

October 27, 2019

Workers' Compensation Board  
Board Appeals  
2601 25<sup>th</sup> Street SE, Suite 150  
Salem, OR 97302-1282

Re: 2018 Biennial Review

Dear Board Members,

Please consider my additional comments as part of this Biennial Review to support the rule concepts being considered.

**Win/loss stats at the Board**

Jodie Phillips Polich has been kind enough to spend her time to track Board review win/loss statistics for injured workers. In 2018, injured workers were the appellants approximately 68 percent of the time. The Board affirmed approximately 80 percent of the time. Overall, whether appellant or respondent, injured workers prevailed only 31 percent of the time.

In 2019, up to about mid-year, injured workers were the appellants approximately 69 percent of the time. The Board affirmed approximately 76 percent of the cases. Overall, whether appellant or respondent, injured workers prevailed approximately 45 percent of the time. We have not had the time to calculate the remainder of the year at this point.

**Win/loss stats at Hearing**

Attached are the last win/loss statistics that were provided by WCD. They were done at the request of SAIF during the 2015-16 attorney fee review by this Board, and they cover the years 2012 through 2015. That I can recall, they were not submitted for consideration during that time. The recent statistics provided by DCBS at the request of the Board do not include win/loss rates. The average rate of claimants prevailing on claim denials for those years was just over 44 percent. There was a high of 49.3 percent and a low of 39.7 percent, and it never reached 50 percent. The litigation of partial denials suffered the same low prevailing rate with a high of 48 percent and a low of 40.8 percent. The rate at which injured workers received an increase in permanent disability was a very low rate of just below 15.5 percent. One year, increases were limited to only 2.1 percent, when the decrease occurred at the rate of 6.3 percent.

Claimants' Bar requests the Board keep these statistics and report them annually. It is hard to understand how the Board could consider the contingent nature of the practice without knowing the general statistics for win/loss, because attorneys for

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injured workers are paid only when claimants prevail. This is the biggest factor for the contingent practice of these attorneys.

### **Bifurcation process – must be voluntary and simple**

The consensus among Claimants' Bar is that the bifurcation process must be voluntary and it must be a quick process. Often, particularly at hearing, a regular case deserves the "regular" fee. Claimants' Attorneys do not want to impede the normal process or slow down finality for their clients. However, there are some more complex cases or complex litigation where it would be better to have the choice of preparing fee statements after claimant has prevailed. On Board review, this author sees it more as a necessary time-saving rule. Given that injured workers lose significantly more than they win on Board review, this would save hours a month – precious hours needed to brief more cases.

This author envisions a very simple process. Claimant requests attorney fees be determined after the decision on the case. A form bifurcation order issues (perhaps not necessary, but can be done administratively). Claimant submits a statement within a short, specified time (21 days is suggested); the insurer responds in a short and specified time (14 days is suggested); the ALJ issues a decision within a short, specified time (14 days is suggested). As the court does, the ALJs could have an attorney fee committee to address this, particularly for times when ALJs are on vacation. This process would not be any different than the process currently done *when* a statement of services is submitted, but claimants would have the choice to have the process occur when claimant has prevailed.

### **Multiplier for contingent factors**

The administrative rule offered by Board Member Lanning is an excellent idea. It captures the hard numbers that Claimants' Bar faces as a whole in being paid on a smaller percentage of cases that go to hearing. I have some suggestions that would assist in a smooth application without creating unintended consequences (as the format of the rule does now).

1. This concept should be attached to the contingent factor already in existence. That is, OAR 438-015-0010(4)(g) should be amended. That way, any change does not undercut the factors as the prime consideration, but puts some numbers to the contingent factor to assist in determining a numerical attorney fee.
2. The correct math to factor to consider a loss/win ratio is actually to divide an hourly rate or a final market fee by the win ratio. For example, if injured workers prevail about 40 percent of the time (and lose 60 percent of the time), then one cannot multiple \$250 per hour by 60%. That equals \$150 per hour, so the rule creates a lower fee using the contingent factor. Instead, one divides the fee by the 40% (the average win percentage). Thus, \$250 per hour divided by 40% equals \$625 per hour:

$$\$250/.4 = \$625.$$

This appropriately compensates for the win/loss ratio. Imagine it this way. An average attorney takes 10 cases and wins 4. The fee on the 4 cases must, on average, offset the losses

on the 6. If each case takes one hour (for simplicity), the attorney has spent 10 hours on all 10 cases. In order to offset the losses of the 6, an enhanced attorney fee must occur on the 4 cases. This requires a fee of \$625 on the cases where claimant prevails:

$$\$625 \times 4 = \$2500$$

$$10 \times \$250 = \$2500$$

The whole point of a contingent attorney fee is to compensate when winning for the cases taken that are lost. This encourages attorneys to take harder cases, so all injured workers are represented. The wins make up for the losses. The legislature codified this requirement in ORS 656.388(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....” (Emphasis added). Until the Board recognizes this and compensates for the contingent aspect of being a claimant’s attorney, it will not address the gap in fees paid between insurers’ attorneys and injured workers’ attorneys.

One might ask whether an attorney would not work as hard, because the attorney knows s/he will be compensated for losses when prevailing. However, an attorney who takes more cases or works harder to win cases will be paid more. That additional incentive creates a market where attorneys want to handle workers’ compensation cases.

3. The hourly multiplier cannot only be the defense attorney’s hourly rate. The defense bar charges separately for associates, legal assistants and for expenses such as copy costs, mailing, travel, and more. If the hourly rate captured does not include all defense revenue on the case, then injured workers’ attorneys will be awarded substandard attorney fees that will continue to add to the growing gap between the defense costs and claimant attorney fees.

The rule right now calls for multiplying the loss/win ratio by the *average* defense attorney fees. This will take additional record keeping by the Board, additional annual reporting by defense counsel, and will create a public record. When defense counsel must submit their billings in a particular case, that does not create a public record (except when a case goes up to the court). Instead, the Board does not provide evidence or submissions in a case to the public, but has the appropriate policy that only the orders are public. But, in order to track defense fees as a whole or as an average, these submissions would create a public record. So, using average defense attorney fees may create an administrative and public records nightmare of reporting, tracking, and producing all defense fees. Having insurers submit their total defense costs in individual cases would not.

It would be better to use a resource already out there: the Oregon State Bar Economic Survey. From a policy standpoint this would be better, because the problem right now that the legislature saw was the lack of attorneys coming into the system. This is because workers’ compensation law is highly complex and highly underpaid. New attorneys have a choice of many different types of practices. Fees in workers’ compensation need to compete with other practices, so setting fees based upon other practices would assist in keeping workers’ compensation fees relevant.

4. One year’s statistics may be highly influenced by one issue and skew the results for that year. Two recent cases, Brown and Caren, will effect the outcome of numerous cases,

particularly at the Board. A rolling three-year average (once the three years is established) would buffer the highs and lows appropriately.

For these and more reasons, I suggest amending this rule concept to:

(4) In any case where an Administrative Law Judge or the Board is required to determine a reasonable attorney fee, the following factors shall be considered:

\* \* \* \* \*

(g) The risk in a particular case that an attorney's efforts may go uncompensated and the contingent nature of the practice. **Consistent with the legislative mandate in ORS 656.388(5) to consider the contingent nature of the practice of workers' compensation law in establishing the Board's schedule of attorney fees awarded under chapter 656, the "contingent nature of the practice" shall include consideration of a rolling three year average of win/loss percentage by injured workers, by dividing the reasonable market hourly rate for the attorney by the win/loss percentage, to provide a multiplier effect enhancing a non-contingent market-rate attorney fee to a contingent rate attorney fee[.]**

### **The gap**

The suggested changes will assist in reducing the gap, but will not eliminate it without further changes. The Board needs to continue to review this issue and come up with ideas to reduce the gap.

### **Contingent considerations**

I am enclosing a chart which compares fees earned by claimants' attorneys (when cases are settled) and fees earned by personal injury attorneys. Besides the cap in "damages" – benefits, in this system, an attorney representing an injured worker cannot charge a contingent attorney fee based upon the benefits that are paid as a result of winning the compensability of a claim. In contrast to personal injury or other contingent practices, there is not the opportunity to earn a large fee in one case to offset all of the other losses or lower fees earned in other cases. Because the settlement fees do not come close to comparing to other practices, which are not obstructed in the fee agreements, claimants' attorneys do not have the opportunity to offset losses due to litigation with other settlements or wins in litigation from large cases.

What I hope the Board will appreciate is that an attorney fee of \$100,000 allows an attorney to take many more \$5,000 and \$10,000 cases. These windfalls are **never** present in workers' compensation. Thus, each case where an injured worker wins must bear more weight in an attorney fee to offset the losses. This is what the system is failing to recognize. If there is going to be a system where large damages are not going to be paid out, then the money to pay attorneys to represent injured workers must come from somewhere. No attorney can afford to do this work as a charity.

Often, I have faced the argument by the defense that this Board raised the settlement attorney fees, so it need not consider contingent fee increases for litigation fees. As the enclosed chart shows, the increased settlement attorney fees do not come close to fees for personal injury cases. As stated, the capped settlement fees limit any windfalls in larger cases that offset

losses and lower fees in smaller cases. Thus, each win must bear the brunt of the contingent nature of the practice.

One of the purposes of the 2015 legislation was to assist in increasing the ranks of attorneys willing to represent injured workers. The present guard is severely aged (me included), retiring, and leaving the practice. It is foolish to believe that the ranks of attorneys who are willing to represent injured workers will come from workers' compensation attorneys. New attorneys have a choice of where to work, and personal injury is a solid competitor: you can represent injured people and help them get recompense so their lives are better. If one is going to do a contingent practice, workers' compensation would be at best a side line.

### **Legal authority to decide this issue in biennial**

There has been a challenge by the insurers, to the Board's authority to consider the contingent factor as part of compensability fees and as part of the biennial review. There is no doubt the Board has the authority to modify its own rules. There is no doubt the Legislature intended the Board to consider the contingent nature of the practice and to reduce the gap between insurers' attorney fees and claimants' attorney fees. Representative Holvey sent a letter to the Board on December 3, 2015.

ORS 656.704 and ORS 656.726(2) provide the authority of the Board to make rules regarding attorney fees (and more). The biennial review of attorney fees is for the purpose of adjusting attorney fees. The Legislative History shows the purpose of the biennial review was to address the aging bar of attorneys representing injured workers. Summary, Senate Committee on Workforce, HB 2764, May 27, 2015, page 9 (attached). The purpose was to avoid the history of failing to adjust attorney fees for over a decade (out-of-compensation attorney fees were last adjusted in 1999 prior to the legislative mandate for an adjustment every 2 years).

The biennial review amendment was placed in ORS 656.388(4). This provision addresses all of the attorney fees the Board awards "under this chapter." Only ORS 656.388(3) addresses attorney fees "out of compensation." That provision applies to the out-of-compensation attorney fees only, but subsection (4) applies to all attorney fees awarded by the Board. To be sure (4) uses the antiquated language of fees the Board schedules, because in the past there were specific schedules of set fees for even compensability cases. However, the Board has chosen, instead of scheduling a set attorney fee, to schedule compensability (and some other fees) on a case-by-case basis. See OAR 438-015-0010(4). That does not negate that ORS 656.388(4) applies to all fees in the chapter, or that the Board shall consider the contingent nature of the practice when awarding contingent attorney fees.

### **Final Word**

The contingent multiplier concept and the bifurcation rule are two important aspects that will assist in giving injured workers' access to reasonable attorney fees and flexibility in requesting attorney fees as appropriate in an individual case. This biennial review was begun in 2018. It is almost 2020, time for the next biennial review. I would request that these concepts move forward to the rule making process so that we can complete the biennial review and move things forward for Claimant's Bar.

Sincerely,

*/s/ Julene M. Quinn*

Julene M. Quinn, Attorney at Law

cc: Roger Pearson, Managing Attorney

Data run 4/8/2016 by Jay Dotter per request from SAIF

Hearings for 3 of the 12 issues WCB hearings are normally broken out as giving the counts for O&O, Stipulations, and all cases then percent disposition per issue and for total issues.

Issue	2015			Opinion and order			Stipulation			All cases		
	SAIF	Other Ins.	All ins.	% disposition	% disposition	Total issues	SAIF	Other Ins.	All ins.	% disposition	% disposition	Total issues
Permanent disability	49	8	57	75.4%	10.3%	13	0	3	3	30.0%	72.1%	98
Decrease	5	13	18	14.3%	14.3%	18	2	0	2	20.0%	11.0%	15
Increase	9	18	27	10.0%	10.0%	27	2	3	5	50.0%	16.9%	23
Total cases	63	63	126	100.0%	100.0%	126	4	6	10	100.0%	0.2%	136
Claim denial	96	86	182	53.4%	46.6%	100	884	523	1407	88.1%	82.0%	1589
Set aside	84	75	159	100.0%	100.0%	159	102	88	190	11.9%	18.0%	349
Total cases	180	161	341	100.0%	100.0%	341	986	611	1597	100.0%	34.9%	1938
Partial denial	73	86	159	52.0%	48.0%	100	823	1050	1873	88.9%	84.2%	2032
Set aside	56	91	147	100.0%	100.0%	147	112	122	234	11.1%	15.8%	381
Total cases	129	177	306	100.0%	100.0%	306	935	1172	2107	100.0%	46.1%	2413
Total cases, all issues	591	720	1311	100.0%	100.0%	1311	2191	2379	4570	100.0%	100.0%	5881

Issue	2014			Opinion and order			Stipulation			All cases		
	SAIF	Other Ins.	All ins.	% disposition	% disposition	Total issues	SAIF	Other Ins.	All ins.	% disposition	% disposition	Total issues
Permanent disability	28	3	31	69.5%	6.3%	6	1	4	5	29.4%	63.4%	71
Decrease	3	6	9	2.1%	2.1%	9	0	5	5	29.4%	9.8%	11
Increase	6	17	23	100.0%	100.0%	23	2	5	7	41.2%	8.0%	9
Total cases	37	58	95	100.0%	100.0%	95	3	14	17	100.0%	0.3%	112
Claim denial	76	103	179	50.7%	49.3%	100	840	645	1485	86.9%	80.7%	1664
Set aside	84	90	174	100.0%	100.0%	174	108	115	223	13.1%	19.3%	397
Total cases	160	193	353	100.0%	100.0%	353	948	760	1708	100.0%	34.5%	2061
Partial denial	84	88	172	56.0%	44.0%	100	896	1151	2047	88.9%	84.9%	2219
Set aside	51	84	135	100.0%	100.0%	135	117	142	259	11.2%	15.1%	394
Total cases	135	172	307	100.0%	100.0%	307	1013	1293	2306	100.0%	46.6%	2613
Total cases, all issues	516	762	1278	100.0%	100.0%	1278	2239	2710	4949	100.0%	100.0%	6227

Issue	2013			Opinion and order			Stipulation			All cases		
	SAIF	Other Ins.	All ins.	% disposition	% disposition	Total issues	SAIF	Other Ins.	All ins.	% disposition	% disposition	Total issues
Permanent disability	24	34	58	65.9%	12.5%	11	0	6	6	35.3%	61.0%	64
Decrease	4	7	11	21.6%	21.6%	11	1	2	3	17.6%	13.3%	14
Increase	10	19	29	100.0%	100.0%	29	4	4	8	47.1%	25.7%	27
Total cases	38	50	88	100.0%	100.0%	88	5	12	17	100.0%	0.3%	105
Claim denial	91	111	202	59.1%	40.9%	100	845	706	1551	86.3%	82.0%	1753
Set aside	59	81	140	100.0%	100.0%	140	111	135	246	13.7%	18.0%	386
Total cases	150	192	342	100.0%	100.0%	342	956	841	1797	100.0%	36.3%	2139
Partial denial	93	111	204	58.8%	41.2%	100	832	1163	1995	89.4%	85.3%	2199
Set aside	62	81	143	100.0%	100.0%	143	115	121	236	10.6%	14.7%	379
Total cases	155	192	347	100.0%	100.0%	347	947	1284	2231	100.0%	45.1%	2578
Total cases, all issues	535	783	1318	100.0%	100.0%	1318	2174	2778	4952	100.0%	100.0%	6270

Issue	2012			Opinion and order			Stipulation			All cases		
	SAIF	Other Ins.	All ins.	% disposition	% disposition	Total issues	SAIF	Other Ins.	All ins.	% disposition	% disposition	Total issues
Permanent disability	31	46	77	65.8%	10.3%	12	0	7	7	41.2%	62.7%	84
Decrease	3	9	12	100.0%	100.0%	12	1	4	5	29.4%	12.7%	17
Increase	18	10	28	100.0%	100.0%	28	2	3	5	29.4%	24.6%	33
Total cases	52	65	117	100.0%	100.0%	117	3	14	17	100.0%	0.4%	134
Claim denial	111	134	245	60.3%	39.7%	100	692	682	1374	85.9%	80.7%	1619
Set aside	56	405	461	100.0%	100.0%	461	99	127	226	14.1%	19.3%	387
Total cases	167	239	406	100.0%	100.0%	406	791	809	1600	100.0%	35.1%	2006
Partial denial	115	139	254	59.2%	40.8%	100	730	1109	1839	88.4%	83.4%	2093
Set aside	65	110	175	100.0%	100.0%	175	100	142	242	11.6%	16.6%	417
Total cases	180	249	429	100.0%	100.0%	429	830	1251	2081	100.0%	45.7%	2510
Total cases, all issues	640	910	1550	100.0%	100.0%	1550	1870	2688	4558	100.0%	100.0%	6108

NOTE: Total Cases, all issues includes the following: Permanent disability, Temporary disability, Claim denial, Partial denial, Aggravation, Responsibility, Premature closure, Insurer penalty, Attorney fee, Subjectivity, Other Issue, Rate of time loss

# Oregon State Bar 2017 Economic Survey Report of Findings



Oregon State Bar

 Portland State  
UNIVERSITY  
Survey Research Lab

## Billing Rate

Table 35 presents the 2016 hourly billing rate for private practice lawyers, regardless of level of employment (i.e., full-time, part-time by choice, and part-time due to lack of legal work). The mean hourly rate was \$286 statewide, and ranged from \$226 to \$324 regionally.

**Table 35: 2016 Hourly Billing Rate – Private Practice**

	Oregon (n=835)	Portland (n=323)	Tri- County (n=259)	Upper Willamette Valley (n=74)	Lower Willamette Valley (n=57)	Southern Oregon (n=42)	Eastern Oregon (n=54)	Oregon Coast (n=26)
Mean Hourly Rate	\$286	\$324	\$274	\$253	\$260	\$232	\$255	\$226
Median Hourly Rate	\$260	\$300	\$250	\$250	\$250	\$245	\$250	\$224
Low Hourly Rate	\$30	\$70	\$30	\$60	\$100	\$46	\$150	\$125
25 <sup>th</sup> Percentile	\$210	\$240	\$215	\$200	\$200	\$200	\$200	\$200
75 <sup>th</sup> Percentile	\$335	\$400	\$325	\$300	\$300	\$260	\$295	\$250
95 <sup>th</sup> Percentile	\$490	\$525	\$410	\$395	\$450	\$290	\$350	\$300
High Hourly Rate	\$850	\$850	\$750	\$475	\$650	\$300	\$550	\$350

Q14: When you charged on an hourly basis, what was your usual billing rate per hour in 2016?

Q6: Which type of employment represented 50% or more of your practice as of 12/31/2016? [*private practice only*]

## Total Years Admitted to Practice

Table 36 presents the 2016 hourly bill rate data by total years admitted to practice for all private practice lawyers, regardless of level of employment. Statewide, the mean hourly billing rate increased as the number of years admitted to practice increased, reaching a mean of \$332 for lawyers admitted to practice for Over 30 Years. Slight variations occurred regionally, and for some regions, too few respondents fell into subgroups to present the data.

**Table 36: 2016 Hourly Billing Rate by Total Years Admitted to Practice – Private Practice**

	Oregon (n=65)	Portland (n=26)	Tri- County (n=19)	Upper Willamette Valley (n=8)	Lower Willamette Valley (n=3)	Southern Oregon (n=4)	Eastern Oregon (n=3)	Oregon Coast (n=2)
<b>0-3 Years</b>								
Mean Rate	\$210	\$236	\$198	\$214	n/a	n/a	n/a	n/a
Median Rate	\$207	\$235	\$200	\$200	n/a	n/a	n/a	n/a
25 <sup>th</sup> Percentile	\$175	\$207	\$165	\$160	n/a	n/a	n/a	n/a
75 <sup>th</sup> Percentile	\$240	\$250	\$225	\$225	n/a	n/a	n/a	n/a
95 <sup>th</sup> Percentile	\$300	\$305	\$320	\$300	n/a	n/a	n/a	n/a
	Oregon (n=97)	Portland (n=43)	Tri- County (n=31)	Upper Willamette Valley (n=10)	Lower Willamette Valley (n=5)	Southern Oregon (n=2)	Eastern Oregon (n=4)	Oregon Coast (n=2)
<b>4-6 Years</b>								
Mean Rate	\$231	\$249	\$227	\$216	\$194	n/a	n/a	n/a
Median Rate	\$220	\$250	\$210	\$200	\$200	n/a	n/a	n/a
25 <sup>th</sup> Percentile	\$190	\$200	\$185	\$200	\$175	n/a	n/a	n/a
75 <sup>th</sup> Percentile	\$257	\$300	\$275	\$250	\$220	n/a	n/a	n/a
95 <sup>th</sup> Percentile	\$330	\$350	\$320	\$250	\$225	n/a	n/a	n/a

**Table 36: 2016 Hourly Billing Rate by Total Years Admitted to Practice – Private Practice**

	Oregon (n=75)	Portland (n=33)	Tri- County (n=15)	Upper Willamette Valley (n=6)	Lower Willamette Valley (n=6)	Southern Oregon (n=5)	Eastern Oregon (n=7)	Oregon Coast (n=3)
<b>7-9 Years</b>								
Mean Rate	\$259	\$282	\$281	\$223	\$213	\$228	\$228	n/a
Median Rate	\$250	\$280	\$270	\$200	\$200	\$240	\$225	n/a
25 <sup>th</sup> Percentile	\$200	\$230	\$250	\$185	\$195	\$200	\$200	n/a
75 <sup>th</sup> Percentile	\$300	\$340	\$300	\$275	\$200	\$250	\$250	n/a
95 <sup>th</sup> Percentile	\$390	\$400	\$390	\$275	\$300	\$250	\$285	n/a
	Oregon (n=78)	Portland (n=41)	Tri- County (n=18)	Upper Willamette Valley (n=6)	Lower Willamette Valley (n=5)	Southern Oregon (n=4)	Eastern Oregon (n=3)	Oregon Coast (n=1)
<b>10-12 Years</b>								
Mean Rate	\$272	\$283	\$288	\$244	\$220	n/a	n/a	n/a
Median Rate	\$250	\$300	\$275	\$250	\$200	n/a	n/a	n/a
25 <sup>th</sup> Percentile	\$225	\$225	\$250	\$215	\$200	n/a	n/a	n/a
75 <sup>th</sup> Percentile	\$320	\$340	\$350	\$275	\$250	n/a	n/a	n/a
95 <sup>th</sup> Percentile	\$400	\$410	\$375	\$300	\$250	n/a	n/a	n/a
	Oregon (n=59)	Portland (n=26)	Tri- County (n=17)	Upper Willamette Valley (n=5)	Lower Willamette Valley (n=1)	Southern Oregon (n=5)	Eastern Oregon (n=3)	Oregon Coast (n=2)
<b>13-15 Years</b>								
Mean Rate	\$273	\$288	\$256	\$277	n/a	\$247	n/a	n/a
Median Rate	\$250	\$300	\$250	\$250	n/a	\$250	n/a	n/a
25 <sup>th</sup> Percentile	\$200	\$180	\$245	\$225	n/a	\$250	n/a	n/a
75 <sup>th</sup> Percentile	\$325	\$375	\$300	\$325	n/a	\$260	n/a	n/a
95 <sup>th</sup> Percentile	\$460	\$460	\$410	\$390	n/a	\$275	n/a	n/a
	Oregon (n=91)	Portland (n=38)	Tri- County (n=29)	Upper Willamette Valley (n=9)	Lower Willamette Valley (n=9)	Southern Oregon (n=0)	Eastern Oregon (n=4)	Oregon Coast (n=2)
<b>16-20 Years</b>								
Mean Rate	\$293	\$334	\$270	<b>\$293</b>	\$252	n/a	n/a	n/a
Median Rate	\$275	\$325	\$250	\$300	\$260	n/a	n/a	n/a
25 <sup>th</sup> Percentile	\$225	\$250	\$240	\$250	\$225	n/a	n/a	n/a
75 <sup>th</sup> Percentile	\$350	\$400	\$300	\$300	\$300	n/a	n/a	n/a
95 <sup>th</sup> Percentile	\$450	\$500	\$400	\$450	\$325	n/a	n/a	n/a
	Oregon (n=147)	Portland (n=32)	Tri- County (n=59)	Upper Willamette Valley (n=14)	Lower Willamette Valley (n=10)	Southern Oregon (n=13)	Eastern Oregon (n=16)	Oregon Coast (n=3)
<b>21-30 Years</b>								
Mean Rate	\$307	\$394	\$279	\$273	<b>\$355</b>	<b>\$248</b>	<b>\$272</b>	n/a
Median Rate	\$300	\$415	\$280	\$255	\$285	\$250	\$250	n/a
25 <sup>th</sup> Percentile	\$245	\$325	\$200	\$250	\$275	\$240	\$225	n/a
75 <sup>th</sup> Percentile	\$350	\$475	\$350	\$300	\$350	\$275	\$310	n/a
95 <sup>th</sup> Percentile	\$500	\$525	\$450	\$475	\$650	\$300	\$350	n/a

**Table 36: 2016 Hourly Billing Rate by Total Years Admitted to Practice – Private Practice**

	Oregon (n=215)	Portland (n=80)	Tri- County (n=69)	Upper Willamette Valley (n=15)	Lower Willamette Valley (n=18)	Southern Oregon (n=9)	Eastern Oregon (n=13)	Oregon Coast (n=11)
<b>Over 30 Years</b>								
Mean Rate	<b>\$332</b>	<b>\$413</b>	<b>\$311</b>	\$254	\$276	\$229	\$251	\$243
Median Rate	\$300	\$425	\$295	\$250	\$250	\$250	\$250	\$225
25 <sup>th</sup> Percentile	\$250	\$300	\$250	\$200	\$250	\$190	\$225	\$200
75 <sup>th</sup> Percentile	\$400	\$495	\$350	\$325	\$300	\$285	\$275	\$295
95 <sup>th</sup> Percentile	\$560	\$610	\$500	\$350	\$450	\$300	\$310	\$350

Q14: When you charged on an hourly basis, what was your usual billing rate per hour in 2016?

Q2: What year were you admitted into any state bar (including Oregon)? [converted into number of years]

Q6: Which type of employment represented 50% or more of your practice as of 12/31/2016? [private practice only]

### Area of Practice

Table 37 presents the 2016 hourly billing rate data by area of practice for all private practice lawyers, regardless of level of employment. The highest hourly billing rate was for Business/Corporate – Litigation (mean=\$333) statewide, with variations across the regions.

**Table 37: 2016 Hourly Billing Rate by Area of Practice – Private Practice**

	Oregon (n=24)	Portland (n=11)	Tri- County (n=8)	Upper Willamette Valley (n=2)	Lower Willamette Valley (n=1)	Southern Oregon (n=1)	Eastern Oregon (n=1)	Oregon Coast (n=0)
<b>Bankruptcy</b>								
Mean Rate	\$298	\$309	\$283	n/a	n/a	n/a	n/a	n/a
Median Rate	\$275	\$280	\$270	n/a	n/a	n/a	n/a	n/a
25 <sup>th</sup> Percentile	\$250	\$250	\$245	n/a	n/a	n/a	n/a	n/a
75 <sup>th</sup> Percentile	\$330	\$375	\$280	n/a	n/a	n/a	n/a	n/a
95 <sup>th</sup> Percentile	\$435	\$475	\$370	n/a	n/a	n/a	n/a	n/a
<b>Business/ Corporate -- Litigation</b>								
Mean Rate	<b>\$333</b>	\$367	\$308	\$231	\$286	n/a	\$271	n/a
Median Rate	\$325	\$365	\$300	\$200	\$275	n/a	\$275	n/a
25 <sup>th</sup> Percentile	\$275	\$300	\$275	\$175	\$250	n/a	\$250	n/a
75 <sup>th</sup> Percentile	\$400	\$425	\$350	\$300	\$325	n/a	\$310	n/a
95 <sup>th</sup> Percentile	\$495	\$525	\$410	\$325	\$325	n/a	\$310	n/a
<b>Business/ Corporate – Transactional</b>								
Mean Rate	\$301	\$351	\$284	\$254	\$235	<b>\$267</b>	\$244	n/a
Median Rate	\$285	\$325	\$275	\$250	\$250	\$275	\$245	n/a
25 <sup>th</sup> Percentile	\$240	\$275	\$200	\$200	\$175	\$250	\$170	n/a
75 <sup>th</sup> Percentile	\$350	\$425	\$350	\$300	\$300	\$300	\$275	n/a
95 <sup>th</sup> Percentile	\$500	\$525	\$450	\$450	\$350	\$300	\$350	n/a

**Table 37: 2016 Hourly Billing Rate by Area of Practice – Private Practice**

<b>Civil Litigation – Defendant</b> (excludes insurance defense)	Oregon (n=95)	Portland (n=58)	Tri-County (n=15)	Upper Willamette Valley (n=2)	Lower Willamette Valley (n=6)	Southern Oregon (n=7)	Eastern Oregon (n=6)	Oregon Coast (n=1)
Mean Rate	\$309	\$327	\$307	n/a	\$250	\$243	\$252	n/a
Median Rate	\$300	\$325	\$320	n/a	\$225	\$250	\$250	n/a
25 <sup>th</sup> Percentile	\$225	\$215	\$250	n/a	\$200	\$200	\$225	n/a
75 <sup>th</sup> Percentile	\$365	\$425	\$355	n/a	\$300	\$285	\$275	n/a
95 <sup>th</sup> Percentile	\$495	\$540	\$450	n/a	\$325	\$300	\$310	n/a

  

<b>Civil Litigation – Insurance Defense</b>	Oregon (n=69)	Portland (n=44)	Tri-County (n=13)	Upper Willamette Valley (n=6)	Lower Willamette Valley (n=2)	Southern Oregon (n=3)	Eastern Oregon (n=0)	Oregon Coast (n=1)
Mean Rate	\$225	\$231	\$182	\$250	n/a	n/a	n/a	n/a
Median Rate	\$200	\$200	\$190	\$190	n/a	n/a	n/a	n/a
25 <sup>th</sup> Percentile	\$170	\$170	\$150	\$160	n/a	n/a	n/a	n/a
75 <sup>th</sup> Percentile	\$250	\$250	\$200	\$300	n/a	n/a	n/a	n/a
95 <sup>th</sup> Percentile	\$380	\$380	\$275	\$475	n/a	n/a	n/a	n/a

  

<b>Civil Litigation – Plaintiff</b> (excludes personal injury)	Oregon (n=133)	Portland (n=56)	Tri-County (n=33)	Upper Willamette Valley (n=8)	Lower Willamette Valley (n=17)	Southern Oregon (n=9)	Eastern Oregon (n=9)	Oregon Coast (n=1)
Mean Rate	\$295	\$312	\$295	<b>\$314</b>	<b>\$289</b>	\$249	\$252	n/a
Median Rate	\$275	\$300	\$300	\$285	\$250	\$250	\$250	n/a
25 <sup>th</sup> Percentile	\$225	\$225	\$250	\$225	\$200	\$240	\$225	n/a
75 <sup>th</sup> Percentile	\$350	\$350	\$355	\$325	\$300	\$275	\$295	n/a
95 <sup>th</sup> Percentile	\$475	\$500	\$410	\$475	\$650	\$300	\$310	n/a

  

<b>Civil Litigation – Plaintiff Personal Injury</b>	Oregon (n=75)	Portland (n=18)	Tri-County (n=32)	Upper Willamette Valley (n=10)	Lower Willamette Valley (n=3)	Southern Oregon (n=5)	Eastern Oregon (n=5)	Oregon Coast (n=2)
Mean Rate	\$297	\$317	<b>\$310</b>	\$280	n/a	\$228	<b>\$302</b>	n/a
Median Rate	\$275	\$300	\$300	\$275	n/a	\$250	\$295	n/a
25 <sup>th</sup> Percentile	\$250	\$250	\$250	\$250	n/a	\$175	\$200	n/a
75 <sup>th</sup> Percentile	\$350	\$350	\$350	\$300	n/a	\$300	\$250	n/a
95 <sup>th</sup> Percentile	\$475	\$450	\$490	\$475	n/a	\$300	\$250	n/a

  

<b>Criminal – Private Bar</b>	Oregon (n=42)	Portland (n=11)	Tri-County (n=11)	Upper Willamette Valley (n=4)	Lower Willamette Valley (n=1)	Southern Oregon (n=4)	Eastern Oregon (n=6)	Oregon Coast (n=5)
Mean Rate	\$266	\$300	\$255	n/a	n/a	n/a	\$231	\$255
Median Rate	\$250	\$300	\$250	n/a	n/a	n/a	\$240	\$250
25 <sup>th</sup> Percentile	\$200	\$200	\$100	n/a	n/a	n/a	\$200	\$224
75 <sup>th</sup> Percentile	\$300	\$400	\$300	n/a	n/a	n/a	\$250	\$250
95 <sup>th</sup> Percentile	\$425	\$485	\$650	n/a	n/a	n/a	\$295	\$350

**Table 37: 2016 Hourly Billing Rate by Area of Practice – Private Practice**

	Oregon (n=118)	Portland (n=26)	Tri- County (n=43)	Upper Willamette Valley (n=14)	Lower Willamette Valley (n=7)	Southern Oregon (n=8)	Eastern Oregon (n=12)	Oregon Coast (n=8)
<b>Family Law</b>								
Mean Rate	\$243	\$258	\$252	\$229	\$231	\$231	\$213	\$240
Median Rate	\$250	\$250	\$250	\$225	\$225	\$240	\$200	\$224
25 <sup>th</sup> Percentile	\$200	\$207	\$215	\$200	\$200	\$200	\$165	\$200
75 <sup>th</sup> Percentile	\$275	\$300	\$285	\$275	\$275	\$250	\$240	\$250
95 <sup>th</sup> Percentile	\$350	\$400	\$370	\$325	\$275	\$250	\$275	\$300
<b>Real Estate/Land Use/Environmental Law</b>								
Mean Rate	\$316	<b>\$398</b>	<b>\$310</b>	\$283	\$278	\$254	\$263	n/a
Median Rate	\$275	\$390	\$275	\$250	\$275	\$250	\$250	n/a
25 <sup>th</sup> Percentile	\$250	\$300	\$250	\$240	\$200	\$200	\$195	n/a
75 <sup>th</sup> Percentile	\$350	\$475	\$325	\$325	\$300	\$285	\$285	n/a
95 <sup>th</sup> Percentile	\$550	\$610	\$515	\$390	\$650	\$300	\$550	n/a
<b>Tax/Estate Planning</b>								
Mean Rate	\$274	\$357	\$262	\$251	\$243	\$243	\$242	\$227
Median Rate	\$250	\$340	\$250	\$250	\$200	\$250	\$250	\$200
25 <sup>th</sup> Percentile	\$200	\$250	\$220	\$200	\$200	\$200	\$200	\$200
75 <sup>th</sup> Percentile	\$300	\$455	\$300	\$260	\$300	\$275	\$285	\$300
95 <sup>th</sup> Percentile	\$480	\$625	\$400	\$350	\$335	\$300	\$330	\$300
<b>Workers' Compensation</b>								
Mean Rate	\$256	\$284	\$231	n/a	n/a	n/a	n/a	n/a
Median Rate	\$200	\$200	\$195	n/a	n/a	n/a	n/a	n/a
25 <sup>th</sup> Percentile	\$185	\$175	\$167	n/a	n/a	n/a	n/a	n/a
75 <sup>th</sup> Percentile	\$275	\$435	\$215	n/a	n/a	n/a	n/a	n/a
95 <sup>th</sup> Percentile	\$450	\$450	\$500	n/a	n/a	n/a	n/a	n/a
<b>General (no area over 50%)</b>								
Mean Rate	\$252	\$313	\$269	\$250	\$241	\$221	\$232	\$208
Median Rate	\$250	\$300	\$250	\$240	\$250	\$200	\$225	\$200
25 <sup>th</sup> Percentile	\$200	\$250	\$250	\$225	\$200	\$200	\$200	\$175
75 <sup>th</sup> Percentile	\$285	\$370	\$300	\$260	\$250	\$245	\$250	\$225
95 <sup>th</sup> Percentile	\$370	\$415	\$400	\$300	\$300	\$300	\$300	\$300

**Table 37: 2016 Hourly Billing Rate by Area of Practice – Private Practice**

	Oregon (n=22)	Portland (n=5)	Tri- County (n=8)	Upper Willamette Valley (n=3)	Lower Willamette Valley (n=3)	Southern Oregon (n=0)	Eastern Oregon (n=3)	Oregon Coast (n=0)
<b>Administrative Law</b>								
Mean Rate	\$265	\$298	\$286	n/a	n/a	n/a	n/a	n/a
Median Rate	\$250	\$300	\$250	n/a	n/a	n/a	n/a	n/a
25 <sup>th</sup> Percentile	\$225	\$275	\$225	n/a	n/a	n/a	n/a	n/a
75 <sup>th</sup> Percentile	\$300	\$315	\$300	n/a	n/a	n/a	n/a	n/a
95 <sup>th</sup> Percentile	\$350	\$350	\$400	n/a	n/a	n/a	n/a	n/a
	Oregon (n=50)	Portland (n=17)	Tri- County (n=18)	Upper Willamette Valley (n=7)	Lower Willamette Valley (n=3)	Southern Oregon (n=2)	Eastern Oregon (n=1)	Oregon Coast (n=2)
<b>Other</b>								
Mean Rate	\$269	\$314	\$264	\$182	n/a	n/a	n/a	n/a
Median Rate	\$225	\$225	\$245	\$175	n/a	n/a	n/a	n/a
25 <sup>th</sup> Percentile	\$175	\$200	\$185	\$80	n/a	n/a	n/a	n/a
75 <sup>th</sup> Percentile	\$350	\$450	\$335	\$225	n/a	n/a	n/a	n/a
95 <sup>th</sup> Percentile	\$550	\$600	\$425	\$350	n/a	n/a	n/a	n/a

Q14: When you charged on an hourly basis, what was your usual billing rate per hour in 2016?

Q7: Which area(s) of practice represented 50% or more of your practice as of 12/31/2016? *[select all that apply]*

Q6: Which type of employment represented 50% or more of your practice as of 12/31/2016? *[private practice only]*

### Change in Billing Methods

Respondents who billed over one-third of their time on an hourly basis were asked to describe any changes in their billing methods over the last five years. Table 38 presents the proportions of those private practice lawyers who decreased their portion of hourly billing, increased their hourly billing, or had no change in their hourly billing. For those who bill at least one-third of their time (i.e., excluding the first row of the table), the largest proportion of lawyers both statewide (47.5%) and across all seven regions (26.4% to 59.4%) did not experience a change in the portion of hourly billing over the last five years.

**Table 38: Change in Billing Methods over Last Five Years – Private Practice**

	Oregon (n=1,000)	Portland (n=379)	Tri- County (n=307)	Upper Willamette Valley (n=91)	Lower Willamette Valley (n=79)	Southern Oregon (n=51)	Eastern Oregon (n=64)	Oregon Coast (n=29)
Not Applicable – Bill Less than 1/3 of Time on Hourly Rate Basis	25.6%	17.7%	30.6%	39.6%	36.7%	17.6%	23.4%	20.7%
Decrease in Portion of Hourly Billing	9.5%	8.4%	9.5%	16.5%	8.9%	7.8%	7.8%	10.3%
Increase in Portion of Hourly Billing	7.7%	4.2%	10.4%	9.9%	6.3%	13.7%	7.8%	10.3%
No Change Portion of Hourly Billing	<b>47.5%</b>	<b>59.4%</b>	<b>41.0%</b>	<b>26.4%</b>	<b>38.0%</b>	<b>45.1%</b>	<b>51.6%</b>	<b>48.3%</b>
Missing	9.7%	10.3%	8.5%	7.7%	10.1%	15.7%	9.4%	10.3%

Q16: Do you bill over one-third of your time on an hourly billing rate basis?

Q16a: *[if Q16=Yes]* Which of the following represents any change in your billing methods over the last five years?

Q6: Which type of employment represented 50% or more of your practice as of 12/31/2016? *[private practice only]*

## Comparison Personal Injury to Workers' Compensation

Settlement Amount	Attorney Fee Amount		Percentage W/C to PI	Discrepancy
	Personal Injury (33%)	Current Workers' Comp		
\$25,000	\$8,333	\$6,250	75%	\$2,083
\$50,000	\$16,666	\$12,500	75%	\$4,166
\$100,000	\$33,333	\$17,500	53%	\$15,833
\$300,000	\$100,000	\$37,500	38%	\$62,500
\$1 Million	\$333,333	\$107,500	32%	\$225,833



**PAUL R. HOLVEY**  
**STATE REPRESENTATIVE**  
DISTRICT 8  
**HOUSE OF REPRESENTATIVES**

December 3<sup>rd</sup>, 2015

To: Workers Compensation Board  
Holly J. Somers, Board Chair  
Margaret F. Weddell, Board Member  
Steve Lanning, Board Member  
Judy L. Johnson, Board Member  
Sally Anne Curey, Board Member

Re: Legislative Intent for HB 2764 Rulemaking (ORS 656.388)

Dear Board Members,

I would like to provide comments on rules being considered to implement HB 2764 for the 2015 legislative session addressing attorney fees for the representation of injured workers. As chair of the Oregon House Business and Labor committee that considered this legislation I was directly involved in the discussions and decisions on the concepts and language of HB 2764.

The main purpose of the bill was to ensure that injured workers had access to adequate legal representation and that representation was not limited or diminished by inadequate claimant attorney fees.

It is my understanding that a question under consideration by the board is that under Section 8 (4) and (5) the attorney fees being awarded may be limited to only fees from the compensation awarded to the claimant. This issue was discussed and referred to during the house committee and floor debate. Section 8 (4) and (5) refer to all fees under this chapter. Our goal was to ensure that injured workers be able to receive the compensation benefit in our workers compensation system and that attorneys representing the injured workers receive all reasonable fees and ensure adequate claimant legal representation in the entire claim process. And that claim process should be construed to include reasonable attorney fees for actual time spent during participation in all interview and deposition processes.

It is critical that injured workers had adequate access to representation through the entire claim process and that they realize the benefit that is paid for in this insurance system.

I hope my comments are informative to the HB2764 rulemaking discussion. If I may be of further assistance please do not hesitate to contact my office.

Respectfully,

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District: P.O. Box 51048, Eugene, OR 97405 — Phone: 541-344-5636



Paul Holvey  
Oregon State Representative  
District 8  
Chair of House Business and Labor Committee