



May 3, 2016

Florida Supreme Court upholds exclusive remedy, renders attorney fee schedule unconstitutional

On April 28, 2016, the Supreme Court of Florida issued decisions in two of the three workers' compensation cases pending their review.

The *Stahl* decision leaves in place the decision from the Florida 1st District Court of Appeal upholding the constitutionality of the Florida workers' compensation statute. In *Castellanos*, the mandatory attorney fee schedule was found to be unconstitutional.

Constitutionality of Florida Workers' Compensation Act upheld

In a brief order, the Supreme Court of Florida unanimously dismissed review of [Stahl v. Hialeah Hospital, et al.](#) after hearing oral arguments on April 6, 2016. The order indicates that "no motion for rehearing will be allowed."

In this case, Daniel Stahl challenged the constitutionality of the workers' compensation statute asserting it was an inadequate exclusive remedy due to amendments that eliminated permanent partial disability (PPD) benefits in 2003 and the addition of a \$10 co-payment provision for medical treatment of injured workers who have reached maximum medical improvement (MMI) in 1994.

The high court exercised its discretion not to rule on the merits of the case, and, therefore, the decision from the Florida 1st DCA remains in place. The 1st DCA upheld the constitutionality of the workers' compensation statute, finding that the challenged amendments "withstand rational basis review, in that the copay provision furthers the legitimate stated purpose of ensuring reasonable medical costs and PPD benefits were supplanted by impairment income benefits."

Florida mandatory attorney fee schedule unconstitutional

On the same day, the high court issued a long-awaited opinion in [Castellanos v. Next Door Company, et al.](#) This 5–2 decision held that the mandatory attorney fee schedule in the Florida Workers' Compensation Act is an unconstitutional violation of due process under both the Florida and United States constitutions.

Based on this finding, the case has been remanded back to the judge of compensation claims (JCC) for entry of a reasonable attorney fee.

Background and case summary

The Florida Supreme Court previously addressed the attorney issue in 2008 in *Murray v. Mariner Health*. At that time, the constitutional issue was avoided. The court instead focused on the ambiguous language in the statute and held that a claimant was entitled to recover a reasonable attorney's fee. The Florida legislature responded to that decision in 2009 by amending the statute to remove the word "reasonable."

This case involved Marvin Castellanos, whose workers' compensation claim was denied. He retained an attorney and was ultimately successful in obtaining workers' compensation benefits valued at \$822.70. In doing so, his attorney expended 107.2 hours of work on his client's behalf and sought attorney fees of \$36,817.50.

Applying the 2009 attorney fee statute, the JCC determined that the claimant attorney was entitled to only \$164.54, which amounted to \$1.53 for each hour worked.

Castellanos appealed the attorney fee award to the Florida 1st DCA, challenging the constitutionality of the attorney fee schedule. The 1st DCA affirmed the attorney fee award of the JCC, indicating that "the statute required this result." However, the appellate court certified a question to the Supreme Court regarding whether the award of attorney's fees in this case were adequate, and consistent with the access to the court, due process, equal protection and other requirements of the Florida and federal constitutions.

In reaching the conclusion that the mandatory attorney fee schedule is unconstitutional, the Supreme Court noted that the right of a claimant to obtain a reasonable attorney fee when successful in obtaining benefits has been a critical feature of the Florida workers' compensation law from 1941 to 2009. The Court also observed that allowing claimants to engage competent legal representation "*discourages the carrier from unnecessarily resisting claims.*"

The high court held that the mandatory attorney fee schedule creates a conclusive irrebuttable presumption and thereby precluded every injured worker from challenging the reasonableness of the fee award. The court explained in its decision that "*It is the irrebuttable statutory presumption – not the ultimate statutory fee awarded in a given case – that we hold unconstitutional.*"

Impact of this decision

By holding the attorney fee schedule unconstitutional, the statute in effect at the time of the *Murray* decision in 2008.

The court emphasized in its decision "that the fee schedule remains the starting point." Only where the claimant can demonstrate that the fee schedule results in an unreasonable fee – such as in a case like *Castellanos* – will the claimant's attorney be entitled to a fee that deviates from the fee schedule.

The possibility of awards above the mandatory attorney fee schedule is anticipated to incentivize an increase in litigation in the state and associated costs.

The effect on rates businesses pay for workers' compensation insurance will be clearer once the National Council on Compensation Insurance (NCCI) submits an expected proposed rate filing with the Florida Office of Insurance Regulation (OIR). Following the Supreme Court of Florida decision in *Murray*, NCCI estimated the full impact to be an increase in overall Florida workers' compensation system costs of 18.6 percent over two years. It is important to keep in mind that there has been a 60 percent cumulative reduction in Florida workers' compensation rates since the 2003 workers' compensation reforms.

Claims affected

This decision will impact any open Florida claim regardless of the date of accident, unless it is settled or has a settlement pending, or a prior attorney fee issue has already been resolved.

Expect a revival of attorney fee claims where the claimant attorneys reserved jurisdiction on their entitlement to fees and costs.

Remaining constitutional challenges to workers' compensation in Florida

Currently the only other workers' compensation case pending before the Florida Supreme Court relating to the constitutionality of the Workers Compensation Act is *Westphal v. City of St. Petersburg*. The issue in this case is the 104 week TTD cap. Oral arguments were heard on June 5, 2014, and a decision is still pending.

What's next?

The Florida legislature adjourned March 11, 2016. This decision and the likely increase in workers' compensation costs will place pressure on Florida lawmakers to consider calling a special session. Given that this is an election year, it is not certain if a special session will occur. If it does not, it will be 2017 before legislation to address this issue is possible.

Sedgwick is actively involved in efforts by the Workers' Compensation Coalition, led by the Associated Industries of Florida, in the development of a broad strategy to address this and other challenges to workers' compensation in the state, including recommendations regarding legislative changes.

Should you have any questions about this case or how it may impact your claims program, please contact your Sedgwick client services representative.

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