
IN THE SUPREME COURT OF FLORIDA

Case No.: SC07-2266

LIBERTY MUTUAL INSURANCE COMPANY
and NORMA J. PEELE,

Petitioners,

vs.

COLLEEN M. STEADMAN,

Respondent.

On Review From The Second District Court Of Appeal
Case No. 2D04-1428

PETITIONERS' BRIEF ON JURISDICTION

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INTRODUCTION

Liberty Mutual Insurance Company and its claims handler, Norma J. Peele (collectively "Liberty") seek to invoke the jurisdiction of this Court to resolve the conflict between the decision below and this Court's decision in *Aguilera v. Inservices, Inc.*, 905 So. 2d 84 (Fla. 2005). The issue is what a plaintiff must allege to overcome the Workers Compensation Immunity conferred by Chapter 440, Florida Statutes (2002). In *Aguilera*, this Court reiterated that mere allegations that the carrier had intentionally delayed payment did not state a tort independent of the claims handling process, even if the complaint characterized the delay as outrageous, intentional, and in bad faith.

Thus, under *Aguilera* it is not enough for the plaintiff in this case, Colleen Steadman, to allege that Liberty intentionally, outrageously, and in bad faith delayed her lung transplant for nine months despite knowing that the treatment was necessary and appropriate. *Aguilera*, 905 So. 2d at 91. But according to the Second District's decision below, such a complaint can overcome the statutory immunity simply by adding allegations that Liberty's actions were outrageous because Liberty intended to injure Steadman (A. 5-6).¹

The problem with the Second District's decision is that these conclusory allegations of intent to harm can be asserted in any case concerning the denial or

¹ References to "A." refer to the appendix attached to this brief containing the Second District's decision below.

withholding of medical benefits. The defendant always knows that the plaintiff is in need of treatment, and the plaintiff always alleges, as Steadman alleges here, that the treatment was necessary to prevent harm. Thus, under the roadmap provided by the decision below, it is a simple matter in every case to circumvent the immunity by alleging that the denial of healthcare was intentionally designed to harm the plaintiff.

As discussed below, *Aguilera* does not permit the statutory immunity to be so easily circumvented, as the Third and Fourth Districts have recognized in cases interpreting *Aguilera*. Review should be granted to prevent the Second District's erroneous and conflicting interpretation from rendering meaningless the immunity conferred by statute and to resolve the conflict between the decision below and *Aguilera* and decisions of the Third and Fourth Districts.

STATEMENT OF THE CASE AND FACTS

The Second District's short statement of the facts reveals that Colleen Steadman filed suit against her employer's worker's compensation carrier, Liberty and its claims handler, Norma J. Peele, for intentional infliction of emotional distress (A. 2). Steadman sought authorization and reimbursement for a bilateral lung transplant through Liberty. The benefits she sought were either denied or discontinued based on Liberty's determination that some of Steadman's requests

related to a preexisting medical condition (A. 2). *Liberty Mut. Ins. Co. v. Steadman*, 895 So. 2d 434, 435 (Fla. 2d DCA 2005) (*Steadman I*).

After the denial of benefits, Steadman filed a petition for benefits with a judge of compensation claims ("JCC") pursuant to Chapter 440, Florida Statutes. The JCC approved denial of some benefits but also ordered Liberty to pay for the surgery and some other items associated with the operation. *Steadman I*, 895 So. 2d at 435. Steadman alleges that Liberty failed to comply with the JCC's order promptly because she did not receive her operation for nine months. *Id.* (A. 2, 5).

Following surgery, Steadman sued Liberty in Hillsborough County Circuit Court for intentional infliction of emotional distress for their alleged delay in authorizing the lung surgery and for denying other medical expenses. *Steadman I*, 895 So. 2d at 435. Liberty moved to dismiss the case with prejudice, arguing that Steadman's sole avenue of relief was through Chapter 440, Florida Statutes (the "Worker's Compensation Act"). Section 440.11 provides that "the liability of a [worker's compensation] carrier to an employee, or to anyone entitled to bring suit in the name of the employee shall be provided in this chapter, *which shall be exclusive and in place of all other liability.*" *Id.* (emphasis added). Liberty argued that, because Steadman's intentional distress claim arose solely from defendant's delay in the payment of benefits, Steadman's only avenue of relief was through the Workers Compensation Act. *Steadman I*, 895 So. 2d at 435.

The trial court held that Liberty was not entitled to statutory immunity under §440.11 as a matter of law. The Second District reversed. *Steadman I*, 895 So. 2d at 435. According to the Court, Steadman's lawsuit did not overcome the immunity conferred by the statute because it was based "entirely on Liberty Mutual's delay in payment of benefits by Liberty." *Id.* at 436.

Steadman then sought review by this Court. At the time, this Court had already granted review of the Third District's decision in *Inservices v. Aguilera*, 837 So. 2d 464 (Fla. 3d DCA 2002), *review granted*, 847 So. 2d 975 (Fla. 2003). In *Aguilera*, on a set of particularly egregious allegations that included claims of fraud and other affirmative misconduct by the insurance carrier, the Third District had held that no cause of action could be based on conduct that arises during the claims process, even if the facts supported an independent tort.

This Court reversed the Third District. Although reiterating that claims of mere delay were not enough, even if couched as being in bad faith, this Court determined that a carrier could be liable for misconduct occurring during the claims process so long as the plaintiff alleged a separate and independent tort such as the intentional infliction of emotional distress. 905 So. 2d at 94-95.

Because the Second District's opinion in *Steadman I* had cited the Third DCA's *Aguilera* decision, this Court remanded the case to permit the Second District to reconsider its decision in light of *Aguilera*. On remand, the Second

District reversed itself and determined that Steadman had, in fact, pleaded an independent tort. The Court held that Steadman's allegations that Liberty's delay of treatment was intentional and designed to injure Steadman was enough under *Aguilera* to avoid the immunity conferred by the Worker's Compensation Act. The Court then denied Liberty's motion to certify a question of great public importance and Liberty's petition for review followed.

SUMMARY OF THE ARGUMENT

The decision below conflicts with *Aguilera* and decisions of the Third and Fourth Districts holding or demonstrating that more than allegations of bad faith or intentional delay are necessary to circumvent the immunity afforded by the Act. This Court's *Aguilera* decision makes clear that allegations of delay or denial of benefits, however characterized, are not sufficient to overcome the immunity. *Aguilera* holds that plaintiff must allege affirmative acts of misconduct that demonstrate a separate and independent tort.

By contrast, the decision below permits a claim that, by its own admission, is formed solely on the carrier's alleged delay in approving treatment. To permit this delay claim to go forward merely because plaintiff has characterized Liberty's actions as outrageous and intentional, is a misapplication of *Aguilera*. Review must be granted to resolve the conflict created by *Steadman*. Otherwise, the roadmap provided by *Steadman* will render the statutory immunity meaningless.

ARGUMENT SUPPORTING THE EXERCISE OF JURISDICTION

The Second District's decision below misinterprets *Aguilera* in such a way that eviscerates the immunity conferred by the Act. The court acknowledged in *Steadman I* that plaintiff's case "is based entirely on Liberty Mutual's delay in paying the benefits awarded [to Steadman]." 895 So. 2d at 436. Yet this Court in *Aguilera* reiterated that mere delay in the processing of claims is not an actionable tort falling outside of the immunity provided by the Workers' Compensation Act, no matter how the plaintiff characterizes the delay. Indeed, in stating this proposition, this Court favorably cited a decision holding that an employee cannot avoid immunity and "transform a mere delay in payments into an actionable tort simply by calling that delay outrageous, fraudulent, deceitful, or an intentional infliction of emotional distress." *Aguilera*, 905 So. 2d at 91, citing, *Sheraton Key Largo v. Roca*, 710 So.2d 1016, 1017 (Fla. 3d DCA 1998).

The decision below directly conflicts with *Aguilera* by permitting Steadman to maintain an intentional infliction claim that is based entirely on what the court below characterizes as Liberty's outrageous delay. According to the Second District, all Steadman need do to circumvent the immunity is allege that Liberty intended to harm Steadman by its delay. Thus, on remand the court held that the complaint stated a cause of action because Steadman alleged that Liberty knew that

Steadman needed treatment and intentionally withheld that treatment to intentionally injure her and hasten her demise.

The obvious problem with this decision, however, is that every workers' compensation delay case can easily be transformed into an outrageous delay claim. In every case regarding the provision of medical care, the patient's health, and often life, is at stake. No doubt a plaintiff faced with the rejection of a particular treatment may subjectively feel that the carrier has acted arbitrarily and outrageously. Perhaps we would all feel the same way in that same position. The point is, when every decision by the carrier has implications of life and death, any plaintiffs' lawyer worth his or her salt can turn the delay claim into an intentional infliction claim that will survive a motion to dismiss under the Second District's interpretation of *Aguilera*. Simply put, every delay claim in the context of medical treatment can readily be dressed up to survive a motion to dismiss.

Aguilera does not hold that immunity can be so easily overcome. Reiterating that mere delay claims are not enough, *Aguilera* stands for the unremarkable proposition that a defendant carrier is not automatically entitled to immunity for everything the carrier does during the claims process. If, as in *Aguilera*, there are allegations that the carrier committed affirmative acts of misconduct, these affirmative acts can form the basis of a claim. For example, in *Aguilera*, the carrier not only delayed the claim on outrageous and compelling

facts, but affirmatively acted to block patient care, attempted to convince the patient to lie to his counsel, and compelled the patient to undergo painful tests that the carrier knew were contraindicated and unnecessary. Simply put, affirmative misconduct that amounted to far more than delay was presented by Aguilera's complaint.

Following *Aguilera*, the Second District stands alone in permitting a claim based solely on delay to state a cause of action. By contrast, the Third District has dismissed claims based on plaintiff's allegations that the carrier in bad faith failed to respond or respond adequately to his claims for treatment. *Ingraham v. Travelers Indemnity Co.*, 925 So. 2d 377, 378 (Fla. 3d DCA 2006). See also *Grace v. Royal Indemnity Co.*, 949 So. 2d 1074, 1077 (Fla. 3d DCA 2007) (Ramirez, J., dissenting) (dismissing claims despite allegations that the carrier withheld treatment for a full nine months "with full knowledge of the necessity for the treatment.").

Other than *Steadman*, those claims that have survived a motion to dismiss have been predicated on acts that rose beyond the level of mere delay. *Thristino v. Crawford & Co.*, 932 So. 2d 1162 (Fla. 4th DCA 2006) (permitting claim to go forward because the complaint contained "specific and detailed allegations of intentional treatment or neglect" and "detailed allegations of intentional mistreatment"); *Protegrity Services, Inc., v. Vaccaro*, 909 So. 2d 445 (Fla. 4th DCA

2005) (plaintiff stated a cause of action based on carrier's wrongful threats made to the doctor).

It is critically important that the question of the proper application of *Aguilera* to a mere delay claim be resolved. The immunity afforded by the statute becomes meaningless if it is too easy to allege around it. Nor is it an adequate answer to suggest that baseless allegations of intentional harm can be sorted out later in the case at summary judgment or at trial. Indeed, Liberty is confident that it will disprove plaintiff's exaggerated and strident claims when given the opportunity, but that proof will come at great expense. Immunity is small comfort when the plaintiff is able to take the case deep into discovery and beyond, simply by adding a few choice adjectives to the complaint. As this Court has already observed in *Aguilera*, and as the Third and Fourth Districts have found in cases like *Ingraham* or *Protegrity*, more must be required before the plaintiff is allowed to circumvent the immunity accorded by the Act.

This Court should grant review to resolve the conflict presented by the Steadman decision below and to make clear that some sort of affirmative misconduct beyond the mere denial or delay of medical benefits must be alleged to overcome the statutory immunity.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for discretionary review and review the conflict presented by the decision below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via U.S. Mail on this **20th** day of **December, 2007** to: **Matthew D. Valdes, Esq.**, Matthew D. Valdes, P.A., P.O. Box 746, Windermere, FL 34786 and **Theodore J. Leopold, Esq., Jodi C. Page, Esq., and Diana L. Martin, Esq.**, Ricci ~ Leopold, P.A., 2925 PGA Blvd., Suite 200, Palm Beach Gardens, FL 33410.

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CERTIFICATE OF TYPEFACE COMPLIANCE

Counsel for Respondent certifies that this Brief on Jurisdiction is typed in 14 point (proportionately spaced) Times New Roman, in compliance with Rule 9.210 of the Florida Rules of Appellate Procedure.

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