

OREGON TRIAL LAWYERS ASSOCIATION

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May 17, 2022

Oregon Workers' Compensation Board
2601 25th St SE, Ste 150
Salem, OR, 97302-1280

Re: Biennial Fee Review

Dear Board Chair and Board Members,

In 2015, the Legislature passed an amendment to ORS 656.388 directing the Board to review all attorney fee schedules “biennially for adjustment.” This year, 2022, begins the next biennial review period according to the statute. As Co-Chairs of the Workers’ Compensation Section of the Oregon Trial Lawyers Association, and on behalf of attorneys representing injured workers and those beholden to the schedules and fees set by the Board, we request that the Board begin the biennial review process.

There are several areas that require review, discussion, and adjustment. They include, but are not limited to:

- Review of the fee caps for settlement attorney fees under OAR 438-015-0050 and OAR 438-015-0052;
- Review of the bifurcation rule and extension to the hearing level;
- Review of the Board’s statistics regarding the contingency nature of a claimant’s practice under ORS 656.388(5), to include the following, among others:
 - > Win/loss by issue and total at hearing;
 - > Win/loss by issue and total at Board, including distinguishing fee awards for hearing and Board;
 - > Win/loss at the Court of Appeals and Supreme Court levels;
 - > Number of attorneys representing injured workers on a consistent basis;
 - > Number of new attorneys representing injured workers.
- Review of the diminishing numbers of attorneys representing injured workers; and
- The current disparity in legal fees and costs between defense counsel and claimant’s counsel.

We anticipate presenting these issues at a meeting with the Board, both in person (or remotely, if the present COVID circumstances require) and in writing. Therefore, we would request the Board set a schedule for various meetings where the presentations could occur. For the last biennial review, the Board waited until the end of the period to have a meeting, largely because of the lengthy process of the previous biennial review.

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We have numerous substantive issues to address for this biennial review, and request the meetings be scheduled earlier in the biennial review period than later.

We look forward to working with the Board for this biennial review process. If you have any questions, please do not hesitate to contact us.

Thank you for your courtesies.



Jovanna Patrick



Keith D. Semple

Co-Chairs, OTLA Workers' Compensation Section