



FLORIDA PROFESSIONAL FIREFIGHTERS

May 18, 2009

TO: PPF Executive Council Members
FROM: Bob Carver, PPF President *BC*
SUBJECT: **Call to Action** – Contact Governor Crist and Ask for the Veto of HB 903

Governor Crist has received House Bill 903 from the Florida Legislature, and is currently reviewing it.

Contact Governor Crist and ask him to veto HB 903. Utilize the following:

Governor Charlie Crist
State of Florida
Plaza Level 05, The Capitol
400 South Monroe Street
Tallahassee, Florida 32399-0001

Phone: (850)488-4441
Fax: (850)487-0801
Email: Charlie.Crist@MyFlorida.com

The attached letters from the FPF and the FPF's General Counsel is forwarded for your review and information.

Although the Governor has until May 30, 2009, to act on HB 903, you need to act as soon as possible. To date, he has been dealing with legislation that his office has received fairly quickly.

It's important for you to communicate to him in your own words. Respond decisively and immediately.

BC/tk
Attachments
cc: Larry Osborne, IAFF 12th DVP



FLORIDA PROFESSIONAL FIREFIGHTERS

May 18, 2009

The Honorable Charlie Crist
Governor, State of Florida
Plaza Level 05, The Capitol
400 South Monroe Street
Tallahassee, Florida 32399-0001

Dear Governor Crist:

The Florida Professional Firefighters strongly recommend that you veto House Bill 903 – Attorney Fees in Workers Comp Cases.

As you may recall, when we met on Wednesday, April 15th, and discussed a number of issues. Our conversation concerning the need for limiting Workers Compensation Attorney Fees was paramount. I paraphrase, but you did indicate that you were as perplexed as we were as to why there was a need to readdress the Workers Compensation issue. Especially, in light of the fact that Workers Compensation premiums have steadfastly declined since the 2003 reforms to a level greater than 60%.

In spite of the fact, that the NCCI recently raised the Workers Compensation rates by 6.4%, which was based on the recent Supreme Court Decision (*Murray v. Mariner Health Care*), employers will continue to see a reduction in their Workers Compensation premiums this year. Furthermore, based on testimony provided at the Senate Judiciary Committee, the savings, above the rate hike, is projected to be between 6% to 8%. That translates, Governor, to another annual reduction of approximately 14%. Based on this additional and significant reduction in employer Workers Compensation premiums, we still cannot understand the need for the passage or approval of C/S for House Bill 903.

In addition to the rate reductions, the limitation on Attorney Fees has a negative impact on our members when they seek professional legal counsel. As you might imagine, many cases involving firefighters are extremely complex, this is especially true in cases involving occupational presumption, occupational

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diseases, or toxic substance exposures. These cases require the most knowledgeable attorneys in these specialized fields of law and consume many hours in preparation for trial. In limiting the attorney fees that can be paid to these experts, you likewise limit the right of access to adequate legal representation, which is guaranteed by the Constitution.

Based on the above, and the fact that it is blatantly unfair, unreasonable, and discriminatory, the membership of the Florida Professional Firefighters would again ask that you veto this unnecessary piece of legislation.

Sincerely,

A handwritten signature in black ink that reads "Bob Carver". The signature is written in a cursive, flowing style.

Bob Carver
President/CEO

LAW OFFICE
RICHARD A. SICKING, P.A.

RICHARD A. SICKING
Board Certified in
Workers' Compensation



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May 12, 2009

Charlie Crist, Governor
State of Florida
Capitol Bldg., Rm. 209
400 South Monroe Street
Tallahassee, FL 32399

Re: Committee Substitute for House Bill 903

Dear Governor Crist:

I am sending you this letter on behalf of the Florida Professional Firefighters, IAFF, the firefighters' union, which represents the firefighters and paramedics employed by the State, counties, districts and cities of Florida to urge you to veto the Committee Substitute for House Bill 903, which was enrolled on May 4, 2009.

This bill relates to attorney's fees for injured workers and their families in workers' compensation cases.

To understand why I urge you to veto this legislation, I am providing you with some background.

Section 440.105(3)(c), Fla. Stat., makes it a crime (misdemeanor) for any lawyer to be paid anything for representing anyone in a workers' compensation case without approval of the Judge of Compensation Claims. Although the statute reads broadly, historically, it has always been considered applicable only to employees' attorneys. The requirements to obtain approval of the Judge of Compensation Claims are contained in Sec. 440.34, Fla. Stat.

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Section 440.34(3)(a-d), Fla. Stat., provide that the employee is responsible for the payment of his own attorney except for four limited circumstances. However, these circumstances are not applicable until the attorney files a petition for benefits and the employer/carrier has not paid the benefits claimed within 30 days of receipt of notice of this claim. Sec. 440.34(3), Fla. Stat.

In 2003, the statute was amended to provide that the Judge of Compensation Claims could not approve an attorney's fee of more than a percent of the benefits secured; 20% of the first \$5,000, 15% of the next \$5,000, 10% of the remaining amount during the first 10 years after claim is filed, and 5% thereafter. Under this amendment, the Judge was not to consider time expended, the standard charges in the community, nor the complexity of the case nor any other legal consideration. He could only approve an attorney's fee in the percentage of the benefits obtained.

In *Murray v. Mariner Health Care*, 994 So. 2d 1051 (Fla. 2008), the employer/carrier wrongfully denied benefits which were subsequently awarded by the Judge of Compensation Claims. At the hearing to determine the amount of the claimant's attorney's fees, the Judge of Compensation Claims found that the benefits were such that a fee based on the statutorily required percentages was \$684.84. However, he also found that 80 hours were reasonably required by the claimant's attorney and this would amount to \$8.11 per hour. After hearing evidence on the standard in the community, the Judge of Compensation Claims found that \$200 an hour would have been a reasonable hourly rate and that would have amounted to an attorney's fee of \$16,000. (Parenthetically, the employer/carrier's counsel was paid \$16,050 for losing - \$125 per hour for 135 hours.)

On appeal, the First District Court of Appeal affirmed as it had in other cases, relying on the required percentages in the statute.

On certified question, the Supreme Court reversed, holding that it did not have to reach the constitutional question presented because there was a statutory ambiguity between the use of the word "reasonable", referring to reasonable attorney's fees, and at the same time providing for these percentages as the exclusive method of determining the amount.

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The Court stated that it reached this interpretation in order to avoid an absurd result. Three earlier decisions of the First District Court of Appeal were reversed and two subsequent cases were reversed by decisions of the entire Court, including recent appointees.

Committee Substitute for House Bill 903 removes the word "reasonable" from Sec. 440.34, Fla. Stat., wherever it appeared. The purpose of this is to legislatively overrule *Murray v. Mariner Health Care* so that whenever attorney's fees are payable by the employer/carrier, the amount can never be more than the percentages set forth in the statute, even when the mathematical result is absurd and unreasonable.

The Constitution requires that all laws be reasonable.

The removal of the word "reasonable" from the statute, is itself unreasonable. Under this bill, the amount of the employee's attorney's fees is a fixed percentage of the benefits secured, regardless of whether the end result is absurd. This is true regardless of who pays. The percentage method applies to both employee paid fees and employer/carrier paid fees. You should note that under the statute, Sec. 440.20(11)(c), Fla. Stat., the employee must pay his own attorney's fees in any washout settlement. He would also be responsible whenever the employer/carrier pays a claim within the 30-day grace period. Furthermore, neither he nor they can agree to pay more, even if they wanted to, because the Judge of Compensation Claims cannot approve of such agreement, in the face of a criminal penalty. That the percentage limitation would apply to those cases in which the employer/carrier has wrongfully denied benefits is quite troublesome. This would allow the employer/carrier to contest any small claim (and many workers' compensation claims are small) simply because it would not be economically feasible for the employee to pursue it. You will notice that by contrast, there is no limitation of any kind upon the attorney's fees paid by the employer/carrier to its own counsel.

Plainly, the Committee Substitute for House Bill 903 has the undesirable effect of making meritorious small claims economically unfeasible. This is not reasonable at all.

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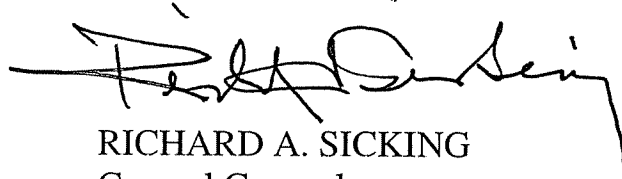
Probably, the government should wait to see what the effect of *Murray* really is. The meaning of the decision is that it was to be used in those cases in which the stated percentage fee would be absurd and unreasonable.

This really is not a dispute about separation of powers, about who gets the last word, the Supreme Court or the Legislature. It is about due process of law. Everyone, employee and employer and carrier, should have the opportunity to tell the Judge everything that is relevant. The Judge could then decide what the amount of the fee should be, which is subject to judicial review, if anyone is dissatisfied. Government should not tell the Judge that he cannot consider all of the relevant facts. In cases such as *Murray*, the time required to provide the service, the standard rate in the community depending upon the location within the state, the complexity of the issues and so on, are relevant facts. A fixed percentage of the benefits involved in the face of the inability of the parties to agree otherwise, under criminal penalty, as the sole basis to determine the amount of an employee's attorney's fees, is not responsible.

When the public hears of the repeal of the word "reasonable" in a statute, surely the public will wonder what nonsense the government is up to.

I conclude in appreciation of the careful consideration you will give to the Committee Substitute for House Bill 903 and the reasons why you should veto it.

Respectfully,



RICHARD A. SICKING
General Counsel
Florida Professional Firefighters,
IAFF, AFL-CIO

RAS/jr

cc: Bob Carver