

CASE LAW UPDATE:

THE FIRST DISTRICT COURT OF APPEAL HAS SET THE STAGE FOR THE AWARD OF ATTORNEY'S FEES FOR A CLAIMANT'S ATTORNEY WHO SUCCESSFULLY OVERCOMES AN E/C'S MISREPRESENTATION DEFENSE, EVEN IF THE CLAIMANT LOSES ON EVERY BENEFIT CLAIMED!!

***Edwin Chandler v. Centex Rooney*, No. 1D08-5773 (Fla. 1st DCA July 24, 2009)**

The First District Court of Appeal recently *per curiam affirmed* the JCC's ruling in the above-mentioned matter. However, in a concurring opinion, Judge J. Thomas outlined his "view" that a claimant's attorney is entitled to payment of an appropriate fee for successfully defending against an E/C's asserted misrepresentation defense, but only when the attorney's fee issue is properly preserved under §440.34(1) and (2).

In his five page interpretation of well-established case law and statutory language, Judge Thomas explains that §440.34(1) allows for an attorney's fee based on "services rendered for a claimant in connection with any proceedings arising under this chapter." Judge Thomas also notes that §440.34(2) allows for attorney's fees associated with benefits "obtained as a result of the claimant's attorney's legal services rendered in connection with the claim for benefits." As such, Judge Thomas explains that 440.34 allows for a fee even if the claimant's attorney fails to obtain any benefits because the claimant's attorney has rendered a "service" by successfully defending a misrepresentation defense that could "preserve the claimant's entitlement to future benefits."

Although it could be argued that the statutory language cited by Judge Thomas was removed by the legislature in 2003 and, as such, the logic behind the opinion is only applicable to pre-October 1, 2003 dates of accident, it does not appear as though the First DCA intends to limit this position to only these dates of accident. As was rather evident during recent oral arguments before the First DCA in the case of *Pasco County Sheriff's Office v. Steven L. Papola*, the rest of the First DCA shares this same "view" that the successful defeat of a misrepresentation defense could result in the award of attorney's fees even if the claimant's attorney was unsuccessful in obtaining any requested benefits at Final Hearing. As such, Employer/Carrier's must be extremely cautious in denying continued compensation and medical benefits utilizing a §440.09 and §440.105 misrepresentation defense as the court could award an attorney's fee to the claimant's attorney for overcoming such a defense, even if no benefits are ultimately obtained.