

300 WORDS (more or less) about WORKERS' COMPENSATION

PROBLEM—The 2003 landmark reforms to Florida’s workers’ compensation system have been lauded by most impartial observers as having turned Florida’s system of compensating injured workers from one of the worst in the nation into one of the best. It took a system that had unaffordable insurance rates for employers, widespread fraud, and poor compliance with coverage requirements and, over a five-year period, reduced the fraud, increased coverage compliance, and reduced insurance rates over 60 percent. A Florida Supreme Court case now threatens to undo all of this progress.

BACKGROUND—A key element of the 2003 workers’ compensation reform legislation was language limiting attorneys’ fees in certain cases. Studies had shown that Florida’s high rate of attorney involvement was a “cost driver,” increasing the overall cost to the system far in excess of the actual fees themselves. It did so by increasing litigation costs through more tests and “expert” witnesses and, ironically, often delayed the injured worker’s return to work. Florida’s answer was to tighten up the fee schedule so that it tied the attorney’s compensation to benefits the attorney actually secured for the injured worker. Prior to this change, the fee formula had a loophole that allowed the Judge of Compensation Claims to award fees based on hours spent on the case, an open invitation to drag out the settlement of the case. Late last year, the Florida Supreme Court, in the case of *Murray v. Mariner Health*, reversed the action of the Legislature, calling a portion of the fee limitation vague and

ambiguous. The Court then substituted its own judgment for that of the Legislature and re-instated a fee loophole that allowed plaintiff attorneys to charge fees based on a number of criteria including hours spent on the case.

The impact of the decision was immediate. The National Council on Compensation Insurance (NCCI) predicted that, because of the *Murray* decision alone, rates would need to increase by 18.6 percent. Recognizing that it would take two years for the full impact of the decision to be realized, the NCCI divided their request in half, asking for an increase of 8.9 percent for 2009 with the intent of making a similar increase next year. After a lengthy public hearing, the Office of Insurance Regulation (OIR) cut this year’s increase to 6.4 percent, still a sizeable increase. In granting the increase, the state’s insurance regulator acknowledged the adverse effect the Court’s decision would have on the previous savings to the system. Reversing the Court’s decision and returning the attorney fee provision to the original intent of the Legislature has become a top priority for the entire business community. We are working with legislative leaders to craft a very narrow fix, one that re-instates the attorney fee limitation as originally intended in 2003, without opening up the workers’ compensation laws to other, more liberal, changes.

SOLUTION—Support SB 2072 by Sen. Richter and HB 903 by Rep. Flores.

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