

RANDY M. ELMER

Attorney at Law, P.C.

Zachary Brunot, Associate
Adela Manzur, Legal Assistant
Personal Injury, Social Security &
Workers' Compensation

March 25, 2015

Senate Committee on Workforce

The Honorable Michael Dembrow, Chair

The Honorable Kim Thatcher, Vice-Chair

The Honorable Diane Rosenbaum, Senate Democratic Leader and Member

The Honorable Tim Knopp, Member

The Honorable Sara Geiser, Member

RE: House Bill 2764

Dear Chair Dembrow, Vice Chair Thatcher and Members of the Committee:

My name is Randy Elmer and I am an attorney who represents injured workers in the Oregon workers' compensation system. I am offering this testimony in support of HB 2764.

The importance of HB 2764 is that the changes proposed in this bill, as modest as they may be, are necessary to insure access to justice for injured workers in our state. Injured workers are presently facing a crisis of not being able to obtain adequate and competent representation to assist them in negotiating their way through the complex workers' compensation laws once they have suffered injuries or occupational diseases in the work place.

The main reasons for this crisis are:

1. The system is extremely complex and without adequate and competent representation, injured workers, for the most part, are incapable of negotiating their way through this complex system by themselves;
2. The economic model that presently exists in our Workers' Compensation Law for compensating injured workers' representatives is failing and so under-compensates those attorneys who attempt to represent injured workers that attorneys will not practice in this legal arena for economic reasons;
3. A huge imbalance has evolved in this system that has resulted in attorneys for the defense and insurers being paid \$13.5 million more than injured workers' attorneys according to the 2014 Annual Report on Workers' Compensation published by the Department of Consumer and Business Services' Workers' Compensation Division; and
4. The numbers of attorneys who are willing to represent injured workers in our state has decreased from approximately 400 in 1989 to approximately 80 presently.

355 Miller St SE, Salem, Oregon 97302-4247

Phone: (503) 581-9770 ♦ Fax: (503) 581-3456 ♦ www.elmerlaw.com

Attorney's fees for representatives of injured workers are highly regulated by statute and administrative rule. These attorneys cannot be paid a fee unless it is approved by the Workers' Compensation Board ("WCB") or the Workers' Compensation Division ("WCD"). On the other hand, the fees paid to the defense bar are a matter of contract, must only be "reasonable" and are in large part unregulated.

Attorney's fees for representatives of injured workers are only allowed in two forms: assessed fees and out-of-compensation fees. Again, any fees paid to these representatives must be approved by either WCB or WCD. Assessed fees are assessed directly against the employer, insurer or self-insured employer. They are only paid when the attorney for the injured worker is instrumental in successfully overcoming a denial of benefits, or successfully obtaining a penalty for the injured worker.

Out-of-compensation fees are fees paid directly out of a worker's increase in benefits to an attorney when the attorney is instrumental in obtaining that increase in benefits for her client, or fees paid out of a worker's settlement. These fees are specified percentages and/or capped at a maximum amounts in most instances. These percentages and caps are specified in the fee schedule established by the WCB. The WCB has not adjusted the caps on these fees since 1997.

HB 2764 is a modest proposal that will change the way injured workers' attorneys are paid and is an attempt to narrow the economic gap that presently exists between the claimants' bar and the defense bar. It will not solve all the problems associated with this crisis that workers in our state face of not being able to obtain legal representation, but it is a start.

Without getting into the details of every proposed change suggested in HB 2764, it is fair to say that the focus of this bill is to incentivize employers, insurers and self-insured employers to process claims and pay benefits correctly to avoid paying any fees, or they carry the burden of paying some of the fees not only to their own attorneys but the attorneys representing the injured worker. It will also provide incentive for attorneys in Oregon to enter into the practice of workers' compensation law and provide injured workers an adequate and competent representation.

I urge you to vote in favor of HB 2764.

Respectfully submitted,



Randy M. Elmer

RME:re