

ENROLLED
CS/HB 903

2009 Legislature

1 A bill to be entitled
2 An act relating to attorney's fees in workers'
3 compensation cases; amending s. 440.34, F.S.; clarifying
4 requirements for the payment of fees and costs under a
5 retainer agreement; specifying the amount of attorney's
6 fees which a claimant is entitled to recover from a
7 carrier or employer; providing an effective date.
8

9 Be It Enacted by the Legislature of the State of Florida:
10

11 Section 1. Section 440.34, Florida Statutes, is amended to
12 read:

13 440.34 Attorney's fees; costs.--

14 (1) A fee, gratuity, or other consideration may not be
15 paid for a claimant in connection with any proceedings arising
16 under this chapter, unless approved ~~as reasonable~~ by the judge
17 of compensation claims or court having jurisdiction over such
18 proceedings. Any attorney's fee approved by a judge of
19 compensation claims for benefits secured on behalf of a claimant
20 must equal to 20 percent of the first \$5,000 of the amount of
21 the benefits secured, 15 percent of the next \$5,000 of the
22 amount of the benefits secured, 10 percent of the remaining
23 amount of the benefits secured to be provided during the first
24 10 years after the date the claim is filed, and 5 percent of the
25 benefits secured after 10 years. The judge of compensation
26 claims shall not approve a compensation order, a joint
27 stipulation for lump-sum settlement, a stipulation or agreement
28 between a claimant and his or her attorney, or any other

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29 | agreement related to benefits under this chapter which ~~that~~
30 | provides for an attorney's fee in excess of the amount permitted
31 | by this section. The judge of compensation claims is not
32 | required to approve any retainer agreement between the claimant
33 | and his or her attorney. The retainer agreement as to fees and
34 | costs may not be for compensation in excess of the amount
35 | allowed under this subsection or subsection (7) ~~section~~.

36 | (2) In awarding a claimant's attorney's fee, the judge of
37 | compensation claims shall consider only those benefits secured
38 | by the attorney. An attorney is not entitled to attorney's fees
39 | for representation in any issue that was ripe, due, and owing
40 | and that reasonably could have been addressed, but was not
41 | addressed, during the pendency of other issues for the same
42 | injury. The amount, statutory basis, and type of benefits
43 | obtained through legal representation shall be listed on all
44 | attorney's fees awarded by the judge of compensation claims. For
45 | purposes of this section, the term "benefits secured" does not
46 | include future medical benefits to be provided on any date more
47 | than 5 years after the date the claim is filed. In the event an
48 | offer to settle an issue pending before a judge of compensation
49 | claims, including attorney's fees as provided for in this
50 | section, is communicated in writing to the claimant or the
51 | claimant's attorney at least 30 days prior to the trial date on
52 | such issue, for purposes of calculating the amount of attorney's
53 | fees to be taxed against the employer or carrier, the term
54 | "benefits secured" shall be deemed to include only that amount
55 | awarded to the claimant above the amount specified in the offer
56 | to settle. If multiple issues are pending before the judge of

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57 | compensation claims, said offer of settlement shall address each
58 | issue pending and shall state explicitly whether or not the
59 | offer on each issue is severable. The written offer shall also
60 | unequivocally state whether or not it includes medical witness
61 | fees and expenses and all other costs associated with the claim.

62 | (3) If any party should prevail in any proceedings before
63 | a judge of compensation claims or court, there shall be taxed
64 | against the nonprevailing party the reasonable costs of such
65 | proceedings, not to include attorney's fees. A claimant is ~~shall~~
66 | ~~be~~ responsible for the payment of her or his own attorney's
67 | fees, except that a claimant is ~~shall be~~ entitled to recover an
68 | ~~a reasonable~~ attorney's fee in an amount equal to the amount
69 | provided for in subsection (1) or subsection (7) from a carrier
70 | or employer:

71 | (a) Against whom she or he successfully asserts a petition
72 | for medical benefits only, if the claimant has not filed or is
73 | not entitled to file at such time a claim for disability,
74 | permanent impairment, wage-loss, or death benefits, arising out
75 | of the same accident;

76 | (b) In any case in which the employer or carrier files a
77 | response to petition denying benefits with the Office of the
78 | Judges of Compensation Claims and the injured person has
79 | employed an attorney in the successful prosecution of the
80 | petition;

81 | (c) In a proceeding in which a carrier or employer denies
82 | that an accident occurred for which compensation benefits are
83 | payable, and the claimant prevails on the issue of
84 | compensability; or

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

87
88 Regardless of the date benefits were initially requested,
89 attorney's fees shall not attach under this subsection until 30
90 days after the date the carrier or employer, if self-insured,
91 receives the petition.

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

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

101 (6) A judge of compensation claims may not enter an order
102 approving the contents of a retainer agreement that permits
103 placing the escrowing of any portion of the employee's
104 compensation into an escrow account until benefits have been
105 secured.

106 (7) If an attorney's fee is owed under paragraph (3)(a),
107 the judge of compensation claims may approve an alternative
108 attorney's fee not to exceed \$1,500 only once per accident,
109 based on a maximum hourly rate of \$150 per hour, if the judge of
110 compensation claims expressly finds that the attorney's fee
111 amount provided for in subsection (1), based on benefits
112 secured, fails to fairly compensate the attorney for disputed

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113 | medical-only claims as provided in paragraph (3)(a) and the
114 | circumstances of the particular case warrant such action.
115 | Section 2. This act shall take effect July 1, 2009.