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State: Fla.
High Court Gets Amicus Briefs in Constitutional Challenge: Top [2015-11-19]

The Florida Supreme Court has collected seven amicus briefs in a pending constitutional challenge to the state's workers' compensation scheme.

Several groups had come forward saying they intended to back Miami claimants' attorney Mark Zientz after the Florida Supreme Court granted review to Stahl v. Hialeah Hospital last month.

The court has now accepted briefs from Florida Workers' Advocates, the Florida Justice Association, 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, Florida Professional Firefighters, Voices Inc. and the Workers' Injury Law and Advocacy Group.

Zientz said Wednesday that he is grateful for the backing of so many organizations, and he added that "the language in these briefs show a real concern on behalf of the writers."

He said he thought all of the briefs presented good arguments to complement his own, and he appreciated that they "seem to have added personal passion to the subject, as opposed to just being a thing with a lawyer reciting cases."

In the Stahl case, Zientz is challenging the adequacy of the rights and remedies afforded to workers after a series of legislative amendments to the comp system from 1968 through 2003.

For instance, he has called the court's attention to the fact that in 1968, employees had the right to "opt out" of the workers' compensation system and pursue a common-law tort claim against their employers for damages if they suffered an industrial injury. Lawmakers eliminated this option in 1970, by declaring workers' compensation to be the exclusive remedy for an industrial injury. Zientz said Wednesday that no one seemed to realize that the legislature was "in effect repealing right to a cause of action."

Then in 1994, the Legislature again tinkered with the act to impose a $10 co-pay for medical visits after a claimant attains maximum medical improvement. Zientz argues that, since claimants are required to shoulder some of the costs, the comp system therefore does not provide "full medical care," which the Florida Supreme Court identified as a key component of a constitutional comp system in a 1991 case called Martinez v. Scanlan.

Zientz also contends that a 2003 amendment ending the payment of compensation for a permanent partial loss of wage-earning capacity eliminated "an entire class of benefits" without providing a "reasonable replacement."

a process allowing them to exercise their fundamental rights under the Florida Constitution to redress wrongs, to have access to the courts and to be rewarded for industry.

Zientz is representing another client with a similar constitutional challenge that is not as far along as the Stahl case.

Zientz last year persuaded 11th Circuit Judge Jorge Cueto to rule that 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. However the 3rd District Court of Appeals reversed the judge's ruling because of a procedural snafu.

Zientz has appealed that decision, Florida Workers' Advocates v. State of Florida, but the Supreme Court has not yet decided whether to accept review.

Zientz said Wednesday that the FWA challenge is broader than his argument in Stahl, since FWA is challenging the adequacy of the entire comp act. In Stahl, he said he is keeping the emphasis on the permanent partial disability and full medical care issues.

When the Supreme Court granted review to the Stahl case on Oct. 13, it joined two other cases involving constitutional challenges to the comp act.

The court has already heard oral argument in Westphal v. City of St. Petersburg, which challenges Florida's 104-week cap on temporary disability benefits, and 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.

Geoffrey Bichler of Bichler, Kelley, Oliver, Longo & Fox, who filed the amicus brief on behalf of the law enforcement groups on Wednesday, said his intent was to discuss the wage-loss benefit issue in Stahl "in the context of Westphal and Castellanos," and "kind of connect the dots for the court."

In his brief, Bichler notes that the comp law in Florida has become increasingly complex as the years have passed. He proposes that the "simplest" illustration of this is the contrast in the length of the comp act as it existed in 1968 and as it exists now.

Back in 1968, the act was only 68 pages long. It has since more than doubled, spanning 170 pages.

Given the "morass of procedural and evidentiary hurdles" posed by the act in its current form, Bichler argues that "the need for legal representation is more obvious than ever," but the fee restrictions being challenged in Castellanos have made it difficult for workers to find attorneys willing to represent them.

He suggests that any legal entitlement under the act is arguably rendered "entirely illusory without the ability to enforce it through adequate legal representation."

Bichler further contends that the changes to the comp act that have been making it "increasingly unworkable" have also inured to the detriment of workers. He asks, if "the arbitrary capping of temporary disability benefits at the statutorily mandated 104 weeks is problematic," as a 1st DCA panel had found in Westphal, then "how much more troubling and egregious is the complete elimination of an entire classification of benefits?"

Advocacy Group, said the focus of the WILG brief was also on the cumulative effect of the diminution of benefits available to Florida's workers.

He said that nationally, "there has been this trend in reducing benefits" for the last 15 to 20 years, as a way for states to cut the costs of their comp systems. Pierce said that "the scales have been tipped" in Florida "so far to one side" that "in the quid pro quo at the heart of the worker's compensation system, the quid is no longer adequate."

He said he saw the Stahl case as bringing this issue "to a head."

The WILG brief points out several areas in which Florida's comp system is different from any other state. It says Florida is the only state that provides no indemnity for a partial loss of wage-earning capacity, and the only state to require workers to make co-payments for medical visits.

Florida is also the only state to allow for the apportionment of all indemnity benefits, both temporary and permanent, and all medical benefits, both before and after a worker reaches maximum medical benefits, according to WILG.

The NELA brief also faults the Florida comp system for its apportionment rules. It further takes issue with the state's abrogation of the liberal construction standard, and the imposition of a requirement that workers show their work was a "major contributing cause" of their disability.

NELA contends that the comp act also does not provide "full medical care," not only because of the co-pay requirements, but because it gives employers and carriers the unfettered right to select the physicians authorized to provide treatment to workers.

"Tragically, it is not uncommon for many workers receiving such inadequate treatment to try to escape the compensation system by accepting a 'coerced' settlement of their claim, just so they can select a qualified physician of their choice to receive a modicum of adequate care," NELA says.

The FWA expands on the "takeaways" workers have suffered since comp became the exclusive remedy for industrial injuries since 1970.

Aside from the change in the burden of proof for comp claims and the statutory limits on attorney fees, FWA says lawmakers have increased the pleading requirements for claim petitions, shortened the statute of limitations for filing a claim, and placed restrictions on the types of medical opinions that can be admitted into evidence.

What's more, the amount of medical benefits, temporary disability compensation, and permanent disability benefits payable to a worker have all be reduced over the years, FWA says.

Employers can also recoup the cost of defending against a worker's unsuccessful PTD claim, and lawmakers have increased the penalties for workers who make false or misleading statements in connection with a comp claim.

Comp fraud is now a felony that forfeits a worker's entitlement to compensation, FWA says. So a worker with a legitimate and totally disabling injury now must forfeit all his benefits if he lies about his mileage for a doctor visit, according to the FWA.

the "opt out" provision for comp, combined with the "systematic depletion of workers' compensation benefits" since then, has rendered the comp system an inadequate substitute for a worker's lost right to a civil claim.

The firefighters' union echoes this argument, and also suggests that the repeal of the Florida Occupational Safety & Health Act in 2000 "is a fatal flaw" in the workers' compensation scheme.

If employers are not required by Florida law to make any effort, nor to spend any money, nor do anything to prevent death or injury of their employees, the union contends its unfair to have them be shielded from civil liability under the comp law.

Michael Winer, a claimant's attorney who filed the amicus brief on behalf of the Florida Justice Association, on Wednesday said the focus of his argument was on the idea that when workers gave up the right to a civil suit against their employers, the loss of their right to a jury trial was a "fundamental right" that was relinquished.

In constitutional challenges implicating a fundamental right, he explained, the courts apply a "strict scrutiny" standard.

"A lot of these types of cases are won and lost depending on the level of scrutiny applied," Winer said.

Normally the government just needs to show a "rational basis" for a law, and this standard is very easy to satisfy. Under a strict scrutiny standard, however, the burden is on the state to show how the challenged law is serving a compelling government interest and that the law is the least intrusive means of achieving that purpose.

So if the Supreme Court agrees that strict scrutiny applies in Stahl, Winer said, that could be "a game-changer" in how the case comes out.

Hialeah Hospital's answer in the Stahl case is supposed to be due on Nov. 23, but Zientz said defense counsel told him that the hospital is going to ask for an extension. The hospital's amici will have 10 days to file their briefs from the date the hospital files its answer brief.

The Florida Association of Insurance Agents and American Association of Independent Claims Professionals have already received permission from the court to file an amicus brief in support of the hospital.