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No More Motions to Compel Medical Treatment in Alabama.
Not That There Ever Were.

On March 9, 2007 the Alabama Court of Civil Appeals released a decision that has sent shock waves through the Workers' Compensation Bar. For employers, the shock waves have provided a new energy for defending the medical aspect of questionable claims. In *Ex parte Publix Super Markets, Inc.*, the Court held that there is no part of the Alabama Workers' Compensation Act (the Act) that "authorizes a circuit court with jurisdiction over a controversy regarding the necessity of medical benefits to decide, on a motion of the employee filed before trial and a determination on the merits, that the employer is compelled to provide medical or surgical treatment to the employee." 2007 WL 705003, Ala. Civ. App. 2007.

The Facts:

On August 24, 2005, the employee/plaintiff visited Brookwood Medical Center for back pain. She reported to the attending physician that she had injured her back by picking up a box of bottled water at work three and a half weeks earlier. Prior to her visit to Brookwood, the employee had been admitted to another hospital due to a cough she associated with her back pain. She had also visited another doctor on August 22 and he had ordered an MRI of her spine. On August 23, the employee had fallen to her knees inexplicably and came to Brookwood's emergency room in response to that incident. Following the failure of prescription medication to relieve her pain, the attending physician admitted her to the hospital and ordered an MRI of the thoracic spine.

On August 31, the TPA for Publix wrote the employee a letter stating that her claim had been submitted and was under investigation. Further, the correspondence enclosed an authorization for the release of her medical records for the employee's signature. Subsequently, on September 1, the employee's doctor wrote a letter to the TPA generally describing the situation, but only in terms as relayed to him by the employee. On February 15, 2006, the TPA sent the employee a letter denying her claim for the reason that they were "not able to confirm that an injury occurred within your employment at Publix nor that your condition is related to your employment."

On April 27, the employee filed a complaint in the Jefferson County Circuit Court. The employer filed an answer to the complaint, denying all material allegations and demanding strict proof thereof. On August 16, the employee filed a "Motion to Compel Medical Treatment." In the motion, the employee restated the allegations in her complaint and requested the court enter an order compelling Publix to provide medical and surgical treatment. Publix responded,

asserting that the motion should be denied because (1) the parties were in the midst of discovery, and thereby the motion was not ripe to be heard and (2) the employee had not offered the court any evidence indicating that she had sustained a covered injury.

The trial court conducted a hearing at which neither side presented evidence. On September 15, the trial court entered an order granting the motion to compel. Publix subsequently filed a petition for a writ of mandamus (a request for extraordinary relief by way of what essentially amounts to an appeal before the conclusion of a case) to the Court of Civil Appeals, requesting that the Court vacate the trial court's order.

The Analysis:

The Court of Civil Appeals began its analysis with a discussion of Section 25-5-77(a) of the Alabama Code, which provides that an employer shall pay for the reasonable and necessary medical expenses of an employee for an accident "arising out of and in the course of the employment." Citing, e.g. *Gold Kist, Inc. v. Couch*, 671 So. 2d 695 (Ala. Civ. App. 1995). The Court noted that, by implication, this Section also stands for the proposition that an employer is not financially responsible for medical and surgical treatment for conditions unrelated to an accident arising out of and in the course of an employee's employment. Citing, e.g. *Boyd v. M. Kimerling & Sons, Inc.*, 628 So. 2d 711 (Ala. 1993).

The Court next addressed the fact that Section 25-5-77 does not provide a means to resolve a dispute over the necessity of medical treatment. However, Section 25-5-88 provides that either party to a controversy under the Act may file a complaint in the circuit court. Further, service has been perfected, the action "shall proceed in accordance with... the same rules and statutes as govern civil actions..." Therefore, workers' compensation controversies are governed by the Alabama Rules of Civil Procedure, unless the Act provides some other procedure. Citing, e.g. *Ex parte Vance*, 900 So. 2d 394, 398 (Ala. 2004). In this case, the Court noted that it could not find another procedure under the Act. Therefore, the employee's motion was due to be treated as either a Motion for Summary Judgment or a Motion for Judgment on the Pleadings under the Rules of Civil Procedure.

A trial court may enter a judgment on the pleadings only when the allegations in the complaint and the averments in the answer show no genuine issue of material fact and that the moving party is due to be granted judgment as a matter of law. *Universal Underwriters Ins. Co. v. Thompson*, 776 So. 2d 81 (Ala. 2000). Therefore, because Publix had denied all material allegations made by the plaintiff, judgment on the pleadings was improper.

A trial court may enter summary judgment when the pleadings and other evidentiary material show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. *Rule 56(c)(3), Ala. R. Civ. P.* Therefore, in order to properly support a motion for summary judgment, the moving party must present "a narrative summary of what the movant contends to be the undisputed material facts." *Rule 56(c)(1)*. Further, even if such procedural hurdles were ignored, the trial court would have had to deny the motion because the employee/plaintiff failed to present **substantial evidence** establishing a prima facie case that no genuine issue of material fact existed. Citing *Infinity Ins. Co. v. Gibson*, 765 So. 2d 3 (Ala. Civ. App. 1999). Therefore, the burden never shifted to Publix to present evidence to the contrary in order to establish a genuine issue of material fact.

Holding:

In granting the writ of mandamus, the Court offered the following:

“While the law encourages employers to provide medical benefits voluntarily, ... nothing in the law requires employers to furnish medical benefits to an employee based on the mere allegation that the employee requires medical treatment because of a work-related injury. The employee bears the burden of proving each and every fact prerequisite to a recovery of medical expenses, including the essential threshold fact that he or she sustained a work-related injury that necessitated the medical or surgical treatment obtained.” Citing *Boyd, supra*.

Conclusion:

What does this case mean for employers, their TPAs, insurers and the lawyers that represent them?

At minimum, it is a procedural hurdle that an employee must overcome on his or her way to potential compensation. (Apparently, the hurdle has always been there, just invisible to date.) Gone are the days of an employee filing a motion to compel medical treatment without filing a complaint; or even after filing a complaint, but prior to obtaining the uncontradicted deposition testimony of his treating physician opining that the treatment is a necessary course of action. Further, in the case of multiple treating physicians, the employer will have the opportunity to offer the deposition testimony of a physician stating that the procedure is not necessary. (Which should create the issue of fact needed to survive a motion to compel medical treatment that is now to be deemed the equivalent of a motion for summary judgment.)

On the battle field, “employers” are already winning with this new decision. Just last week, we argued a case where an employee presented a questionable claim and was forced to “moot” a motion to compel medical treatment when counsel was presented with the ramifications of this case. Before providing the employee with treatment that our client believes (based upon the record) to be unnecessary and potentially counterproductive, the employee is going to have to depose her treating physician. Accordingly, we will be able to question the physician extensively in an attempt to determine whether the injury is work related and whether his suggested course of action is the appropriate one in the face of contradictory medical opinions. At the very minimum, “employers” are better able to “get to the bottom” of a questionable claim, instead of blindly paying for a medical procedure that may be unnecessary.

It is important to note, that we are not advocating a blind policy of denials based upon this new ruling. There are still potential drawbacks with applying this case. The opinion still does encourage employers to voluntarily pay medical expenses for claims that are clearly compensable. However, for those claims that just don’t add up, this new case is certainly a feather in the cap of the employer. Let’s use it to our advantage.

Sincerely,

ESW