

March 23, 2023

CONSTANCE WOLD, BOARD CHAIR
WORKERS' COMPENSATION BOARD
2601 25TH ST. SE, STE. 150
SALEM, OR 97302

Re: SAIF Corporation written comments regarding WCB's biennial review of attorneys' fees

Dear Board Members:

SAIF Corporation thanks the Workers' Compensation Board for the opportunity to provide input and written comments related to the biennial review of scheduled attorney fees.

In December 2018 SAIF provided comments regarding the Board's review and relayed SAIF's own data to the Board in relation to attorneys' fees paid from 2014-2017. This data revealed that, overall, payments by SAIF to attorneys representing injured workers rose 18% during this 3 year period.

The Board thereafter undertook rulemaking and modified OAR 438-015 with changes going into effect on June 1, 2020. The changes included:

Two new factors were added to OAR 438-015-0010(4) which the ALJ and board will consider when assessing a reasonable attorney fee. They are:

(g) The necessity of allowing the broadest access to attorneys by injured workers;

(h) The fees earned by attorneys representing the insurer/self-insured employer, as compiled in the Director's annual report under ORS 656.388(7) of attorney salaries and other costs of legal services incurred by insurers/self-insured employers pursuant to ORS Chapter 656;

Additionally, effective October 1, 2020, the Board modified subsection (l) of OAR 438-015-0010(4) to state:

(l) Claimant's counsel's contingent hourly rate, if asserted, together with any information used to establish the basis upon which the rate was calculated

Summarized in the chart below is SAIF's attorney fee data for 2019-2022. Overall attorneys' fees associated with Orders rose 13% during this time period.

Order Type	2019-2020			2021-2022			% Change of Average Attorney Fee
	Total Attorney Fee Amount	Case Count	Average Attorney Fee	Total Attorney Fee Amount	Case Count	Average Attorney Fee	
Opinion and Order	\$1,519,898	162	\$9,382	\$1,735,877	162	\$10,715	14%
Order on Reconsideration	\$31,500	5	\$6,300	\$36,000	2	\$18,000	186%

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Order on Demand	\$16,162	1	\$16,162	\$56,280	6	\$9,380	-42%
Order on Review	\$563,047	49	\$11,491	\$372,475	29	\$12,844	12%
Total Overall Average	\$2,130,607	217	\$9,818	\$2,200,632	199	\$11,058	13%

As noted in SAIF's 2018 submission, the average attorney fee associated with an Order was \$7,116 in 2014. The average SAIF paid attorney fee associated with an Order in 2022 is \$11,058, a 55% increase from 2014 and a 13% increase comparing 2019-2020 to 2021-2022 fees.

SAIF also researched the total amounts paid by SAIF to attorneys representing injured workers in 2019 and 2022. The total amounts paid represents all payments to injured worker attorneys including fees not captured by the Board's data such as fees from the Court of Appeals and Oregon Supreme Court, interview fees, and fees awarded by the Workers' Compensation Division. For 2019, the cumulative amount paid to attorneys representing injured workers was \$11,134,986.05. By 2022, the cumulative amount was \$13,747,816.37, representing a 23% increase.

When considering the proportion of fees from legal orders compared to fees from other sources, it appears that most fees are not awarded at hearing or by the board. To obtain a complete and accurate understanding of attorney fees and the source of those fees when comparing fees for representing injured workers to the defense costs, the Board should consider additional data including fees awarded by the Court of Appeals, Oregon Supreme Court, interview fees and fees awarded by the Workers' Compensation Division. As the board continues its biennial review, SAIF urges the Board to collect additional data that is missing from its annual report including fees awarded by the Court of Appeals, Oregon Supreme Court, interview fees and fees awarded by the Workers' Compensation Division. This ensures the Board has complete data as it conducts this review as well as future reviews.

Given the increases noted in attorney fees since rule changes were instituted in 2020, the changes the Board made appear to be working towards the stated goal of allowing the broadest possible access to attorneys by injured workers. This is further support by the high representation rates of injured workers as noted in the Board's report. As a result, SAIF recommends leaving the current rules unchanged, but does endorse increased collection of data as noted above.

Sincerely,

/s/ Shannon Rickard
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