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WORKERS' COMPENSATION

Workers Compensation Defense: the Unwitnessed Accident

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A common situation encountered in Workers Compensation defense cases is the unwitnessed accident. This is simply a factual situation where the claimant does not have any witnesses to corroborate his story of an accident.

A Good Workers Compensation Defense Recognizes What the Plaintiff has to Prove

A Louisiana Supreme Court case from 1992, *Bruno v. Harbert International, Inc.*, 593 So.2d 357 (La. 1992), continues to provide guidance on the burden an injured employee must meet to support that an accident did occur if there were no witnesses to corroborate his story. Known commonly as the "*Bruno* standard," it provides that an employee may prove by his or her testimony alone that an unwitnessed accident occurred in the course and scope of their employment if the employee can satisfy two elements: (1) no other evidence discredits or casts serious doubt upon the employee's version of the incident; and (2) the employee's testimony is corroborated by circumstances following the alleged accident. Corroboration can usually be supplied by

the testimony of fellow workers, spouses, friends, or through medical evidence.

The Plaintiff's Story is Not Enough if the Evidence Disagrees

In a recent Workers Compensation defense success, the Louisiana Fourth Circuit Court of Appeal affirmed the trial court's granting of the defendants' Motion for Summary Judgment in *Lenig v. Textron Marine & Land Sys.*, 13-0579 (La. App. 4 Cir. 8/7/13), — So. 3d —. First, the employee participated in a recorded interview. He supplied the date of the accident in which he claimed he had injured his leg while lifting welding plates, which was later confirmed to be a date that he did not work. The employee's supervisor provided testimony through an affidavit that the employee never reported a work-related accident or that he missed any work due to a work-related accident. Medical records were also introduced that did not corroborate the occurrence of the work-related accident. Records from the Veterans Administration hospital indicate that the employee was seen prior to the date of his alleged accident, and he did not report the occurrence of any work-related accident. A later record, after the date of the alleged accident, provided that the employee had associated leg pain for over 20 years, and there was no reference to a work-related accident.

The employee argued that he was simply confused about the date of the accident, that he supplied the corrected date in his discovery responses, and that he had informed his supervisor of his problems resulting from the alleged accident. This was found by the trial court to be insufficient to carry his burden of proof under *Bruno*. The trial court stated that while the employee's affidavit and recorded statement referred to an accident within the course and scope of his employment, none of the other

evidence corroborated his story of having suffered a work related accident on the date he claimed.

While this case does not significantly change the law, it does show that courts will not automatically accept an employee's version of events simply because the accident was not witnessed. It also demonstrates that a Motion for Summary Judgment can be used as part of the strategy in a Workers Compensation defense to challenge a compensation claim when the occurrence of the accident is unwitnessed. This is most effective once discovery has progressed enough to support that there is a lack of corroboration of the employee's version of events.