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No

P.L. 2002, CHAPTER 112, *approved December 11, 2002*
Senate, No. 1415 (*First Reprint*)

1 AN ACT concerning witness fees in workers' compensation cases and
2 amending R.S.34:15-64.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. R.S.34:15-64 is amended to read as follows:

8 34:15-64. a. The commissioner, director and the judges of
9 compensation may make such rules and regulations for the conduct of
10 the hearing not inconsistent with the provisions of this chapter as may,
11 in the commissioner's judgment, be necessary. The official conducting
12 any hearing under this chapter may allow to the party in whose favor
13 judgment is entered, costs of witness fees and a reasonable attorney
14 fee, not exceeding 20% of the judgment; and a reasonable fee not
15 exceeding ~~[\$250]~~ ¹~~[\$350]~~ \$400¹ for any one witness, except that the
16 following fees may be allowed for a medical witness:

17 (1) (a) A fee of not more than ~~[\$200]~~ ¹~~[\$300]~~ \$400¹ paid to an
18 evaluating physician for an opinion regarding the need for medical
19 treatment or for an estimation of permanent disability, if the physician
20 provides the opinion or estimation in a written report; and

21 (b) An additional fee of not more than ~~[\$250]~~ \$400 paid to the
22 evaluating physician who makes a court appearance to give testimony;
23 or

24 (2) (a) A fee of not more than ~~[\$250]~~ ¹~~[\$350]~~ \$450¹ paid to a
25 treating physician for the preparation and submission of a report
26 including the entire record of treatment, medical history, opinions
27 regarding diagnosis, prognosis, causal relationships between the
28 treated condition and the claim, the claimant's ability to return to work
29 with or without restrictions, what, if any, restrictions are appropriate,
30 and the anticipated date of return to work, and any recommendations
31 for further treatment; and

32 (b) (i) An additional fee of not more than ~~[\$250]~~ \$300 per hour,
33 with the total amount not to exceed ~~[\$1,500]~~ \$2,500, paid to the
34 treating physician who gives testimony concerning causal relationship,
35 ability to work or the need for treatment; or

36 (ii) An additional fee of not more than ~~[\$250]~~ \$300 per hour, with
37 the total amount not to exceed ~~[\$750]~~ \$1,500, paid to the treating
38 physician who gives a deposition concerning causal relationship, ability
39 to work or the need for treatment.

40 b. (1) No fee for an evaluating physician pursuant to this section

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AAP committee amendments adopted October 21, 2002.

1 shall be contingent on whether a judgment or award is or is not made
2 in favor of the petitioner.

3 (2) No evaluating or treating physician shall charge any fee for a
4 report, testimony or deposition in excess of the amount permitted
5 pursuant to the provisions of this section.

6 c. A fee shall be allowed at the discretion of the judge of
7 compensation when, in the official's judgment, the services of an
8 attorney and medical witnesses are necessary for the proper
9 presentation of the case. In determining a reasonable fee for medical
10 witnesses, the official shall consider (1) the time, personnel, and other
11 cost factors required to conduct the examination; (2) the extent,
12 adequacy and completeness of the medical evaluation; (3) the objective
13 measurement of bodily function and the avoidance of the use of
14 subjective complaints; and (4) the necessity of a court appearance of
15 the medical witness. When, however, at a reasonable time, prior to
16 any hearing compensation has been offered and the amount then due
17 has been tendered in good faith or paid within 26 weeks from the date
18 of the notification to the employer of an accident or an occupational
19 disease or the employee's final active medical treatment or within
20 26 weeks after the employee's return to work whichever is later or
21 within 26 weeks after employer's notification of the employee's death,
22 the reasonable allowance for attorney fee shall be based upon only that
23 part of the judgment or award in excess of the amount of
24 compensation, theretofore offered, tendered in good faith or paid.
25 When the amount of the judgment, or when that part of the judgment
26 or award in excess of compensation, offered, tendered in good faith or
27 paid as aforesaid, is less than \$200, an attorney fee may be allowed not
28 in excess of \$50.

29 d. All counsel fees of claimants' attorneys for services performed
30 in matters before the Division of Workers' Compensation, whether or
31 not allowed as part of a judgment, shall be first approved by the judge
32 of compensation before payment. Whenever a judgment or award is
33 made in favor of a petitioner, the judges of compensation or referees
34 of formal hearings shall direct amounts to be deducted for the
35 petitioner's expenses and to be paid directly to the persons entitled to
36 the same, the remainder to be paid directly to the petitioner.

37 (cf: P.L.1995, c.303, s.1)

38

39 2. This act shall take effect immediately.

40

41

42

43

44 _____
Concerns witness fees in workers' compensation cases.

SENATE, No. 1415

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED MARCH 26, 2002

Sponsored by:
Senator NIA H. GILL
District 34 (Essex and Passaic)

SYNOPSIS

Concerns witness fees in workers' compensation cases.

CURRENT VERSION OF TEXT

As introduced.



S1415 GILL

2

1 AN ACT concerning witness fees in workers' compensation cases and
2 amending R.S.34:15-64.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. R.S.34:15-64 is amended to read as follows:

8 34:15-64. a. The commissioner, director and the judges of
9 compensation may make such rules and regulations for the conduct of
10 the hearing not inconsistent with the provisions of this chapter as may,
11 in the commissioner's judgment, be necessary. The official conducting
12 any hearing under this chapter may allow to the party in whose favor
13 judgment is entered, costs of witness fees and a reasonable attorney
14 fee, not exceeding 20% of the judgment; and a reasonable fee not
15 exceeding **[\$250]** \$350 for any one witness, except that the following
16 fees may be allowed for a medical witness:

17 (1) (a) A fee of not more than **[\$200]** \$300 paid to an evaluating
18 physician for an opinion regarding the need for medical treatment or
19 for an estimation of permanent disability, if the physician provides the
20 opinion or estimation in a written report; and

21 (b) An additional fee of not more than **[\$250]** \$400 paid to the
22 evaluating physician who makes a court appearance to give testimony;
23 or

24 (2) (a) A fee of not more than **[\$250]** \$350 paid to a treating
25 physician for the preparation and submission of a report including the
26 entire record of treatment, medical history, opinions regarding
27 diagnosis, prognosis, causal relationships between the treated
28 condition and the claim, the claimant's ability to return to work with
29 or without restrictions, what, if any, restrictions are appropriate, and
30 the anticipated date of return to work, and any recommendations for
31 further treatment; and

32 (b) (i) An additional fee of not more than **[\$250]** \$300 per hour,
33 with the total amount not to exceed **[\$1,500]** \$2,500, paid to the
34 treating physician who gives testimony concerning causal relationship,
35 ability to work or the need for treatment; or

36 (ii) An additional fee of not more than **[\$250]** \$300 per hour, with
37 the total amount not to exceed **[\$750]** \$1,500, paid to the treating
38 physician who gives a deposition concerning causal relationship, ability
39 to work or the need for treatment.

40 b. (1) No fee for an evaluating physician pursuant to this section
41 shall be contingent on whether a judgment or award is or is not made
42 in favor of the petitioner.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

S1415 GILL

1 (2) No evaluating or treating physician shall charge any fee for a
2 report, testimony or deposition in excess of the amount permitted
3 pursuant to the provisions of this section.

4 c. A fee shall be allowed at the discretion of the judge of
5 compensation when, in the official's judgment, the services of an
6 attorney and medical witnesses are necessary for the proper
7 presentation of the case. In determining a reasonable fee for medical
8 witnesses, the official shall consider (1) the time, personnel, and other
9 cost factors required to conduct the examination; (2) the extent,
10 adequacy and completeness of the medical evaluation; (3) the objective
11 measurement of bodily function and the avoidance of the use of
12 subjective complaints; and (4) the necessity of a court appearance of
13 the medical witness. When, however, at a reasonable time, prior to
14 any hearing compensation has been offered and the amount then due
15 has been tendered in good faith or paid within 26 weeks from the date
16 of the notification to the employer of an accident or an occupational
17 disease or the employee's final active medical treatment or within 26
18 weeks after the employee's return to work whichever is later or within
19 26 weeks after employer's notification of the employee's death, the
20 reasonable allowance for attorney fee shall be based upon only that
21 part of the judgment or award in excess of the amount of
22 compensation, theretofore offered, tendered in good faith or paid.
23 When the amount of the judgment, or when that part of the judgment
24 or award in excess of compensation, offered, tendered in good faith or
25 paid as aforesaid, is less than \$200, an attorney fee may be allowed not
26 in excess of \$50.

27 d. All counsel fees of claimants' attorneys for services performed
28 in matters before the Division of Workers' Compensation, whether or
29 not allowed as part of a judgment, shall be first approved by the judge
30 of compensation before payment. Whenever a judgment or award is
31 made in favor of a petitioner, the judges of compensation or referees
32 of formal hearings shall direct amounts to be deducted for the
33 petitioner's expenses and to be paid directly to the persons entitled to
34 the same, the remainder to be paid directly to the petitioner.

35 (cf: P.L.1995, c.303, s.1)

36
37 2. This act shall take effect immediately.
38
39

40 **STATEMENT**

41
42 This bill increases the maximum fee for a witness allowed in a
43 workers' compensation case from \$250 to \$350, except for the
44 following fee increases:

45 1. The fee for an evaluating physician for an opinion regarding the
46 need for medical treatment or for an estimation of permanent disability

S1415 GILL

- 1 is increased from \$200 to \$300;
- 2 2. The additional fee for an evaluating physician for a court
3 appearance to give testimony is increased from \$250 to \$400;
- 4 3. The fee paid to a treating physician for a written report is
5 increased from \$250 to \$350;
- 6 4. The additional fee paid to a treating physician giving testimony
7 concerning causal relationship, ability to work or the need for
8 treatment is increased from \$250 per hour to \$300 per hour, with the
9 total maximum amount increased from \$1,500 to \$2,500; and
- 10 5. The additional fee paid to a treating physician giving a
11 deposition concerning causal relationship, ability to work or the need
12 for treatment is increased from \$250 per hour to \$300 per hour, with
13 the total maximum amount increased from \$750 to \$1,500.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 1415

STATE OF NEW JERSEY

DATED: MAY 9, 2002

The Senate Labor Committee reports favorably Senate Bill No. 1415.

This bill increases the maximum fee for a witness allowed in a workers' compensation case from \$250 to \$350, except for the following fee increases:

1. The fee for an evaluating physician for an opinion regarding the need for medical treatment or for an estimation of permanent disability is increased from \$200 to \$300;

2. The additional fee for an evaluating physician for a court appearance to give testimony is increased from \$250 to \$400;

3. The fee paid to a treating physician for a written report is increased from \$250 to \$350;

4. The additional fee paid to a treating physician giving testimony concerning causal relationship, ability to work or the need for treatment is increased from \$250 per hour to \$300 per hour, with the total maximum amount increased from \$1,500 to \$2,500; and

5. The additional fee paid to a treating physician giving a deposition concerning causal relationship, ability to work or the need for treatment is increased from \$250 per hour to \$300 per hour, with the total maximum amount increased from \$750 to \$1,500.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 1415

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 21, 2002

The Assembly Appropriations Committee reports favorably Senate Bill No. 1415, with committee amendments.

Senate Bill No. 1415, as amended, increases the maximum fee for a witness allowed in a workers' compensation case from \$250 to \$400, except for the following fee increases:

1. The fee for an evaluating physician for an opinion regarding the need for medical treatment or for an estimation of permanent disability is increased from a maximum of \$200, to a maximum of \$400;
2. The additional fee for an evaluating physician for a court appearance to give testimony is increased from a maximum of \$250 to a maximum of \$400;
3. The fee paid to a treating physician for a written report is increased from maximum of \$250 to a maximum of \$450;
4. The additional fee paid to a treating physician giving testimony concerning causal relationship, ability to work or the need for treatment is increased from \$250 per hour to \$300 per hour, with the total maximum amount increased from \$1,500 to \$2,500; and
5. The additional fee paid to a treating physician giving a deposition concerning causal relationship, ability to work or the need for treatment is increased from \$250 per hour to \$300 per hour, with the total maximum amount increased from \$750 to \$1,500.

As amended and reported by the committee, this bill is identical to Assembly Bill No. 1836 (1R) as also amended and reported by the committee.

FISCAL IMPACT:

This bill was not certified as requiring a fiscal note. It is not anticipated that this bill will significantly impact workers' compensation costs.

COMMITTEE AMENDMENTS:

The amendments increase the new maximum general fee for witnesses from \$350 to \$400; increase the new maximum fee amount for an evaluating physician from \$300 to \$400; and increase the new maximum fee for the submission of a report by a treating physician from \$350 to \$450.

ASSEMBLY, No. 1836

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED FEBRUARY 21, 2002

Sponsored by:

Assemblyman NEIL M. COHEN

District 20 (Union)

SYNOPSIS

Concerns witness fees in workers' compensation cases.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning witness fees in workers' compensation cases and
2 amending R.S.34:15-64.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. R.S.34:15-64 is amended to read as follows:

8 34:15-64. a. The commissioner, director and the judges of
9 compensation may make such rules and regulations for the conduct of
10 the hearing not inconsistent with the provisions of this chapter as may,
11 in the commissioner's judgment, be necessary. The official conducting
12 any hearing under this chapter may allow to the party in whose favor
13 judgment is entered, costs of witness fees and a reasonable attorney
14 fee, not exceeding 20% of the judgment; and a reasonable fee not
15 exceeding **[\$250]** \$350 for any one witness, except that the following
16 fees may be allowed for a medical witness:

17 (1) (a) A fee of not more than **[\$200]** \$300 paid to an evaluating
18 physician for an opinion regarding the need for medical treatment or
19 for an estimation of permanent disability, if the physician provides the
20 opinion or estimation in a written report; and

21 (b) An additional fee of not more than **[\$250]** \$400 paid to the
22 evaluating physician who makes a court appearance to give testimony;
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24 (2) (a) A fee of not more than **[\$250]** \$350 paid to a treating
25 physician for the preparation and submission of a report including the
26 entire record of treatment, medical history, opinions regarding
27 diagnosis, prognosis, causal relationships between the treated
28 condition and the claim, the claimant's ability to return to work with
29 or without restrictions, what, if any, restrictions are appropriate, and
30 the anticipated date of return to work, and any recommendations for
31 further treatment; and

32 (b) (i) An additional fee of not more than **[\$250]** \$300 per hour,
33 with the total amount not to exceed **[\$1,500]** \$2,500, paid to the
34 treating physician who gives testimony concerning causal relationship,
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36 (ii) An additional fee of not more than **[\$250]** \$300 per hour, with
37 the total amount not to exceed **[\$750]** \$1,500, paid to the treating
38 physician who gives a deposition concerning causal relationship, ability
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41 shall be contingent on whether a judgment or award is or is not made
42 in favor of the petitioner.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 (2) No evaluating or treating physician shall charge any fee for a
2 report, testimony or deposition in excess of the amount permitted
3 pursuant to the provisions of this section.

4 c. A fee shall be allowed at the discretion of the judge of
5 compensation when, in the official's judgment, the services of an
6 attorney and medical witnesses are necessary for the proper
7 presentation of the case. In determining a reasonable fee for medical
8 witnesses, the official shall consider (1) the time, personnel, and other
9 cost factors required to conduct the examination; (2) the extent,
10 adequacy and completeness of the medical evaluation; (3) the objective
11 measurement of bodily function and the avoidance of the use of
12 subjective complaints; and (4) the necessity of a court appearance of
13 the medical witness. When, however, at a reasonable time, prior to
14 any hearing compensation has been offered and the amount then due
15 has been tendered in good faith or paid within 26 weeks from the date
16 of the notification to the employer of an accident or an occupational
17 disease or the employee's final active medical treatment or within 26
18 weeks after the employee's return to work whichever is later or within
19 26 weeks after employer's notification of the employee's death, the
20 reasonable allowance for attorney fee shall be based upon only that
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22 compensation, theretofore offered, tendered in good faith or paid.
23 When the amount of the judgment, or when that part of the judgment
24 or award in excess of compensation, offered, tendered in good faith or
25 paid as aforesaid, is less than \$200, an attorney fee may be allowed not
26 in excess of \$50.

27 d. All counsel fees of claimants' attorneys for services performed
28 in matters before the Division of Workers' Compensation, whether or
29 not allowed as part of a judgment, shall be first approved by the judge
30 of compensation before payment. Whenever a judgment or award is
31 made in favor of a petitioner, the judges of compensation or referees
32 of formal hearings shall direct amounts to be deducted for the
33 petitioner's expenses and to be paid directly to the persons entitled to
34 the same, the remainder to be paid directly to the petitioner.

35 (cf. P.L.1995, c.303, s.1)

36
37 2. This act shall take effect immediately.
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39

40 STATEMENT
41

42 This bill increases the maximum fee for a witness allowed in a
43 workers' compensation case from \$250 to \$350, except for the
44 following fee increases:

45 1. The fee for an evaluating physician for an opinion regarding the
46 need for medical treatment or for an estimation of permanent disability

A1836 COHEN

- 1 is increased from \$200 to \$300;
- 2 2. The additional fee for an evaluating physician for a court
3 appearance to give testimony is increased from \$250 to \$400;
- 4 3. The fee paid to a treating physician for a written report is
5 increased from \$250 to \$350;
- 6 4. The additional fee paid to a treating physician giving testimony
7 concerning causal relationship, ability to work or the need for
8 treatment is increased from \$250 per hour to \$300 per hour, with the
9 total maximum amount increased from \$1,500 to \$2,500; and
- 10 5. The additional fee paid to a treating physician giving a
11 deposition concerning causal relationship, ability to work or the need
12 for treatment is increased from \$250 per hour to \$300 per hour, with
13 the total maximum amount increased from \$750 to \$1,500.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1836

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 13, 2002

The Assembly Labor Committee reports favorably Assembly, No. 1836, with committee amendments.

As amended by the committee, this bill increases the maximum fee for a witness allowed in a workers' compensation case from \$250 to \$350, except for the following fee increases:

1. The fee for an evaluating physician for an opinion regarding the need for medical treatment or for an estimation of permanent disability is increased from a maximum of \$200, with no minimum, to a minimum of \$300 and a maximum of \$400;

2. The additional fee for an evaluating physician for a court appearance to give testimony is increased from a maximum of \$250, with no minimum, to a minimum of \$400 and a maximum of \$500;

3. The fee paid to a treating physician for a written report is increased from \$250 to \$350;

4. The additional fee paid to a treating physician giving testimony concerning causal relationship, ability to work or the need for treatment is increased from \$250 per hour to \$300 per hour, with the total maximum amount increased from \$1,500 to \$2,500; and

5. The additional fee paid to a treating physician giving a deposition concerning causal relationship, ability to work or the need for treatment is increased from \$250 per hour to \$300 per hour, with the total maximum amount increased from \$750 to \$1,500.

COMMITTEE AMENDMENTS

The committee amendments change the increase in fees for evaluating physicians. The unamended bill raised the maximum fee for an opinion by an evaluating physician from \$200 to \$300 and, like the current law, set no minimum fee, while the committee amendments set a minimum fee of \$300 and a maximum fee of \$400. In a case where the evaluating physician makes a court appearance to give testimony, the unamended bill raised the maximum fee for an opinion by an evaluating physician from \$250 to \$400 and, like the current law, set no minimum fee, while the committee amendments set a minimum fee of \$400 and a maximum fee of \$500.

MINORITY STATEMENT
by Assemblyman GREGG

This bill increases witness fees in workers' compensation cases. While this legislation, considered in a vacuum, may not *significantly* impact workers' compensation costs, it will add to the existing pressures on current insurance rates. The current economic environment indicates that workers' compensation rates will increase in 2003. According to the New Jersey Manufacturers Insurance Company, this rate increase will range between 6-10% due to inflation of medical costs, decreased investment returns and soaring reinsurance rates due to general economic conditions and the impact of the September 11 catastrophes. Costs associated with this bill will be in addition to those already projected.

This bill will exacerbate the problem of increased costs in the workers' compensation system and further accentuate the spiraling inflation of insurance fees across the state.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 1836

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 21, 2002

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1836 (1R), with committee amendments.

Assembly Bill No. 1836 (1R), as amended, increases the maximum fee for a witness allowed in a workers' compensation case from \$250 to \$400, except for the following fee increases:

1. The fee for an evaluating physician for an opinion regarding the need for medical treatment or for an estimation of permanent disability is increased from a maximum of \$200, to a maximum of \$400;

2. The additional fee for an evaluating physician for a court appearance to give testimony is increased from a maximum of \$250 to a maximum of \$400;

3. The fee paid to a treating physician for a written report is increased from maximum of \$250 to a maximum of \$450;

4. The additional fee paid to a treating physician giving testimony concerning causal relationship, ability to work or the need for treatment is increased from \$250 per hour to \$300 per hour, with the total maximum amount increased from \$1,500 to \$2,500; and

5. The additional fee paid to a treating physician giving a deposition concerning causal relationship, ability to work or the need for treatment is increased from \$250 per hour to \$300 per hour, with the total maximum amount increased from \$750 to \$1,500.

As amended and reported by the committee, this bill is identical to Senate Bill No. 1415 as also amended and reported by the committee.

FISCAL IMPACT:

This bill was not certified as requiring a fiscal note. It is not anticipated that this bill will significantly impact workers' compensation costs.

COMMITTEE AMENDMENTS:

The amendments increase the new maximum general fee for witnesses from \$350 to \$400; eliminate a minimum fee amount for an evaluating physician; eliminate a minimum fee for an evaluating

physician who makes a court appearance and decrease the new maximum fee from \$500 to \$400; and increase the new maximum fee for the submission of a report by a treating physician from \$350 to \$450.