



May 13, 2015

Chair Michael Dembrow
Senate Workforce Committee
Oregon State Capitol

RE: HB 2764A, MLAC amendments

Dear Chair Dembrow and Committee Members:

SAIF is Oregon's State-chartered Workers' Compensation Insurer. SAIF is a not-for-profit entity charged by its enabling statute to provide workers' compensation coverage to as many employers as possible, as inexpensively as possible, while protecting the Industrial Accident Fund and applying sound principles of insurance. As a public entity we believe SAIF exists to serve and protect the Oregon workforce, meeting the needs of both workers and employers. We believe this strengthens Oregon's economy. SAIF offers its testimony from this unique perspective.

SAIF Corporation testified before House Business and Labor about its concern with HB 2764A and the bill's potential impact on the Oregon Workers' Compensation system; these concerns remain because HB 2764A passed through the House without considering the Management Labor Advisory Committee's (MLAC) proposed amendments.

A bedrock principle of the Workers' Compensation Act from its beginning has been to "provide a fair and just administrative system for delivery of medical and financial benefits to injured workers that reduces litigation and eliminates the adversary nature of the compensation proceedings, to the greatest extent practicable." ORS 656.012. HB 2764A contains multiple incentives to increase litigation.

Despite testimony to the contrary, attorney fees awarded to claimants' attorneys have increased dramatically, while the percentage of injured workers represented by an attorney at hearing remains stable at close to 90%. Workers' Compensation Division (WCD) statistics show the average fees assessed at hearing increased 78% from an average of \$3,324 to \$5,942 from 2001 to 2011, compared to a 27.1% inflation rate during the same period. SAIF's own data shows its fees continue to escalate, with an average award to claimant attorneys of \$7,880.55 for overturning a SAIF denial in 2013. In the last ten years the number of attorneys representing workers at hearing has ranged from 189 to 209.

The National Council on Compensation Insurance (NCCI), the State of Oregon's rate making and statistical agent, issued a pricing memorandum stating that HB 2764 will increase the costs to the system significantly. SAIF's concern is that HB 2764A will increase rates with very little corresponding benefit to injured workers.

SAIF supports MLAC and its statutory mission to review the Oregon workers' compensation system and provide advice to the legislature. MLAC's proposed amendments to HB 2764A provide that advice. Like any compromise, MLAC's proposal requires all parties to "give a little." SAIF believes the proposal is a fair compromise.

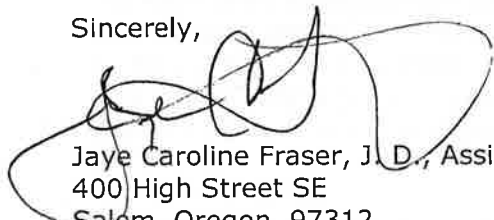
The MLAC amendments will provide injured worker attorneys new or additional fees in the following ways:

- 1) A new fee when an insurer or self-insured employer unreasonably delays, resists or refuses to pay attorney fees or costs.
 - a. The cap for penalty related fees increases to \$4000 with an annual cost of living adjustment
- 2) A new hourly fee for representing a worker during the insurer's investigative personal or telephonic interview or deposition. A new fee when an attorney is instrumental in obtaining an order from the Workers' Compensation Division to reclassify a claim from nondisabling to disabling.
- 3) New interest on attorney fees and costs during an appeal.
- 4) Additional fees for defending all or part of the worker's compensation when challenged by an employer or insurer.
- 5) Additional fees when an insurer or self-employed insurer raises attorney fees, penalties, or costs as a separate issue on appeal or challenges a prior award of attorney fees at a hearing.
- 6) A new fee for when a carrier initiates an appeal to the board or Court of Appeals and the matter is briefed, but the insurer or self-insured employer withdraws the appeal prior to a decision by the board or court, resulting in the claimant prevailing in the matter.
- 7) New assessed fees for disputes involving litigation costs when the claimant prevails.
- 8) A requirement that the Workers' Compensation Board review all attorney fees schedules biennially for adjustment.
- 9) New assessed fee for prevailing in obtaining temporary disability compensation benefits.

The fees represented in this list are new and significant. While SAIF does not agree with all of the additional fees proposed by the MLAC amendments, SAIF believes that the proposal represents a reasonable compromise. MLAC's measured guidance during the past 25 years has been instrumental in maintaining Oregon's robust and healthy workers' compensation system. This system provides benefits to workers that are better than those provided in most places at rates lower than most states.

SAIF urges adoption MLAC's proposed amendments.

Sincerely,



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