



Worker Compensation Carrier Abuse: Successfully Pleading Intentional Infliction of Emotional Distress Under Aguilera

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We have all heard time and again that workers' compensation law does not protect employers from liability for intentional tortious conduct. See, e.g., *Turner v. PCR, Inc.*, 754 So. 2d 683, 687 (Fla. 2000). But when it comes to bringing an action for intentional infliction of emotional distress against a workers' compensation carrier, alleging that a carrier's behavior

was intentional is simply not enough. In order to plead allegations sufficient to satisfy the standard set forth by the Florida Supreme Court in *Aguilera v. Inservices, Inc.*, 905 So. 2d 84 (Fla. 2005), a plaintiff should specifically allege harm caused by the carrier's misconduct during the claims process that is separate and distinct from the original workplace injury.

The *Aguilera* case came to the Supreme Court with a particularly egregious set of facts. The plaintiff, who was injured in a warehouse accident, had kidney and bladder pain and blood in his urine. 905 So. 2d at 87. His treating doctors repeatedly advised that plaintiff needed urological care and should not return to work. *Id.* Nevertheless, the workers' compensation carrier denied authorization for plaintiff to be examined or treated by a urologist and terminated his workers' compensation benefits. *Id.* at 87-88. And, the carrier actually intervened by blocking plaintiff's receipt of prescribed medication and canceling scheduled medical testing. *Id.* As a result of the carrier's antics, the plaintiff was not authorized or approved for emergency surgery until he had urinated blood and feces for over ten months and was seen by at least seven doctors who all agreed that his physical injuries were related to the warehouse accident. *Id.* at 88-89.

The Third District Court of Appeal held that plaintiff's action against the workers' compensation carrier was barred because the carrier's alleged wrongdoing did not occur independently of its claims handling. *Inservices, Inc. v. Aguilera*, 837 So. 2d 464, 466 (Fla. 3d DCA 2002). The Supreme Court disagreed:

The workers' compensation system was never designed or structured to be used by employers or insurance carriers as a sword to strike out and cause harm to individual employees during the claim process and then provide a shield from responsibility for an employee's valid intentional tort claim for that conduct through immunity flowing under the law. Most certainly, the workers' compensation sys-

tem was never intended to function as a substitute for an employee's right to seek relief in a common law intentional tort action against an employer or insurance carrier, but was only intended to provide employers and insurance carriers with immunity for negligent workplace conduct which produced workplace injury.

905 So. 2d at 91.

In so holding, the Court reaffirmed the principle that mere delay of payments or simple bad faith in handling workers' compensation claims are not actionable torts. *Id.* at 91. But it found that plaintiff's allegations go far beyond simple claim delay or a simple termination of benefits. The complaint specifically alleges harm caused subsequent to and distinct from the original workplace injury. *Id.* at 91-92.

In *Liberty Mutual Insurance Co. v. Steadman*, 968 So. 2d 592 (Fla. 2d DCA 2007), the Second District Court of Appeal grappled with applying the standard set forth in *Aguilera*. There, the primary focus of plaintiff's complaint was that the workers' compensation carrier delayed authorizing her double lung transplant even after ordered to do so by the Judge of Compensation Claims (JCC) because it had knowledge that plaintiff was not expected to survive without the surgery and thought by delaying approval it could avoid paying for the surgery at all. *Id.* at 595. When first presented with this case, the second district found plaintiff's claim for intentional infliction of emotional distress was barred by workers' compensation law because her claim is based entirely on the carrier's delay in paying the benefits awarded to her by the JCC. *Liberty Mut. Ins. Co. v. Steadman*, 895 So. 2d 434, 436 (Fla. 2d DCA 2005). Upon remand from the Florida Supreme Court, see *Steadman v. Liberty Mut. Ins. Co.*, 932 So. 2d 1034 (Fla. 2006), however, the second district determined that it had improperly focused on whether the alleged tort occurred during the claims process rather than whether the allegations stated a viable cause of action for intentional infliction of emotional distress. 968 So. 2d at 594. It then considered whether the pleaded facts amounted to conduct that was so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, *id.* at 594-95 (quoting *Ponton v. Scarfone*, 468 So. 2d 1009, 1011 (Fla. 2d DCA 1985)), and whether such conduct was 'atrocious, and utterly intolerable in a civilized community.' *Id.* at 595 (quoting *Ponton*, 468 So. 2d at 1011). The court decided plaintiff's allegations satisfied this test:

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Viewed in isolation, the conduct [plaintiff] has alleged with respect to the lung transplant is not so outrageous that it qualifies as atrocious, and utterly intolerable in a civilized community. However, paired with her specific allegation that [the workers' compensation carrier] knew, based on testimony from [plaintiff's] physicians, that she had a very limited life expectancy, and further considering that [plaintiff] was well aware that the clock was ticking and that the additional emotional distress caused by the delay could well hasten her demise, we conclude that the conduct falls within the ambit of comment "f" of [Restatement (Second) of Torts] section 46. Further, comment "e" explains that the unequal position of the parties in a relationship, where one asserts and has the power to affect the interests of the other, may also supply the heightened degree of outrageousness required for a claim of intentional infliction of emotional distress. See Restatement (Second) of Torts, § 46 cmt. e. [The carrier] was in such a position in relation to [plaintiff]. Finally, accepting the allegations in the complaint as true, [the carrier's] delay was wholly unjustified because the issue of [plaintiff's] entitlement to the lung transplant had been litigated, and the JCC had ordered [the carrier] to authorize the transplant.

Id. at 596 (internal citations and quotations omitted).

The carrier in *Steadman* sought Florida Supreme Court review of the second district's decision on the ground that it was in conflict with *Aguilera's* requirement that there be an allegation of some sort of affirmative misconduct beyond the mere denial or delay of medical benefits [in order] to overcome the statutory immunity. Petitioners' Brief on Jurisdiction, 2007 WL 4648944, * 9 (2007).

In opposition, plaintiff argued that

a close reading of *Aguilera* demonstrates that while a mere or minor delay in payment or claims handling does not rise to the level of an independent tort falling outside of the immunity provided by the workers' compensation statute, see 905 So. 2d at 91 ([m]inor delays in payments, and conduct amounting to simple bad faith in claim handling procedures); *id.* (mere delay of payments or simple bad faith); *id.* at 92 (employees are not permitted to simply transform a simple delay in payments into an actionable tort); *id.* at 93 (simple bad faith, and minor delays in payment), behavior, including delays that are more than minor, that amounts to conduct that actually exacerbates the situation of the insured by causing injury in addition to that incurred at the workplace does fall outside the statutory immunity. See *id.* at 97; see also *id.* at 93-94 ([I]f an insurance carrier engages in outrageous actions and conduct that constitutes an intentional tortious act while processing the claim beyond mere short delays in payment and simple bad faith, the carrier is not cloaked with a shield of immunity flowing from the workers' compensation provisions.); *id.* at 92 (complaint specifically alleges harm caused subsequent to and distinct from the original workplace injury); *id.* at 97 (the allegations

reflect individuals using the power of the insurance carrier and its position of authority to affirmatively inflict damage upon [Plaintiff] separate from and in addition to the initial workplace injury).

Respondent's Brief on Jurisdiction, 2008 WL 242331, * 4-5 (2008). The supreme court denied the carrier's petition for review. *Liberty Mut. Ins. Co. v. Steadman*, 980 So. 2d 490 (Fla. 2008).

Thus, although the misconduct of the carriers in both *Aguilera* and *Steadman* focused on misconduct in handling the claims process, the carriers were not protected by the statutory workers' compensation immunity because their misconduct allegedly caused harm to plaintiffs that was separate and distinct from the original workplace injuries. This was also the case in *Protegrity Services, Inc. v. Vaccaro*, 909 So. 2d 445, 447-48 (Fla. 4th DCA 2005), wherein the Fourth District Court of Appeal found plaintiff's complaint satisfied *Aguilera* because it specifically allege[d] harm caused subsequent to and distinct from the original workplace injury. Therefore, when representing a client in a dispute with a workers' compensation carrier involving misconduct in the claims process, an attorney should carefully determine whether the carrier's actions have caused the client harm that is distinct from the workplace injury. If so, and the conduct otherwise amounts to a claim for intentional infliction of emotional distress, the client should be able to successfully plead a cause of action against the carrier under *Aguilera*.

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