

Julene M Quinn LLC

f: 971.925.8611 Attorney at Law 971.259.8141

julene.m.quinn@gmail.com julenequinn.com

Mailing address: PO Box 820087, Portland, Oregon 97282-1087

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Exhibit 8

Holly J Somers, Board Chair
Margaret F. Weddell, Board Member
Steve Lanning, Board Member
Judy L. Johnson, Board Member
Sally Anne Curey, Board Member
Workers' Compensation Board
2601 25th Street S.E.
Salem, OR 97302-1280

15 DEC -2 PM 12:09
WCS - SALEM
IN ORDER

Re: Implementation of HB 2764
ORS 656.388

Dear Board Members,

In the last Board meeting, several members expressed the opinion that ORS 656.388(4) and (5) apply only to the schedule of fees applicable to the out-of-compensation fees contained in the Board rules (OAR 438-015-0040 to -0055) and do not apply to all attorney fees awarded under the chapter and regulated by the Board. The statutes do not support such a limited reading of ORS 656.388(4) or (5), and so I offer my analysis of the statutes and rules.

The amendments to ORS 656.388(4) and (5) effect all attorney fees, because all attorney fees for attorneys representing injured workers are depressed currently and do not reflect the work and the risk associated with representing injured workers. Limiting that language incorrectly to out-of-compensation fees would nullify the effects of the legislation. Both litigation fees and Board review fees are also significantly depressed considering the increasing complexity of the statutes, among other factors.

Consider the statutory text and context. ORS 656.388(3) specifically addresses out-of-compensation fees, whereas subsection (4) and (5) address all fees "under this chapter."

It is significant that neither subsection (4) nor (5) has specific, limiting language referencing out-of-compensation fees.

ORS 656.388(3) and (4) provide:

(3) If an injured worker signs an attorney fee agreement with an attorney for representation on a claim made pursuant to this chapter and **additional compensation is awarded** to the worker or a settlement agreement is consummated on the claim after the fee agreement is signed and it is shown that the attorney with whom the fee agreement was signed was instrumental in obtaining the additional

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compensation or settling the claim, **the Administrative Law Judge or the board shall grant the attorney a lien for attorney fees out of the additional compensation awarded** or proceeds of the settlement in accordance with rules adopted by the board governing the payment of attorney fees.

(4) The board shall, after consultation with the Board of Governors of the Oregon State Bar, establish a **schedule of fees** for attorneys representing a worker and representing an insurer or self-insured employer, **under this chapter**. The Workers' Compensation Board shall review all attorney fee schedules biennially for adjustment. (Emphasis added.)

The eight factors listed under OAR 438-015-0010(4) are the manner in which the Board has "scheduled" consideration of all attorney fees awarded "under this chapter." OAR 438-015-0010(4) expressly provides that the eight factors listed "shall" be considered when awarding a reasonable attorney fee. Thus, subsection (4) provides a schedule of factors for consideration for all reasonable attorney fees awarded "under this chapter." In contrast, OAR 438-015-0010(2) and (5) address only out-of-compensation fees, except in certain, statutory applications.

There was discussion that the word "schedule" in ORS 656.388(4) may imply only out-of-compensation fees. First, "schedule" cannot be equated to "fees out-of-compensation." Second, it would be too myopic to limit the statute to those fees for which the Board has provided a schedule of specific *amount*. Third, the context of ORS 656.388(3) and (4) do not support a limited application of (4) or (5) to only out-of-compensation fees, as both include all fees "under this chapter."

Fourth, the word "schedule" has a broader meaning. *Webster's Third New International Dictionary* 2028 (1993 ed. unabridged) defines "schedule" in a more generic manner. It includes a documentation, a plan or proposal, a program of classes for a student, one's calendar for the day, and also includes simply "a list." The eight factors of OAR 438-015-0010(4) qualify as a "schedule," or list, that the board has adopted to determine all attorney fees "under this chapter."

The fact that the Board has chosen to list *amounts* for fees for out-of-compensation fees, and list *factors* for consideration of assessed attorney fees does not change the fact that ORS 656.388(4) addresses all fees "under this chapter," nor does it change that both have schedules (list of fees, list of considerations to determine a fee).

When the legislature amended ORS 656.388(4) requiring the Board to review "all attorney fee schedules biennially," it also added subsection (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**

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attorneys by injured workers and shall give consideration to fees earned by attorneys for insurers and self-insured employers. (Emphasis added.)

Subsection (5) also references the fees awarded “under this chapter” and contains no language limiting consideration to “out-of-compensation” attorney fees. Subsection (5) mandates that the board consider the necessity of allowing the broadest access to attorneys by injured workers. It would not make sense to do this only by increasing out-of-compensation fees, when a large percentage of fees are assessed fees under the chapter.

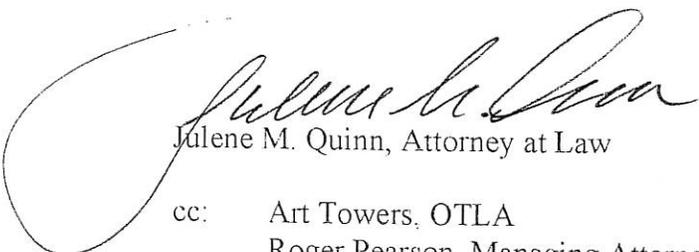
When considering the text and context of the statutes, along with the amendments, the contingent nature of the practice is a factor that *must* be considered by the board in all fees awarded under the chapter. Furthermore, when reviewing “all attorney fee schedules” biennially, the amendments to ORS 656.388 mandate a review of *every* fee awarded under the chapter, not just out-of-compensation fees. The purpose is stated in the amendment: to ensure that claimants have the broadest access to attorneys by making sure that attorneys (this generation and the next) are appropriately compensated, and to ensure that claimants’ bar is not disadvantaged in attracting new talent, because of depressed fees as compared to the defense bar.

I would urge the Board to reconsider its opinion on this issue and urge the Board to make sure that the amendments to ORS 656.388(4) and (5) are fully implemented as intended. I note that OAR 438-015-0010 has a proposed amendment to it, and so should qualify to have “the contingent nature of the practice of workers’ compensation law” and “the necessity of allowing the broadest access to attorneys by injured workers” added as factors that must be considered when awarding any attorney fee “under this chapter.”

I ask that these comments be made part of the public record for comments on the proposed amendments to the Board’s rules on attorney fees that are being implemented because of the passage of HB 2764 (2015).

Thank you for your consideration of this very important matter.

Sincerely,



Julene M. Quinn, Attorney at Law

cc: Art Towers, OTLA
Roger Pearson, Managing Attorney