

Testimony of Jake Hessel
Oregon Trial Lawyers Association
before the Workers' Compensation Board
October 29, 2019

Thank you for the opportunity to testify today. OTLA represents the attorneys who help workers navigate the maze of the workers' comp system. The workers' comp system has been revised and tweaked since the reforms of the 1990's. Through case law, legislative action, and agency rulemaking, the fate of a worker's claim to health care and lost wages has increasingly hinged on technicalities that an ordinary worker may not be aware of.

The legislature and the Governor recognized this need for a robust plaintiffs' bar when they passed and signed HB 2764 in 2015.

This bill strengthened some provisions regarding compensation for workers' attorneys. Among other things, the bill called for lawyers to be paid for services they are ethically bound to provide.

To the point today, the law now states in 656.388:

(4)...The Workers' Compensation Board shall review all attorney fee schedules biennially for adjustment.

(5) The board shall, in establishing the schedule of attorney fees awarded under this chapter, consider the contingent nature of the practice of workers' compensation law and the necessity of allowing the broadest access to attorneys by injured workers and shall give consideration to fees earned by attorneys for insurers and self-insured employers. (emphasis added)

The current data shows that defense legal costs are \$40.1M and legal fees for workers' attorneys are \$23.1M, a gap of \$17M. The defense is compensated roughly 63%, to the workers' attorneys 37% from total fees. Nearly double. When you look at the same data from 2013-2014, there has been no progress in closing this gap.

The legislature was clear in its intent to close the gap. We urge the Workers' Compensation Board to comprehensively review all aspects of the fee system in

order to help make this change. Anecdotally, we are seeing a handful of new lawyers entering the field. However, given the skyrocketing student debt new lawyers are saddled with, more needs to be done to compensate attorneys who have it in their heart to fight for injured workers.

We urge the Board to follow through on its charge from the legislature and its legal requirement to look at the entire fee system to rectify the inequity between the plaintiffs and defense bar.