

## **Impact of the Florida Supreme Court Decision in *Castellanos v. Next Door Company***

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On April 28, 2016, the Florida Supreme Court issued a decision in ***Castellanos v. Next Door Company***. The central implication of the Florida Supreme Court's ruling is that judges of compensation claims (JCCs) will no longer be constrained by the fee formula contained in FL Stat. §440.34 in determining the amount of attorney fees owed by employers and carriers in workers' compensation cases.

- The statutory attorney fee structure will still be considered the starting point for attorney fee awards, but now, as in the past, JCCs will have the liberty to depart upward or downward from that statutory fee in order to reach a result that is equitable given the unique facts of the case.
- A JCC must look to see if the guideline fee is reasonable: the standards for reasonableness are based on a 1968 Florida Supreme Court case (***Lee Engineering***), which was eventually made a part of the workers compensation statute.
- If the JCC finds the guideline fee is not reasonable based on the above, the claimant's attorney receives a carrier paid fee, based on his or her hours and an hourly rate determined by the JCC.

*Until the Florida Legislature considers re-writing the law, determination of attorney fees now reverts to the last constitutionally-accepted version of the statute, which is the 10/1/2003 law. It is identical to the current version of §440.34, with the exception that it contains the word "reasonable." Only a JCC can approve a "reasonable" fee, and in light of the ruling in Castellanos, is no longer required to apply only the statutory fee.*

### **Factors for determining "reasonable" claimant attorney fees**

These factors are taken from the Florida Supreme Court's 1968 decision in *Lee Engineering & Construction Co. v. Fellows*, and from Florida Bar Rule 4-1.5(b)(I):

- the time, labor and skill required by the attorney
- the novelty, complexity, and difficulty of the questions involved
- the fee customarily charged in the locality for similar legal services
- the amount involved in the controversy and the benefits resulting to the Claimant
- the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer
- the time limitation imposed by the Claimant or the circumstances, and any additional or special time demands or requests by the Claimant
- the nature and length of the professional relationship with the Claimant
- the experience, reputation, and ability of the lawyer or lawyers performing the services
- the contingency or certainty of a fee

### **Statutory Formula for reference**

- 20% of the first \$5,000.00 of benefits secured, 15% of the second \$5,000.00, 10% of the remaining benefits secured after 10 years from the date of the petition, 5% of the benefits secured after 10 years.

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### **What this court decision means to Insurers and Employers**

The *Castellanos* decision governs any post-October 1, 2003, accident date, eliminates strict adherence to the statutory formula, and permits the award of hourly fees by the Judge of Compensation Claims according to the statute and *Lee Engineering* factors for reasonableness.

As a result, we may see an increase in litigation activity and in the timeframes needed to resolve claims. Discovery requests and timeframes subsequently may increase, including adjuster and nurse depositions, and production of claim records.

Employers play an important role in managing attorney fee exposure. Employers can assist by:

- Providing wage information on the state mandated DWC1(a) form and related detailed information as quickly as possible,
- Clearly documenting any communication you have with the employee regarding their employment activities,
- Making available modified or light work duty and sending the information to the injured employee in writing, and
- Continuing to keep the lines of communication open with us.

Travelers will continue to carefully review and evaluate each claim on its merits and pay what is owed according to Florida law. Claims will continue to be handled and adjusted accordingly, and issues surrounding attorney fees will be considered on a case-by-case basis within the ***Castellanos*** framework.

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