

Florida Supreme Court Overturns Workers' Comp Attorney Fee Limits

October 24, 2008

The Florida Supreme Court announced its final ruling in *Murray v. Mariners Health/ACE USA*, reinstating hourly attorneys' fees in workers compensation cases.

In response to the announcement, William Stander, assistant vice president and regional manager of the Property Casualty Insurers Association of America referenced SB 50A passed during the 2003 Florida Legislative Session.

"Since the 2003 reform bill passed, workers compensation rates have decreased by over 60 percent, saving employers hundreds of millions of dollars annually," Stander said. "Eliminating hourly attorneys' fees, a key cost driver, was an integral component to the 2003 legislation."

Standar added that the Oct. 23 decision will drive more litigation back into the system and drain more money from employers' pockets.

According to the Workers' Compensation Coalition for Business & Insurance Industry, the Court's decision could negatively impact Florida's employees through potential rate increases that will constrict job growth and employee raises. With the restoration of hourly attorney fees, the Court has revived one of the system's prime drivers of claim costs -- excessive attorney involvement, WCCBII added.

"Florida's workers' compensation system diverted a crisis with landmark reforms in 2003, which eliminated unaffordable rates, widespread fraud and poor compliance with insurance requirements, while providing reasonably priced workers' compensation insurance that covered more employees than ever before," said Tamela Perdue, WCCBII chair. "As a result, injured workers continued to receive benefits, found legal representation when needed, and returned to work. Unfortunately, today's Supreme Court decision has put us right back into another potential crisis."

The American Insurance Association agreed that the decision will undermine the positive impact of 2003's landmark workers' compensation reforms.

"The 2003 legislative reforms rescued what was a failing workers' comp system," said Cecil Pearce, AIA vice president, southeast region. "It was failing for workers, employers and insurers."

Pearce called the decision an unfortunate setback for a workers' comp system that has seen significant improvement since 2003.

The 2003 reforms addressed a number of issues, including extensive fraud and noncompliance with workers' compensation coverage requirements, and steadily increasing system costs, Pearce said. A key driver of claim costs prior to the reforms was hourly attorney fees, which made the cost of litigated claims 40 percent higher in Florida than in any other state because of the increased litigation. The 2003 reforms linked attorney fees to the value of benefits secured through a fee percentage schedule, eliminating the ability of claimant attorneys to bill by the hour. With that law now overturned, it is expected that an increase in workers' compensation premiums will be inevitable, Pearce added.

"AIA will be working with a coalition of Florida businesses and insurers to encourage the Legislature to address the court's concerns as expressed in the Murray decision, and put the workers' compensation system back on track," said Pearce.

Insurance Commissioner Kevin McCarty said the Office of Insurance Regulation is reviewing the Court's decision to determine its potential impact on the workers' compensation system as a whole and on future workers' compensation insurance rates in Florida.

**A copy of the Murray v. Mariners Health/ACE USA decision can be accessed at:
<http://www.floridasupremecourt.org/decisions/2008/sc07-244.pdf>

**Sources: Property Casualty Insurers Association of America
American Insurance Association
Workers' Compensation Coalition for Business & Insurance Industry

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