Attorney Fees in the Oregon Workers’ Compensation System

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An Overview for the Management Labor Advisory Committee
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Overview

System objectives
Reasons for fees, and who pays them
Recent history
Trends in workload and fees
Terminology
Five System Objectives
(ORS 656.012)

• To provide, regardless of fault, sure, prompt and complete medical treatment for injured workers and fair, adequate and reasonable income benefits to injured workers and their dependents
System Objectives (continued)

- To provide a fair and just administrative system for delivery of medical and financial benefits to injured workers that reduces litigation and eliminates the adversary nature of the compensation proceedings, to the greatest extent practicable.
System Objectives (continued)

- To restore the injured worker physically and economically to a self-sufficient status
- To encourage maximum employer implementation of accident study, analysis and prevention programs
- To provide the sole and exclusive source and means by which subject workers, their beneficiaries and anyone otherwise entitled... shall seek and qualify for remedies for such conditions
Reasons for claimant attorney fees

- Reversing a denial
- Obtaining an increase in compensation
- Getting Penalties/Sanctions
- Preventing a decrease in compensation
- Negotiating Settlements
## Sources of claimant fees

<table>
<thead>
<tr>
<th>Out-of-compensation fee</th>
<th>Assessed fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Paid out of worker’s award or settlement</td>
<td>• Paid by insurer/SI, in addition to compensation</td>
</tr>
<tr>
<td>• Based on % formula</td>
<td>• Does not reduce benefits to worker</td>
</tr>
<tr>
<td>• Typically for settlements or disability benefits increase</td>
<td>• Not based on % formula</td>
</tr>
<tr>
<td>• Limits in statute and rules</td>
<td>• Based on adjudicator’s judgment of reasonable fee</td>
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General principles for a “reasonable” assessed fee
(WCB and WCD Rules)

- Time devoted
- Complexity of the issues
- Value of the interest involved
- Skill of the attorneys
- Nature of the proceedings
- Benefit secured
- Risk of the attorney going uncompensated
- Frivolous issues or defenses
Recent History

- 1999: Threshold change for settlement fees
- 2003: Penalty amount to worker with an employer-paid atty fee (matrix for penalty fees)
- 2003: Fees for medical & vocational disputes (WCD rules use “factor” approach.)
- 2007: Litigation costs paid for denied claims
- 2007: Attorney fee liens if attorney was instrumental in obtaining compensation
- 2009: Fees available in new circumstances; fee caps indexed to inflation
- 2013: Report on 2009 change: no major system cost impact identified
System trends
Claimant Fee trends 1989-present ($ millions)
Defense legal cost trends
1989-present ($ millions)
System Workload trends
(Index 1996 = 100)
Ave. fees/case trend compared to average wage growth
(\textit{Index 1998 = 100})
Defining some terms
Fee regulation terms

- **Rate**: a percentage of a dollar amount obtained.
- **Threshold**: a point where a percentage rate changes.
- **Cap**: a fixed dollar amount that can’t be exceeded in ordinary circumstances.
Questions?
Thank you

DCBS research reports on WC are available at:
http://www4.cbs.state.or.us/ex/imd/external/reports/index.cfm?fuseaction=dir&ItemID=1991
System Workload trends
(Index 1996 = 100)
Areas of attorney involvement

- Medical, Time Loss, Penalties, Partial Den.
- Compensability
- Extent of disability
- Agg
- Voc
- Own Motion
- Date of Injury
- Claim closure
- Life of a claim
- CDA