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Recent Florida Supreme Court Decisions on Workers' Compensation Could Lead to Higher Premiums

In two long-awaited decisions, the Florida Supreme Court declared several provisions of the state's workers' compensation statutes unconstitutional, weakening legislative reforms approved in 1994 and 2003 intended to curb the system's growing costs and higher premiums for employers and businesses. The rulings, in [Castellanos v. Next Door Company](#) and [Westphal v. City of St. Petersburg](#) were released almost two years after the Court first heard oral arguments in the cases. The decisions struck down Florida laws that restricted the fees for claimants' attorneys to a statutory formula tied to the benefits secured by the claimant and limited the recovery of benefits to 104 weeks for temporary total disability, respectively.

Castellanos v. Next Door Company

On April 28, 2016, the Florida Supreme Court held that the state's strict adherence to its workers' compensation statutory fee formula for the award of fees to claimant's attorneys was an unconstitutional violation of both state and federal due process rights.

Castellanos was heard by the Supreme Court after lower courts upheld the award of \$164.54 for 107.2 hours of legal work performed by claimant's counsel, even though those courts found that the legal work performed was reasonably necessary to secure the claimant's workers' compensation benefits. The actual amount of benefits secured was \$822.70, resulting in a fee for the claimant's attorney of \$1.53 per hour. However, the Court found the claimant in *Castellanos* had no avenue to challenge the reasonableness of the \$1.53 hourly rate under the statute, even when it determined that his attorney had to dedicate significant time and effort in pursuing the case and refuting numerous defenses raised by the employer and its carrier.

While the Court acknowledged that the Legislature was concerned about the excessiveness of attorneys' fee awards and attempted to standardize fees, it held that the statutory fee schedule lacked any relationship to the amount of time and effort that would have to be expended by a claimant's counsel. Moreover, it determined that adherence to the fee schedule resulted in a significant and ever increasing gap between the amount of fees paid to claimant attorneys and the amount of fees paid to attorneys representing employers/carriers in the same case. The Court also noted that excessive fees still result under the fee schedule as the law does nothing to provide a standard to adjust fees downward when the recovery is too high in view of the time and effort involved.

The Court determined that the current law discouraged attorneys from representing claimants in cases that are low-value but complex. "Without the ability of the attorney to present, and the JCC to determine, the reasonableness of the fee award and to deviate where necessary, the risk is too great that the fee award will be entirely arbitrary, unjust and grossly inadequate," the Court wrote. "It is the irrebuttable statutory presumption – not the ultimate statutory fee awarded in a given case – which we hold unconstitutional."¹

Westphal v. City of St. Petersburg

As Florida's business and legal communities assessed the impact of the *Castellanos*' decision on workers' compensation costs, the Court released its 5-2 decision in *Westphal* on June 9, 2016. In *Westphal*, the Court held that the statutory two-year limitation for temporary total disability benefits in workers' compensation cases is an unconstitutional denial of the claimant's right of access to the courts under Florida's constitution. In striking down the temporary disability benefit limitation set forth in Section 440.15(2)(a), F.S., the Court restored the pre-1994 law, which allowed for temporary total disability benefits of up to 260 weeks.

The claimant in *Westphal* argued that the law left him with no recourse to benefits as his workplace injury left him temporarily disabled for more than 104 weeks, but he was not entitled to receive permanent disability benefits because he was not determined to have reached maximum medical improvement. Claimants with an improving condition who exhaust their temporary disability benefits are not entitled to further workers' compensation benefits until they reach maximum medical improvement.

Westphal came to the Florida Supreme Court after the First District Court of Appeal (First DCA), in an en banc ruling issued in September 2013, overruled the Judge of Compensation Claims' (JCC) denial of recovery to the claimant due to the statutory gap in benefits allowed. The First DCA held that a "worker who is totally disabled as a result of a workplace accident and remains totally disabled by the end of his or her eligibility for temporary total disability benefits is deemed to be at maximum medical improvement by operation of law and is therefore eligible to assert a claim for permanent and total disability benefits." In so holding, the First DCA did not address the constitutional access to courts issue.

The Supreme Court, however, overturned the First DCA's decision that *Westphal* was eligible for permanent total disability benefits "by operation of law." According to the Court, the First DCA tried to rewrite a plainly written statute to avoid an unconstitutional result, rather than follow the statutory language providing that temporary disability benefits shall cease when an employee reaches the statutory 104-week limit. The Court determined that the law, as currently written, does not provide that a worker is entitled to permanent total disability benefits when he or she reaches the 104-week temporary disability limit. Moreover, the Court pointed out that in 2009, when the events giving rise to the case occurred, the workers' compensation laws expressly limited permanent total disability benefits to claimants with catastrophic injuries or claimants who are incapable of engaging in employment.

¹ Days before the *Castellanos* decision, Florida's First District Court of Appeal held Sections 440.34 and 440.105(3)(c) . F.S., unconstitutional as applied in *Miles v. City of Edgewater Police Dep't*. In *Miles*, the Court found that the statutes worked together to unduly limit a person's free speech by making it a crime for an attorney to accept a fee not approved by the Judge of Compensation Claims (JCC), and then requiring the JCC to approve a fee based on the amount of benefits secured, regardless of the amount of the work involved. In its *Castellanos* decision, the Supreme Court acknowledged the *Miles* ruling but noted the constitutionality of Section 440.105(3)(c) was not yet before the Court. The National Council of Compensation Insurance (NCCI) indicated in a recent release that under *Miles*, claimant's attorneys can earn fees regardless of whether benefits are awarded and, depending on the circumstances, they may earn higher fees than they would earn under the *Castellanos* decision. NCCI indicated they are unable to determine the impact of the *Miles* decision at this time.

“The Legislature intended this result by limiting temporary total disability benefits and then limiting the class of individuals entitled to permanent total disability benefits,” the Court said. “It is not the prerogative of the courts to rewrite a statute to overcome its shortcomings.”

The Court decided that the statutory gap contradicts the goal of the workers’ compensation law, which is to provide a reasonable remedy for the payment of benefits as an alternative to tort litigation. The Court indicated that the statutory scheme, as applied in *Westphal*, completely cuts off the injured worker’s right to receive any disability benefits “even though there is no dispute” that the claimant is severely injured, disabled, and still undergoing treatment.

The Court determined there was no showing of an “overwhelming public necessity” in the enactment of this statute in order to justify denial of the right of access to the Courts for these workers. In declaring this statutory provision unconstitutional, the Court decided to revive the pre-1994 law that limited temporary total disability benefits to 260 weeks. Two years of temporary disability benefits was simply not enough time for severely injured workers who cannot yet be considered permanently disabled, the Court said.

Castellanos and Westphal’s Effect on the Workers’ Compensation System in Florida

The resulting impact of the Supreme Court’s decisions in *Castellanos* and *Westphal* on current and future workers’ compensation cases was instantaneously evident, with the state’s business community already preparing for increases in their workers compensation premiums and industry leaders publicly declaring that the Court’s decision could threaten Florida’s recovering business climate. Some of their concerns have already proven correct with a JCC recently awarding \$42,000 in fees in a case where approximately \$9,000 in benefits was secured.²

After *Castellanos*, the National Council of Compensation Insurance (NCCI) made a rate filing with the OIR, requesting a 17.1 percent increase in workers’ compensation premiums to begin on Aug. 1, 2016. This did not take into account the unfunded liability which has been created in Florida due to the retroactive nature of the *Castellanos* decision. Immediately after *Westphal’s* decision, however, the NCCI indicated that it will amend that filing. A hearing for the NCCI rate filing is expected to be scheduled in the summer.

It is premature to completely identify an effective solution that would ensure there is a viable, efficient, and cost effective workers’ compensation system that provides all claimants with reasonable access to recourse when benefits are denied. Florida’s Office of Insurance Regulation has announced that a public hearing will be held in order to hear from all stakeholders on this issue. It is expected that addressing the court decisions will become a priority in the next regular session of the Florida Legislature, scheduled to convene March 2017.

It has been more than 13 years, however, since Florida workers’ compensation laws underwent comprehensive legislative reform in a special session. Only a handful of legislators that served during the 2003 session remain in the Legislature. Those reforms were deemed necessary due to affordability concerns of the business community with workers’ compensation premiums at an all-time high. At the time, it was estimated by the NCCI that the legislative reforms to the workers’ compensation system would create annual savings to businesses of about \$400 to \$450 million. Since those reforms were enacted, rates have reportedly decreased a cumulative average of more than 63 percent. As such, it is imperative that the business community communicate to their local representatives the onerous effects these decisions will have on workers’ compensation premiums in Florida and to the overall state economy.

Other legal and financial ramifications will be closely monitored by stakeholders as time will clarify the impact of the *Castellanos* and *Westphal* decisions and offer a roadmap to ensuring a sustainable and responsive workers’ compensation system in Florida. Associated Industries of Florida (AIF), along with other business and insurance stakeholders, has already scheduled a series of town hall meetings across the state. The purpose of these meetings

² *Diaz v. Palmetto General Hospital*, OJCC Case No. 11-002425GCC (May 3, 2016)

is to bring together legislators, employers, insurance agents, and other interested parties in informational sessions that will discuss the ramifications the Supreme Court decisions will have on workers' compensation premiums.

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