for purchase of reinsurance. For the Workers' Compensation Administration Trust Fund, the bill also closes a loophole associated with large deductible policies, which was created when many formerly self-insured employers purchased large deductible commercial policies and thereby exempted their deductible premium amount from assessment by the division. Beginning July 1, 2001, all large deductible policyholders must pay on both their deductible and nondeductible policy amounts. This increases the assessable premium base for the Workers' Compensation Administration Trust Fund substantially, and should result in lower assessment rates across the board after July 1, 2001.

Senate Bill 2532 also lowered the statutory cap on the assessment rate for the Workers' Com-

pensation Administration Trust Fund from four percent (4%) to two and three-quarters percent (2.75%) beginning January 1, 2001. With both large deductible premium amounts and ceded premiums subject to assessment, the expanded assessment base should provide adequate funding for the Administration Trust Fund and its targeted programs even within the lowered maximum rate of assessment. The statutory cap for the Special Disability Trust Fund remains at four and a quarter percent (4.52%); however, large deductible policyholders may continue to shelter the deductible portion of their policies from assessments for that fund.

Along with a minor technical adjustment to the division's self-insurance regulations and a provision to fund the Workers' Compensation Joint Underwriting Association when its premium volume falls below a certain threshold, SB 2532 provides for a study commission designed to review the Division of Workers' Compensation and its processes. The study commission has seven members; three appointed by the Governor, and two each by the President of the Senate and Speaker of the House of Representatives. Appointments were to be made by July 1, 2000, and data from the division were to be disseminated to the commission no later than August 15, 2000. The study commission, with a budget of \$250,000, has hired outside consultants to assist its members with data collection and interpretation. To date, the commission has held four public meetings where it has received testimony from division personnel, representatives of the workers' compensation insurance industry, the Workers' Compensation Oversight Board, and members of the public. Written recommendations will be finalized at a meeting scheduled for January 12, 2001. The final report is due January 15, 2001.

The passage of other desired legislation was unsuccessful during the 2000 session. Two omnibus workers' compensation bills (SB 1992 and HB 1149), which contained a good number of noncontroversial provisions to improve the workers' compensation system, did not pass. SB 1992 was amended before being sent to the House for approval to include a provision which would have provided \$15 million in relief funding for those employees formerly insured with the Governmental Risk Insurance Trust, which formally declared bankruptcy on March 17, 2000. Five million in funding would have come from the Workers' Compensation Administration Trust Fund, and the remaining \$10 million was to be appropriated from general revenue funds. This amendment was not acceptable to the House, and time simply ran out before the provision could be removed and sent back to the Senate for ratification.

Some of the provisions lost by the failure of SB 1992 to pass were:

- Appointments by the Governor for temporary JCC vacancies
- Consideration by Judges of Compensation Claims to consider child support arrearage when approving lump-sum settlements
- Statutory revision of authorization criteria for self-insured employers
- Requirement for the First District Court of Appeal to maintain panels of judges experienced in workers' compensation law
- Requirement of specified rules for the Judges of Compensation Claims and review of those rules by the Legislature
- Resolution of a statutory conflict regarding exemptions from workers' compensation coverage and construction licensure by the Department of Business and Professional Regulation
- Authorization of direct deposit of benefits to injured workers
- Authorization for release of medical records to rehabilitation providers without consent of injured worker or worker's attorney

- Opt-out provisions from workers' compensation managed care requirements for self-insured employers
- Modified grievance procedures under managed care arrangements
- Electronic filing of Petitions for Benefits with the Judges of Compensation Claims
- Other technical administrative revisions

Finally, the 2000 legislative session entertained a number of measures designed to substantially revamp government functions heretofore performed by the Department of Labor and Employment Security. The department itself was scheduled for dissolution with the proposal of several bills. Most of the department's divisions were parceled out to other agencies, either during the 1999 legislative session (through the passage of CS/SB 230), or the 2000 session through the provisions of SB 2050 (a bill whose provisions were written and recommended by the Senate Select Committee on Workforce Innovation), which passed both chambers. SB 1206 (Kirkpatrick) was designed to move the remaining functions out of the Department of Labor, shifting the Division of Workers' Compensation and a downsized version of the Division of Safety to the Department of Insurance. At the last minute, the minority party made a move to keep SB 1206 from being moved to third reading after it was debated on the floor. As a result, the bill died in the House, leaving the Department of Labor and Employment Security with one remaining division (workers' compensation) and the remnants of two other divisions that were not transferred by SB 2050. The Division of Safety and its functions were repealed effective July 1, 2000.

With many statutory issues regarding the function and organization of the Department of Labor and Employment Security still unresolved, it is anticipated that the 2001 Legislature will return to these matters. The task force recommendations pertaining to the division should add further impetus to this work. Given that substantive legislation in workers' compensation has not been passed since the 1993 reforms, some

may suspect that new legislation is due, if not inevitable, in the near future.

