Filing # 14799039 Electronically Filed 06/13/2014 02:41:27 PM

RECEIVED, 6/13/2014 14:43:52, John A. Tomasino, Clerk, Supreme Court

IN THE SUPREME COURT OF FLORIDA

Case No. SC13-2082

On Review from the First District Court of Appeal
LT Case No. 1D12-3639; OJCC No. 09-027890-GCC

MARVIN CASTELLANOS,

Petitioners,

v.

NEXT DOOR COMPANY, et al.,

Respondents.

AMICUS CURIAE BRIEF OF THE FLORIDA JUSTICE REFORM INSTITUTE AND THE FLORIDA CHAMBER OF COMMERCE, INC. IN SUPPORT OF RESPONDENTS

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STATEMENT OF INTEREST

The Florida Justice Reform Institute (the "Institute") is Florida's leading organization of concerned citizens, small business owners, business leaders, doctors, and lawyers who are working towards the common goal of restoring predictability and personal responsibility to civil justice in Florida through the elimination of wasteful civil litigation and the promotion of fair and equitable legal practices. **The Florida Chamber of Commerce, Inc.** (the "Chamber") serves as Florida's business advocate. It is the largest federation of businesses, local Chambers of Commerce and business associations in Florida. This federation represents in excess of 139,900 member businesses with more than three million employees across Florida. The Court's decision in this case will directly impact every Florida employer. As organizations that represent business interests, the Institute and the Florida Chamber have a significant interest in the outcome of this proceeding and in promoting stable and competitive workers' compensation insurance premiums in order to further Florida's continued economic growth.

SUMMARY OF THE ARGUMENT

The cap on prevailing party fees for claimant's counsel does not violate the equal protection clause because the statutory limits on a claimant's prevailing-party fees rationally relate to important state interests, including the need to provide an efficient system of delivering benefits to injured workers that can be maintained at

a reasonable cost to employers. The core function of the workers' compensation system is to provide benefits to injured workers. In order to deliver this service at a reasonable cost to employers, claims must be resolved efficiently.

In the years leading up to 2003, Florida experienced the consequences of failing to properly align the interests of claimant's counsel with the interests of the overall workers' compensation system. For a period of five years from 1998 through 2002, Florida workers' compensation premiums were either the first or second highest in the country. In 2003, the Florida Legislature enacted reforms that have moved Florida from the most expensive state to its 2012 ranking of 29th out of 51. A critical component of the 2003 reforms was linking prevailing-party attorneys' fees to the benefit obtained for the injured worker. This approach provides many benefits. Following the 2003 reforms, cases were closed more quickly, workers returned to work sooner, discovery tended to be less burdensome, and fewer issues were litigated. These efficiencies resulted in huge savings to employers in the form of significantly reduced workers' compensation premiums. These savings, in turn, helped to promote job creation, expand employment opportunities and push up wages as compared to neighboring states.

Incentives matter. Attorneys who get paid "by the job" based on a percentage of the recovery obtained for the injured employees are motivated to work efficiently to secure the maximum recovery for the employee. In contrast,

attorneys who get paid "by the hour" (without regard to the amount ultimately recovered for the injured worker) benefit by keeping cases open, by propounding extensive discovery, by contesting facts, by exploring novel legal theories, and by refusing to settle. Petitioner invites this Court to invalidate the "by the job" approach that was adopted by the Legislature and to substitute in its place a "by the hour" system. The problem is that the incentives inherent in a "by the hour" system are exactly opposite of what is needed to efficiently resolve claims. Petitioner has not pointed to a single state that has adopted unlimited prevailing party fees that Petitioner seeks here. Such a system would create the wrong incentives and would shift the focus from the benefits secured for the injured worker to the hours expended by counsel.

ARGUMENT

I. THE FEE STATUTE SATISFIES THE REQUIREMENTS OF THE EQUAL PROTECTION CLAUSE.

The Legislature has broad discretion in creating statutory classifications, and they are presumed valid. *Grant v. State*, 770 So. 2d 655, 660 (Fla. 2000). In an equal protection challenge not involving a fundamental right or a suspect class, the test is whether the statute bears a reasonable relationship to a permissive legislative objective. *Abdala v. World Omni Leasing, Inc.*, 583 So. 2d 330, 333 (Fla. 1991); *Acton v. Fort Lauderdale Hosp.*, 440 So. 2d 1282, 1284 (Fla. 1983) (applying the rational-basis test to a challenge to the workers' compensation statute). Section

440.34 meets this standard. As the party challenging the statute, Petitioner "bears the burden of showing that the statutory classification does not bear a rational relationship to a legitimate state purpose." *Westerheide v. State*, 831 So. 2d 93, 112 (Fla. 2002). Petitioner has not made the required showing.

The nub of Petitioner's equal protection challenge is that claimants' counsel is limited by the fee caps while counsel for the employer/insurance carrier[1] is not. This different treatment falls outside the protections of the equal protection clause because employers and employees are not similarly situated. *Duncan v. Moore*, 754 So. 2d 708, 712 (Fla. 2000) (finding that equal protection "only requires that persons similarly situated be treated similarly"). Workers' compensation is a no-fault system, where strict liability is imposed on the employer. *Turner v. PCR, Inc.*, 754 So. 2d 683, 686 (Fla. 2000). Thus, the employer is subject to strict liability, whereas the employee is not. The employer has no possibility of recovering its attorneys' fees, whereas the employee may be entitled to prevailing-party attorneys' fees. § 440.34(1), Fla. Stat. The employer is required by law to provide workers' compensation coverage, whereas the employee is the beneficiary of the coverage. § 440.09(1), Fla. Stat. And, the employee is entitled to assistance from the Ombudsman Office, whereas the employer is not. § 440.191(1)(b), Fla. Stat.

[1] Throughout, the term "employer" will be will be used to refer to the entity liable for the workers' compensation claim. In most instances, including this case, the insurance carrier is liable. But, where an employer is self-insured, the employer is liable (although payments are often made through a servicing agent).

The Legislature has limited compensation for claimants' counsel to protect injured workers from improvident contracts and to preserve any recovery for the benefit of the claimant.[2] Employers do not need similar protections.[3]

II. INVALIDATING THE FEE CAPS WILL THWART THE LEGISLATIVE INTENT

The state requires every employer to provide workers' compensation benefits. §§ 440.105(4)(a)3., 440.09(1), Fla. Stat. The workers' compensation system exists for the benefit of workers and employers. § 440.015, Fla. Stat. The intent of the Legislature is to create "an efficient and self-executing system" that provides benefits to injured workers to facilitate their return to work and that can be operated at a reasonable cost to the employer. *Id*.

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[2] *Samaha v. State*, 389 So. 2d 639, 640 (Fla. 1980) (affirming the state's legitimate interest in regulating attorney fees), a*ccord*, *Yeiser v. Dysart*, 267 U.S. 540, 541 (1925) (“[A] large proportion of those who come under the statute have to look to it in case of injury, and need to be protected against improvident contracts in the interest not only of themselves and their families, but of the public”).

[3] Other courts have found that treating counsel for employers differently from claimants' counsel does not violate the equal protection clause *Crosby v. State Workers’ Compensation Bd*., 442 N.E.2d 1191, 1195 (N.Y. 1982) (concluding that the Legislature could properly determine that employers and compensation carriers are not in need of the same protections as claimants' counsel); *Hudock v. Virginia State Bar*, 355 S.E.2d 601, 604 (Va. 1987) (finding a “rational basis . . . for the difference in treatment of counsel for employees versus . . . employers”); *accord Ayotte v. United Services, Inc.*, 567 A.2d 430, 434 (Me. 1989); *Mieras v. Dyncorp*, 925 P.2d 518, 527 (N.M. App. 1996) (collecting cases to support the claim that "[c]onstitutional challenges to statutory or administrative restrictions on awards of attorney fees based on equal protection grounds have met with little success when considered by the courts in other jurisdictions").

The essence of a self-executing system is that it is designed so the injured worker can promptly receive benefits without formal proceedings or the assistance of counsel. *S & A Plumbing v. Kimes*, 756 So. 2d 1037, 1041 (Fla. 1st DCA 2000) ("The workers' compensation system is clearly intended to be self-executing, with the resort to adversarial proceedings being undertaken only as a last recourse . . . ."). Counsel is not essential to the resolution of a workers' compensation claim, and in fact, most claims are handled without the aid of counsel.[4] On this point, *Walters v. National Assn. of Radiation Survivors*, 473 U.S. 305 (1985) is instructive. There, the Court upheld a statutory $10 limitation on attorney's fees payable by veterans seeking disability or death benefits in proceedings before the Veterans' Administration. The Court found that the Government had an interest in administering benefits in an informal and nonadversarial fashion so that claimants would receive the entirety of an award without having to divide it with a lawyer. *Id*. at 323-26. The Court assumed that the fee limitation would make attorneys unavailable to claimants, but upheld the statute because attorneys were not essential to vindicate the claims. *Id*. at 321-23.

As will be discussed below, claims data shows that injured workers continue to be able to obtain counsel in the post-fee-cap era.[5] And, to the extent that fewer claimants are represented by counsel, that does not make the fee caps

[4] *See* App. Ex. 5, Savych Report at xii (just 38% of workers had counsel).
[5] App. Ex. 5, Savych Report at xi-xii, 17-19.

unconstitutional. Instead, as in *Walters*, this Court should find that the Legislature is within its rights to adopt a self-executing system.

A. **Murray** *provides a clear window, revealing the impact that invalidating caps would have on the marketplace.*

In most cases when a court analyzes the constitutionality of a statute, the court does so without the benefit of detailed knowledge about the impact of its decision in the marketplace. This case is different. When this Court issued its decision in *Murray v. Mariner Health Care, Inc.*, 994 So. 2d 1051, 1062 (Fla. 2008), the resulting fee structure is exactly what Petitioner seeks here. Although the structure adopted by *Murray* was relatively short-lived,[6] it triggered actuarial studies and market analysis. *Murray* also resulted in a state-wide increase in workers' compensation insurance premiums. As will be explained below, eliminating the statutory limits on claimant's prevailing-party attorneys' fees will make the entire workers' compensation system less efficient and will cost employers hundreds-of-millions in higher workers' compensation premiums.

The benefits of the 2003 workers' compensation reforms are well documented.[7] Many of these benefits flow from the cap on attorneys' fees. What

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[6] The Legislature quickly amended the statute to limit prevailing party fees to the amounts authorized in the fee statute. Ch. 2009-94, Laws of Fla.

[7] See, for example, the Florida Insurance Commissioner's Annual Report on Workers' Compensation, at http://www.floir.com/Office/DataReports.aspx#rec (annual reports from 2004 to 2013 are available), visited 5/29/14.

would happen if the caps were invalidated? The National Counsel on Compensation Insurance, Inc. ("NCCI") analyzed the impact of *Murray* as follows:

> It is anticipated that cases will be kept open longer, there will be more discovery, more issues will be litigated, cases will be more expensive to settle, it will take longer to close cases, and it will take longer for injured workers to return to work. In addition, there is incentive to take additional cases, no matter how small the potential benefits to be secured.[8]

All of these factors make the workers' compensation system less efficient and thus more costly. These observations are consistent with *Walters*, where the Court noted that counsel has a duty to advance his client's interest by any ethical means, even if that involves causing delay or sowing confusion:

> But this is only one side of the coin. Under our adversary system the role of counsel is not to make sure the truth is ascertained but to advance his client's cause by any ethical means. Within the limits of professional propriety, causing delay and sowing confusion not only are his right but may be his duty.

473 U.S. at 325 (citation omitted, emphasis added)). The Legislative intent is to have an efficient, self-executing system that can be run at a reasonable cost to employers. Invalidating the fee caps will thwart that intent.

B. Linking attorney pay to employee recovery hardwires the workers' compensation system to efficiently allocate resources.

Incentives matter. Linking attorney pay to the recovery obtained for the injured worker creates market incentives that are consistent with the self-executing

[8] App. Ex. 1, NCCI Circular, at 21 (consecutive page numbers added by counsel).

intent for the workers' compensation system.[9] Fee caps make the entire system more efficient and more self executing. Experience has shown that under this system, workers return to work sooner, claims are processed more quickly, and overall system costs are maintained at reasonable levels. *Id.* The result is a more efficient system where more money goes to injured workers and less money to legal wrangling. The 2003 Florida reforms have proven that a more efficient system results in lower premiums, which in turn promotes job creation, higher wages, and more opportunities for everyone.[10]

The workers' compensation system is a system of limited resources and widely varying claims. When attorney pay is linked to employee recovery, claimants' counsel earns more by representing workers with severe injuries. And, fee caps create a powerful incentive to work efficiently. For a $5,000 injury, the fee for claimants' counsel is capped at 20%, or $1,000. If the attorney can resolve the claim in four hours, the attorney would earn $250/hour. If it takes 10 hours, the rate drops to $100/hour. These incentives reward the most efficient counsel with the highest hourly rate for their time.

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[9] App. Ex. 1, NCCI Circular at 20-21; App. Ex. 4, Helvacian Report at 54-63 (impact on system costs), and 64-68 (impact on employment and wages).

[10] *See* Florida Insurance Commissioner's 2013 Annual Report on Workers' Compensation at 12 (finding that premiums have fallen 56% since 2003) *at* http://www.floir.com/siteDocuments/2013WorkersCompensationAnnual%20Report.pdf; App. Ex. 4, Helvacian Report at 67-68 (finding that if fee caps were eliminated, growth in employment would be reduced by one third, wage growth would be reduced by 15%, and 337,000 jobs would be lost over five years).

C. Important safeguards are in place to ensure that workers with relatively minor claims have the opportunity to recover.

Unlike the tort system where individuals with minor injuries may have no recourse, there are at least two important safeguards that give workers with minor injuries the opportunity to recover, with or without the assistance of counsel. First, an award of up to $1,500 in attorneys' fees can be authorized when the JCC finds that the statutory fee structure is inadequate for a "medical benefits only" claim. § 440.34(7), Fla. Stat. Second, to assist injured workers in handling their own claims, the Legislature created an "Employee Assistance and Ombudsman Office." § 440.191(1)(b), Fla. Stat. If an employer or insurance carrier fails to provide benefits, the statute directs the employee to contact the Ombudsman Office "to request assistance in resolving the dispute." § 440.191(2)(a), Fla. Stat.

D. Invalidating the fee caps will make the workers' compensation system less efficient and will cost employers hundreds of millions.

The Florida workers' compensation marketplace, measured by total annual premiums, was a $2.9 billion industry in 2012.[11] Given the size of the market, premium increases can have a significant impact on Florida employers and the economy. Three important resources provide detailed insight into the direct annual cost that invalidating the statutory prevailing-party fee caps would have on Florida employers. Under a conservative estimate, eliminating fee caps will increase

[11] App. Ex. 3, Florida: Workers Compensation Market, at 8. To capture the entire marketplace, this number includes self-insureds.

premiums by more than $180 million in the first year alone. And, as explained below, actuaries predict that the impact will double by the second year, pushing the annual impact to $360 million.

NCCI Circular.[12] The NCCI Circular was submitted by the National Counsel on Compensation Insurance, Inc.[13] in support of a premium increase. The scope of the analysis was specifically limited to the impact of the *Murray* decision. Thus, it measures the impact of invalidating the prevailing-party attorney fee caps.

NCCI actuaries concluded that unlimited prevailing party fees would increase annual workers' compensation costs in Florida by 18.6% by year two, with half of the increase (8.9%) coming in year one. *Id*. at 18. When these projected increases are applied to Florida's $2.9 billion in annual workers' compensation premiums, the financial impact is huge. The first year increase of 8.9% equates to more than $250 million. By year two, when the full impact of eliminating the fee caps would be realized, the annual cost of eliminating the fee caps will double to $500 million. The Office of Insurance Regulation ("OIR") relied on the NCCI Circular when it approved the year-one rate increase of 6.4%.

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[12] App. Ex. 1, NCCI Filing Circular, November 14, 2008.

[13] NCCI is the nation's most experienced provider of workers compensation information, tools, and services. At least 35 states have designated NCCI as the licensed rating and statistical organization. Thus, most states rely on data from NCCI when making important policy decisions about workers' compensation programs. Additional background information is available online. *See* https://www.ncci.com/nccimain/AboutNCCI/Pages/default.aspx (visited 6/3/14).

OIR's Order on Rate Filing.[14] The second guidepost for predicting the cost that invalidating the statutory fee caps will impose on Florida employers is the actual rate increase that was approved by OIR. In January 2009, OIR approved of a first-year increase of 6.4%. *Id*. at 5. Based on a $2.9 billion market, this first year increase would raise insurance premiums by more than $180 million. Because the Legislature quickly reinstated the fee caps, we do not know what additional rate increase would have been approved for year two. But, if the impact doubled by year two (as FCCI actuaries predicted), doubling OIR's first-year rate of 6.4% would result in a year-two rate of 12.8%. This translates into more than $360 million in increased premiums for year two and the years that follow.

Helvacian Report.[15] This report analyzed Florida workers' compensation claims data before and after the 2003 reforms to determine the impact of the 2003 reforms. To further measure the impact of the Florida reforms, Dr. Helvacian also compared the Florida data against nearby Gulf States (GA, AL, LA, MS). The Helvacian Report concludes that the "restructuring of the attorney fees had profound effects in the way that claim disputes were resolved in the system." *Id*. at 7. From 2003 to 2008 premiums dropped by 60%, claims closed more quickly, system costs decreased, and workers returned to work more quickly. *Id*. at 6-9, 40-53. As compared to nearby Gulf States on an array of metrics, including claim

[14] App. Ex. 2, OIR, Order on Rate Filing, No. 100044-08 (Jan. 26, 2009).
[15] App. Ex. 4, Helvacian Report.

closure, lost-time, permanent impairment claim costs, claim frequency, and system costs, the Florida system was superior. *Id*. at 9-17, 40-56. And, on the question of how the workforce fared, employment grew at a faster rate and wages increased at a faster rate as compared to the Gulf states. *Id.* at 19-22, 64-68.

One might argue that if these costs are needed to hire counsel for injured workers, then wouldn't that be a good investment? Here is the problem: While a system without fee caps is significantly more expensive, for the most part the increased expenditures do not reach the injured worker. Instead, the cost increases are eaten up by a less efficient system. This is well documented in the reports discussed above. In a system where the compensation for the claimant's attorney is determined by the *hours billed* (and not the *recovery obtained* for the employee), the value of the claim becomes irrelevant, and that changes everything. Contrary to the legislature's intent that the system be self-executing, the "hours billed" system creates an incentive for counsel to accept every case—including cases where the amount at issue would not justify the cost of counsel. It not only takes away the incentive to resolve cases quickly, it creates the opposite incentive.

The instant case illustrates this point. Petitioner's counsel argues that the employers/insurance carrier must pay for 107 hours of attorney time in a case where the injured worker received just $822.70. Even at the low end of counsel's market rate of $350, the time spent equates to $37,450 in fees. And that is on just

one side of the case. Counsel for the employer spent 115.2 hours. Assuming equivalent spending on both sides and adding in costs, nearly $80,000 was spent to recover $822.70 for the employee.

A system that expends $80,000 to resolve an $822 claim simply cannot be maintained at a "reasonable cost" to the employer. The system the Petitioner invites this Court to adopt is *not* the system that the Legislature has chosen.

III. ANALYSIS OF NEARLY 50,000 CASES FOUND THAT INJURED WORKERS CONTINUE TO BE ABLE TO RETAIN COUNSEL

Petitioner invites this Court to accept as fact the bare assertion that workers' compensation claimants are unable to secure the representation of counsel as a result of the fee caps that were adopted by the Legislature in 2003, and that were reinstated in 2009 following *Murray*. Two researches at the Workers Compensation Research Institute analyzed nearly 50,000 Florida cases in an effort to determine whether the Florida reforms reduced attorney involvement.[16] The study found that before the reforms, 43% of workers with indemnity claims had counsel, compared with 38% after. *Id.* at xi-xii. When certain changes were accounted for, the final conclusion was that attorney involvement dropped by 3.6%. *Id*. The authors were unable to determine whether this reduction was caused by the fee caps. The study dug deeper, analyzing cases where the recovery obtained for the worker under $2,500 and under $1,000. *Id*. at xii. After analyzing

[16] App. Ex. 5, Savych Report.

over 9,000 cases before and after the 2003 reforms, the findings were similar. Under one set of thresholds, the reduction in attorney involvement was about 1%; under another set it was about 3%. *Id*. Thus the effect, if any, was small.

Several aspects of this study are instructive here. First, there is no evidence that the fee caps have reduced attorney involvement. Second, this report confirms that the *majority* claimants are able to obtain benefit without the assistance of counsel. Since just 38% of workers with indemnity claims were represented by counsel, it must follow that the remaining 62% did not have counsel.

The finding that attorney involvement has not diminished as a result of the fee caps is further supported by the 2011-2012 Annual Report of the Office of the Judges of Compensation Claims.[17] The Report analyzed data from 2002 through 2012 and found that available data supports the conclusion that *pro se* representation before the OJCC has *declined* over this period. *Id*. at 15 ("fewer injured workers are representing themselves in the OJCC system"). In 2002-2003, 22% of the new cases filed with OJCC were *pro se*. By 2011-12 just over 10% of the new cases were *pro se*. *Id*. Thus, for cases in the OJCC system, attorney involvement appears to be *increasing*. Thus, there is no indication that workers' compensation claimants are unable to secure counsel.

[17] The 2011-12 Annual Report of the Office of the Judges of Compensation Claims is available at http://edocs.dlis.state.fl.us/fldocs/dah/ojcc/2012AnnualReport.pdf.

IV. FLORIDA'S FEE CAPS ARE REASONABLE AND CONSISTENT WITH LIMITS ADOPTED IN OTHER STATES.

While the workers' compensation program exists for the benefit of employers and employees, their roles in the system are different. Employers pay into the system, and injured employees, in turn, receive benefits from the system. Florida has opted for a self-executing system designed for injured workers to receive compensation for work-related injuries without the need for formal proceedings or the assistance of counsel. Florida, like most states, limits payment to the claimant's counsel to a percentage of the benefit secured.[18]

The Florida fee statute authorizes the claimant's attorney to receive 20, 15, 10, or 5 percent of the benefit secured, depending on the amount recovered and the time that has elapsed since the injury. These limits are reasonable and consistent with the limits adopted in other states. *See Wagner v. AGW Consultants*, 114 P.3d 1050, 1060 (N.M. 2005) (observing that "in states that set attorney fees at some percentage of the worker's recovery, ten to twenty percent is generally considered to be an appropriate range") (citation omitted, emphasis added).

This is not a case where someone changed the rules in the middle of the game. Petitioner's counsel was aware of the fee caps from the outset.

[18] App., Ex. 6, Workers' Compensation Laws as of January 1, 2014.

V. ADDITIONAL ATTORNEYS' FEES, IF ANY, MUST COME FROM THE PETITIONER.

For this Court to authorize additional prevailing-party fees without express statutory authorization would be contrary to the nearly a hundred years of unbroken precedent. On this point, Florida law is clear: Only the Legislature can authorize prevailing-party attorneys' fees. Should this Court find that Petitioners' counsel is entitled to additional fees, those fees must come from the Petitioner.

In the United States, parties in litigation ordinarily bear their own attorneys' fees, absent "explicit statutory authority."[19] Florida follows the "American Rule."[20] The attorneys' fees at issue in this proceeding are prevailing-party attorneys' fees. In keeping with the settled practice of following the American Rule, prevailing party attorneys' fees is "a matter of substantive law properly within the aegis of the legislature." *State Farm Mut. Auto. Ins. Co. v. Nichols*, 932 So. 2d 1067, 1077 (Fla. 2006) (internal quotation marks and citation omitted).

Only *limited* prevailing party fees are authorized by statute. In *Murray v. Mariner Health Care, Inc.*, 994 So. 2d 1051, 1062 (Fla. 2008), this Court determined that there was a statutory authorization for "reasonable" prevailing-party fee. *See* § 440.34(3), Fla. Stat. (2008) ("a claimant shall be entitled to recover

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[19] *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 602 (2001).

[20] *State Farm Fire & Cas. Co. v. Palma*, 629 So. 2d 830, 832 (Fla. 1993); *see also Price v. Tyler*, 890 So. 2d 246, 251 (Fla. 2004) ("each party is responsible for its own attorneys' fees unless a contract or statute provides otherwise").

a reasonable attorney's fee from a carrier or employer [under four subsections]"). Following the *Murray* decision, the Legislature withdrew the statutory authorization for a "reasonable" prevailing-party fee. Ch. 2009-94, § 1, Laws of Fla. What remains is the statutory fee schedule. Through this fee schedule the Legislature authorized only *limited* prevailing party fees. § 440.34(1), Fla. Stat.

Petitioner invites this Court to rewrite the *limited* prevailing party fee statute to authorize *unlimited* prevailing party fees. For nearly 100 years, this Court has held that prevailing-party fees are only available to the extent authorized by the Legislature.[21] The Legislature clearly intended that employer-carriers would be liable for a claimant's attorney's fees to the extent of the percentage formula—but not further. Of course, when the Legislature authorizes fee-shifting, it is free to impose limits. *See, e.g., L. Ross, Inc. v. R. W. Roberts Const. Co., Inc.*, 481 So. 2d 484 (Fla. 1986) (applying a statute that limited the recovery of attorney's fees to 12.5 percent of the judgment); *Nichols*, 932 So. 2d at 1077. Only the Legislature can expand the attorney's fee statute at issue here. *See e.g., Palma*, 629 So. 2d at 833 ("If the scope of section 627.428 is to be expanded to include fees for time

[21] *State ex rel. Royal Ins. Co. v. Barrs*, 99 So. 668, 669 (Fla. 1924) (holding that prevailing party attorneys' fees "are recoverable only when provided for by law or by contract") (cited with approval by *Price v. Tyler*, 890 So. 2d 246, 252 (Fla. 2004)); *see also Trytec v. Gale Indust.,Inc.*, 3 So. 3d 1194, 1198 (Fla. 2009) ("It is well-settled that attorneys' fees can derive only from either a statutory basis or an agreement between the parties.").

spent litigating the amount of attorney's fees, then the Legislature, rather than this Court, is the proper party to do so.") (emphasis added).

If this Court finds that Petitioner's counsel is entitled to fees beyond the statutory caps, then the Petitioner must bear that cost.[22] This solution is consistent with the American Rule and would not impose additional costs on employers, since employers would only be responsible for prevailing-party fees up to the limits authorized by statute.

CONCLUSION

The Florida workers' compensation system can only deliver benefits to injured workers at a reasonable cost if claims are processed quickly and efficiently. Limiting the recovery of claimant's counsel to a portion of the recovery obtained for the injured worker keeps the focus of the entire system on the benefit secured for the injured worker. It also creates powerful incentives that promote the efficient resolution of claims.

WHEREFORE, the Institute and the Florida Chamber urge this Court to affirm the court below and to answer the certified question, "yes."

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[22] In many states, counsel for injured workers is paid out of the recovery obtained for the injured worker. App. Ex. 6 (indicating that in many states the worker's attorney is paid out of the worker's recovery). The Florida system allows the injured worker to retain his or her entire award. Thus, if an injured worker recovered $5,000 with the assistance of counsel, the worker would receive $5,000 and counsel an additional $1,000.

Respectfully submitted this 13th day of June, 2014.

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CERTIFICATE OF RULE 9.210 COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

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