**Florida Supreme Court Rules**

**Section 440.34, Florida Workers’ Compensation Statute is**

**Unconstitutional Under Both the Florida and the United States Constitutions©**

***Attorney’s Fees***

Section 440.34 of Florida’s workers’ compensation statute is the provision that governs the payment of attorney’s fees in connection with workers’ compensation cases to a claimant’s attorney. The statutory provision contains a formula that created an irrebuttable presumption that could not be challenged by a claimant who claimed that the attorney fees awarded were not reasonable in light of the complexity of the case.

The case at issue was filed by Marvin Castellanos who worked for a company called Next Door Company in Hialeah, Florida. He was injured in 2009 and the employer-carrier denied his claim and raised twelve affirmative defenses. Ultimately, Castellano’s attorney successfully defeated all of the employer-carrier’s twelve affirmative defenses and Mr. Castellanos received workers’ compensation. However, when it came time to determine the attorney fees award, the limitation set forth in Section 440.34 resulted in an hourly rate of $1.53 per hour for a total of 107.2 hours ($164 and change). Experts testified that the number of hours spent on the case were reasonable in light of the complexity of the case and the formidable stance taken by the employer-carrier.

***The Purpose of Workers’ Compensation Insurance***

The purpose of any workers’ compensation law is to ensure that injured workers receive medical payments and benefits if they suffer a workplace injury in the course and scope of employment in an efficient, timely manner. In exchange, the employer gets the protection of the exclusive remedy doctrine (there are a few exceptions) and the certainty that the benefits paid to the injured worker are proscribed by statute and not awarded at the whim of a jury.

***Amendments/Reduced Benefits Over the Years/Complexity***

Over the years, there have been numerous amendments to Florida’s workers’ compensation statute. As a result, the statute became very complex for a lay person to navigate. The legislature even recognizes this reality as evidenced by statements like “workers’ compensation has become increasingly complex and the assistance of a competent attorney is needed to navigate the statute.” Even though the legislature recognizes the need for a competent counsel to assist an injured worker in the prosecution of the injured worker’s workers’ compensation claim, the legislature amended the statute in 2009 to further limit the amount of attorney fees that could be awarded by eliminating any discretion by the judge to determine whether the attorney fees were reasonable.

***Still Pending Before the Supreme Court***

The *Castellanos* case was just one of the workers’ compensation cases on the Florida’s Supreme Court docket challenging the constitutionality of certain provisions of Florida’s workers’ compensation statute or the entire statute. On April 6, 2016 the Florida Supreme Court heard oral arguments in another workers’ compensation case, i.e. *Daniel Stahl v. Hialeah Hospital, et al.*, SC-115-725. In this case, Mr. Stahl, an injured nurse filed a claim for benefits under Florida’s workers’ compensation statute. Believing that the benefits he received were insufficient to compensate for his injury, he filed suit challenging the constitutionality of the entire statute based upon the theory that the statute fails to provide adequate benefits for workers who are permanently and partially disabled from on the job injuries. As of April 28, 2016, no decision had been issued in the *Stahl* case.

In light of the *Castellanos* decision and depending upon the ruling in *Stahl*, it is likely that workers’ compensation will be a hot topic during the 2017 Florida Legislative Session. In the meantime, the costs of workers’ compensation claims may increase as a result of the holding in *Castellanos* or the decision could cause employers-carriers to be more reasonable when it comes to resolving workers’ compensation claims rather than fighting them as the ruling in *Castellanos* changes the economic realities of the cost associated with fighting such claims. Time will tell.

*A note to the reader: This article is intended to provide general information and is not intended to be a substitute for competent legal advice. Competent legal counsel should be consulted if you have questions regarding compliance with the law.*

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