



JUGE NAPOLITANO

GUILBEAU RULI FRIEMAN APLC

Johnny Bell v. Mid-City Printers, 2010-0819 (La. App. 4 Cir., 12/23/10); 54 So. 3d 1226

On a compensable claim that also included a subrogation claim involving the third party tortfeasor, an injured worker initiated litigation after his SEB benefits were terminated based on an offer of employment within his work restrictions by our insured.

During litigation and prior to the enactment of the Medical Treatment Guidelines, an issue arose as to whether a three level artificial disc surgery recommended by the treating physician was medically necessary. Based on a dispute between the treating and SMO physicians as to the medical necessity of surgery, the judge appointed a third doctor to address the issue pursuant to LSA-R.S. 23:1124.1.

In the initial report of the court appointed doctor, he agreed with the treating physician's recommendation for surgery. However, during the deposition of that doctor, we confronted the doctor with additional information from the injured worker that was previously elicited and successfully persuaded the court appointed doctor to change his opinion on the need for surgery.

After a full trial on the merits that lasted three days, the judge ruled that the surgery was not medically necessary. The judge also ruled that the termination of SEB benefits was justified and did not award back due SEB benefits, which amounted to over \$125,000.

During the handling of the workers' compensation case, the third-party litigation was also on-going. Counsel for the third party, on behalf of his client, continuously pressured us and our client to go to trial in the workers' compensation case, as he was confident the injured worker was feigning his injuries. Although we took the workers' compensation case to a full trial on the merits and prevailed on all issues, the confident third party tortfeasor and its attorney evidently were not as confident as previously portrayed. The third party shortly thereafter settled with the injured worker for nearly \$500,000, of which we were able to recover a significant amount of our client's workers' compensation lien and a full and final settlement of the underlying workers' compensation claim.