



July 29, 2020

Mr. Ian Brown
Rulemaking Hearing Officer
Workers' Compensation Board
2601 25th Street, SE Suite 150
Salem, OR 97302-1280

Via Electronic Mail: rulecomments.wcb@oregon.gov

Re: Proposed Rules Regarding Attorney Fee Awards

Dear Mr. Brown:

The American Property Casualty Insurance Association (APCIA)¹ appreciates the opportunity to comment on the Workers' Compensation Board's proposed new rule, OAR 438-015-0125, regarding workers' compensation attorney fee awards. The proposed new rule would authorize bifurcation of the attorney fee award from the underlying claim resolution.

The proposed rule would permit bifurcation of the attorney fee award upon the filing of a request for Board review of an administrative law judge order, where within 14 days of the expiration of the briefing schedule, the claimant files a request for bifurcation and the Board reaches a decision entitling the claimant to a reasonable attorney fee award. If appropriate, the Board will issue a separate WCB Case Number pertaining to the bifurcated attorney fee award proceeding. Claimant's counsel may file a statement of a proposed amount of the reasonable fee, together with a supporting statement. The insurer or employer may file a response to the claimant's counsel's statement within 21 days of the Board's acknowledgement letter. The claimant may then file a reply within 14 days of the insurer's or employer's response statement. The Board would conduct "an expeditious review" and determine the amount of a reasonable attorney fee award. The Board's determination would constitute a final, appealable order.

¹ APCIA represents nearly 60 percent of the U.S. property casualty insurance market and the broadest cross-section of home, auto, and business insurers of any national trade association, including approximately 70% of the workers' compensation market countrywide. APCIA members represent all sizes, structures, and regions, protecting families, communities, and businesses in the U.S. and across the globe.

Proposed new rule OAR 438-015-0125 authorizing bifurcation of the attorney fee award from the underlying claim is unnecessary and would only increase complexity, costs and delays. A workers' compensation system stays in balance and functions most efficiently when disputes are streamlined and costs and expenses remain low. Rather than streamlining the dispute resolution process, bifurcation of the attorney fee award would create two hearings, two records, two decisions, and potentially two appeals. These extra system costs and delays would not result in any concomitant benefits to the injured worker, but would only unnecessarily increase system costs. APCIA recommends proposed new rule OAR 438-015-0125 be withdrawn.

Thank you for your consideration of these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "S. A. Bennett", with a long horizontal flourish extending to the right.

Steven A. Bennett
Assistant Vice President, Workers Compensation Programs & Counsel
American Property Casualty Insurance Association