

**Senate Workforce Committee
Testimony of Arthur Towers
Oregon Trial Lawyers Association
In Favor of HB 2764-A
May 13, 2015**

Thank you for the opportunity to testify today. OTLA members represent injured workers in their efforts to work through the workers' comp system.

The goal of HB 2764 is to ensure that injured workers can get the legal help they need to navigate the complicated workers' comp system. After a worker gets hurt on the job, they have to withstand a maze of insurers, claims adjusters, medical providers, & the vocational rehab process – all while under the stress of lost income during convalescence. (see attached charts)

1.7 Million Oregon workers are covered by the workers' comp system, but there are fewer than 100 lawyers to help them (down from over 400 25 years ago). Injured workers often need legal help to get back on the job quickly, get their medical bills paid, and secure their benefits in a timely manner so they can support their families.

Injured workers' legal services are highly regulated. Legal fees for injured workers' lawyers are set in statute and rule. The list of services for which lawyers can be paid is also prescribed by law. Lawyers often are ethically required to provide services for which they legally cannot accept payment, and can face bar sanctions or malpractice charges if they fail to provide these unpaid services.

Because of the complexity of the law and the relatively low fees, new lawyers coming out of law school with a pile of debt do not go into this field of the law, even if they have it in their heart to help injured workers. A recent law school graduate testified before MLAC that, while he is currently helping workers who face discrimination on the job and has a passion for the work, he was reticent to build a practice helping injured workers because he has more than \$200,000 in student debt.

These unpaid services are often desperately needed by workers. Some examples:

- A worker gets hurt on the job. S/he is legally required to submit to an interview by the insurance company. The worker's lawyer is ethically required to participate in the interview but is legally prohibited from being paid.
- An injured worker is mistreated by an insurance company and a judge awards a penalty payment to the worker. The insurance company appeals the penalty. The injured worker's lawyer is legally required to defend the injured worker. If the worker wins and keeps the money, the attorney cannot be paid for this service.

HB 2764 expands the list of services for which injured workers can pay for legal help, & in some instances increases the amount an attorney can charge. HB 2764 also transfers some payments from injured workers to insurance companies that have wrongly denied benefits.

- An injured worker misses work. S/he is supposed to get say \$350 a week, but instead only gets \$300. {This happens a lot because normal overtime, meal allowances and the like are supposed to be included and then are not.} If the worker hires a lawyer to help get the \$50 that might be critical for paying the rent or feeding the kids, the lawyer gets paid 25% or \$12.50, and the money comes out of the injured worker's pocket. HB 2764 would force the insurance company to pay for its mistake, and require the payment to be commensurate with the work needed to collect the funds owed.

The bill thus provides incentives to insurance companies to calculate benefits right the first time and to pay medical providers promptly. These are key steps towards reducing employer costs and to getting workers back on the job as quickly as possible.

The overall workers' comp system costs \$880M. Injured workers' legal fees are currently \$21M of that \$880M. Employer premiums have decreased by 12% in the last two years. Legislative fiscal expects legal fees to increase by a few million dollars so **HB 2764-A would not even require premiums to rise back to 2013 levels.**

***OTLA Supports the Concepts Approved by the
Management Labor Advisory Committee***

HB 2764-A is a weaker bill for injured workers than the original version of the legislation. The Management Labor Advisory Committee voted on May 1 to support a compromise version that is weaker for injured workers than the House-passed version. MLAC voted on concepts, and the exact wording is being processed by Legislative Counsel.

In the spirit of compromise, OTLA supports the concepts voted on by MLAC. Assuming that the wording of the amendment matches the concepts, OTLA will wholeheartedly support that amendment. The MLAC version is still a strong step forward for injured workers. It should have the impact of attracting new lawyers to the effort of helping injured workers. The MLAC version also retains the biennial review of rates so that stakeholders can advocate for changes if injured workers continue to have difficulty getting the help they need to get the benefits they deserve.

OTLA members, injured workers, and other advocates participated in twelve MLAC meetings on this topic. In 2014, MLAC suffered from high turnover and a number of vacancies. This spring, however, MLAC really hit its stride and participated deeply in the process. The committee's hard work should be recognized and appreciated. The product of its deliberations should be enacted into law.