

OREGON TRIAL LAWYERS ASSOCIATION

812 SW Washington Street, #900

Portland, OR 97204

www.oregontriallawyers.org

503-799-1017

**Testimony in Support of Amended HB 3022
Before the House Rules Committee
By Arthur Towers, on behalf of
Oregon Trial Lawyers Association
April 22, 2019**

We appreciate the opportunity to testify in favor of the amendment to HB 3022 that MLAC has approved. The MLAC language accomplishes the same thing as the -2s, but the essential wording is much more precise. Legislative Counsel did a good job with the -2s but each word in statute has a specific meaning as a result of case law.

OTLA members are lawyers who fight for underdogs, and in this instance, the underdogs are workers hurt on the job.

We believe that the entire workers' compensation system merits a review and tune-up. The last major reforms in the workers' comp system occurred a quarter-century ago. From that belief, we worked with Rep. Power and other sponsors to draft the original, broader version of HB 3022.

Of the changes proposed by the original version of the bill, the MLAC consensus amendment addresses two of the most critical issues: adequate diagnostic services for workers, and the process by which workers lose benefits due to pre-existing conditions.

We enthusiastically support MLAC's recommendations. Those recommendations should resolve two major barriers to health care that workers are facing.

The first challenge is that workers with lingering ailments are often denied additional diagnostic services (eg MRIs, epidural injections, arthroscopies and the like). Fundamentally, the insurance company provides only the diagnostic services and treatment related to the initial naming of the ailment. An injured knee may be initially diagnosed as a knee bruise. But if the worker is still in pain, unable to go back to work, and the doctor recommends additional tests, current law allows the insurance company to deny payments for the additional tests.

The second challenge is related to workers who suffer due to an on-the-job event and due to a pre-existing condition. The MLAC language requires the insurance company to weigh the severity of the worksite accident against the severity of the pre-existing condition when determining whether or not the worker's benefits should be cut off.

These two changes to the law will impact a number of workers whose rights were limited by the 2017 *Royce Brown v SAIF* Oregon Supreme Court decision

We are excited that we and other stakeholders have an opportunity to materially improve the lives of injured workers and improve the likelihood that they get quality care.

We are equally excited with the process through which MLAC hammered out this compromise. This compromise is the result of roughly two dozen hours of meetings among stakeholders and MLAC. The meetings started as negotiations but ended in more of a problem-solving mode.

Would we have liked the compromise to address a broader set of issues? Of course. That said, MLAC has paved the way to do a deeper dive into some of the broader issues affecting how quickly injured workers can resume their employment.

Representative Power and the other sponsors are playing a key leadership role. Associated General Contractors and Oregon Business and Industry negotiated in good faith. SAIF played a very positive and critical role in providing analysis and policy and political expertise. Our allies in the labor movement -- Oregon Nurses' Association, Oregon AFL-CIO, SEIU, Oregon School Employees Association, United Food and Commercial Workers, among others -- entrusted OTLA members to represent workers well in the technical (literally word-by-word negotiating process).

We also want to single out the Management Labor Advisory Committee and especially the co-chairs Kimberly Wood and Diana Winter for driving a process to a successful conclusion. DCBS also did an excellent job staffing MLAC through a process that could have been extremely contentious.

OTLA members do not have a lot of data to work from. Instead we have anecdotal accounts of emerging issues in workers' comp. We are uniquely involved in the lives of our clients, the injured workers themselves. We see first-hand what they have to go through as they recuperate from serious injury. We see our role as identifying trends before they show up in the data. Since a contested claim can take quite a while to be adjudicated, the data can often lag the actual impact on workers.

MLAC members understood the valuable role our members play and took our reports seriously. The committee could have taken the position of waiting until 2019 or 2021 to see what the data showed. Instead they moved nimbly to address two of the most pressing barriers that injured workers have to overcome. MLAC members listened intently and asked smart questions about the on-the-ground situation. They invested a lot of their time. They moved the process forward on the pressing issues, and triaged other matters for future discussion.

We are looking forward to working with stakeholders in an MLAC-guided process to tackle other impediments for injured workers.

In the meantime, we strongly urge your support of the MLAC compromise to HB 3022.