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UNRELATED WORKS EXCEPTION REVISITED
by Ted Babbitt

Fla. Stat. 440.11(1) provides an exception to the civil immunity granted to both employers and coemployees by the workers' compensation law when a coemployee either acts with gross negligence or is employed by the same employer, but is assigned primarily to unrelated works within the employment. What constitutes "unrelated works" has been the subject of enormous judicial labor. In Taylor v. School Board of Brevard County, 888 So. 2d 1 (Fla. 2004), the Florida Supreme Court attempted to reconcile the opinions of all of the District Courts which diverged on how to define the unrelated works exception. In that case, the Court concluded that the unrelated works exception had to be interpreted narrowly:

"That the exception of the scheme for unrelated works should be applied only when it can clearly be demonstrated that a fellow employee whose actions caused the injury was engaged in works unrelated to the duties of the injured employee."
Id. at Page 5.

Unfortunately, the Supreme Court in Taylor provided little guidance as to how their mandate was to be applied. The Legislature gave even less guidance in the statute itself. That led to differing interpretations among the District Courts and ultimately brought the question before the Supreme Court again in Aravena v. Miami-Dade County, 31 Fla. L. Weekly S205 (Fla. April 6, 2006). That case, in an opinion authored by Chief Justice Pariente, reviews the rocky course of

attempted interpretation of the unrelated works exception by all of the courts including the Supreme Court and gives needed guidance to the Courts as to when this exception applies.

The Aravena case arose out of a wrongful death action brought on behalf of a school crossing guard who died when lights at a crossing malfunctioned and resulted in a two car collision where one of the cars left the roadway and killed the decedent. Suit was brought on behalf of her survivors against Miami-Dade County, which employed the decedent as well as those who maintained the lights. After a jury verdict in favor of the plaintiff, the Third District reversed and remanded for entry in favor of the defendant based upon its interpretation of Taylor, supra. The Supreme Court reversed and reinstated the verdict.

The facts showed that the crossing guard worked for the County's police department while the traffic signal personnel worked for the Department of Public Works, at different locations. The employees were not supervised by the same individuals and did not have similar duties. The crossing guards did not interact with the mechanics who maintained the signals and the responsibilities of the crossing guard to shepherd school children across the street had nothing to do with the appropriate regulation of traffic lights.

In reversing the trial court, the Third District looked at the big picture, opining that the traffic signal repair personnel's responsibility was to regulate cars and pedestrians and to appropriately repair the traffic lights while the school crossing guard's responsibility was to regulate the same vehicles and people at the same intersection where the defective light was located. The Third District

concluded it could not be said that the two jobs clearly demonstrated that they were unrelated or that the employees were working on entirely different projects.

The Third District's interpretation is understandable. In Taylor, the Supreme Court concluded that a school bus driver and a school bus mechanic were not engaged in unrelated works because they "shared a common goal of providing safe transportation to the students." Taylor at Page 6.

Recognizing the Supreme Court's interpretation in Taylor might be misinterpreted too restrictively, the Avavena majority felt it was time to set out clearer instructions to the courts as to how to apply this workers' compensation exception. At Page 208, the Court states:

"We conclude that the phrase 'assigned primarily to unrelated works' in section 440.11(1) has both an operational and a locational component. Thus, where coemployees are assigned primarily to different departments and different locations, and are assigned primarily to different job functions, the fact that the coemployees may have some broad overlapping responsibilities is not dispositive.

Although we stated in *Taylor* that 'we could not hope to contemplate the myriad of factual circumstances' that might arise in applying the unrelated works exception, 888 So. At 5, a review of the district court decisions shows common factors used in the analysis of the applicability of the unrelated works exception. These include: (1) whether the coemployees work at the same location; (2) whether the coemployees must cooperate as a team to accomplish a specific mission; (3) the size of the employer; (4) whether the coemployees have similar job duties, (5) whether the coemployees have the same supervisor; and (6) whether the coemployees

work with the same equipment.

In a case such as this one, in which the coemployees do not work at the same location, it is more likely that the coemployees will be considered to be assigned primarily to unrelated works. However, in making this determination the courts should also consider whether the coemployees must cooperate as a team to further a *specific* mission of the employer, not whether they further the same *general* mission of the employer. In deciding whether coemployees must cooperate as a team to further a specific mission of the employer, it may be helpful to look to the last four factors enumerated above; the size of the employer and whether the coemployees work with the same equipment, have the same supervisor, or have similar duties.

Further, although we recognize that when employees work at the same location, it is more likely that they will not be considered to be assigned primarily to unrelated works, we caution that in those circumstances, the courts must also consider whether the work being performed is part of a team effort. Clearly, as Justice Lewis observed, a large university that has thousands of employees across many acres warrants different consideration than a small, single-structured location such as an elementary school, where everyone from teachers to custodial staff may be considered part of the same team. *See Taylor*, 888 So. 2d at 15 (Lewis, J., concurring in result only)."

This road map gives clearer instructions to the courts as to how to apply the unrelated works exception to the workers' compensation law. This step by step analysis, while still necessarily imperfect, allows courts to review the myriad

fact situations which could apply to this question in a more structured analysis than was provided by the Legislature.