



Liberty Mutual Insurance

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December 10, 2018

Kayleen Atkins, Executive Assistant
Workers' Compensation Board
Via email only: kayleen.r.atkins@oregon.gov

Re: Proposed attorney fee rule amendments

Dear Ms. Atkins,

I am writing to provide written comment on behalf of Liberty Mutual regarding the proposed attorney fee rule amendments. Liberty opposes the proposed amendments.

First, the claimants' bar argues that the hourly rate for attending a personal or telephonic interview or deposition under ORS 656.262(14)(a) should be raised from \$275 to \$400. The reason given is the contingent nature of claimants' attorneys' practice. However, there is nothing contingent about a fee for attending such an interview. If the insurer sets up an interview with a represented claimant and the claimant's attorney attends, the claimant's attorney is guaranteed a fee under that statute. Therefore it does not make sense to raise this hourly rate based on any contingency.

More generally, a multiplier is not necessary to provide claimants' attorneys with fair fees. The claimants' bar cites the OSB 2017 Economic Survey as stating that workers' compensation attorneys bill between \$256 and \$450 per hour. When HB 2764 was being considered, written testimony from the Oregon Self Insurers' Association stated that typical workers' compensation defense attorney billing rates were in the \$175 range. The hourly rate is far lower for in-house/staff defense counsel. The OSB economic survey was a voluntary survey of anonymous respondents, with a relatively low sampling of workers' compensation practitioners. Liberty asserts that extrapolating hourly rates from this survey would be inaccurate. Moreover, rates paid to defense attorneys have no bearing on benefits to injured workers. The two sides' practices are structured in fundamentally different ways.

Finally, Liberty takes the position that adding a multiplier is unnecessary. ALJs and the Board already have a directive to consider the contingent nature of claimants' attorneys' practices. OAR 438-015-0010(6). ALJs and the Board should be able to use their discretion to set a reasonable fee based on the facts in each case. Adding a multiplier based on defense attorney fees would lead to divergent results in cases with very high defense attorney rates vs. very low defense attorney rates.

In addition, it is common knowledge that claimant attorney assessed fees are on the rise over the past several years. Claimant attorneys can now get assessed fees on a broader range of disputes, including disputes over penalties, costs, and attorney fees themselves.

Liberty is not arguing that claimant attorneys are overpaid. Liberty is arguing that a multiplier is an unnecessary and unfair mechanism to award fees. The current rule achieves claimants' attorneys' goal of supporting access to justice. The proposed rule would remove the Board's discretion and force fees based on the irrelevant factor of defense attorney billing.

For all these reasons, Liberty asks the Board to refrain from amending the current rule.

Sincerely,

A handwritten signature in black ink that reads "Todd Stallman". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Todd Stallman
Senior Claims Manager
503-736-8439