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**FLORIDA LAW WEEKLY**

Week of November 1, 2013

**Attorney's Fees**

Castellanos v. Next Door Company, 38 Fla. L. Weekly D2232a (Fla. 1st DCA October 23, 2013)

The claimant argued that section 440.34, *Fla. Stat.*, should be deemed in violation of several constitutional provisions. The Judge of Compensation Claims, pursuant to the statutory formula outlined in section 440.34, *Fla. Stat.*, awarded the claimant's counsel an attorney fee of only \$164.54 for 107.2 hours of legal work reasonably necessary to secure the claimant's workers' compensation benefits. The appellate court, noting that the award may be inadequate from a practical standpoint, agreed that the statute required this result.

The 1st DCA noted that it had previously addressed this question and found the statute to be constitutional in Kauffman, Campbell, Lundy and Wood and that it was "bound" by its precedent. As a result, the court held that section 440.34, *Fla. Stat.* is constitutional both on its face and as applied to this case.

However, the 1st DCA also noted that The Florida Supreme Court had addressed the attorney fee provisions in Murray v. Mariner Health. The Florida Supreme Court did not address constitutional issues in Murray, instead resolving the issue based on statutory construction. Therefore, the Florida Supreme Court did not specifically address the 1st DCA's reasoning as to constitutionality in Lundy, Campbell, and Wood. In response to the Murray decision the Florida legislature amended section 440.34, *Fla. Stat.*, in 2009 to eliminate the ambiguity that had been the basis of the Florida Supreme Court's decision. In light of the current circumstances, the 1st DCA certified to the Florida Supreme Court the question of whether the award of attorney's fees in this case is adequate and consistent with access to courts, due process, equal protection, and other requirements of the Florida and federal constitutions.

**PTD**

Groseclose v. Optimum Oncology-Comprehension Cancer Center, 38 Fla. L. Weekly D2232b (Fla. 1st DCA October 23, 2013)

The claimant appealed an Order denying permanent total disability. The appellate court reversed and remanded to the JCC to consider the case in light of the Westphal decision which had not yet been available to the JCC or the parties when the JCC issued the Order.

**Presumption**

Pasco County Sheriff's Office v. Shaffer, 38 Fla. L. Weekly D2238b (Fla. 1st DCA October 23, 2013)

Judge Wolf prepared a concurring opinion to the per curiam affirmance (PCA) issue by the appellate court. Justice Wolf noted that despite the fact that the claimant earned her full wages and worked full time while under medical restrictions, she was "disabled" under section 112.18, Florida Statutes, because she was unable to have inmate contact while under restrictions and inmate contact was a substantial and significant portion of her necessary job duties.