

**MINUTES OF THE WORKERS' COMPENSATION SECTION**  
**EXECUTIVE COMMITTEE**  
**OF APRIL 8, 2011**

**I. CALL TO ORDER**

Chair Mundorff called the Executive Committee (EC) to order at 12:15 p.m. at the Oregon State Bar offices in Tigard, Oregon.

Committee members attending or absent were:

<b>Exec Board Member</b>	<b>Present in Person</b>	<b>Present by Phone</b>	<b>Absent</b>	<b>Comments</b>
Bohy, Ronald	▲			
Cole, Norm	▲			
Donnelly, Kate		▲		
Edmunson, James	▲			
Fisher, Matthew	▲			
Guarrasi, Robert	▲			
Harrell, Tom			▲	
Jacobson, Jacqueline		▲		
Johnson, Dale	▲			
Masters, Julie		▲		
Mundorff, Charles	▲			
Rock, Douglas		▲		
Roumell, Jennifer			▲	
Schoenfeld, Steven		▲		
Semple, Keith		▲		
Sencer, Nicholas	▲			
VavRosky, Dennis			▲	

**II. MINUTES**

A motion was made and seconded to approve the Minutes of March 8, 2011, as amended, to redact the name of the person who receive the Daughtry Award at the Salishan Conference. The motion passed.

**III. CHAIR'S REPORT**

No report. The meeting will be dedicated to discussing proposed “Attorney Fee-related” rules outlined in Roger Pearson’s March 10, 2011 memo to WCB Members. Chair Herman asked the EC to discuss and comment. The EC’s comments are summarized under Old Business below.

#### **IV. TREASURER’S REPORT**

No report.

#### **V. COMMITTEE REPORTS**

##### **A. Salishan**

Conference plans are on track.

##### **B. Communication**

No report.

##### **C. Daughtry Award of Merit**

No report.

##### **D. Legislative / Rules**

No report.

##### **E. Bench / Bar Forum**

No report.

##### **F. Access to Justice**

No report.

##### **G. Going Forward**

No report.

##### **H. New Technologies**

No report.

##### **I. Nominating**

No report.

## **VI. OLD BUSINESS**

The meeting focused on discussion of proposed attorney fee related rules.

### 1. Definitions

The EC thought the proposed amendment offered by Board staff is unnecessary. The definition of denied claim as “as claim for compensation on which an insurer or self-insured employer refuses to pay on the express ground that the injury or conditions for which compensation is claimed is not compensable or otherwise does not give rise to an entitlement to any compensation” is substantively correct and consistent with current practice.

Regarding the definition of expenses and costs, a majority of the EC felt no new rule was needed. The statute can be clarified, if necessary, through Board decisions and appeals.

### 3. Charge for Legal Services Must Be Authorized

EC recommended adoption.

### 4. Cost Bill Procedures

Staff comment, recommending inclusion of “unless a dispute arises” language, is appropriate.

### 5. Attorney Fee Lien Procedures

The proposal to replace “amount” with value is appropriate.

### 6. Maximum Attorney Fees Out of Compensation

Staff recommendation to include a reference to additional statutes is appropriate.

### 7. Request at Board Review Level for Assessed Fee

Request for fees should be served on attorneys, rather than on parties. (If a worker is not represented by an attorney, there will not be a fee.) Time of service (Section 2(c)) should incorporate “no later than 14 days” rather than “within 14 days.”

EC disagreed with Member Weddell’s proposal to substitute “may” for “shall” and thereby allow the Board to consider requests or responses that do not comply with the rule. Instead, EC recommends the following language:

(4) A request or response that does not comply with this rule shall not be considered by the Board in determining the amount of a reasonable assessed fee absent extraordinary circumstances.

8. Attorney Fee When There is No Hearing

No amendment to existing rule is needed.

9. Attorney fees When a Claimant Requests a Hearing on a Denied Claim

Board staff’s proposed amendment is reasonable.

10. Attorney Fees When a Claimant Requests a Hearing on a Responsibility Denial

Board staff’s suggestion to include the “before July 1” language is appropriate.

11. Attorney Fees When a Claimant Requests a hearing on Extent of Permanent Disability

No change in the existing rule is needed. The statute uses the term “permanent partial disability,” which includes impairment and disability awards.

12. Attorney Fees in Connection With Disputed Claim Settlements

The reference to “Administrative Law Judge provisions” is incorrect. Board staff’s recommendation to delete the reference is appropriate.

13. Attorney Fees when a Claimant Requests Review by the Board

EC recommends adoption of Board Staff’s proposed amendment.

14. Attorney Fees in Third-Party Cases

EC recommends adoption of Board Staff’s proposed amendment.

15. Attorney Fees in Cases Involving ORS 656.262(11)(a)

EC recommends adoption of Board Staff's proposed amendment.

2 & 16. General Principles;

No EC member advocated in favor of either proposal. The current system allows, but does not require, attorneys to submit fee petitions. EC members who represent injured workers thought this system worked reasonably well. EC members were concerned a rule requiring submission of fee petitions in every claim would require all parties –attorneys representing workers, defense attorneys, and administrative law judges – to devote a significant amount of time to litigation regarding fees. Yet, time is only one factor that should be considered when determining a reasonable fee. Administrative Law Judges have a significant work load now, and requiring them to consider merits of individual fee petitions in every claim would increase their work load and increase the time required to complete a decision. Additionally, attorneys representing workers might be unwilling to accept clients who live far away from their office because of a risk their travel time would not be compensated. This could have implications with respect to access to justice.

Rather than require submission of fee petitions, that Board might want to consider a rule that identifies the information that should be submitted when a petition is filed. EC did not discuss this proposal in detail or reach a consensus on this suggestion.

**VII. NEW BUSINESS**

No new business.

**VIII. ADJOURNMENT AND NEXT MEETING**

The Executive Committee Meeting adjourned at 1:30 p.m.

The next meeting will be on 11:00 a.m. on May 13, 2011, at Salishan..