INTRODUCTION

The two cases the court is hearing today both involve "exposure" cases which are generally governed by Florida Statute Section 440.02(1), which provides, in relevant part:

> An injury or disease caused by exposure to a toxic substance, including, but not limited to, fungus or mold, is not an injury by accident arising out of the employment unless there is clear and convincing evidence establishing that exposure to the specific substance involved, at the levels to which the employee was exposed, can cause the injury or disease sustained by the employee.

1D17-3814 City of Titusville et al. v. Robert Taylor

In approximately April 2015, Claimant and the crew he worked began clearing some land for the construction of a training facility. The job included cutting down trees, pulling their roots out of the ground, and hauling fill dirt in preparation for installation of a concrete pad. Over the next three months, Claimant experienced headaches that grew severe enough so that, in August 2015, his supervisor granted Claimant's request to see a doctor. Claimant was subsequently hospitalized and ultimately diagnosed with fungal meningitis as a result of exposure to the cryptococcus gatti (*C. gattii)* fungus. In December 2015, Claimant filed a claim seeking compensability of his condition and various benefits. The Employer/Carrier (E/C) denied the claim alleging that, although there was no dispute as to Claimant's condition and that it was caused by exposure to the fungus at issue, there was no medical evidence to substantiate, by clear and convincing evidence, that Claimant contracted the fungal meningitis at his place of employment, and that the claim was barred because Claimant failed to timely provide notice of his condition.

In awarding compensability, the Judge of Compensation Claims (JCC) cited the rarity of the *C. gattii* fungus and that there was only one previously documented case of exposure in Florida. The JCC noted that the fungus is found in the type of environment Claimant had been working in before he was hospitalized, and that the land-clearing work could disturb that environment and cause the spores to become airborne and be inhaled. The JCC found that, although it wasn't possible to determine exactly when or where Claimant inhaled the fungus, or whether such inhalation was on one or more occasions, the onset of symptoms suggested that the exposure occurred during the time he cleared land for the Employer, given that there was no evidence of Claimant's exposure to such conditions elsewhere, and Claimant's expert testified that he had eliminated any non-work related cause of Claimant's condition. The JCC also found that the statute's quantification requirement applied to types the of molds that must reach a critical exposure level before causing a medical condition, but that such precise measurement was unnecessary here because the evidence was that just one spore was enough to cause infection. In other words, the fact that Claimant had a disease caused by exposure to the *C. gattii* fungus proved Claimant contracted his meningitis as a result of inhaling at least one spore of that fungus.

As to notice, the JCC found that Claimant reported his headaches to his supervisor, who instructed him to go to the City's doctor, who in turn, sent Claimant to the hospital where diagnostic tests led to the meningitis diagnosis. Thus, the JCC found, the Employer was aware of the symptoms of the medical condition at issue and instructed Claimant to seek medical treatment. The JCC also concluded that the notice required to satisfy the knowledge exception to the thirty-day rule need not detail every facet of the injury sustained. Rather, it is sufficient that the employer have notice of *an* injury. The E/C have appealed this order.

1D17-3342 School District of Indian River County et al. v. Edward Cruce, Deceased, et al.

The Employer/Carrier (E/C) appeal the Judge of Compensation Claims' (JCC's) order finding that the deceased Employee died from meningitis as a result of a compensable exposure to the cryptococcal neoformans fungus. The deceased Employee worked as a groundskeeper for the Employer from 1989 until he died on January 10, 2015, at the age of 52. Sometime between August and October 2014, the Employee began moving painting supplies and equipment from a storage shed at a football stadium (the old Citrus Bowl) to a storage area in a maintenance building underneath some bleachers. In late September or early October 2014, the Employee came home several days in a row covered from head to toe in smelly white dust. According to testimony from the Employee's wife, the dust was in his beard, in his nose, and on his lips. The Employee told his wife and his eldest daughter that the white dust was bird droppings, and that he had to clean out a storage area containing dead pigeons as well as live bats and rats. In November 2014, the Employee began complaining of bad headaches, and underwent medical treatment during which he received various diagnoses. It was not until January 1, 2015, that the Employee had a spinal tap, and the resulting cytology report indicated the presence of budding yeasts that were morphologically consistent with cryptococcal species. Two additional spinal taps confirmed a diagnosis of cryptococcal meningitis. The Employee was treated for cryptococcal meningitis, but died in the hospital from this disease on January 10th. At some point after the Employee became ill, the Employer's director of maintenance called an environmental contracting company for recommendations concerning pigeon feces he observed in the swale used for drainage under the stadium. He was told that the area could be sprayed with sealant, but the best thing to do was not to disturb the dirt. The maintenance director did not have any testing done because he was told that the fungus was "prevalent in the environment."

The Employee's wife and their dependent children filed a workers' compensation claim seeking, among other things, death and funeral benefits. Expert testimony established that the Employee's illness is typically contracted when the cryptococcal neoformans fungus is stirred up in the air and then inhaled. But the stadium was never tested for the fungus and had been demolished by the time of the final hearing. The E/C denied the claim, asserting, among other defenses, that the Employee's employment was not the major contributing cause of his exposure injury and death, as required under section 440.09(1), Florida Statutes (2014), and that Claimants had not established, by clear and convincing evidence, sufficient exposure in the workplace to a specific harmful substance with evidence of the levels of exposure, particularly given the ubiquity of the fungus at issue.

In the appealed order, the JCC determined that clear and convincing evidence supported the claim of compensability based on exposure and awarded all claimed benefits. In reaching his decision, the JCC rejected the E/C's argument that the evidence did not show that the Employee was exposed to pigeon droppings while on the job. Although the JCC noted that the lay testimony was inconsistent concerning the physical configuration of the worksite—in particular, whether there was a proper "ceiling" over the storage rooms—he found sufficient evidence of exposure to pigeons and their droppings at the stadium. At the same time, the JCC found that it was not necessary to identify the specific animal source of the Employee's infection. Ultimately, the JCC ruled that the lack of evidence establishing the quantitative level of exposure did not preclude a finding of compensability under section 440.02(1) and that Claimants established compensability under an alternative theory of prolonged or repetitive trauma in accordance with *Festa v. Teleflex*, 382 So. 2d 122, 123 (Fla. 1st DCA 1980).