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## Special Information Bulletin – Case Law Update February 2008

Two important cases were recently decided by the First District Court of Appeal on the issues of the new Permanent Total Disability standard for accidents after October 1, 2003, and on whether an Employer/Carrier is responsible for providing an injured worker with a treating physician after the injured worker moves out of the country.

In a January 31, 2008 decision AMS Staff Leasing v. Arreola, Judge Terlizzese ruling that an Employer/Carrier must provide a treating physician in Mexico for a worker injured in Florida was upheld. The Employer/Carrier had defended that they were only required to authorize treatment with a “physician” licensed under Chapter 458, Florida Statutes. The appellate court disagreed and ruled that Judge Terlizzese was correct in ordering authorization of a Mexican physician because Florida’s Administrative Rules regarding the authorization of physicians indicate that the requirements for certification do not apply to health care providers outside of Florida.

Another interesting point in the case was that the injured worker was an undocumented alien; however, the Court was specifically not addressing whether the injured worker would be precluded from benefits under the workers’ compensation fraud defense. This statement means that the use of an invalid social security number in obtaining employment may still be a valid defense under misrepresentation theories.

The other important case recently released by the First District on February 6, 2008, involves application of the PTD standard as enacted on October 1, 2003. While many Employer/Carrier’s are arguing that vocational factors no longer come into play in the new standard, Judge Murphy considered vocational testimony when he reluctantly ruled that a claimant was permanently and totally disabled. In Wal-Mart v. Thompson, the appellate Court ruled that Judge Murphy’s decision was supported by competent substantial evidence.

A review of the briefs filed in that case reveals that the Employer/Carrier did not make a strong coverage argument under the major contributing cause standard as set forth in F.S. 440.09. Therefore, the argument that vocational factors do not come into consideration for PTD is still valid when considering whether the work accident is the major contributing cause of the disability as compared to all other causes.

This firm has a case with similar issues pending for oral argument before the Court on March 25, 2008. We expect that the Court will issue another clarifying ruling thereafter to assist workers' compensation practitioners in formulating defenses to permanent total disability claims.

Please feel free to contact one of our attorneys if you have any questions regarding the cases referenced herein or any other matter involving Employer/Carrier defense in Florida.