



STATUTE OF LIMITATIONS DOES NOT RUN IF JURISDICTION IS RESERVED FOR ATTORNEY'S FEES

Longley v. Miami-Dade County School Board, 37 Fla. L. Weekly D307a
(Fla. 1st DCA February 2, 2012)

The First DCA has shockingly ruled that the statute of limitations is tolled if a claim for attorney's fees and costs remains pending. In *Longley*, the claimant had filed a PFB in 2009 and subsequently dismissed this PFB after the issues contained therein had been resolved. The voluntary dismissal contained the following statement: "there are no outstanding issues other than attorney's fees and costs, over which jurisdiction remains reserved in the JCC." In 2010, the claimant filed a new PFB. The E/C argued that this PFB was barred by the statute of limitations. The JCC agreed. On appeal, one of the arguments raised by the claimant was that the statute of limitations had not run because the claim for attorney's and costs from the 2009 PFB was still pending. The First DCA agreed with this argument, finding that the issue of fees and costs from the 2009 PFB had not been resolved, and as such, remained pending, thereby tolling the statute of limitations.

This is a terrible decision and could have quite an effect on the litigation of workers' compensation claims. Until now, it had been thought that attorney's fees and costs had no impact on the statute of limitations. F.S. 440.19 says nothing about attorney's fees and costs, and the First DCA had previously held that the payment of attorney's fees and costs did not impact the limitations period.

Claimant's attorneys always state that jurisdiction is reserved to resolve the issues of fee entitlement and amount when they voluntarily dismiss a PFB, because they do not want to waive fees that they may be owed. Many times nothing comes of this because opposing counsel is not entitled to a fee. With *Longley*, the First DCA is now saying that in any case in which jurisdiction is reserved for fees and costs, the statute of limitations will be tolled until this issue is resolved. As such, in order to keep the statute of limitations from being tolled indefinitely, it is very important to object to jurisdiction being reserved on fees and costs and request that the matter proceed to a final hearing on these issues. In some cases, it will also be necessary to file motions to compel the filing of a verified petition for attorney's fees and costs, pursuant to Rule 60Q-6.107(4) of the Rules of Procedure for Workers' Compensation Adjudications. Failing to do this could result in the inability to ever raise a statute of limitations defense.

This decision will certainly increase the amount of litigation. In fact, in many older, and possibly closed, cases, the claimant will now be able to file a PFB because the statute of limitations has been tolled because jurisdiction was previously reserved to resolve fees and costs, and that issue was never resolved.

We expect that the E/C in this case will file a motion for rehearing. Therefore, this decision will not become final until that is disposed of. We will be sure to you updated on this.