

Alabama Workman's Compensation Law Deemed Unconstitutional.

By: Christian Feldman¹

On May 8, 2017 Jefferson County Circuit Court Judge Pat Ballard issued an Order declaring two Alabama statutes in the Workman's Compensation Act unconstitutional.² The statutes in question are Alabama Code § 25-5-68, and Alabama Code § 25-5-90.³ Alabama Code § 25-5-68 caps workman's compensation for permanent partial disability ("PPD") at \$220.00,⁴ while Alabama Code § 25-5-90 limits attorney's fees to a maximum of 15% of the compensation awarded.⁵ In effect, this Order renders the entire act unconstitutional due to its inclusion of a non-severability statute.⁶

Prior to deciding the issue of the merits of the motion, the court first recognized that the plaintiff had standing to bring the action. The court relied on both Alabama case law and persuasive authority to reach this conclusion.⁷ The court found that the threatened harm sufficiently satisfied standing to bring a constitutional challenge.⁸

The court then proceeded to analyze each statute independently.⁹ In its thorough review, the court found that Alabama Code § 25-5-68 failed by violating both the equal protection provisions and Article I, § 13 of the Alabama Constitution.¹⁰ Conceding that there was no suspect classification, the court utilized rational basis review.¹¹ Despite the minimal standard of review, the court found that the statute failed to provide equal protection of the law in two distinct ways. First, there was "no identifiable rational basis [to classify] injured workers . . . into a group that *is* entitled to indexed benefits . . . versus a group that *is not* entitled to indexed benefits"¹² The PPD group was identified as the group not entitled to indexed benefits. Furthermore, the law classifies PPD workers into a "\$220 group" and a "sub-\$220 group."¹³ Thus, as the court notes, any PPD worker in the "\$220 group" receives the capped compensation regardless of whether they earn

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² See *Clower v. CVS Caremark Corp.*, No. 01-CV-2013-904687, 2017 WL 1948883 (Ala. Cir. Ct. May 8, 2017).

³ *Id.* at *1.

⁴ ALA. CODE § 25-5-68(a) (1975) ("Notwithstanding the foregoing, the maximum compensation payable for permanent partial disability shall be no more than the lesser of \$220.00 per week or 100 percent of the average weekly wage.").

⁵ ALA. CODE § 25-5-90(a) (1975) ("[B]ut the fee shall not exceed 15 percent of the compensation awarded or paid.").

⁶ *Clower*, 2017 WL 1948883, at *1. See generally ALA. CODE § 25-5-17 (1975).

⁷ See *Clower*, 2017 WL 1948883, at *2.

⁸ *Id.*

⁹ *Id.* at *3, *6.

¹⁰ *Id.*

¹¹ *Id.* at *4.

¹² *Id.* (emphasis in original). The classification is that workers that are classified as suffering total temporary disablement and permanent total disablement receive benefits that are indexed and thus adjusted annually. Those workers who are partially disabled, even if permanently, are capped at \$220.00. Partial disablement is any percentage that does not equal 100 – even if it is 99% disablement.

¹³ *Clower*, 2017 WL 1948883, at *4.

\$3,000 a week, or \$350.¹⁴ “There cannot *conceivably* be any more arbitrary, capricious, irrational, or attenuated idea than telling both workers that ‘equal protection of the laws’ means that they each get the identical amount under those circumstances.”¹⁵ Therefore the court held this statute violated equal protection of the law.¹⁶

Additionally, the court found that the statute failed Article I, § 13 of the Alabama Constitution. The court utilized the test recognized in *Fireman’s Fund American Insurance v. Coleman*, establishing that any legislation which abolishes common-law actions must meet one of two requirements.¹⁷ The right relinquished must (1) have equivalent benefits, or (2) the legislation must eradicate a perceived social evil.¹⁸ The court found that neither prong had been met. Indeed, the first failed because the established cap provides no equivalent benefit.¹⁹ Meaning that there was no *quid pro quo*, so to speak.²⁰ On the other hand, the second prong failed as the law is an arbitrary and capricious exercise of the police power.²¹ That is to say that there must be some reasonable relation between the legislation and the ends to be attained.²² However, if the cap had been indexed, so that it increased alongside the cost of living, it would pass this test.²³ Accordingly, it was declared unconstitutional.

The second statute in question caps the recoverable attorneys’ fees at 15% of the compensation awarded.²⁴ Prior to its analysis, the court determined that the constitutionality question had not already been decided under Alabama law, and was thus appropriate for review.²⁵ Previous Alabama precedent was distinguishable because individual’s participation under the Workman’s Compensation Act is not elective – i.e. its adherence is statutorily mandated.²⁶ On further review, the court found the statute unconstitutionally violates both due process, and separation of power.

In its analysis, the court utilized a recent Florida decision as persuasive authority and adopted their three-part test.²⁷ The Florida Supreme Court, reviewing a fixed attorney fee opposed to a reasonable fee, held that to be upheld as constitutional (1) the

¹⁴ *Clower*, 2017 WL 1948883, at *4 (“There is little credibility in telling two injured workers, both of whom are 99% disabled due to work injuries, that they both get \$220 per week in PPD – *when one earns \$8.50 per hour for a 40-hour work week, and the other earns an annual salary of \$125,000.*”) (emphasis in original).

¹⁵ *Id.* (emphasis in original).

¹⁶ *Id.*

¹⁷ *Id.* at *5.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ The \$220 cap essentially supersedes an individual’s former remedy available under the common law. Individuals are not reimbursed with an equivalent remedy; they are merely subject to the reduced potential compensation.

²¹ *Clower*, 2017 WL 1948883, at *6.

²² *Id.* (citing *Reed v. Brunson*, 527 So. 2d 102, 116 (Ala. 1988)).

²³ *Id.* at *6 (“It was the failure of the Legislature of 1987 to index the cap so that it would increase with prevailing wages and the cost of living that makes the cap unconstitutional.”).

²⁴ *Id.* See also ALA. CODE § 25-5-90 (1975).

²⁵ *Clower*, 2017 WL 1948883, at *6–7.

²⁶ *Id.* at *7. The 1973 Alabama legislature amended the Workman’s Compensation Act which in effect allowed only employers the ability to opt-out (subject to penalties), and had no such language for employees.

²⁷ *Id.* at *8 (citing *Castellanos v. Next Door Co.*, 192 So. 3d 431 (Fla. 2016)).

legislature's concern must be reasonably provoked by the possibility of abuse, (2) there must be a reasonable basis for the opinion that the legislation could protect against such abuse, and (3) if "the expense and other difficulties of individual determinations justify the inherent imprecision of a conclusive presumption."²⁸ The court stated that laws do not afford due process when "they deny rights and benefits on the basis of facts presumed to exist and be true."²⁹ The court found that to be the case here.

The statute further failed a separation of powers challenge. After an extensive review, the court came to a simple conclusion: determining the reasonableness of attorneys' fees is a function of the judiciary, not the legislature.³⁰ Although the court found the statute authorized judicial discretion to determine fees up to 15%, the court ultimately determined this to be an overstep on judicial autonomy.³¹

Given the magnitude of this Order, Judge Ballard stayed the action for 120 days providing the legislature time to solve the issues of constitutionality.³² It is not likely the legislature will be able to resolve the dispute within the time frame, however. Any appeal must be filed within 42 days of the date of the Order, and many have expressed interest in serving as *amicus curiae* in opposition to the Plaintiff.³³ For now, the Order remains in effect.

Cumberland Law Review will closely follow any future legislative or judicial action in response to Judge Ballard's Order in *Clowers v. CVS*. Follow Cumberland Law Review on LinkedIn, Twitter, and Facebook for timely articles and legal analysis of both state and national case law.

²⁸ *Clower*, 2017 WL 1948883, at *9.

²⁹ *Id.*

³⁰ *Id.* at *15.

³¹ *Id.* at *14 (relying on Alabama precedent, as well as the Alabama Rules of Disciplinary Procedure).

³² *Id.* at *15.

³³ See generally, *Local Judge Rules Alabama Workman's Compensation Act Unconstitutional*, <http://www.carrallison.com/local-judge-rules-alabamas-workers-compensation-act-unconstitutional/> (last visited May 23, 2017).