

Manatee County Government Administrative Center
Commission Chambers, First Floor
9:00 a.m. - December 3, 2013

December 3, 2013 - Regular Meeting
Agenda Item #6

Approved in Open Session 12/3/13,
Manatee County Board of County Commissioners

Subject

Audra Stern v. Manatee County, OJCC No. 06-012323; workers' compensation claim; attorney's fee settlement

Briefings

None

Contact and/or Presenter Information

Raymond Carter, Risk Manager, ext. 3750

Action Requested

Motion to approve an agreement to settle outstanding attorney's fees and costs in the respective amounts of \$34,625 and \$1,600.

Enabling/Regulating Authority

Florida Statutes Chapter 440 and Manatee County Ordinance No. 08-49

Background Discussion

The claimant, Audra Stern, is an employee in the Public Safety Department. He suffered a work-related injury on 2/26/06. The claim was initially accepted as compensable. On 4/3/06, the employer/servicing agent elected to deny all further benefits based on a perception of a misrepresentation by the claimant. The claimant retained counsel, and on 4/28/06 a Petition for Benefits was filed requesting medical care and treatment for the injury. Upon further discovery, it was found that there had not been a misrepresentation by the claimant. The County entered into a stipulation in October 2006 and the denial was rescinded. The stipulation agreed to the authorization of Dr. Bundschu for pain management and opposing counsel's entitlement to reasonable fees and costs. Both parties agreed to the value of the indemnity benefits secured.

In May 2011, a Petition for implantation of a spinal cord stimulator was filed with the Judge of Compensation Claims. This was denied by the employer/servicing agent. This matter proceeded to Final Hearing before Judge Beck in December 2011. The injured employee prevailed.

An attorney's fee is due in any case where the employer/carrier files a response to a Petition denying benefits with the Office of the Judge of Compensation Claims, and the injured person has employed an attorney in the successful prosecution of the Petition (Florida Statute 440.34). Authority is being requested to resolve an attorney fee entitlement of \$34,625.00 and payment of \$1,600.00 in costs payable to Lancaster and Eure, P. A.

Case law is clear on entitlement to fees. Fees on medical benefits are calculated on the value of the benefits for five years from the date of the initial Petition for Benefits. This amount can be subject to the scrutiny of a medical expert. The amount of the benefits secured is \$357,388 (inclusive of both indemnity and medical benefits).

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Both parties have agreed to compromise on the attorney's fees and costs. Costs are the additional expenses above and beyond the attorney's fee. Costs must adhere to the State Uniform Guidelines. We have negotiated an agreement for the fees and costs contingent on County Commission approval. That amount is \$34,625.00 for the fee and \$1600.00 for the costs.

If this matter regarding fees goes to trial, the County would be exposed to additional expenses related to this issue. The County Attorney's Office believes that a resolution of this matter is economically advantageous.

County Attorney Review

Other (Requires explanation in field below)

Explanation of Other

This is a County Attorney item. See attached stipulation.

Reviewing Attorney

N/A

Instructions to Board Records

Please return a copy of the approved agenda to Risk Manager Raymond Carter (raymond.carter@mymanatee.org). Emailed 12/3/13, RLL

Cost and Funds Source Account Number and Name

5050001300-524000--Workers' Compensation account

Amount and Frequency of Recurring Costs

\$36,225.00 one time payment

Attachment: [Audra Stern Stip.pdf](#)

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS
SARASOTA DISTRICT OFFICE

RECEIVE
NOV 18 2013
COUNTY ATTORNE

EMPLOYEE/CLAIMANT:

Audra R. Stern, III
5211 Commonwealth Dr.
Palmetto, FL 34221-8776

EMPLOYER:

Manatee County
P.O. Box 1000
Bradenton, FL 34206-1000

CARRIER/SERVICING AGENT:

Commercial Risk Management, Inc.
P.O. Box 18366
Tampa, FL 33679-8366

ATTORNEY FOR EMPLOYEE/CLAIMANT:

Rosemary B. Eure, Esq.
Lancaster & Eure, P.A.
P.O. Drawer 4257
Sarasota, FL 34230-4257

ATTORNEY FOR EMPLOYER/CARRIER/
SERVICING AGENT:

Daniel J. DeMay, Esq.
Pallo, Marks, Hernandez, Gechijian & DeMay, P.A.
5652 Marquesas Circle
Sarasota, FL 34233-3331

D/A: February 28, 2006
OJCC Case No.: 06-012323 DBB
VENUE: Manatee County
JUDGE: Diane B. Beck

STRAIGHT STIPULATION REGARDING ATTORNEY'S FEES & COSTS

COME NOW the parties, by and through their undersigned attorneys, and hereby stipulate and agree as follows and further request that the Judge of Compensation Claims enter an Order that approves this instant Straight Stipulation. The parties stipulate that:

1. The Claimant has been represented by ROSEMARY B. EURE, ESQ., LANCASTER & EURE, P.A., in connection with his above-noted industrial accident while working for MANATEE COUNTY.

2. Attorney Eure has rendered services to and on behalf of the Claimant and secured various medical and indemnity benefits in connection with the above-noted date of accident, such that she is entitled to payment of reasonable attorney's fees by the Employer/Service Agent. Those benefits are more fully enumerated in Ms. Eure's Verified Motion for Attorney's Fees & Costs, Aug. 12, 2013. By way of a summary, however, the parties agree that Attorney Eure secured compensability of the industrial accident and injuries, payment of indemnity benefits, and provision of and payment of medical benefits as related to said industrial injuries. The parties agree that Ms. Eure has secured benefits for and on behalf of the Claimant in the approximate amount of \$357,388. As a result of having secured these benefits for and on behalf of the Claimant, Attorney Eure is owed a reasonable attorney's fee under fee under § 440.34, Fla. Stat. (2005), and *Murray v. Mariner Health*, 994 So. 2d 1051 (Fla. 2008).

3. In satisfaction of any and all outstanding claims for attorney's fees, the Employer/Service Agent agree to pay and the Claimant's attorney, ROSEMARY B. EURE, ESQ., LANCASTER & EURE, P.A., agrees to accept the sum of \$34,625 as and for payment of reasonable attorney's fees.

payable by the EC,

4. In satisfaction of any and all outstanding claims for costs, the Employer/Service Agent agree to pay and the Claimant's attorney, ROSEMARY B. EURE, ESQ., LANCASTER & EURE, P.A., agrees to accept the sum of \$1,600 as and for payment of all costs.

5. The parties further agree that said payment of attorney's fees and costs by the Employer/Service Agent to ROSEMARY B. EURE, ESQ., LANCASTER & EURE, P.A., shall satisfy any and all pending claims for attorney's fees and costs in connection with the above-referenced date of accident with the Employer herein, as those claims are more fully described within the aforementioned Verified Motion for Attorney's Fees & Costs.

payable by the EC

6. With the execution of this instant Straight Stipulation by counsel for the parties and entry of an Order thereon by the Judge of Compensation Claims, any and all outstanding claims for attorney's fees and costs, with regard to any and all benefits secured to date, shall be deemed to be dismissed with prejudice.

7. The parties specifically stipulate that the Employer/Servicing Agent shall have 14 days from the date on which the Judge of Compensation Claims enters and e-mails to counsel for the parties an Order that approves this instant Stipulation, within which to pay the aforementioned attorney's fees and costs, without incurring penalties or interest on said fees and costs.

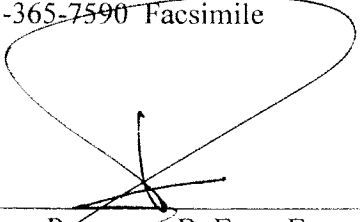
* * * * *

Dated: 11/12/13

Dated: _____

Lancaster & Eure, P.A.
P.O. Drawer 4257
Sarasota, FL 34230-4257
941-365-7575 Telephone
941-365-7590 Facsimile

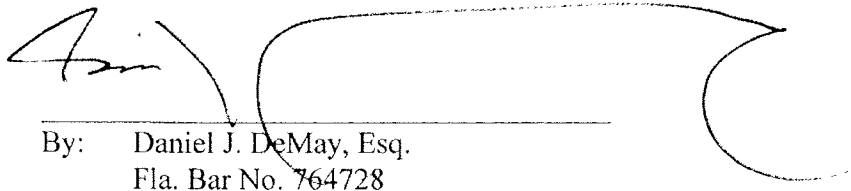
Manatee County Attorney's Office
P.O. Box 1000
Bradenton, FL 34206-1000
941-745-3750 Telephone
941-745-3774 Facsimile


By: ~~Rosemary B. Eure~~, Esq.
Fla. Bar No. 797782
Attorneys for Employee/Claimant

By: Mitchell O. Palmer, Esq.
County Attorney
(or his designee)
Fla. Bar No.: 351873
Attorney for Employer

Dated: Nov. 20, 2013

Pallo, Marks, Hernandez,
Gechijian & DeMay, P.A.
5652 Marquesas Circle
Sarasota, FL 34233-3331
941-328-6200 Telephone
941-328-6211 Facsimile


By: Daniel J. DeMay, Esq.
Fla. Bar No. 764728
Attorneys for Employer/
Servicing Agent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been electronically filed with the Office of the Judge of Compensation Claims and true and correct copies thereof have been furnished to the Claimant via U.S. Mail and to Claimant's counsel via e-mail, as follows, this _____ day _____, 2013:

The Honorable Diane B. Beck
Judge of Compensation Claims
6497 Parkland Drive, Suite M
Sarasota, FL 34243-4097

Rosemary B. Eure, Esq.
Lancaster & Eure, P.A.
P.O. Drawer 4257
Sarasota, FL 34230-4257
reure@lancasterlawyers.com
karent@lancasterlawyers.com

Audra R. Stern, III
5211 Commonwealth Dr.
Palmetto, FL 34221-8776

**PALLO, MARKS, HERNANDEZ,
GECHIJIAN & DEMAY, P.A.**
5652 Marquesas Circle
Sarasota, FL 34233-3331
Attorneys for Employer/Servicing Agent
(941) 328-6200 Telephone
(941) 328-6211 Facsimile
DDeMay@PalloLaw.com
Andrea@PalloLaw.com

By: _____
Daniel J. DeMay, Esq.
Florida Bar No. 764728