

LEGISLATIVE EFFORTS AIMED AT EMMA MURRAY DECISION

By Thomas P. Vecchio

The Florida House of Representatives has passed a bill designed to reinstate limitations on attorney's fees payable to lawyers who represent injured workers. House Bill 903 was sponsored by State Representative Anitere Flores of Miami.

HB 903 is designed to directly address the Florida Supreme Court's opinion in Emma Murray v. Mariner Health, decided on October 23, 2008. In the Murray opinion, the Florida Supreme Court held that a Judge of Compensation Claims is permitted to deviate from the statutory guideline in calculating attorney's fees payable to the claimant by the employer/carrier, and is not bound by the schedule of attorney's fees set forth in Section 440.34(1), Florida Statutes. The Court noted that reference to a "reasonable attorney's fee" remained in Section 440.34(3), despite changes made to other sections of 440.34. The Court therefore held that the statute was internally inconsistent, and attorneys who represent injured workers are sometimes entitled to "reasonable" hourly fees at the expense of the employer/carrier.

HB 903 is designed to curtail attorney's fees payable to claimants' attorneys to the 20%/15%/10% schedule set forth in Section 440.34(1). In HB 903, the word "reasonable" was stricken from Section 440.34(3).

The preamble to this bill indicates that one of the legislative goals of the 2003 Workers' Compensation Law was to reduce workers' compensation premiums by eliminating employer/carrier paid fees, which were deemed a significant cost "driver." The enacting language notes that workers' compensation premiums fell by 60.2% after enactment of the 2003 law. The bill's preamble indicates that the Florida Supreme Court's decision in Murray constituted, "judicial nullification of critical workers' compensation reform," and that the Murray case presents a threat to availability and affordability of workers' compensation insurance.

Analysis: As of this writing, HB 903 has not been considered by the Florida Senate or Governor Crist. The author cannot estimate the likelihood of this bill becoming law.

If HB 903 is passed into law, the Claimants' bar is likely to mount a constitutional challenge to the attorney's fee statute, or the entire 2003 law. The 2003 Florida Workers' Compensation Act does not contain language that would enable the statute to remain in full force and effect if a portion is deemed unconstitutional. Thus, if the Florida Supreme Court finds any portion of the 2003 law unconstitutional, it may declare the entire 2003 law unconstitutional.

Advocacy groups such as Florida Workers Advocates are mounting an aggressive campaign to defeat HB 903 in the Florida Senate. Their argument is essentially the same as the arguments advanced by the Claimant in Murray, that a statutory cap on attorney's fees constitutes an impediment to access to the Courts. They also argue that by divesting the Judge of Compensation Claims of the ability to deviate from the statutory guideline, an irrebuttable presumption was created, which is constitutionally invalid.