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[Lombardi v. Southern Wine & Spirits and Fireman's Fund,](#)
(Released, Nov. 30, 2004)

CLAIMANT MAY BE ENTITLED TO SECOND OPINION IF MEDICALLY NECESSARY.

Claimant filed a petition for benefits seeking a second medical opinion at the E/C's expense. In response, the E/C stated that claimant was not entitled to a second opinion because the E/C did not participate in a managed care arrangement at time of the accident. The E/C argued under section 440.13, Florida Statutes, which controls medical benefits outside managed care arrangements, that claimant was only entitled to an IME. The JCC ruled for the E/C and stated as a matter of law that claimant cannot obtain second opinion under section 440.13, Florida Statutes.

The appellate court reversed the order of the JCC denying the request to the second medical opinion. The court concluded that the claimants' request for a second medical opinion presents a question of fact, similar to any other request under § 440.13(2)(a), Florida Statutes. Therefore, an evidentiary hearing must be held where claimant will bear burden of demonstrating entitlement.

[Cooper v. Buddy Freddy's Restaurant and Travelers Ins. Co.,](#)
(Released, Nov. 30, 2004)

COURT REAFFIRMS THAT CLAIM FOR IMPAIRMENT OR PERMANENT DISABILITY BENEFITS MADE BEFORE CLAIMANT REACHES MMI OR 98 WEEKS OF TEMPORARY BENEFITS IS PREMATURE.

Claimant filed petition for impairment benefits under section 440.15(3)(a), Florida Statutes. Claimant had not reached MMI and had only received 36 weeks of temporary disability benefits.

The appellate court upheld the order of the JCC denying claim for impairment or permanent disability benefits due to the fact the claimant had not reached psychiatric MMI nor received 98 weeks of temporary benefits. The court stated that a claim for impairment or permanent disability benefits before a claimant has reached MMI or received 98 weeks of temporary benefits is premature. Furthermore, the court held that the wording of the JCC's order did not impair claimant's right to seek temporary disability for any period following final hearing.

Amendments to the Florida Rules of Workers Compensation Procedure. (December 2, 2004).

FLORIDA SUPREME COURT CONCLUDES THAT IT LACKS AUTHORITY TO PROMULGATE RULES OF WORKERS COMPENSATION PROCEDURE.

In the past, the Florida Supreme Court has cited article V, section 2(a), of the Florida Constitution as the basis for its authority for the Courts adoption of workers compensation rules of procedure.

However, citing Florida Constitution article V, section 1 and Florida case law, the Florida Supreme Court stated that the OJCC is not a court of the State because it is not a supreme court, district court of appeal, a circuit court or a county court. Furthermore, the Court held that JCC are executive branch officials and not judicial branch officials. They went on to state that since the OJCC is not an article V court, the Florida Supreme Court never had constitutional authority to promulgate rules of procedure for this executive entity (OJCC).

In conclusion, the Court stated that the Workers Compensation Rules of Procedure are an unconstitutional encroachment on the power of the executive branch to adopt rules of procedure for its own agencies. The Florida Supreme Court has repealed these rules effective immediately and the repeal of the rules shall operate prospectively.