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FLORIDA INSURANCE TRUST

A Message from our Chairman

On October 23rd 2008, The Florida Supreme Court released their decision in the Emma Murray vs. Mariner Health and Ace USA case. This decision basically returns the plaintiff attorney fees back to the pre-October 1, 2003 law. This could significantly increase the cost of litigating your workers' compensation claims.

I ask that you please review the attached article which provides some of the details of this significant ruling by the Florida Supreme Court. The article is written and provided by the Ross-Vecchio Law Firm. Dennis Ross and his associates have contributed several articles which are posted on the FIT website at: www.floridainsurancetrust.com

Your FIT board of directors and our program administrator, Non-Profit Insurance Services, Inc. (NPIS) will remain vigilant in distributing insurance information to the non-profit community as it becomes available.

Dr. Joseph Aniello
President/CEO UCP of South Florida, Inc.
Chairman, Florida Insurance Trust



LANDMARK ATTORNEY FEE CASE: HOURLY FEES REINSTATED

We have all been anticipating the decision on the Case of *Emma Murray vs. Mariner Health and ACE USA*, and the decision is now in.

In the *Murray* case, the Claimant challenged the constitutionality of the statute governing attorney fees in workers' compensation cases. The Court found that the constitutionality issues need not be addressed in this case. However, the Court also held that the statute does create ambiguity as to what constitutes a "**reasonable attorney fee**" because the term is not defined by the statute and because subsections (1) and (3) of Florida Statute 440.34 create conflict and ambiguity as to how this should be interpreted. Because of this conflict, the Court looked to statutory construction law and found that a strict application of just subsection (1) or subsection (3) would result in both inadequate fees and excessive fees. The Court further held that neither is reasonable. Thus, the Court held that because "**reasonable attorney fee**" is not defined by Chapter 440, fees are to be determined using Rule 4-1.5(b) of the Rules regulating the Florida Bar. These include: the time and labor required; the novelty, complexity, and difficulty of the questions involved; and the requisite skill to perform the legal services properly. Thus, the state of the attorney fee law appears to have reverted to pre October 1, 2003 law, allowing an hourly rate when the statutory formula would result in an inadequate fee. Although the Court further cautioned that the JCCs must be vigilant to award only reasonable and necessary fees, the awards will be subject to the JCC's discretion.

What this means for Employers and Carriers:

Based on this decision, we anticipate a marked increase in litigation. Since 2003, there has been a steady decline in litigation since the new law effectively discouraged the filing of petitions for both frivolous issues and minor issues where the statutory recovery outweighed the claimant attorney's desire to litigate. Unfortunately, this decision will eliminate any hesitation claimant attorneys may have when deciding whether to litigate a matter, since they are now able to seek a fee at an hourly rate. As stated above, this decision is a revision to the pre October 1, 2003 law and as such, you should expect to litigate more and pay higher attorney fees on matters where the claimant prevails.