Florida court analysis

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Pending court decisions could erode Florida statute

Florida has been the center of some very interesting cases arguing the constitutionality of workers' compensation and adequacy of benefits. Issues range from benefit caps to the ability of an injured worker to circumvent the exclusive remedy doctrine. Premiums in Florida dropped significantly over the past ten years since the last major workers' compensation reform in 2003. The cases below originated based on arguments around the adequacy of the benefits available to injured workers. Some argue that the pendulum has swung too far in limiting benefits as well as attorney fees. Could these pending court cases result in eroding reforms addressing permanent partial disability (PPD) benefits and attorney fees? Is Florida ready to consider additional reforms including options outside of workers' compensation much like those in Texas and Oklahoma?

The Castellanos v. Next Door Company/Amerisure Ins. Co.

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The case focuses on rolling back prior reform efforts to streamline attorney fees. The question referred to the high court by the 1st District Court of Appeals is whether the method of calculating a fee award provided by Florida statutes actually protects the ability of claimants to access the courts, and gives them due process and equal protection under the law. The case involves Marvin Castellanos who was working for Next Door Company as a press brake operator when he was struck by his supervisor. Both were terminated and Mr. Castellanos' workers' compensation claim was denied. Mr. Castellanos retained an attorney who successfully overturned the denial. Based on the Florida statutory attorney fee formula, the judge determined that the claimant's attorney was entitled to only $164.54 for 107.2 hours of legal work, amounting to only $1.53 an hour. The attorney fee award was affirmed by the court as the panel indicated it was bound to uphold the law. The Florida Supreme Court previously addressed this issue in Murray v. Mariner Health, but avoided the constitutional issues and instead resolved the issue based on statutory construction. In response to the Murray decision, the Florida legislature amended Section 440.34 in 2009 to eliminate the ambiguity that had been the basis of the Florida Supreme Court's decision. Oral arguments were held before the Supreme Court on November 5, 2014. During the arguments, one Justice asked the attorneys participating if they would have handled the Castellanos case for $1.53 an hour. A decision is pending.

Westphal v. City of St. Petersburg

In this case, the 1st District Court of Appeals analyzes the constitutionality of a statute that has been in place for more than 20 years. The court reversed a prior ruling en banc issued by a three-judge panel declaring Florida's 104-week limit for temporary total disability (TTD) benefits unconstitutional. The injured employee was denied permanent total disability benefits after the 104-week temporary disability cap was exhausted. The employee was unable to return to work after having back surgery and had not yet reached maximum medical improvement (MMI). The court upheld the 104-week cap in Florida Statute 440.15 and determined that a worker who exhausted their TTD benefits has reached MMI by operation of law and is therefore eligible to apply for permanent and total benefits. The finding was a departure from the 2011 1st District

Court of Appeals en banc ruling in Matrix Leasing Inc. v. Hadley, which held that workers must reach MMI before applying for permanent and total benefits. It is unknown whether the Supreme Court will affirm the en banc court ruling or agree with the initial panel decision and rule the 104-week cap as unconstitutional. The following question was certified to the high court: "Is a worker who is totally disabled as a result of the workplace accident, but still improving from a medical standpoint at the time TTD benefits expire, deemed to be at MMI by operation of law and therefore eligible to assert a claim for permanent and total disability benefits?" Oral arguments were heard by the Florida Supreme Court on June 5, 2014.

Morales v. Zenith

In this case, Florida's exclusive remedy doctrine is being tested. The estate of Santana Morales Jr. sued Lawns Nursery and Irrigation Designs Inc. for wrongful death while securing an approved settlement for worker's compensation death benefits. Mr. Morales was killed when crushed by a falling palm tree. Because Morales's death occurred during the course and scope of his employment, Zenith accepted the workers' compensation claim as compensable and benefits were furnished. Meanwhile, the estate of the deceased employee sued Lawns Nursery for wrongful death. Zenith agreed to defend Lawns Nursery and appointed an attorney to defend its insured under a reservation of rights. Zenith asserted the estate's claim was barred due to accepting workers' compensation benefits. The case proceeded to a one-day jury trial for damages. The jury awarded the estate $9.5 million. Zenith refused to pay the wrongful death judgment. The estate filed an action in the Florida Circuit Court asserting that Zenith had breached its insurance policy. Zenith moved the case to a federal court and requested a summary judgment based on three items: the estate electing workers' compensation benefits as its exclusive remedy, the claim was not allowed under the insurance policy, and the estate lacked standing to bring a claim of policy breach. Alternatively, Zenith contended that even if it was liable, the estate's damages were limited to the $100,000 policy cap. The federal District Court granted Zenith's motion to dismiss the count for declaratory relief. They concluded that the workers' compensation exclusion in the employer's liability policy barred Zenith's coverage of the deceased employee's estate tort judgment against the employer. The estate appealed the decision to the Court of Appeals for the 11th Circuit. Because this appeal depends on resolution of an unsettled Florida law, the 11th Circuit certified the following questions to the Supreme Court for determination under Florida law:

- Does the estate of the injured worker have standing to bring its breach of contract claim against Zenith under the employer's liability policy?
- If so, does the provision in the employers' liability policy, which excludes from coverage "any obligation imposed by workers' compensation…law," operate to exclude coverage of the estate's claim against Zenith for the tort judgment?
- If the estate's claim is not barred by the workers' compensation exclusion, does the release in the workers' compensation settlement agreement otherwise prohibit the estate's collection of the tort judgment?

Advocates v. State of Florida

On August 13, 2014, the 11th Circuit Court Judge Jorge Cueto in Advocates v. State of Florida, also known as the Padgett case, held that the Florida Workers' Compensation Act, as amended effective October 1, 2003, is unconstitutional as long as it contains the exclusive remedy provision (Section 440.11, Florida Statute). Elsa Padgett sustained a work-related injury resulting in the need for a

shoulder replacement. She was unable to return to work due to ongoing issues and retired. Padgett argued that the workers' compensation benefits in Florida are inadequate and that exclusive remedy impeded her constitutional right to access due process. Judge Cueto outlined that the current workers' compensation statutory scheme in Florida is inadequate as an exclusive remedy as it no longer provides for full medical coverage and eliminated PPD benefits. This case is currently on appeal in the 3rd District Court of Appeal in Miami. The court can either hear the case or pass it directly to the Florida Supreme Court.

It is evident that Florida's current workers' compensation statutory scheme is being significantly tested. Stakeholders on the plaintiff's side argue that there is an imbalance in the system. Groups such as Florida Workers' Advocates framed up this imbalance by showcasing injured workers who appear to be struggling in the current landscape. The decisions in the cases above will increase political tension for Florida legislators. Striking a balance to ease this tension will not be easy. According to NCCI, medical costs in Florida represent 69% of the overall cost to employers compared to the region's medical spend, which is around 54%. According to the Florida Office of Insurance Regulation, medical cost drivers in the state, particularly in the areas of hospital inpatient, hospital outpatient and ambulatory surgical centers are noticeably higher than the national average. Legislative reform in the reimbursement of these services could produce substantial savings for Florida employers. How can Florida work to balance where their employers' dollars are going? Given this political tension and imbalance, is Florida ready for workers' compensation reform?

Sedgwick will work to keep our partners updated on the status of these cases and the potential impact on their programs.

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