



We have all been waiting with bated breath for the Florida Supreme Court to issue its ruling in Castellanos v. Next Door Company, et al. . Well, today is that day and the outcome is, unfortunately, unsatisfactory and will likely have a lasting effect for many years to come. We write you today to provide our analysis of the Castellanos decision and provide you guidance as to what to expect in the coming months.

PROCEDURAL HISTORY:

This original appeal to the First District Court of Appeals (1st DCA) resulted from a Judge of Compensation Claims awarding Claimant Counsel a statutory attorney fee of \$164.54 for 107.2 hours of legal work reasonably necessary to secure the Claimant's workers' compensation benefits. The equates to an award of about \$1.54 per hour.

The First District affirmed the Judge of Compensation's decision holding that "the statute required this result" and that the court was "bound by precedent to uphold the award, however inadequate it may be as a practical matter." Castellanos, 124 So. 3d at 393. In so doing, the First District recognized that there were important constitutional issues presented by this case that warranted the Supreme Court to determine the constitutionality of the current attorney's fee statute. Id. at 394.

Despite the affirmation of the lower Court's ruling, the 1st DCA certified to the Florida Supreme Court the following question: "whether the award of attorney's fees in this case is adequate, and consistent with the access to courts, due process, equal protection, and other requirements of the Florida and Federal Constitutions."

The Florida Supreme Court granted review and concluded today that the mandatory fee schedule is unconstitutional as a violation of due process under both the Florida and United States Constitutions.

In light of same, the Florida Supreme Court advised, "Florida law has long held that, when the legislature approves unconstitutional statutory language and simultaneously repeals its predecessor, then the judicial act of striking the new statutory language automatically revives the predecessor unless it, too, would be unconstitutional." *citing B.H. v. State*, 645 So. 2d 987, 995 (Fla. 1994).

As such, the Florida Supreme Court's holding operates to revive the statute's immediate predecessor.

The Florida Supreme Court advised, "This is the statute addressed by this Court in Murray, where we construed the statute to provide for a 'reasonable' award of attorney's fees. With Murray as a guide, a JCC must allow for a claimant to present evidence to show that application of the statutory fee schedule will result in an unreasonable fee. We emphasize, however, that the fee schedule remains the starting point, and that the revival of the predecessor statute does not mean that claimants' attorneys will receive a windfall. Only where the claimant can demonstrate, based on the standard this Court

articulated long ago in Lee Engineering, that the fee schedule results in an unreasonable fee—such as in a case like this—will the claimant’s attorney be entitled to a fee that deviates from the fee schedule.”

WHAT DOES THIS MEAN TO ME?

First and foremost, the current fee statute (statutory only + \$1,500.00 one time medical only) is no more and the statute’s immediate predecessor is revived. This means hourly attorney’s fees for benefits obtained on behalf of claimants are back in play. With this added incentive to the claimant’s bar we expect to see the following:

- 1) Increase in number of new claims filed as claimant attorneys take less valuable or more “fringe” type cases;
- 2) Increase in filings of petitions for benefits on current claims;
- 3) Increase in litigation (more depositions, more live events, etc.) on current and new claims related to claimant attorneys now being able “get paid” for the time they invest;
- 4) Increase in number of verified fee petitions for fees previously reserved upon by the parties; and
- 5) Increase in the aggressiveness of prosecution of claims. With the added threat of hourly fees, it is believed we will see more “hardcore” litigation on even small issues that may have previously been left by the wayside or ignored.

It is believed that the Florida Legislature will react to the Castellanos decision but we do not know when or how. However, even a complete statutory rewrite will require time and anything predating that rewrite will be “hourly” fee.

WHAT TO DO IN THE SHORT TERM?

- 1) Review your files for prior reservation of fees or stipulations to fee entitlement. Resolve these first as it is believed that there will be a short period of generalized confusion while claimant attorneys “load their guns” so to speak. They will take the low hanging fruit while the prepare the “bigger” fee cases.
- 2) Review files that have been in litigation for an extended period of time where both sides have many hours of attorney time involved. Evaluate them objectively and look at the possible hourly downside of a loss. If they can be settled, now may be the time.
- 3) Work with management or your defense attorneys to identify the danger files. If you require assistance, please know that the attorneys at Chartwell stand ready to help.

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