

The Law Offices of Bolton and Helm, LLP

CASE LAW UPDATE

Attorney's Fees May Be Payable In Florida Even If Benefits Are Not Awarded

In Chandler v. Centex Rooney Const. Co., 34 Fla. L. Weekly D1504 (Fla. 1st DCA, July 24, 2009), E/C defended a claim for indemnity benefits and, in doing so, also asserted a workers' compensation fraud defense. The Judge denied claimant's request for indemnity benefits, but rejected the fraud defense. Justice Thomas concurring explained that it is implicitly acknowledged a claimant may be entitled to attorney's fees under these circumstances. Justice Thomas said that Section 440.34 Florida Statutes could allow for a fee even if claimant's attorney does not obtain the requested benefits because the services rendered in defending the fraud defense are rendered in connection with the claim for benefits, and preserved the claimant's entitlement to future benefits.

Discussion:

Care should be taken in asserting a fraud defense as the courts may be empowered to award an attorney's fee even if a JCC does not award benefits but denies E/C's fraud defense.

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