

OREGON TRIAL LAWYERS ASSOCIATION

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WCB SLM

Re: Biennial Review of Attorney Fees

Dear Board Members,

As Co-Chair of the Oregon Trial Lawyers Workers' Compensation Section, I am pleased that the Board has scheduled its biennial review of attorney fees.

In 2015, we had the unprecedented situation where maximum attorney fees for obtaining benefits and settlements had not been raised since 1999. Attorneys representing injured workers faced a chronic gap of lower attorney fees compared to attorneys representing insurance companies. We faced a continued reduction in attorneys representing injured workers without new attorneys coming into the practice to replace retiring claimants' attorneys. We faced many litigation issues where no attorney fees were paid for the attorney's efforts in being successful, and where fees paid were drastically lower than the market value for the effort expended.

The Oregon Legislature was concerned about these situations and amended the attorney fee statutes to address the growing crisis. One important change was that the Legislature identified the Board as the body responsible for reviewing attorney fees on a regular basis, and implemented a mandatory biennial review. The Board was charged with considering both the higher fees paid to attorneys representing insurers and self-insured employers as compared to injured workers' attorneys and the contingent nature of injured workers' attorneys' practices. The Legislature enacted a specific policy seeking "adequate representation for injured workers" with the goal of setting attorney fees to allow "the broadest access to attorneys by injured workers."

Initially, this Board made rule changes to accommodate the new or changed provisions for attorney fees. The Board also reviewed the maximum attorney fees for out-of-compensation benefits and settlements. We do not request changes to those, but will give the new rates time to develop and demonstrate their sufficiency.

One area that has not been reviewed for sufficiency of attorney fees, either as compared to fees earned by insurance counsel or the contingent nature of the practice, are those fees paid for Board review. It is time the Board consider these fees and increase them to meet the statutory requirements, particularly of ORS 656.388(5).

As part of the Biennial Review, OTLA requests the Board take the following action:

1. Review the fees paid on Board review and increase them to an appropriate market rate that considers the time devoted to the cases, the expertise of counsel and that considers the contingent nature of the practice.
2. Enact a rule change to allow injured workers to voluntarily have attorney fees determined after the underlying merits are determined and to allow submission of a statement of services at that point.
3. Develop a specific administrative mechanism to monitor and eliminate the gap between fees awarded to attorneys for injured workers as compared to fees earned by insurance counsel on an annual basis; and to monitor the number of attorneys representing injured workers.
4. Request that WCD continue to prepare the annual Litigation Report that it has for so many years, until they stopped in about 2012 at the request of the Board, so as to identify general litigation statistics, including the number and types of cases/issues, the win/loss rate on the various issues and at the different levels of litigation, fees awarded to injured workers' attorneys, and fees earned by insurance attorneys.
5. Develop and implement a plan to reduce the attorney fee gap to zero and compensate for the contingent nature of the practice experienced by attorneys representing injured workers.

OTLA is willing to assist in this effort, but we believe the Board, as the institution with the legal duty, authority and available resources, should spearhead the effort to address the Legislature's concerns.

Thank you for your efforts on this issue of vital importance to injured workers and their access to justice.

Respectfully,



Keith D. Semple
Co-Chair, OTLA Workers' Compensation
Section