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SENT VIA EMAIL ONLY TO: kayleen.r.atkins@oregon.gov

Kayleen Atkins, Executive Assistant
Worker's Compensation Board
2601 25th St. SE, Ste. 150
Salem, OR 97302

RE: Biennial Review/Attorney Fees/"388(4)"—Written Comments:

Dear Ms. Atkins:

I am writing to comment on the biennial attorney fee reviews.

I am an attorney practicing claimant-side workers' compensation in the Oregon. I have been practicing workers' compensation for approximately 10 years.

It seems quite obvious to me that claimant attorneys make less money than they should. This is compared to defense-side workers' compensation attorneys and litigation attorneys in private practice in other practice areas. The evidence for this is easy to find if you look for it. The Oregon State Bar has published statistics for income from private practice based on hourly rates. The Board typically awards fees on overturned denials that are lower than the average hourly billing rates for attorneys in private practice, especially when you factor in the contingent nature of our cases. Personal injury and other civil plaintiff attorneys make, at least, 33% of all recoveries. The damages in their cases are higher so their attorney fees are even higher than ours because we make a lower percentage and our cases are typically worth less. But the real evidence that claimant attorneys are underpaid comes from the size of workers' compensation claimant firms.

There are no large claimant firms. The *larger* claimant firm in the state is not known for providing, consistently, particularly good representation. Whereas, Reinsich Mackenzie and Sather Byerly both have 20 or 30 or 40 lawyers practicing Oregon workers' compensation. Defense workers' compensation firms are constantly hiring new associates to help with their case load. That means they have the resources to delegate a lot of work and it means they are very profitable.

It seems to me that the system in place is designed to give claimants a disadvantage in litigation. They already cannot afford to pay the litigation costs, so the attorneys who represent them have to advance the costs (whereas insurers are very aggressive about paying for defense experts). Claimant attorneys can make more money by taking more cases, but investing less time in the individual cases. Often if we invest a lot of time in a case the Board or some ALJs refuse to give us higher fees. That sends a very clear

message to claimant attorneys: do not work hard on your case because we will not pay you. It is not just to have a system that functions like that.

The culture of the workers' compensation Board needs to change. That is my opinion. It seems well supported by the facts. One time I had a defense attorney who worked in house for an insurer complain that I should not get a fee that I requested because it was more than what he earned on a per case basis! That is abject ignorance and I am afraid many people who have a background in insurance defense, but no experience in private practice, do not understand the economic reality of running a law firm. It is very expensive. Depriving claimant attorneys of reasonable fees directly affects our ability to effectively represent our clients. This should change.

Thank you.

Very Truly Yours,

A handwritten signature in black ink that reads "Colin Hackett". The signature is written in a cursive, flowing style.

Colin Hackett
Attorney at Law