

## **Working For You – NEWS FLASH**

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The Florida Supreme Court dealt a painful blow to claimant's attorneys across the State yesterday when it declined to review the case of *Kaufman v. Community Inclusions*, 57 So.3d 919 (1<sup>st</sup> DCA 2011). *Kaufman* was thought to be "the case" that would result in the return of carrier paid hourly attorney fees.

**BACKGROUND:** In 2003, the Florida Legislature passed massive amendments to the Workers' Compensation Act in an effort to reduce premium rates paid by employers. One of the cornerstones in this effort was the elimination of carrier paid hourly fees. The legislature substituted a fee schedule based on a percentage of benefits secured for the claimant by the efforts of his/her attorney. This and other amendments lead to a dramatic reduction of premium rates. Current rates are approximately 39% of what they were prior to the 2003 law revision.

This amendment was loathed by claimant's attorneys throughout Florida, and an intense effort was commenced to find the perfect case to defeat this new restriction on attorney's fees. The effort was successful, though temporary. On October 23, 2008 the Florida Supreme Court released an opinion in *Murray v. Mariners Health*, 994 So.2d 1051 (Fla. 2008) which changed the game. The practical outcome of that opinion was to reinstate carrier paid hourly fees if such a determination would insure that the claimant's attorney was paid a "reasonable" fee. The *Murray* Court did not address the constitutional challenge to F.S. Section 440.34 but implicitly concluded that even a represented claimant could make a constitutional challenge to this statute as violating his or her right to access to the courts.

The Florida Legislature responded and passed yet another amendment to Florida Statute Section 440.34 which countered the *Murray* decision and reinstated the fee schedule as the sole means of carrier paid attorney fees from 7/01/09 forward.

All Injuries Law Firm of Port Charlotte was Ms. Murray's attorney. The same firm went to bat again with the *Kauffman* case to rectify what many considered an injustice. On 3/23/11 The First District Court of Appeals of Florida released the *Kauffman* decision. In that case, the JCC found that claimant's attorney had secured benefits for his client and that a reasonable fee would be \$25,075. However, the JCC also stated that because he was constrained by the schedule in F.S. Section 440.34 he could only award a carrier paid attorney fee of \$684.41. The First DCA determined that the legislature had spoken and affirmed the JCC's award.

The *Kauffman* case was appealed to the Florida Supreme Court. Yesterday the high court refused to hear the case on the grounds that it lacked jurisdiction.

Though carriers will breathe a sigh of relief after the opinion is released later today, it is this writer's opinion that other cases will follow to challenge the constitutional validity of F.S. Section 440.34.