

HB 903

2009

1 A bill to be entitled  
2 An act relating to workers' compensation attorney's fees;  
3 amending s. 440.34, F.S.; requiring a fee, gratuity, or  
4 other consideration to be paid to an attorney representing  
5 a claimant as approved by a judge of compensation claims  
6 or court having jurisdiction in accordance with statutory  
7 guidelines; revising the amount of attorney's fees that  
8 may be paid; clarifying amounts a claimant is eligible to  
9 recover from a carrier or employer; providing an effective  
10 date.

11  
12 WHEREAS, in 2003, premiums for workers' compensation  
13 insurance in Florida ranked among the highest in the nation,  
14 financially crippling Florida businesses and hurting Florida's  
15 ability to attract business and limiting economic growth, and

16 WHEREAS, in 2003, upon a thorough analysis of the workers'  
17 compensation system, the Florida Legislature recognized that the  
18 availability of hourly attorney fee awards operated as a  
19 significant cost driver with respect to workers' compensation  
20 premiums and that the reliable and effective way to contain  
21 those costs was to provide certainty in the awards of attorney's  
22 fees, and

23 WHEREAS, in 2003, the Florida Legislature enacted  
24 comprehensive workers' compensation reform, a critical element  
25 of which amended section 440.34, Florida Statutes, to impose  
26 concrete limitations on awards of attorney's fees and delete the  
27 Lee Engineering v. Fellows discretionary factors which

HB 903

2009

28 | previously fostered an excessive litigation volume by allowing  
29 | awards of unpredictable and unbridled hourly fees, and

30 |       WHEREAS, since the enactment of this reform, and in  
31 | material part because of the attorney's fee reform, workers'  
32 | compensation insurance has become vastly more available and  
33 | affordable for Florida's businesses, and

34 |       WHEREAS, following the enactment of the 2003 reforms, the  
35 | Legislature's goal of affordability was achieved as evidenced by  
36 | the premium decrease in workers' compensation premiums over the  
37 | next 5 consecutive years, by an average aggregate amount of 60.2  
38 | percent, to their lowest levels since 1984, including the  
39 | greatest one-year reduction in workers' compensation premiums in  
40 | Florida history in 2007, and

41 |       WHEREAS, on October 23, 2008, the Florida Supreme Court  
42 | effectively revived the discretionary factors in its ruling on  
43 | Murray v. Mariner Health, despite the express removal of those  
44 | factors, and

45 |       WHEREAS, this judicial nullification of critical workers'  
46 | compensation reform presents a real threat to the continued  
47 | availability and affordability of workers' compensation  
48 | insurance, particularly in these challenging economic times, and

49 |       WHEREAS, it is the intent of the Legislature to clarify  
50 | beyond dispute that the reforms on awards of attorney's fees are  
51 | an essential element of a functioning and self-executing  
52 | workers' compensation system, NOW, THEREFORE,

53 |

54 | Be It Enacted by the Legislature of the State of Florida:

55 |

HB 903

2009

56 Section 1. Section 440.34, Florida Statutes, is amended to  
57 read:

58 440.34 Attorney's fees; costs.--

59 (1) A fee, gratuity, or other consideration shall ~~may not~~  
60 be paid to an attorney representing ~~for~~ a claimant in connection  
61 with any proceedings arising under this chapter, as ~~unless~~  
62 approved ~~as reasonable~~ by the judge of compensation claims or  
63 court having jurisdiction over such proceedings pursuant to this  
64 section. Any attorney's fee approved by a judge of compensation  
65 claims for benefits secured on behalf of a claimant must be less  
66 than or equal to 20 percent of the first \$5,000 of the amount of  
67 the benefits secured, 15 percent of the next \$5,000 of the  
68 amount of the benefits secured, 10 percent of the remaining  
69 amount of the benefits secured to be provided during the first  
70 10 years after the date the claim is filed, and 5 percent of the  
71 benefits secured after 10 years. The judge of compensation  
72 claims shall not approve a compensation order, a joint  
73 stipulation for lump-sum settlement, a stipulation or agreement  
74 between a claimant and his or her attorney, or any other  
75 agreement related to benefits under this chapter that provides  
76 for an attorney's fee in excess of the amount permitted by this  
77 section. The judge of compensation claims is not required to  
78 approve any retainer agreement between the claimant and his or  
79 her attorney. The retainer agreement as to fees and costs may  
80 not be for compensation in excess of the amount allowed under  
81 this subsection or subsection (7) ~~section~~.

82 (2) In awarding a claimant's attorney's fee, the judge of  
83 compensation claims shall consider only those benefits secured

84 | by the attorney. An attorney is not entitled to attorney's fees  
85 | for representation in any issue that was ripe, due, and owing  
86 | and that reasonably could have been addressed, but was not  
87 | addressed, during the pendency of other issues for the same  
88 | injury. The amount, statutory basis, and type of benefits  
89 | obtained through legal representation shall be listed on all  
90 | attorney's fees awarded by the judge of compensation claims. For  
91 | purposes of this section, the term "benefits secured" does not  
92 | include future medical benefits to be provided on any date more  
93 | than 5 years after the date the claim is filed. In the event an  
94 | offer to settle an issue pending before a judge of compensation  
95 | claims, including attorney's fees as provided for in this  
96 | section, is communicated in writing to the claimant or the  
97 | claimant's attorney at least 30 days prior to the trial date on  
98 | such issue, for purposes of calculating the amount of attorney's  
99 | fees to be taxed against the employer or carrier, the term  
100 | "benefits secured" shall be deemed to include only that amount  
101 | awarded to the claimant above the amount specified in the offer  
102 | to settle. If multiple issues are pending before the judge of  
103 | compensation claims, said offer of settlement shall address each  
104 | issue pending and shall state explicitly whether or not the  
105 | offer on each issue is severable. The written offer shall also  
106 | unequivocally state whether or not it includes medical witness  
107 | fees and expenses and all other costs associated with the claim.

108 |       (3) If any party should prevail in any proceedings before  
109 | a judge of compensation claims or court, there shall be taxed  
110 | against the nonprevailing party the reasonable costs of such  
111 | proceedings, not to include attorney's fees. A claimant shall be

HB 903

2009

112 responsible for the payment of her or his own attorney's fees,  
113 except that a claimant shall be entitled to recover an ~~a~~  
114 ~~reasonable~~ attorney's fee in an amount not to exceed the amount  
115 authorized under subsection (1) from a carrier or employer:

116 (a) Against whom she or he successfully asserts a petition  
117 for medical benefits only, if the claimant has not filed or is  
118 not entitled to file at such time a claim for disability,  
119 permanent impairment, wage-loss, or death benefits, arising out  
120 of the same accident;

121 (b) In any case in which the employer or carrier files a  
122 response to petition denying benefits with the Office of the  
123 Judges of Compensation Claims and the injured person has  
124 employed an attorney in the successful prosecution of the  
125 petition;

126 (c) In a proceeding in which a carrier or employer denies  
127 that an accident occurred for which compensation benefits are  
128 payable, and the claimant prevails on the issue of  
129 compensability; or

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

132  
133 Regardless of the date benefits were initially requested,  
134 attorney's fees shall not attach under this subsection until 30  
135 days after the date the carrier or employer, if self-insured,  
136 receives the petition.

137 (4) In such cases in which the claimant is responsible for  
138 the payment of her or his own attorney's fees, such fees are a

HB 903

2009

139 | lien upon compensation payable to the claimant, notwithstanding  
140 | s. 440.22.

141 |       (5) If any proceedings are had for review of any claim,  
142 | award, or compensation order before any court, the court may  
143 | award the injured employee or dependent an attorney's fee to be  
144 | paid by the employer or carrier, in its discretion, which shall  
145 | be paid as the court may direct.

146 |       (6) A judge of compensation claims may not enter an order  
147 | approving the contents of a retainer agreement that permits the  
148 | escrowing of any portion of the employee's compensation until  
149 | benefits have been secured.

150 |       (7) If an attorney's fee is owed under paragraph (3)(a),  
151 | the judge of compensation claims may approve an alternative  
152 | attorney's fee not to exceed \$1,500 only once per accident,  
153 | based on a maximum hourly rate of \$150 per hour, if the judge of  
154 | compensation claims expressly finds that the attorney's fee  
155 | amount provided for in subsection (1), based on benefits  
156 | secured, fails to fairly compensate the attorney for disputed  
157 | medical-only claims as provided in paragraph (3)(a) and the  
158 | circumstances of the particular case warrant such action.

159 |       Section 2. This act shall take effect upon becoming law.