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Via E-Mail Only

December 7, 2018

Workers Compensation Board
2601 25th Street SE, Ste. 150
Salem, OR 97302

RE: Proposed Changes to Attorney Fee Rules in Workers' Compensation

Dear Board Members:

Thank you for taking the time to carefully consider the matter of attorney fees for claimants' attorneys. As we all know, the issue of fair fees has been a subject of ongoing debate by all members of our section and has proven to be a difficult issue. I believe it would be in the best interests of all our members to establish a simple and clear rule for assessing attorney fees. Not only would this increase fairness but it would reduce unnecessary workload for both Judges and practitioners.

Attorney Fee Proposal

I am aware of Member Lanning's proposal to assess fees for claimant's attorney at a rate of two times the hourly rate of the defense attorney. I very much appreciate this proposal and think it is an excellent plan. I do have some concerns as follows.

First, defense attorneys commonly negotiate different rates for different providers based upon agreements to exclusively handle work. For example, it is a common practice for an insurer to negotiate a lower rate with one defense law firm in exchange for promising that firm all their workers' compensation legal work in Oregon. This artificially deflates the defense attorney's rate.

Second, defense attorneys and firms have no duties to front costs for experts and can bill their clients for small costs such as mailing, etc. Claimants' attorneys are not in this position which creates a significant burden.

Third, Member Lanning's proposal requires the defense attorneys to register their rates. I suspect this may be unsatisfactory for those firms also because the rates are privately negotiated and could affect those negotiations.

Considering these issues, I would suggest the Board consider basing the modifier on the set hourly rate in ORS 656.262(14)(a). This rate has already been discussed at length by the section and been agreed to as reasonable. Further, it is already tied to the Board's biennial review meaning it would adjust as appropriate. This would cause very little additional negotiation by members, would eliminate the need for the defense bar to register their rates, and would provide a fair fee to claimant's attorney for their contingency work.

However, I am aware there is also proposal is also to increase the hourly rate in ORS 656.262(14)(a) from \$275 to 400. If this is approved, a two times modifier is probably not

appropriate. Perhaps it would be more appropriate to use this rate as the standard claimant's attorney rate itself or to use a different modifier.

Sliding Scale for ORS 656.262(14)(a) Rate

It is not appropriate to have a sliding scale for the ORS 656.262(14)(a) rate. First, that results in clear age discrimination. This would be paying attorneys different amounts for the same exact work. Second, it would be difficult to clarify. Some people enter law very experienced in some area of expertise and to consider them as less experienced would not be fair. Third, it makes entering the workers' comp field less desirable for young attorneys which is one of the main issues affecting our section.

Bifurcation of Attorney Fee Hearings

I strongly support the proposal to have a separate hearing to assess attorney fees once it has been determined they are due. Creating attorney fee statements and petitions is very time consuming for claimant's attorneys and detracts from the work needed to prepare for the main legal issues at hearing.

I suspect that if we are able to establish a clear rule with a set rate for attorney fees, these hearings would generally not be necessary. As in circuit court, the claimant's attorney could submit a simple statement of services after the issuance of the Opinion and Order. A hearing would only be needed if the defense objected to the statement.

Finally, thank you again for your assistance with this complicated issue. It is an ongoing pleasure to work with the workers' compensation section in Oregon.

Very Truly Yours,



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Attorney at Law