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October 29, 2026

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

Re: Biennial attorney fee review - comments

Dear Board Chair Dougherty and Board Members:

SAIF Corporation (SAIF) thanks the Workers' Compensation Board (Board) for the opportunity to respond to Ms. Julene Quinn's requests and comments submitted on September 23, 2026, as part of the Board's biennial review of attorney fees.

1. Extension of the bifurcation process

The Board was asked to extend the bifurcation process to ORS 656.382(1), (3), and (4), and ORS 656.386(3) and (4). SAIF questions whether extension of the bifurcation process is supported based on the limited utilization by claimant attorneys of the current bifurcation process. SAIF welcomes additional feedback as to whether other claimant attorneys would utilize bifurcation if the process was extended to other attorney fee statutes. Based on the limited use of the bifurcation process, an extension to other attorney fee statutes is not well supported.

2. Determinations

The Board was asked to review its processes to issue decisions within a shorter time period. SAIF agrees that system improvements and efficiencies are necessary components to an effective workers' compensation system. It is worth noting that bifurcation is an optional process. If an attorney prefers a speedier determination of the attorney fee then the attorney may forego bifurcation and present arguments for an attorney fee with the substantive issues, which allows for the fastest determination of the attorney fee.

Additionally, SAIF has observed that attorney fee arguments submitted through the bifurcation process often exceed 10 or more pages and include requests for hourly rates that the Board has rejected in prior cases. Given the duplicative hourly fee requests and breadth of arguments presented, the Board may require more time to complete its review to address each of the attorney fee arguments presented and to author an order that can withstand judicial scrutiny.

Lastly, the Board's rules do not limit the number of extensions of time to submit a written argument by either party when an attorney utilizes the bifurcation process. SAIF requests the Board consider limiting the number of extensions that are granted to either party to shorten the time period of the review.

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3. 2015 legislative history

SAIF agrees there is a vibrant claimants' attorney practice in Oregon as supported by the Board's 2025 attorney fee report. The Board's report shows that representation numbers remain high in settlements, at hearing, and during appeal to the Board. Additionally, claimant attorney fee growth has consistently outpaced increases to the state's average weekly wage since 2020.

SAIF maintains that comparing defense costs to claimant attorney fees is not an apples-to-apples comparison. As noted in the Board's 2025 report, defense costs include administrative salaries, in-house costs, retained counsel costs, costs in support of retained, and counsel. Additionally, SAIF's defense attorneys provide more services in support of the organization internally and externally that are not directly tied to litigation of a claim. SAIF urges the Board to take a tempered approach to its comparison of defense costs and claimants' attorneys fees.

4. Court of Appeals decisions

SAIF agrees the Court of Appeals attorney fee decisions are shorter than the Board's. However, unlike Board decisions, there is no automatic appeal right to the Oregon Supreme Court. Because the Board's order must withstand judicial scrutiny, the depth of the analysis and reasoning are understandably greater when the Board determines a reasonable attorney fee.

SAIF appreciates the Board's consideration of SAIF's comments as well as the Board's engagement and collaborative approach to the biennial attorney fee review.

Sincerely,

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