

Bill No. SB 50-A

Amendment No. ____ Barcode 145768

CHAMBER ACTION

Senate

House

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Senator Wasserman Schultz moved the following amendment:

Senate Amendment

On page 156, line 3, through
page 159, line 28, delete those lines

and insert:

Section 26. Subsections (1), (2), and (3) of section
440.34, Florida Statutes, are amended to read:

440.34 Attorney's fees; costs.--

(1) A fee, gratuity, or other consideration may not be
paid for 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. Except as provided by this
subsection, any attorney's fee approved by a judge of
compensation claims for services rendered to a claimant must
~~be equal to 20 percent of the first \$5,000 of the amount of~~
~~the benefits secured, 15 percent of the next \$5,000 of the~~
amount of the benefits secured, ~~10 percent of the remaining~~
~~amount of the benefits secured to be provided during the first~~

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1 ~~10 years after the date the claim is filed, and 5 percent of~~
 2 ~~the benefits secured after 10 years. In the alternative, if~~
 3 ~~the judge of compensation claims concludes that the percentage~~
 4 ~~fee provided in this subsection does not fairly compensate the~~
 5 ~~attorney, he or she may award an attorney's fee not to exceed~~
 6 ~~\$5,000. However, the judge of compensation claims shall~~
 7 ~~consider the following factors in each case and may increase~~
 8 ~~or decrease the attorney's fee if, in her or his judgment, the~~
 9 ~~circumstances of the particular case warrant such action:~~

10 ~~(a) The time and labor required, the novelty and~~
 11 ~~difficulty of the questions involved, and the skill requisite~~
 12 ~~to perform the legal service properly.~~

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

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

17 ~~(d) The time limitation imposed by the claimant or the~~
 18 ~~circumstances.~~

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

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

22 (2) In awarding a reasonable claimant's attorney's
 23 fee, the judge of compensation claims shall consider only
 24 those benefits secured by the attorney to the claimant that
 25 ~~the attorney is responsible for securing.~~ The amount,
 26 statutory basis, and type of benefits obtained through legal
 27 representation shall be listed on all attorney's fees awarded
 28 by the judge of compensation claims. For purposes of this
 29 section, the term "benefits secured" ~~means benefits obtained~~
 30 ~~as a result of the claimant's attorney's legal services~~
 31 ~~rendered in connection with the claim for benefits. However,~~

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1 ~~such term~~ does not include future medical benefits to be
2 provided on any date more than 5 years after the date the
3 claim is filed. If an offer to settle an issue pending before
4 a judge of compensation claims is communicated in writing to
5 the claimant or the claimant's attorney not later than the
6 date of the pretrial, the benefits secured shall be those
7 offered to settle each issue. If the offer to settle an issue
8 is rejected by the claimant, any claim against the carrier for
9 hourly fees is waived on that issue unless the amount awarded
10 is 10 percent greater than the amount specified in the offer.
11 If multiple issues are pending before the judge of
12 compensation claims, the offer of settlement must address each
13 pending issue and must state explicitly whether or not the
14 offer on each issue is severable. The written offer must also
15 unequivocally state whether or not it includes medical witness
16 fees and expenses and all other costs associated with the
17 claim. Acceptance of an offer by a claimant must be
18 communicated in writing to the carrier and its counsel, if
19 any. The benefits contained in the offer, excluding fees and
20 costs, shall be due and payable 14 days after the date the
21 carrier receives the acceptance.

22 (3) If the claimant should prevail in any proceedings
23 before a judge of compensation claims or court, there shall be
24 taxed against the employer the reasonable costs of such
25 proceedings, not to include the attorney's fees of the
26 claimant. A claimant shall be responsible for the payment of
27 her or his own attorney's fees, except that a claimant shall
28 be entitled to recover an ~~a reasonable~~ attorney's fee as
29 provided under subsection (1) from a carrier or employer:

30 (a) Against whom she or he successfully asserts a
31 petition for medical benefits only, if the claimant has not

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1 filed or is not entitled to file at such time a claim for
2 disability, permanent impairment, wage-loss, or death
3 benefits, arising out of the same accident;

4 (b) In any case in which the employer or carrier files
5 a response to petition denying benefits with the Office of the
6 Judges of Compensation Claims and the injured person has
7 employed an attorney in the successful prosecution of the
8 petition;

9 (c) In a proceeding in which a carrier or employer
10 denies that an accident occurred for which compensation
11 benefits are payable, and the claimant prevails on the issue
12 of compensability; or

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

15
16 Regardless of the date benefits were initially requested,
17 attorney's fees shall not attach under this subsection until
18 30 days after the date the carrier or employer, if
19 self-insured, receives the petition. ~~In applying the factors~~
20 ~~set forth in subsection (1) to cases arising under paragraphs~~
21 ~~(a), (b), (c), and (d), the judge of compensation claims must~~
22 ~~only consider only such benefits and the time reasonably spent~~
23 ~~in obtaining them as were secured for the claimant within the~~
24 ~~scope of paragraphs (a), (b), (c), and (d).~~

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