

Bill No. HB 1837, 2nd Eng.

Amendment No. Barcode 110830

CHAMBER ACTION

Senate

House

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Senator Wasserman Schultz moved the following amendment:

Senate Amendment

On page 157, line 401, through
page 160, line 4597 delete those lines

and insert:

440.34 Attorney's fees; costs.--

(1) A fee, gratuity, or other consideration may not be paid for benefits secured ~~services rendered~~ for a claimant in connection with any proceedings arising under this chapter, unless approved as reasonable by the judge of compensation claims or court having jurisdiction over such proceedings. For purposes of this section, the term "benefits secured" reflects the following. Except as provided by this section ~~subsection~~, any attorney's fee approved by a judge of compensation claims for benefits secured for ~~services rendered to~~ a claimant shall be must equal to 20 percent of the first \$5,000 of the amount of the benefits secured, whether ordered or agreed to by the parties, and 15 percent of the ~~next \$5,000 of the amount of~~ the benefits secured, 10 percent of the remaining amount of

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1 the benefits secured to be provided during the first 10 years
2 after the date the claim is filed, ~~and 5 percent of the~~
3 ~~benefits secured after 10 years.~~ In the alternative ~~However,~~
4 the judge of compensation claims may approve an attorney's fee
5 that may not exceed \$2,500, based on a maximum hourly rate of
6 \$150 per hour, if the judge of compensation claims expressly
7 finds that the fee, based upon the total benefits secured,
8 fails to fairly compensate the attorney and the benefits
9 secured are less than \$10,000. In a proceeding in which a
10 carrier or employer denies that an injury occurred for which
11 compensation benefits are payable and the claimant prevails on
12 the issue of compensability, in lieu of an attorney's fee
13 equal to 15 percent of the benefits secured, the judge of
14 compensation claims may award an attorney's fee that may not
15 exceed \$2,500, based on a maximum hourly rate of \$150 per
16 hour, if the judge of compensation claims expressly finds that
17 the attorney's fee, based on the benefits secured, fails to
18 fairly compensate the attorney and ~~shall consider the~~
19 ~~following factors in each case and may increase or decrease~~
20 ~~the attorney's fee if, in her or his judgment, the~~
21 ~~circumstances of the particular case warrant such action.~~ The
22 judge of compensation claims may not approve a compensation
23 order, joint stipulation for a lump-sum settlement,
24 stipulation, or agreement between a claimant and his or her
25 attorney, or any other agreement related to benefits under
26 this chapter which provides for an attorney's fee in excess of
27 the amount permitted by this section. An attorney's fee may
28 not be due and does not begin to accrue for a proceeding on
29 medical issues until the peer review panel has issued its
30 initial adjudication of the issue.†

31 (a) ~~The time and labor required, the novelty and~~

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1 ~~difficulty of the questions involved, and the skill requisite~~
 2 ~~to perform the legal service properly.~~

3 ~~(b) The fee customarily charged in the locality for~~
 4 ~~similar legal services.~~

5 ~~(c) The amount involved in the controversy and the~~
 6 ~~benefits resulting to the claimant.~~

7 ~~(d) The time limitation imposed by the claimant or the~~
 8 ~~circumstances.~~

9 ~~(e) The experience, reputation, and ability of the~~
 10 ~~lawyer or lawyers performing services.~~

11 ~~(f) The contingency or certainty of a fee.~~

12 (2) In awarding a reasonable claimant's attorney's
 13 fee, the judge of compensation claims shall consider only
 14 those benefits secured by the attorney to the claimant that
 15 the attorney is responsible for securing. An attorney is not
 16 entitled to attorney's fees for presentation in any issue that

17 was ripe, due, and owing and that reasonably could have been
 18 addressed during the pendency of other issues for the same
 19 injury. The amount, statutory basis, and type of benefits

20 obtained through legal representation shall be listed on all
 21 attorney's fees awarded by the judge of compensation claims.

22 For purposes of this section, the term "benefits secured"
 23 ~~means benefits obtained as a result of the claimant's~~

24 ~~attorney's legal services rendered in connection with the~~
 25 ~~claim for benefits. However, such term does not include future~~

26 medical benefits to be provided on any date more than 5 years
 27 after the date the claim is filed.

28 (3) If any party the claimant should prevail in any
 29 proceedings before a judge of compensation claims or court,
 30 there shall be taxed against the nonprevailing party employer

31 the reasonable costs of such proceedings, not to include ~~the~~

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1 attorney's fees ~~of the claimant~~. A claimant shall be
2 responsible for the payment of her or his own attorney's fees,
3 except that a claimant shall be entitled to recover a
4 reasonable attorney's fee from a carrier or employer:

5 (a) Against whom she or he successfully asserts a
6 request for reconsideration ~~petition~~ for medical benefits
7 only, if the claimant has not filed or is not entitled to file
8 at such time a claim for disability, permanent impairment,
9 wage-loss, or death benefits, arising out of the same
10 accident;

11 (b) In any case in which the employer or carrier files
12 a response to petition denying benefits with the Office of the
13 Judges of Compensation Claims and the injured person has
14 employed an attorney in the successful prosecution of the
15 petition, subject to the restrictions on proceedings for peer
16 review initial adjudication upon which no fees shall be due;

17 (c) In a proceeding in which a carrier or employer
18 denies that an accident occurred for which compensation
19 benefits are payable, and the claimant prevails on the issue
20 of compensability; or

21 (d) In cases where the claimant successfully prevails
22 in proceedings filed under s. 440.24 or s. 440.28.

23
24 Regardless of the date benefits were initially requested,
25 attorney's fees shall not attach under this subsection until
26 30 days after the date the carrier or employer, if
27 self-insured, receives the petition. ~~In applying the factors~~
28 ~~set forth in subsection (1) to cases arising under paragraphs~~
29 ~~(a), (b), (c), and (d), the judge of compensation claims must~~
30 ~~only consider only such benefits and the time reasonably spent~~
31 ~~in obtaining them as were secured for the claimant within the~~

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1 ~~scope of paragraphs (a), (b), (c), and (d).~~

2 (4) In such cases in which the claimant is responsible
3 for the payment of her or his own attorney's fees, such fees
4 are a lien upon compensation payable to the claimant,
5 notwithstanding s. 440.22.

6 (5) If any proceedings are had for review of any
7 claim, award, or compensation order before any court, the
8 court may award the injured employee or dependent an
9 attorney's fee to be paid by the employer or carrier, in its
10 discretion, which shall be paid as the court may direct.

11 (6) Retainer agreements or contracts of representation
12 may not be submitted to a judge of compensation claims for
13 approval except in conjunction with an appropriate motion for
14 approval of a specific fee following the securing of a
15 specific benefit or benefits. A judge of compensation claims
16 may not prospectively approve a contract of representation
17 prior to the securing of the benefit. A judge of compensation
18 claims may not enter an order approving the contents of a
19 retainer agreement that permits the escrowing of any portion
20 of the employee's compensation until benefits have been
21 secured.

22 (7) The judge of compensation claims may not approve a
23 compensation order, joint stipulation for a lump-sum
24 settlement, stipulation, or agreement between a claimant and
25 his or her attorney or any other agreement related to benefits
26 under this chapter which provides for an attorney's fee in
27 excess of the amount permitted by this section.

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