

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

LORI KEELE,

Claimant,

v.

CITIBANK,

Employer,

and

INSURANCE COMPANY OF
PENNSYLVANIA,

Surety,
Defendants.

IC 2013-034253

ORDER ON ATTORNEY'S FEES

**FILED MAY 28, 2026
IDAHO INDUSTRIAL COMMISSION**

INTRODUCTION

Claimant Lori Keele was injured on December 22, 2013, when she slipped on ice in her employer's parking lot and hit her head. She is represented by Taylor Mossman-Fletcher. Defendants, Citibank, and Surety, Insurance Company of the State of Pennsylvania, are represented by Mark Sebastian. Referee John Hummel conducted a hearing on November 4, 2024, and issued a second Findings of Fact and Conclusions of Law ("2024 Recommendation") on January 20, 2026, which was adopted by the full Commission. In this 2024 Recommendation, it was found that Defendants unreasonably delayed and denied payment of Claimant's proper medical expenses and temporary disability benefits and found that Claimant is entitled to collect attorney fees. *Findings of Fact and Conclusions of Law*, at 67. As is standard, the Commission directed the parties to address the factors identified in *Hogaboom v. Economy Mattress*, 107 Idaho 13, 684 P.2d 990 (1984).

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Claimant filed a Stipulation To Extend Deadline To File Plaintiff's Memorandum Of Attorney Fees ("Stipulation") on February 9, 2026. On February 10, 2026, the Commission granted the extension requested in the Stipulation. Plaintiff's attorney filed a Memorandum of Attorney Fees, along with a Declaration, on March 3, 2026, requesting an award of \$104,895.00, which was calculated multiplying 299.7 hours of work by the hourly rate of \$350 per hour. If a contingency fee is awarded, Claimant seeks fees of \$65,482.08.

Defendants filed a Memorandum in Opposition on March 24, 2026, contesting both the hourly rate applied over the years of litigation and also the total billable time. Claimant filed a Reply on March 31, 2026, maintaining that the requested award for attorney fees was reasonable.

On April 1, 2026, Defendants filed a Motion to Strike Claimant's Reply to Defendants' Memorandum in Opposition to Claimant's Memorandum of Attorney Fees ("Motion to Strike"). Defendants argue that there is no provision in the Judicial Rules of Practice and Procedure (JRP) which allows for a reply brief from the Claimant. Claimant filed a response to the Motion to Strike on April 2, 2026, arguing that a reply brief was allowed per the Commissions January 20, 2026, Order.

The Commission hereby DENIES Defendants' Motion to Strike.

DISCUSSION

Idaho Code § 72-804 provides that attorney fees may be awarded where an employer or surety denies or delays payment of benefits without reasonable grounds. In *Hogaboom v. Economy Mattress*, 107 Idaho 13, 684 P.2d 990 (1984), the Idaho Supreme Court listed the factors that the Commission is to consider in awarding attorney fees on a contingency basis under I.C. § 72-804. The relevant factors include:

- (1) the anticipated time and labor required to perform the legal services properly;
- (2) the novelty and difficulty of the legal issues involved in the matter; (3) the

fees customarily charged for similar legal services; (4) the possible total recovery if successful; (5) the time limitations imposed by the client or circumstances of the case; (6) the nature and length of the attorney-client relationship; (7) the experience, skill and reputation of the attorney; (8) the ability of the client to pay for the legal services to be rendered; and (9) the risk of no recovery.

Hogaboom, 107 Idaho at 15, 684 P.2d at 992 (quoting *Clark v. Sage*, 102 Idaho 261, 265– 66, 629 P.2d 657 (1981)).

By analyzing these factors, the Court sought to further the legislative intent to encourage attorneys to represent claimants whose cases may not otherwise prove financially lucrative, while also discouraging employers and sureties from delaying or denying their obligations to an injured worker. The Commission is not, however, required to specifically address each factor, nor is it required to make specific findings showing how each factor entered into its decision. *Swett v. St. Alphonsus Regional Medical Center*, 136 Idaho 74, 29 P.3d 585 (2001).

Given that a hearing occurred in this matter, per IDAPA and the agreement made between Claimant and counsel, the presumed fee in this case would be thirty (30%) of the benefits awarded to Claimant. Upon analyzing the arguments of the parties and relevant factors, discussed below, we find it reasonable to award attorney fees on a contingent basis.

Hogaboom Factors

Of all of the factors considered, Claimant emphasized the anticipated time and labor required; the novelty and difficulty of the legal issues involved; and the fees customarily charged for similar legal services. *Claimant's Memorandum of Attorney Fees*, at 5-7.

The anticipated time and labor required to perform the legal services properly

Claimant's Attorney invested a substantial amount of time in this case. *See Exhibit B* to the Declaration of Taylor L. Mossman-Fletcher. As acknowledged by Claimant, it would be unduly burdensome to separate the time spent on the medical and TTDs benefits from other benefits, such as the PPD award. *Id.* at 5. Defendant objected to relying on the comprehensive

billable hour ledger as overstating the work performed related to the attorney fee award, and criticized the requested \$350 hourly rate as inconsistent with the Attorney-Client agreement.

As detailed in Claimant's Memorandum of Attorney Fees, Claimant's benefits had all been suspended at the time that Attorney Mossman-Fletcher was retained. *Claimant's Memorandum*, at 5; *Keele January 2026 Recommendation*, at 2. The Referee's first hearing was held in August of 2017, which was followed by a second hearing in December of 2017 and several post-hearing depositions. *Id.* When concerns with Claimant's cervical spine condition arose, Attorney Mossman-Fletcher filed a Motion to Reopen the Record for Additional Medical Evidence and Post-Hearing Depositions, or Alternatively, Set a Briefing Schedule; the Referee would subsequently hold an emergency hearing in July of 2022. *Id.* at 2-3. In 2023, the Commission adopted the Referee's recommendation that the cervical surgery was compensable, while reserving all other issues. *Id.* at 3. The Referee held a hearing in November of 2024, on the remaining issues.

It is understandable that Attorney Mossman-Fletcher's records were comprehensible and that her hourly rate increased over the course of her lengthy representation of Claimant. The Commission is persuaded that Mossman-Fletcher invested significant time and resources into her representation of Claimant, and this factor weighs in Claimant's favor.

The novelty and difficulty of the legal issues involved in the matter

Claimant contends that this case was unquestionably difficult, and the Commission agrees. Attorney Mossman-Fletcher points to the combination of the extensive medical records and delays of Claimant's treatment. Defendants disagree and argue that a voluminous record does not equate novelty or difficulty. In its 2024 Recommendation the Commission described the case in the following way:

The record in this case is voluminous. The 71 exhibits, as supplemented, comprise some 18 volumes, amounting to thousands of pages of records. The record includes transcripts of four different hearing dates. The record also includes 17 depositions, including the depositions of Claimant and her husband and numerous expert witnesses.

Findings of Fact and Conclusions of Law (filed January 20, 2026), at 2.

Although there were no novel legal issues presented in Claimant's case, the sheer volume and lifespan of the case contributed to its inherent difficulty, and this is a factor which the Commission will consider when making a determination on attorney fees.

The fees customarily charged for similar legal services.

Included in Claimant Attorney's Declaration is an exhibit with the Declarations of seven individual attorneys and their current hourly rate. These Declarations contain the current hourly rate charged by the respective attorneys, and provides context on the present market rates for attorneys. Because the rates all reflect current pricing structures, they do not assist us in determining historical charging practices or understanding Claimant's individual agreement with Attorney Mossman-Fletcher.

Overall Hogaboom Factors Analysis

Because Idaho Code § 72-804 provides for "reasonable attorney fees" and does not specify whether those fees ought to be based on a contingency fee agreement, or an hourly billable rate, it is within the discretion of the Commission to award fees using the contingency approach. The Commission has previously held that the IDAPA regulations contemplating contingency fee agreements are a "reasonable interpretation" of the power vested in the Commission by the Legislature. *Laurel Kulm, Claimant*, No. IC 2006-012770, 2010 WL 2187423, at *7 (Idaho Ind. Com. May 20, 2010).

Because of the inherent difficulty in separating the time expended on the benefits obtained related to the attorney fee, Claimant's signed fee agreement, and because of Defendants strong objections to basing the Idaho Code § 72-804 award on hourly fees, the Commission finds it reasonable to award fees of \$65,482.08 per the contingency fee arrangement.

CONCLUSION

Claimant is entitled to a reasonable attorney fee pursuant to Idaho Code § 72-804 in the amount of \$65,482.08.

ORDER

Based on the foregoing, IT IS HEREBY ORDERED:

1. Claimant is entitled to a reasonable attorney fee pursuant to Idaho Code § 72-804 in the amount of \$65,482.08.
2. This is a final order under Idaho Code § 72-718.

DATED this 28th day of May, 2026.

INDUSTRIAL COMMISSION

Claire Sharp

Claire Sharp, Chair



Aaron White

Aaron White, Commissioner

ATTEST:

M. Womer

Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on 28th day of May, 2026, a true and correct copy of the foregoing **ORDER ON ATTORNEY'S FEES** was served upon the following:

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