

HAYES, SCHLOSS, & ALCOCER, P.A.

WORKERS COMPENSATION NEWSLETTER



*"The Law always limits
every power it gives."
~ David Hume*

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Statute of Limitations-

Outstanding attorney fee and costs claims toll the statute of limitations

On February 2, 2012, the First District Court of Appeal in Longley v. Miami-Dade County School Board finally addressed an issue that had long been left unaddressed by the Courts. That issue is whether an outstanding claim for attorney fees and costs tolls the statute of limitations or stops the clock from running on the Claimant's underlying case. The Appellate Court ruled that a claim left open for attorney fees and costs does keep the statute of limitations and the case open.

In Longley, on July 22, 2009, the Claimant sent a letter to the Mediator advising that the issue in the outstanding Petition for Benefits had resolved and that there were no other outstanding issues other than attorney fees and costs; and jurisdiction remained reserved in the Judge of Compensation Claims. As a result of this correspondence, the mediation on July 23, 2009 was cancelled. On March 3, 2010, the Claimant filed a new Petition for Benefits seeking an alternative orthopedic, penalties, interest, costs, and attorney fees. The Employer/Carrier denied the entire claim as barred by the statute of limitations. The Judge of Compensation Claims agreed that the correspondence to the mediator acted as a voluntary dismissal.

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REAPPOINTMENT OF JUDGES OF COMPENSATION CLAIMS -

Judge Timothy Basquill of West Palm Beach and Judge Doris Jenkins of Tampa have recently been reappointed by Governor Rick Scott.

Judge Paul Terlizzese of Melbourne has recently resigned. His trial docket is being covered by various Judges from other Jurisdictions. Settlement and fee stipulations are being handled by Judge Winn of Pensacola. Procedural Motions on cases not set for trial are being handled by Judge Pitts of Orlando. The question remains as to whether Governor Rick Scott will appoint a new Judge to Melbourne or whether this position will be eliminated due to budget restraints.

In 2012, several Judges are up for reappointment. Those Judges include: Judge McAliley of Port St. Lucie, Judge Medina-Shore of Miami, Judge Hill of Miami, Judge Lewis of Ft. Lauderdale, Judge Punancy of West Palm Beach, Judge Condry of Orlando, Judge Portuallo of Daytona Beach, and Judge Lorenzen of Tampa.

STATUTE OF LIMITATIONS – CON'T.

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The First DCA disagreed with the JCC as the parties had not settled the active claims for entitlement to attorney fees and costs. The fee and costs claims were ripe at the time the benefit was provided and those claims remained pending.

In the future, when a Claimant voluntarily dismisses a Petition for Benefits or advises that there are no outstanding issues, attorney's fees and costs should either also be dismissed or called up for hearing to bring the attorneys' fees and costs to resolution to prevent a tolling of the statute of limitations. As the attorney fee and costs issue is ripe when the benefits are provided, arguably those claims can also be dismissed for lack of prosecution if the Claimant does not properly pursue those claims within a year as outlined in Fla. Stats., Sec. 440.25(4)(i).

This case also reflects the Appellate Court's more liberal trend in dealing with statute of limitations issues.



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***"The color of springtime is in the flowers,
the color of winter is in the imagination."
~Terri Guillemets***



SPRING 2012 LEGISLATIVE SESSION

Senate bill 668 (SB 668) has passed the Senate Banking and Insurance Committee by a vote of 7-4.

This bill aims to close a loophole in workers' compensation where physicians are allowed to dispense repackaged drugs and charge employers outrageous prices (up to 679%) grossly exceeding the statutory reimbursement for the same drugs dispensed by pharmacies.

This bill will not prevent a physician from dispensing medications, it will merely limit the cost the physician can charge the employer.

It is estimated that the passage of SB 668 will save employers over \$62 million.

DEFENSE OF FAILURE TO RETURN EMPLOYEE EARNINGS REPORTS MUST BE ALLEGED TO AVOID PENALTIES AND INTEREST

In Rucker v. Just Brakes and The Hartford, the 1st DCA recently ruled that if an Employer/Carrier denies benefits to an employee because the employee failed to return employee earnings reports, also called DWC-19 forms, the Employer/Carrier must state the reason for the denial. If the Employer/Carrier states the reason for the denial, penalties and interest will not be owed. If the Employer/Carrier does not state the reason for the denial, penalties and interest will be owed as soon as the employee turns in their completed DWC-19 forms.

Further, in Republic Waste Services v. Ricardo, the 1st DCA ruled that it is the Carrier's responsibility to furnish a letter along with DWC-19 forms to the employee explaining their eligibility for benefits. The letter must also include notice to the employee that if they do not return the DWC-19 forms that their benefits may cease. If the employee fails to fill out the DWC-19 forms and return them because the Carrier did not provide them, penalties and interest will be owed. If the employee was provided with a letter and the DWC-19 forms and fails to fill them out and return them, then their benefits may cease.

It is strongly recommended that if an Employer/Carrier is denying benefits because the employee did not return DWC-19 forms, that the Employer/Carrier clearly state that as the reason for the denial. Also, make sure that the employee has been mailed a letter and the DWC-19 forms to fill out and return.

THE ATTORNEYS AT HAYES, SCHLOSS & ALCOCER, P.A. ARE AVAILABLE
TO SPEAK TO YOUR GROUP ON ANY WORKERS COMPENSATION RELATED ISSUE

"Always desire to learn something useful."
~ Sophocles

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This newsletter is intended for general information only. The information included in this newsletter should not be construed to be formal legal advice or as establishing an attorney/client relationship.

*The attorneys at **Hayes, Schloss, & Alcocer, P.A.** primarily represent the interests of Employers/Carriers/Servicing Agents in the area of Workers' Compensation.*

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**IF THERE ARE ANY TOPICS YOU WOULD LIKE TO SEE COVERED IN A
FUTURE EDITION OF THIS NEWSLETTER
PLEASE LET US KNOW**