

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CHESTER CAMPBELL,

Appellant,

v.

CASE NO. 1D05-3672

ARAMARK & SPECIALITY RISK
SERVICES,

Appellees.

Opinion filed July 24, 2006.

An appeal from an order of the Judge of Compensation Claims.
Mary A. D'Ambrosio, Judge.

Barbara B. Wagner, of Wagenheim & Wagner, P.A., Ft. Lauderdale, and Michael Celeste, West Palm Beach, for Appellant.

Cheryl Wilke, of Hinshaw & Culbertson, Ft. Lauderdale, for Appellees, and Jack A. Weiss, of Fowler White Boggs Banker, P.A., St. Petersburg, for Amicus Curiae, Florida Defense Lawyers Association.

BROWNING, J.

Chester Campbell, the claimant in this workers' compensation case, appeals an attorney's fee order of the judge of compensation claims (JCC) directing the

employer/carrier (E/C) to pay to Campbell's attorney a fee in the amount of \$1,111.13 for securing temporary partial disability benefits with a total value of \$5,740.89. Campbell challenges the JCC's determination that section 440.34, Florida Statutes, as amended in 2003, precludes the JCC from approving an attorney's fee greater than the statutorily enumerated percentage based on the value of the benefits secured on the claimant's behalf. We have *de novo* review of this issue of statutory interpretation. See McBride v. Pratt & Whitney, 909 So. 2d 386, 387 (Fla. 1st DCA 2005).

Campbell contends that although (in the 2003 amendments) the Florida Legislature deleted the factors set out in Lee Eng'g & Constr. Co. v. Fellows, 209 So. 2d 454, 458-59 (Fla. 1968), which were codified in the attorney's fee statute, the JCC still has the discretion to award a reasonable attorney's fee greater than what the statutory percentage fee formula establishes. This interpretation of the post-amendment attorney's fee statute was expressly rejected in Wood v. Fla. Rock Indus., 31 Fla. L. Weekly D463 (1st DCA Feb. 13, 2006), mot. for certif. granted, 31 Fla. L. Weekly D1458 (1st DCA May 25, 2006), in which the following question of great public importance was certified:

DO THE AMENDED PROVISIONS OF SECTION 440.34(1), FLORIDA STATUTES (2003), CLEARLY AND UNAMBIGUOUSLY ESTABLISH THE PERCENTAGE FEE FORMULA PROVIDED

THEREIN AS THE SOLE STANDARD FOR DETERMINING THE
REASONABLENESS OF AN ATTORNEY'S FEE TO BE AWARDED
A CLAIMANT?

31 Fla. L. Weekly at D1458; see also Lundy v. Four Seasons Ocean Grand Palm Beach, 31 Fla. L. Weekly D1663 (1st DCA June 20, 2006). Accordingly, even without the benefit of Wood and Lundy, the JCC correctly construed the section 440.34 by following the strict statutory percentage formula.

Campbell argues that the JCC's interpretation of the attorney's fee statute, as amended in 2003, renders the statute unconstitutional: specifically, in violation of federal and/or Florida constitutional guarantees of equal protection, due process, separation of powers, and access to courts. These specific arguments were addressed and rejected in Lundy. See 31 Fla. L. Weekly at D1663. Pursuant to Wood and Lundy, we AFFIRM the award of attorney's fees according to the statutory percentage formula and CERTIFY the same question of great public importance.

ERVIN and BENTON, JJ., CONCUR.