

**March 15, 2009**

**Attention: Legislative Committee**

**Subject: Legislative Update**

We are about to enter the third week of legislative session and already the issue of Workers' Compensation has been the focus of noteworthy deliberations.

**Four major bills have been filed** seeking to address the Murray v. Mariner Health ruling and debate and negotiations between attorney groups, carriers, business and industry, injured workers, labor, and first responders are ongoing. Of course, the final legislative determination is still in doubt and thus this letter can only provide a "snapshot" of where we are at present.

**Rep. Anitere Flores** filed **HB903** and its companion is SB2072 by Sen. Garrett Richter from Naples. The House bill amends the attorney's fee schedule to permit fees on the first \$5,000 of benefits secured to be "less than or equal to" 20 percent of the first \$5,000 of benefits secured. Under current law, the fee must equal 20 percent of the first \$5,000 in benefits secured. The bill also addresses the *Murray* decision by clarifying that awards of attorney's fees, except in certain medical only cases, are to be calculated based solely on the fee schedule. HB903 was filed on February 16<sup>th</sup> and on March 4<sup>th</sup> it was referred to the **Insurance, Business, and Financial Affairs Policy Committee** and the General Government Policy Council. It was heard in its first committee of reference on March 10<sup>th</sup>.

Interestingly, Rep. Flores had filed a "strike-all" amendment to her own bill which was compromise language agreed to by most stakeholders but in the night prior to the bill being heard, the **National Council on Compensation Insurance (NCCI)** reported that said amendment would result in a significant rate increase. Rep. Flores withdrew her amendment and the legislation passed the committee as originally introduced. Deliberations continue.

**SB2072** strikes the words "as reasonable" from F.S. 440.34 (Attorney's fees; costs) and in that fashion attempts to clarify the ambiguity that the Supreme Court found as to whether the fee schedule is the sole basis for determining a reasonable attorney's fee. This legislation was filed on February 24<sup>th</sup> and on March 5<sup>th</sup> was referred to the **committees of Banking and Insurance, Judiciary, and General Government Appropriations**. This bill has not had its first hearing.

The two other Workers' Compensation bills take a different tack. **SB2280 by Senator Dan Gelber is linked to HB1489 by Rep. David Rivera.** The Senate bill deletes the provisions prohibiting payments for services in connection with a worker's compensation claim not approved by a judge of compensation claims; deletes the provisions prohibiting a judge of compensation claims from approving the payment of attorney's fees in excess of certain amounts; deletes the provisions authorizing a judge of compensation claims to approve a limited amount of alternative attorney's fee; and, does not impair the right of a claimant to contract with an attorney. This bill was filed on February 26<sup>th</sup> and on March 10<sup>th</sup> was referred to the committees of Banking and Insurance, Judiciary, General Government Appropriations, and Rules. It too has not had its first hearing.

**HB1489 decriminalizes receipt of an attorney's fee** that has not been approved by a judge of compensation claims; deletes a limitation on retainer agreements and provisions relating to approval of certain attorney's fees; specifies that nothing shall impair a claimant's right to contract for representation; and, limits the scope of a judge of compensation claims' authority to approve settlement agreements. Rep. Rivera filed this legislation on March 3<sup>rd</sup> and on March 10<sup>th</sup> it was referred to the Insurance, Business, and Financial Affairs Committee, the Civil Justice and Courts Policy Committee, the General Government Policy Council, and the Policy Council. This bill has not been placed on the agenda.

The above bills evidence significant legislative activity in the Workers' Compensation arena and that the legislative reluctance to "open" Chapter 440 was rendered mute by the Murray decision.

cc: IARP Legislative Committee