March 13, 2025

TO: Members of the House Judiciary Committee

FR: Paloma Sparks, Oregon Business & Industry

RE: SB 926 – Undermining Legal Processes

Chair Kropf, members of the committee. For the record, I am Paloma Sparks, Executive Vice President & General Counsel for Oregon Business & Industry (OBI).

OBI is a statewide association representing businesses from a wide variety of industries and from each of Oregon's 36 counties. In addition to being the statewide chamber of commerce, OBI is the state affiliate for the National Association of Manufacturers and the National Retail Federation. Our 1,600 member companies, over 75% of which are small businesses, employ more than 250,000 Oregonians. Oregon's private sector businesses help drive a healthy, prosperous economy for the benefit of everyone.

OBI's interest in this bill is not specific to this litigation. Instead, our concern is the fact that the bill sets a precedent of the legislature interfering in the judicial process and undermining the key principles of separation of powers. We are alarmed at the possibility that OTLA or others can turn to the legislature to further penalize parties for availing themselves of our legal processes. We are extremely concerned about the possibility of the legislature deciding who is or is not worthy of due process. What happens in the next class action suit? What sort of precedent does this establish when the state is a defendant? Your own lawyers would never allow the state to agree to give up their right to appeal.

The bill proposes to impose prejudgment interest on the damage awards in this case. First, plaintiffs' attorneys made that motion at trial and that motion was denied. Second, such interest is generally limited to contract claims or lost wages, losses that can be readily ascertained and already have specific dollar amounts associated with them at the date specified. Traditionally, post-judgment interest has not been assessed in personal injury judgments, instead interest accrues from the date the judgment is entered.

SB 926 also contains language prohibiting investor-owned utilities from distributing dividends. Our understanding is that the intent behind this language is to ensure that the defendant is properly capitalized to pay the judgment. However, preventing investor-owned utilities from distributing dividends is the surest way to ensure the company is undercapitalized because investors will abandon them and drain the company of essential resources. This language could also interfere with a company's obligations to distribute contributions to employee retirement plans.

The trial lawyers have articulated a concern that the defendant will try to move funds to another entity and then bankrupt the company that is liable. First, courts have amble authority to prevent or reject such actions and have exercised this power when needed and have identified such transfers as fraudulent transfers. If legislative language is needed, there are better ways to go about achieving that goal.

Bill proponents seem to be attempting to prevent a party from exercising their appeal rights by imposing new and unheard-of penalties if judgments are paid after the date this bill would go into effect. The bill would require the defendant to pay any taxes owed on judgments after January 1, 2026, even though the IRS clearly identifies this as income to the plaintiff. As we understand it, in cases like this where an appeal is pending, the proper procedure is for the defendant to post a bond which they have done in this case. If the bond is insufficient, that seems to be a question that should be before the trial court, not the legislature.

Finally, it is alarming that this bill seems to be putting itself in the place of the courts by imposing new requirements on judgments already issued between January 1, 2020 and January 1, 2025.