

Court ponders attorney fees in worker cases

By **Jim Saunders,**

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TALLAHASSEE — In an issue watched closely by business, labor and trial-lawyer groups, the Florida Supreme Court weighed the constitutionality of limits on attorneys' fees in workers-compensation insurance cases.

Justices heard arguments Wednesday in a case that stemmed from injuries suffered in 2009 by a South Florida man, Marvin Castellanos, during an altercation with another worker at their employer, Next Door Company. After a dispute about a workers-compensation claim, a judge approved \$822.70 in benefits for Castellanos — and a \$164.54 fee for his attorney.

The fee was based on a formula in state law. But Castellanos' attorneys contend that a change made in 2009 to the law can lead to such small fee amounts that it is unconstitutional. In part, they argue that injured workers' "access to courts" is hampered because lawyers might not take cases without the possibility of more pay.

Richard Sicking, an attorney for Castellanos, told the Supreme Court that state lawmakers set fee amounts that have "no basis in fact" — and described as "crazy" the fee in the case, which was the equivalent of \$1.53 an hour for the work that was done.

"The Legislature has set the fee," Sicking said. "That is not a legislative function."

Justices asked pointed questions of Sicking and Raoul Cantero, who represents the Next Door Company and its insurer, Amerisure Insurance Co.

After Sicking's comment about the fee being crazy, Justice Barbara Pariente quickly replied, "Crazy doesn't always translate into unconstitutionality."

Cantero, a former Supreme Court justice, said Castellanos' attorneys had not shown that the fee limits affect the ability of injured workers to get legal representation. As an example, he alluded to the lawyer who agreed to take Castellanos' case.

"There's no claim here, 'I couldn't get an attorney because this was a low-value (benefits) claim,'" Cantero said.

But Justice James E.C. Perry appeared to disagree about the effect of low fees, asking Cantero at one point, "Would you represent a claimant under these circumstances?"

Attorneys' fees have long been a controversial issue as state lawmakers, urged by business groups, have looked for ways to hold down workers-compensation insurance costs. Generally, the workers-compensation system is designed to resolve claims quickly so injured employees can return to work, but some disputes wind up going to court.

Business groups contend that large attorneys' fees would contribute to higher insurance costs. But plaintiffs' attorneys and labor groups counter that lawyers are often necessary to help injured workers navigate the

complicated workers-compensation system.

As a sign of the interest in the Supreme Court case, prominent groups have filed briefs on both sides.

Among the groups supporting Castellanos' arguments have been the Florida Justice Association trial-lawyers group, the Fraternal Order of Police, the Police Benevolent Association and the Florida Professional Firefighters. On the other side are groups such as the Florida Justice Reform Institute, the Florida Chamber of Commerce, Associated Industries of Florida and the Florida Insurance Council.

Lawmakers in 2003 passed a massive overhaul of the workers-compensation system, amid arguments that Florida businesses paid some of the highest insurance rates in the country.

State law includes a formula for judges to award attorneys' fees. For example, the fees are set at 20 percent of the first \$5,000 in benefits obtained and 15 percent of the next \$5,000 in benefits. But the Castellanos case focuses heavily on a change that lawmakers approved in 2009 to eliminate a reference to being able to recover "reasonable" attorneys' fees.

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