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High Court Will Review another Challenge to Adequacy of Comp System: Top [2015-10-15]

The Florida Supreme Court has agreed to accept review of yet another workers' compensation case.

Stahl v. Hialeah Hospital is a constitutional challenge based on the premise that the workers' compensation system is no longer a fair replacement remedy for a civil cause of action.

Miami claimants' attorney Mark Zientz filed the lawsuit. Last year, he secured a ruling from a trial court judge in Miami finding the erosion of benefits to injured workers over the years had reached a point where a comp claim could no longer be considered an adequate substitute for a tort cause of action, as a matter of law.

The 3rd District Court of Appeals reversed the judge's ruling because of a procedural snafu. Now the parties in the case, which has become known as Florida Workers' Advocates v. State of Florida, are waiting to see if the Supreme Court will weigh in.

And the Stahl case is just the latest controversial ruling in a growing list of cases that have employers worried about the stability of Florida's system.

Last June, the court heard oral argument in Westphal v. City of St. Petersburg, which challenges Florida's 104-week cap on temporary disability benefits. The Supreme Court in November 2014 also heard argument in Castellanos v. Next Door Co., which centers on the constitutionality of the method for calculating attorney fees set forth by Florida Statutes Section 440.34.

Zientz, speaking with WorkCompCentral on Wednesday, said the Stahl case is about "the appropriate remedy for the Legislature wiping out a whole class of benefits" and shifting some of the cost of treatment to workers.

In his jurisdictional brief to the Supreme Court, Zientz explains that he is specifically challenging a 1994 legislative amendment which imposes a $10 copay for medical visits after a claimant attains maximum medical improvement, and the 2003 elimination of permanent partial disability benefits.

Zientz notes that when the Florida Supreme Court rejected a constitutional challenge to the comp system in a 1991 case called Martinez v. Scanlan, the court said the system passed muster because it continued to provide full medical care and some form of compensation for the partial loss of wage-earning capacity.

He contends that the Florida system stopped providing full medical care in 1994, when the copay requirement made workers at MMI start shouldering some of the cost of their care.

Zientz also argues that the "impairment income benefits" created by lawmakers in 2003 and the PPD benefits that had previously been available are "vastly different animals," so the former did not supplant the latter as a means of compensating workers for the partial loss of wage-earning capacity.

His arguments had not been persuasive to Judge of Compensation Claims Stephen L. Rosen, and the 1st DCA rejected them in March. But the Supreme Court on Tuesday said it wanted to take a look.

Zientz's opening brief on the merits will be due Nov. 2.

Several groups have given the court notice that they wish to join in as amici, including the National Employment Lawyers Association, Fraternal Order of Police, the Police Benevolent Association, the International Union of Police Associations, the Florida Association of State Troopers, the Florida Professional Firefighters, Voices Inc. and the Workers' Injury Law and Advocacy Group.

Claimants' attorney Geoffrey Bichler of Bichler, Kelley, Oliver, Longo & Fox filed the amicus notice on behalf of the law enforcement groups.

He said Wednesday that he saw the Stahl case as "part of a concerted effort" by members of the claimants' bar "to highlight the inequities in the system and the problems that exist in the current Workers' Compensation Act."

Bichler said he plans to provide the court with "real world examples" of "how the workers' compensation system is just an inadequate remedy, and woefully inadequate as an exclusive remedy" in his amicus brief.

With so many cases involving constitutional challenges to the comp system now awaiting the Supreme Court's attention, Bichler said, "it makes sense to me for the court to address any and all constitutional problems at the same time and release opinions on these cases at the same time."

He said he also thought the collection of cases puts the justices "in a position to do something much more significant" than just rule on the constitutionality of each part of the comp system being challenged in Stahl, Castellanos and Westphal.

Bichler said he believes that the comp system is now "so far removed from any notion of reasonable and adequate that it is time for the court to address that, and not just in a piecemeal fashion."

He said he was hoping the court will do "something sweeping" with the comp system when it finally rules on all of these cases.

Fellow claimants' attorney Mike Winer, who is the immediate past president of Florida Workers' Advocates and current chair of the Florida Bar Workers' Compensation System, said he had the same impression.

Winer said his personal opinion is that Stahl, Westphal and Castellanos are all basically "about the

same thing" – namely, "the insufficiency of benefits," and how "the trade-off is broken."

He said his theory is that the court is "setting the stage for the court to take a more plenary look at the workers' compensation law" and "analyze the system as a whole as opposed to its individual parts" by taking up so many comp cases at once.

If he's right, Winer said, he expects there will be a significant delay in seeing a decision from the court in Westphal and Castellanos, since it will take a few months for briefing to conclude in the Stahl case.

Claimants' attorney Louis P. Pfeffer, who filed an amicus notice for the NELA in the Stahl case, said he plans to discuss "how Stahl fits into the whole backdrop of how comp is no longer a viable alternative (to the tort system)" in his amicus brief for the case.

When the comp system was created, a negligence suit was "a really, really tough row to hoe," with any contributory negligence by a worker being a bar to recovery, he said. Thus, Pfeffer said he thought a limited comp remedy was a fair trade when it was "almost impossible to win" a negligence suit, but not any longer.

Russell Hurley Young of Eraclides, Gelman, Hall, Indek, Goodman & Waters had filed the opposition on behalf of Hialeah Hospital to Stahl's request for Supreme Court review.

He said Wednesday that he remained of the opinion that review wasn't warranted for the reasons stated in his brief.

The court docket is available here.