



MEMORANDUM

TO: Members of the Senate Judiciary Committee
FROM: Alida Kass, Chief Counsel
SUBJECT: NJCJI's Opposition to Senate Bill 374
DATE: June 17, 2014

The New Jersey Civil Justice Institute is a statewide, bipartisan coalition of the state's largest employers, small businesses, and leading trade associations advocating for a fair and predictable civil justice system in New Jersey. On behalf of our members, **we respectfully oppose S-374.**

We appreciate the desire of the sponsors to ensure that employees who have suffered injuries receive adequate compensation. And we certainly understand that attorneys need to earn a living, also. But even more important is ensuring that injured employees receive prompt good faith offers of compensation. And if that can be accomplished without the help of attorneys threatening litigation, that is a good thing.

We do not believe plaintiff attorney recovery should be augmented at the expense of injured employees.

This legislation seeks to amend the formula for calculating attorneys' fees to be awarded for workers comp. judgments. The existing statute provides for fees based only on the portion of the judgment in excess of whatever compensation was promptly offered and paid to an employee. The proposed amendment would instead base the formula for attorney fees on the full amount of the recovery, regardless of how much of that recovery was achieved absent any attorney involvement, and would actually deduct that full amount from the employee's recovery.

The existing formula fosters good public policy in several ways. Most obviously, it encourages prompt, good faith payments to injured employees. It also ensures that the incentives for litigating claims are aligned with the incremental benefit of the potential litigation. And to the extent that the current formula dis-incentivizes unnecessary litigation, it ensures maximum compensation for employees at a minimum cost to employers. Keeping workers' comp. rates low also means more money available for employee compensation.

The proposed amendment, by contrast, would undo all of those beneficial incentives. Eliminating the potential savings for prompt settlements reduces the potential risk and costs of contesting claims, encouraging more delayed and contested settlements.

Compensating plaintiff's counsel for the entire award grants an unwarranted windfall to the attorney bringing the claim, at the expense of the injured employee. It also over-incentivizes litigation, eliminating the attorney's incentive to consider the likelihood that he will recover any additional compensation for the employee over what the defendant has already paid.

In short this legislation would undo each element of the existing, beneficial incentive structure, to the detriment of injured employees, for the benefit of the plaintiffs trial bar.

The New Jersey Civil Justice Institute respectfully requests a NO vote on S-374