



MEMORANDUM

TO: Members of the Assembly
FROM: Alida Kass, Chief Counsel
SUBJECT: NJCJI's Opposition to Assembly Bill 3403
DATE: December 16, 2015

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 A-3403.**

This bill would enhance plaintiff attorney recovery at the expense of injured employees in workers' compensation cases.

A-3403 seeks to amend the formula for calculating attorney fees to be awarded in workers' compensation judgments. Under current law, when a carrier makes a payment to an injured employee within the requisite window following an accident, the entire payment goes to that employee. Should the employee choose to seek additional compensation, he can also retain the services of an attorney. The attorney's fees will be based solely on the incremental benefit he has brought to the injured party – the portion in excess of whatever compensation was promptly offered and paid.

That existing formula fosters good public policy in several ways. It encourages prompt, good faith payments to injured employees, at a time when victims are often in particular need of assistance. It 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' compensation rates low of course also means more money is available for employee compensation.

The proposed legislation, by contrast, would amend the existing law to undo all of those beneficial incentives.

Rather than base attorney compensation on the incremental value brought by attorney involvement, it would instead base the formula on the full amount of the recovery, including the portion that the carrier was independently willing to pay. As amended in the Senate Judiciary Committee, the bill clarifies that the attorney fees will be based on the amount tendered after the

establishment of an attorney client relationship. Unfortunately, the clarification does not mitigate the damage this bill would do to existing incentives.

By eliminating the window of opportunity for carriers to make payments that go entirely to the injured party, this bill would weaken the carrier's incentive to make maximum payments as quickly as possible. And it would incentivize attorney involvement at an earlier stage of the process without regard to their incremental value. Tying the fees to the signing of an attorney client agreement simply incentivizes such agreements. And basing fees on total compensation means 20% of the payments that carriers would have made *absent any attorney involvement* will be diverted to attorneys instead of compensating victims.

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

The New Jersey Civil Justice Institute respectfully requests a NO vote on A-3403.