

THE 440 AUTHORITY PRESENTS



COMP FEES QUARTERLY

FEBRUARY 2025

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WELCOME TO THE FIRST EDITION OF COMP FEES QUARTERLY!

DISCOVER THE LATEST ATTORNEY FEE ISSUES AND TRENDS SHAPING FLORIDA'S WORKERS' COMPENSATION SYSTEM. POWERED BY INSIGHTS FROM PUBLIC RECORDS AND JUDICIAL DECISIONS, THIS REPORT DELIVERS VALUABLE DATA FOR PRACTITIONERS WHO WANT TO STAY AHEAD OF THE CURVE. SUBSCRIBE TODAY AT 440AUTHORITY.COM AND TAKE THE GUESSWORK OUT OF NAVIGATING THE EVER CHANGING WORLD OF WORKERS' COMPENSATION ATTORNEY FEES!

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The Legacy of Miles

The Florida Supreme Court's decision in *Miles v. City of Edgewater*, 190 So. 3d 171 (Fla. 1st DCA 2016), continues to generate uncertainty in workers' compensation practice, nearly nine years after its issuance. This issue was recently highlighted in the sole fee order from Deputy Chief Judge David Langham this quarter, entered on December 20, 2024. In *Michele Szabo v. St. Lucie Public Schools*, Case No.: 19-000797DWL, Attorney Lissa Dorsey, of Franks & Koenig, sought approval for a contingency settlement fee of \$6,225.00, representing 25% of a \$24,900.00 settlement, as per the retainer agreement. Dorsey argued the fee as reasonable, submitting affidavits detailing the settlement and legal time involved in securing recovery.

Counsel's motion for approval additionally raised constitutional challenges to Florida's statutory fee limitations, invoking *Miles* and related cases such as *Lee Engineering* and *Jacobson*. These arguments suggested that statutory fee constraints are unconstitutional when applied to workers' claims for attorney's fees. However, the JCC expressed concerns about the interpretation of *Miles*, particularly whether it constitutes an "as-applied" challenge rather than a declaration of facial unconstitutionality. The JCC emphasized the lack of clear authority to declare the statute unconstitutional in this case and determined the statutory fee of \$3,240.00 to be reasonable. Accordingly, the JCC approved that amount, including costs, but denied the motion to approve the requested \$6,225.00 fee pending further proceedings if necessary.

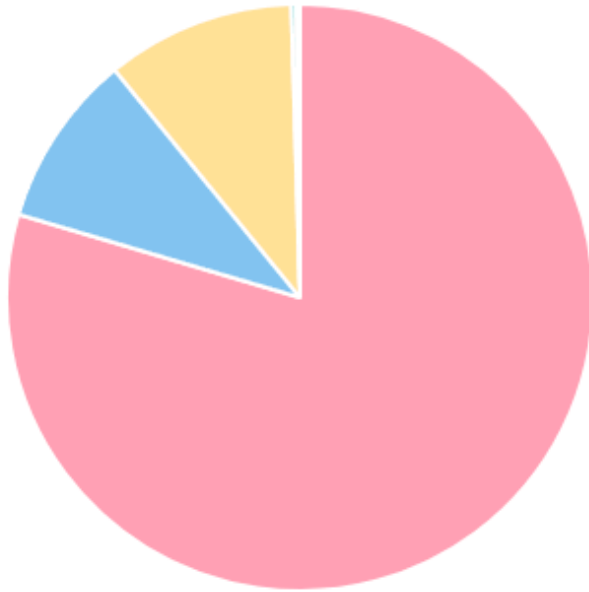
The decision underscores ongoing legal uncertainty in applying statutory attorney fee guidelines and interpreting *Miles* in workers' compensation disputes. Despite the Deputy Chief JCC's cautious approach, however, evidence suggests other JCCs have applied *Miles* differently in practice. Among the 6,222 washout fee approvals analyzed, approximately 70% of approved fees equaled 25% of the total settlement or greater, and nearly 80% were at least 20% of the settlement value. Statistically, it is evident that the *Miles* fee has become the prevailing standard, effectively replacing the statutory fee as the norm.

Thirty years ago the 1994 amendments to F.S. Sec. 440.34 reduced guideline fees from 25%/20%/15% to 20%/15%/10%, with the intent of lowering litigation costs and stabilizing insurance premiums. The 2003 reforms further restricted attorney fees by establishing the statutory formula as the sole basis for fee calculations, eliminating provisions for hourly fees, even in complex cases. After years of litigation and judicial interpretation, the prevailing fee standard has now become a flat 25%, with allowance for hourly fees, reflecting a full-circle evolution in fee structures. This shift highlights the irony that, despite legislative efforts to cap attorney fees, the effective fee structures, influenced by *Miles* and its interpretations, now surpass the pre-1994 25%/20%/15% threshold set by the statute.

*At the time of this publication Attorney Dorsey had not requested an additional hearing nor filed an appeal with the First District regarding the 25% fee denial.

Statewide Overview

For the period October 1 through December 31, 2024



TOTAL FEE ORDERS: 7880

- Settlement Fees (represented) (6270 - 79.57%)
- Side Fees (753 - 9.56%)
- Interim Fees (819 - 10.39%)
- Contested Trial Fees (22 - 0.28%)
- Stipulated Appellate Fees (5 - 0.06%)
- Contested Appellate Fees (1 - 0.01%)
- Unrepresented Settlement Orders (10 - 0.13%)

FEE APPROVALS BY HOURLY RATE

Fee Type	Median	Average	Range
Side Fees (725)	\$338.54	\$320.00	\$41.67 - \$1,732.91
Interim Fees (719)	\$312.50	\$310.70	\$19.23 - \$1,030.30
Contested Fees (17)	\$350.00	\$342.03	\$196.43 - \$428.01

FEE APPROVALS BY CONTINGENCY PERCENTAGE

Fee Type	Median	Average	Range
Settlement Fees (6222)	25%	23%	1% - 45%
Side Fees (27)	11%	17%	1% - 96%
Interim Fees (91)	10%	13%	3% - 69%

Judicial Breakdown

For the period October 1 through December 31, 2024

Judge	Total Fee Orders	Median Hourly Rate	Average Hourly Rate	Median Contingency %	Average Contingency %	Contested Hourly Rate(s)
Almeyda, Edward	223	\$350.00	\$335.38	25%	21%	N/A
Anderson, Wilbur	289	\$300.17	\$300.07	25%	23%	N/A
Anthony, Brian	287	\$300.00	\$296.29	25%	22%	\$350.00
Arthur, Robert	283	\$335.70	\$316.92	25%	22%	\$350.00
Case, Barbara	235	\$349.83	\$378.65	25%	22%	N/A
Clark, Frank	286	\$308.31	\$292.42	25%	23%	N/A
Forte, Iliana	257	\$343.43	\$320.31	25%	22%	N/A
Grindal, Erik	231	\$300.00	\$297.52	25%	24%	N/A
Havers, Walter	184	\$350.29	\$337.40	25%	21%	\$350.00
Hedler, Thomas	268	\$337.84	\$324.81	25%	21%	\$300.00
Hill, Kimberly	199	\$349.89	\$327.81	25%	22%	N/A
Holley, William	514	\$300.00	\$302.88	25%	24%	\$285.00
Humphries, Ralph	473	\$305.32	\$308.06	25%	23%	\$275.00
Jacobs, Jeffrey	226	\$349.65	\$335.63	25%	21%	N/A
Jacobs, Jill	272	\$297.78	\$301.53	25%	23%	N/A
Johnsen, Gregory	266	\$344.83	\$333.12	25%	22%	\$350.00
Kerr, Margret	198	\$354.84	\$346.95	25%	21%	N/A
Langham, David	1	\$0.00	\$0.00	13%	13%	N/A
Lewis, Daniel	240	\$338.49	\$321.53	25%	22%	\$400.00
Massey, Mark	290	\$294.15	\$288.00	25%	23%	\$350.00
Medina-Shore, Sylvia	198	\$357.14	\$368.85	25%	21%	\$360.00
Moneyham, John	261	\$284.90	\$266.06	25%	24%	N/A
Newman, Jacquelyn	310	\$300.00	\$303.27	25%	23%	\$375.00
Pitts, Neal	289	\$321.35	\$305.66	20%	20%	N/A
Ring, Michael	216	\$336.84	\$313.97	25%	22%	N/A
Sancerni, Lourdes	253	\$300.00	\$300.44	25%	23%	N/A
Stanton, Timothy	283	\$310.80	\$293.15	25%	23%	\$300.00
Walker, Jonathan	348	\$300.09	\$315.03	25%	23%	\$325.00
Weiss, Jack	250	\$307.69	\$287.12	25%	23%	\$400.00, \$425.00
Young, Rita	250	\$285.71	\$275.73	25%	24%	\$300.00

Top Fives

For the period October 1 through December 31, 2024

Top washout settlements

Case Number	Judge	Docket Date	Accident Date	Washout	Attorney Fees	%	Attorney
22-002404	Stanton, Timothy	10/25/2024	1/15/2004	\$5,000,000.00	\$1,050,000.00	21%	Vaughan, Thomas
13-028291	Grindal, Erik	12/13/2024	9/28/2008	\$2,866,500.00	\$573,300.00	20%	Eure, Rosemary
23-000979	Clark, Frank	11/1/2024	11/23/2022	\$1,500,000.00	\$300,000.00	20%	Mossallati, Christopher
19-013112	Holley, William	11/5/2024	5/21/2019	\$1,394,277.60	\$140,000.00	10%	Radloff, James
17-026358	Kerr, Margret	10/21/2024	10/11/2017	\$1,251,755.00	\$167,707.44	13%	Stein, Barry

Top washout fees

Case Number	Judge	Docket Date	Accident Date	Washout	Attorney Fees	%	Attorney
22-002404	Stanton, Timothy	10/25/2024	1/15/2004	\$5,000,000.00	\$1,050,000.00	21%	Vaughan, Thomas
13-028291	Grindal, Erik	12/13/2024	9/28/2008	\$2,866,500.00	\$573,300.00	20%	Eure, Rosemary
23-000979	Clark, Frank	11/1/2024	11/23/2022	\$1,500,000.00	\$300,000.00	20%	Mossallati, Christopher
23-010609	Humphries, Ralph	10/30/2024	2/13/2023	\$750,000.00	\$187,500.00	25%	Gale, Jeffrey
17-026358	Kerr, Margret	10/21/2024	10/11/2017	\$1,251,755.00	\$167,707.44	13%	Stein, Barry

Top fees by contingency %

Case Number	Judge	Docket Date	Accident Date	Washout	Attorney Fees	%	Attorney
23-031989	Almeyda, Edward	11/05/2024	12/14/2023	\$18,500.00	\$7,150.00	39%	Adan, Elvis
24-009347	Jacobs, Jeffrey	10/31/2024	04/13/2022	\$11,250.00	\$4,250.00	38%	Adan, Elvis
24-004659	Weiss, Jack	12/05/2024	12/20/2023	\$13,750.00	\$5,250.00	38%	Adan, Elvis
23-032292	Almeyda, Edward	11/15/2024	10/31/2023	\$13,750.00	\$5,250.00	38%	Adan, Elvis
24-014944	Almeyda, Edward	11/15/2024	02/23/2024	\$15,000.00	\$5,750.00	38%	Adan, Elvis

Top hourly fees

Case Number	Judge	Docket Date	Accident Date	Attorney Fees	Hours	Rate	Attorney
00-023205	Almeyda, Edward	10/02/2024	10/09/2000	\$295,000.00	590.00	\$500.00	Souza, William
18-030400	Forte, Iliana	11/08/2024	10/28/2018	\$157,418.68	452.00	\$348.27	Shea, Mitchell
18-024907	Hedler, Thomas	10/30/2024	07/15/2018	\$146,304.33	266.00	\$550.02	Smith, Eric
13-028291	Grindal, Erik	12/13/2024	09/28/2008	\$125,000.00	400.00	\$312.50	Eure, Rosemary
21-007880	Ring, Michael	11/15/2024	03/01/2021	\$100,000.00	250.00	\$400.00	Feldman, Philip

Top overall fee producers

Attorney	# of Fee Orders	Total Fees Paid
Vaughan, Thomas	10	\$1,179,218.76
Gallagher, Kevin	68	\$805,643.46
Masnikoff, Lyle	129	\$778,667.44
Eure, Rosemary	13	\$762,599.31
Zaldivar, Richard	95	\$729,446.40

Decisions Spotlight

F.S. Sec. 440.30 - Attending deposition without pending petition.

Antonio J. Arango v. Rodriguez General Carpentry

OJCC#: 24-015069, Decision Date: 10-28-2024,

JCC Jack Weiss, Ft. Myers District, D/A: 12-04-2023

Claimant counsel: James F. Fee; E/C Counsel: Judith M. Blinderman

JCC Weiss awarded attorney's fees under section 440.30 for not only the actual 3 hours spent attending the deposition but also for additional time related to travel and preparation, emphasizing the significance of these ancillary activities. Specifically, the JCC found that counsel was entitled to recover 5.6 hours for the deposition itself, which included travel time from Miami to Pembroke Pines and back. The JCC explicitly rejected the E/C's objections regarding the time entry's lack of specificity, accepting Mr. Fee's testimony that he traveled to the deposition and attended in person. Furthermore, the JCC approved 2.6 hours for preparation on June 25, 2024, including reviewing the E/C's response to a request to produce, as well as 1.3 hours for meeting with the claimant the day before the deposition to prepare him. These allowances highlighted the importance of thorough preparation, especially given the case's complexity and the E/C's extensive deposition, which lasted three hours without a pending Petition for Benefits. The JCC acknowledged the legitimate time spent by counsel to ensure proper representation, awarding a total of \$3,800.00, representing 9.5 hours at a rate of \$400/hour for these combined efforts.

\$928,211.55 Guideline fee in 1982 attendant care case.

Raymond Monsoor v. Time Out Lounge/Okeechobee Steak House

OJCC# 02-039010, Decision Date: 09-18-2024

JCC Jill Jacobs, Orlando District, D/A: 09-23-1982

Claimant Counsel: Douglas H. Glick; E/C Counsel: Frank C. Wesighan

The E/C/SA raised several defenses regarding the statutory attorney's fee amount. They contended that the claimant's future benefits should be calculated with an inflation factor, but the judge rejected this argument, citing case law that inflationary factors are not relevant when determining a fee based on the secured benefits. The E/C/SA also argued that an offset or credit should apply for the value of an assisted living facility (ALF), as an alternative to the home care awarded. JCC Jacobs found this argument unpersuasive, noting that the ALF was not considered a benefit secured due to the claimant's rejection of the facility. Further, the E/C/SA opposed the use of the statutory fee formula, suggesting a downward deviation to reflect a more appropriate hourly rate. Ultimately, the JCC adhered to the statutory fee, using the standard percentage formula applicable in this 1982 case. The value of the benefits secured, including 24/7 attendant care and bathroom modifications, was \$6,206,882.60, resulting in an award of \$928,211.55 in attorney's fees. This case is currently on appeal.

F.S. Sec. 440.32 - Sanctions for maintaining frivolous claims.**Willie Arrington v. Advanced Disposal****OJCC# 21-013075, Decision Date: 12-20-2024****JCC Thomas Hedler, West Palm Beach District, D/A: 09-03-2020***Claimant Counsel: Kate E. Albin (Randall Porcher for Kate Albin);**E/C Counsel: Jennifer L. Armstrong*

In a September 11, 2024 order, JCC Hedler found attorney Albin violated §440.32(3) by filing a petition without a legitimate good faith effort, as evidenced by the lack of prior denials, the absence of substituted counsel, and an inadequate response to the E/C's good faith email. The JCC emphasized that Albin's failure to attempt to resolve the issue before filing the petition constituted a violation of the statute. Despite Albin's arguments seeking to vacate these findings, the JCC found insufficient evidence to support the claim that she made a reasonable attempt to resolve the issue. Although testimony indicated that similar filing practices were common in other cases, the JCC ruled these factors did not justify the improper conduct in this particular case. Sanctions were imposed under §440.32(3), considering mitigating factors, including Albin's lack of prior sanctions. The JCC also found violations under §440.32(2) for the frivolous maintenance of claims filed on March 21, April 8, and April 17, 2024, as the benefits requested had already been provided by the E/C prior to the petitions, and the claims were not resolved within the required 21-day safe harbor period. The sanctions were aimed at reimbursing the E/C for unnecessary litigation costs, rather than as punitive measures. Accordingly, the JCC assessed attorney's fees of \$5,249.50 and costs of \$419.62 against Ms. Albin, based on the E/C's defense billing of 11.3 hours at \$275.00 per hour and 15.3 hours at \$140.00 per hour.

Saily Atencio Merchan v. HCC Cleaning LLC**OJCC# 23-025080, Decision Date: 12-18-2024****JCC Wilbur Anderson, Orlando District, D/A: 07-11-2023***Claimant Counsel: Sandra L. McAuley; E/C Counsel: Matthew J. Troy*

In the December 18, 2024, order, JCC Anderson granted the E/C's motion for sanctions under §440.32(1) and §440.32(3), finding that claimant's counsel, Ms. McAuley, filed and maintained a verified fee motion without reasonable ground. The fee motion, submitted amid challenges tied to Ms. McAuley's transition from her previous law firm, contained numerous inaccuracies, improper legal citations, and copied content irrelevant to the case. Despite multiple months to evaluate the verified fee motion, Ms. McAuley neither consulted prior counsel nor thoroughly investigated the facts or law supporting the claim for attorney's fees and costs. Furthermore, Ms. McAuley failed to rectify glaring deficiencies identified in the E/C's verified response to the fee motion or take proactive measures to address the issues, such as seeking an extension for filing. The JCC noted that although some claims from the original petition for benefits had been resolved or withdrawn earlier, the verified fee motion lacked a reasonable basis, as confirmed by Ms. McAuley's dismissal of the motion the day before its scheduled hearing. While no improper intent was found, the JCC determined that the lack of reasonable inquiry warranted sanctions and reserved jurisdiction to determine the appropriate penalty.

Attorney fee quantum meruit lien and Appellate jurisdiction

Jorge Castillo v. American Airlines

OJCC# 12-023578, DCA Dismissal Date: 11-27-2024

JCC Margret Kerr, Miami District, D/A: 08-19-2012

Claimant Former Counsel: Toni Villaverde; E/C Counsel: Robert C. Hand

JCC Kerr denied Attorney Villaverde's request for attorney fees and costs under various statutory provisions, including Section 440.32(2), 440.32(3), 440.33, 440.34(4), 440.34(5), and Section 92.525, among others, finding no basis for an award. The JCC determined there was insufficient evidence that E/C/SA's defenses were frivolously maintained, and that the claims made by Attorney Villaverde were as responsible for the extensive litigation as E/C/SA's defenses. The JCC concluded that workers' compensation statutes did not support the award of attorney fees and costs to enforce a quantum meruit charging lien or for the litigation involved in securing such a lien. Furthermore, the JCC emphasized that equity principles were inapplicable due to the limitations of statutory authority. The First DCA later dismissed Attorney Villaverde's appeal, specifically ruling that she was not a party to the proceedings and thus lacked standing to invoke appellate jurisdiction.

Stipulated fees rejected

Alexandria Martin v. ICS Delivery Solutions

OJCC# 19-030460, Decision Date: 12-20-2024

JCC Wilbur Anderson, Orlando District, D/A: 06-10-2019

Claimant Counsel: Kevin R. Gallagher, E/C Counsel: Daren J. Dorminy

JCC Anderson rejected a joint stipulation for an attorney fee of \$23,000 sought by Claimant's former counsel, Kevin Gallagher. The stipulation stemmed from Gallagher's efforts in securing \$75.20 in penalties, interest, and a return doctor's appointment. Gallagher and his firm claimed to have spent 66.1 hours on these tasks but did not provide sufficient documentation, specifically time records, to substantiate the requested fee. Despite multiple requests, the firm failed to furnish these records, and the JCC determined that the absence of this evidence prevented approval of the above-guideline fee. The JCC emphasized that judges have a duty to ensure that only reasonable fees are approved, and that Gallagher's claim of the time spent was insufficient for such a determination.

Attorney fee data unnecessary for approval of Appellate Fee stipulations?

Darvin Helm v. Midwest Transport Inc.

OJCC# 20-003216, Decision Date: 10-21-2024

JCC Brian Anthony, Tampa District, D/A: 07-13-2019

Claimant Counsel: Thomas W. Sculco, E/C Counsel: Jodi K. Middleton

JCC Anthony approved a joint stipulation for an appellate attorney fee of \$40,000. In a footnote, the JCC observed: "... it is not entirely clear that an Attorney Fee Data Sheet is required, and I note that an approved form for such appellate attorney fee has not been provided by the OJCC. Therefore, the Stipulation is being approved without one."

Appellate Monitor

Contested attorney fee decisions on appeal.

Preston Williams v. Miami Dolphins, LTD, DCA# 24-3295

APPEAL STATUS - Claimant's Notice of Appeal filed 12-26-2024

The Verified Motion for Attorney's Fees and Costs was denied by the JCC after considering the circumstances surrounding the Claimant's Petition for Benefits, which included seeking authorization for medical treatment and asserting claims for attorney's fees under Florida Statutes. The JCC ruled that the Employer/Carrier's assertion of the statute of limitations defense had been previously adjudicated, and therefore the Claimant's claims for fees and costs were barred by the doctrine of res judicata. Additionally, the JCC found that the Claimant could not rely on a post-final order that reserved jurisdiction on issues of fees and costs since the prior Compensation Order had already concluded those issues.

Anthony Rios v. Orange County Government and CCMSI, DCA# 24-1684

APPEAL STATUS - E/C Reply brief filed 01-17-2025 - Under Court Consideration.

Claimant suffered an industrial accident resulting in heart disease, which was denied by the Employer/Servicing Agent. After three Petitions for Benefits were adjudicated, Claimant was awarded compensability, medical care, indemnity benefits, penalties, interest, and attorney's fees by the JCC. Former Counsel Leuzzi sought attorney's fees and costs, which were disputed by the Employer/Servicing Agent. The JCC found that former Counsel Leuzzi and his firm could only be compensated for services rendered before a conflict emerged and was disqualifying. After applying the statutory guidelines, the JCC determined an upward departure from the guideline was warranted. Ultimately, the JCC awarded former Counsel Leuzzi attorney's fees of \$9,414.00, based on 31 attorney hours and 1.9 paralegal hours at the respective hourly rates of \$300 and \$60, plus costs of \$2,672.55.

Kimberly Fox v. Sarasota County School Board, DCA# 23-3093

APPEAL STATUS - Answer brief filed 06-18-2024 - Under Court consideration.

In the case of *Spitzer v. Bartlett Bros. Roofing*, the First DCA established that stipulations for benefits, once agreed upon in the face of legal uncertainty, should not be rejected later by the deputy commissioner based on a changed interpretation of the law. However, in this 70-page analysis of the facts and law, the JCC focused on whether the stipulation for attorney fees and costs was submitted with the improper purpose of circumventing specific statutory provisions. Ultimately, the JCC found that the stipulation, involving an \$85,000 payment to claimant's counsel, was a sham for three reasons: lack of a factual or legal basis for attorney fee entitlement, an excessively high fee amount, and payment of non-taxable overhead expenses. Accordingly, the JCC DENIED approval of the stipulation with prejudice. He further issued an order to show cause for both claimant and defense counsels to explain why sanctions should not be imposed on them for violations of F.S sections 440.32(2) and 440.32(3), with a potential reimbursement of the \$12,240 attorney's fee paid by the claimant to her counsel.