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INSURANCE-RELATED APPELLATE UPDATE
May 3, 2004

For more information on these and other insurance-related cases, contact Katherine E. Giddings or Felicia Leborgne Nowels at 850-224-9634 or by e-mail at katherine.giddings@akerman.com and felicia.nowels@akerman.com

Florida Supreme Court

No cases of interest reported.

Florida District Courts of Appeal

Workers' compensation — Temporary partial disability benefits — Claimant who makes less than 80 percent of average weekly wage, but more than maximum compensation rate, while working with employer following accident is entitled to TPD benefits — Statutory maximum compensation rate merely limits amount carrier is obligated to pay if temporary benefits are due and is not a consideration in determining whether TPD benefits are due. *Orange County Corrections and Crawford & Co., v. Summers*, 29 Fla. L. Weekly D1025b (Fla. 1st DCA April 26, 2004.)

Administrative law — Agency for Health Care Administration — Licensing — Hospice provider — Standing — Error to find that existing hospice provider lacked standing to initiate formal administrative proceedings relating to change of ownership licensure of competing provider — Allegation that agency granted licensee a "de facto" certificate of need or CON exemption to establish a new hospice because hospice purchased by licensee never actually existed was sufficient to raise factual question as to whether issuance of license resulted from the issuance of a de facto CON — Existing hospice provider has statutory standing to intervene in competitor's CON proceedings — Agency cannot deny standing to contest granting of de facto CON simply because a license has been issued since de facto CON does not offer existing provider the required clear point of entry into CON proceedings. *Hospice of Palm Beach County, Inc. v. Florida, Agency For Health Care Administration and Vistas Healthcare Corporation of Florida, Inc.*, 29 Fla. L. Weekly D1030a (Fla. 1st District. April 26, 2004.)

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Continued

Insurance — Florida Windstorm Underwriting Association — Rates — Arbitration is improper means of deciding whether and in what amount FWUA’s premiums should be raised — Under FWUA’s Plan of Operation, insurance rate increases proposed by FWUA require approval by Department of Insurance — FWUA’s resort to arbitration of rate filing after Department disapproved request for rate increases was not authorized, because FWUA’s Plan of Operation required departmental approval or assent, not an arbitration award — Trial court erred in entering judgment in declaratory action declaring that “the arbitration resulted in Department approval as a matter of law” — Court did not err in denying premium refunds and injunctive relief — Requests for refunds should be addressed to Department of Insurance rather than to court. *Zimmerman, et. al., v. Florida Windstorm Underwriting Assoc., State of Florida Department of Insurance*, 29 Fla. L. Weekly D971b (Fla. 1st DCA April 20, 2004.)