

Interested Party testimony on HB 80
Offered by Chelsea Fulton Rubin
On behalf of the Ohio Association for Justice
Before the House Insurance Committee
May 21, 2019

Good morning, Chairman Brinkman and members of the House Insurance Committee. My name is Chelsea Fulton Rubin, and I am an attorney at Philip J. Fulton Law Office, where I exclusively represent injured workers as well as disabled individuals and children seeking Social Security Disability insurance. I am here to provide testimony on House Bill 80 on behalf of the Ohio Association for Justice, a statewide association of attorneys whose mission is to protect access to the civil justice system. OAJ includes among its membership most of the attorneys who represent and assist injured workers with their workers' compensation claims in Ohio. I would first like to thank Administrator-CEO McCloud and Chairman Brinkman for meeting with OAJ and discussing our legislative priorities and workers' compensation wish list.

Chairman Brinkman asked OAJ to compose a wish list, so we created a list of priorities, regardless of political viability, that would make the Ohio workers' compensation system work better for all stakeholders, as well as provide benefits to injured workers that have been eroded through Supreme Court decisions. I am here to testify as an Interested Party; while OAJ supports the funding of the BWC, we are withholding judgment on House Bill 80 until we know what will be in the legislation. However, I would like to address three of our priorities that we included in our wish list today.

First, OAJ seeks to eliminate a state-fund employer's authority to veto a settlement when the claim is no longer in the employer's experience, and the employee is no longer employed by the employer under R.C. 4123.65. A state-fund employer should not have the power to veto a settlement application if the employer is no longer impacted. This practice creates bad policy for the workers' compensation system as it makes it more difficult to settle claims.

Second, the BWC should be prohibited from denying a claim for jurisdictional reasons if the employer and employee agree it should be an Ohio claim under R.C. 4123.54. For example, when an employer pays workers' compensation premiums for the injured worker in Ohio, and both the employer and injured employee assert that they want it to be an Ohio claim, the BWC should not be able to deny the claim for jurisdictional reasons. The current policy often prevents workers from having a compensable claim in any state, or it leads them to file a claim in a state where they do not live, making it difficult to get treatment.

Last, OAJ wishes to restore prior law that allowed psychological injuries to be compensable when they accompanied physical injuries under R.C. 4123.01(C). In a 2013 Supreme Court decision, *Armstrong v. Jurgensen*, 2013-Ohio-2237, the Court adopted a new standard that requires a psychological injury to be caused by a physical injury in order to be compensable. This activist decision disturbed over one hundred years of jurisprudence, as Ohio workers formerly had to have a physical injury in addition to a psychological injury for the latter to be compensable. Now, injured workers are prevented from getting medical treatment for any psychological diagnosis unless they are able to prove that the psychological diagnosis was caused by the physical diagnosis. OAJ wants the Ohio General Assembly to restore prior law and allow Ohio injured workers to get treatment and compensation for psychological conditions as long as they arise from the workplace accident.

Thank you for allowing me to testify today on behalf of OAJ. I am happy to answer any questions your may have.