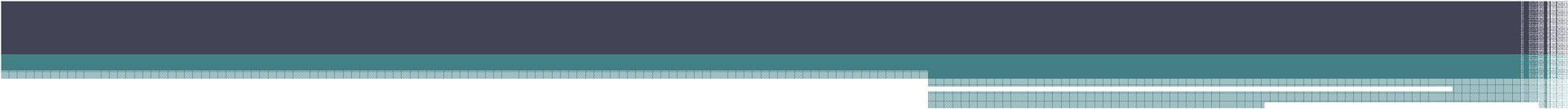


# Attorney Fees in the Oregon Workers' Compensation System

Mike Manley, DCBS Central Services Div.

*An Overview for the  
Management Labor Advisory Committee  
December 11, 2014*



# Overview

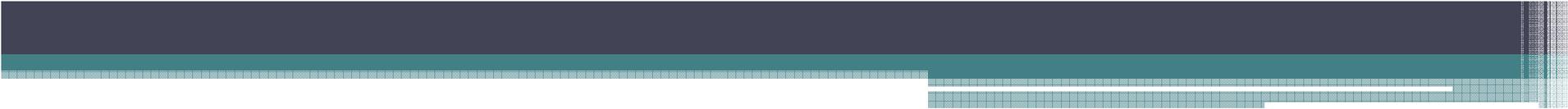
System objectives

Reasons for fees, and who pays them

Recent history

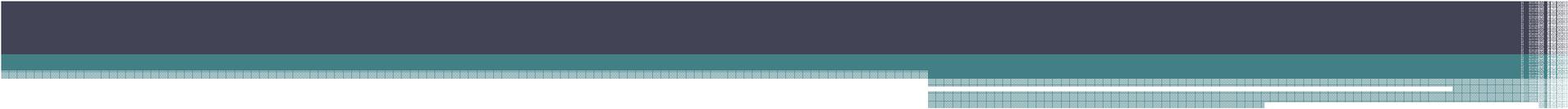
Trends in workload and fees

Terminology



## Five System Objectives (ORS 656.012)

- To provide, regardless of fault, sure, prompt and complete medical treatment for injured workers and fair, adequate and reasonable income benefits to injured workers and their dependents

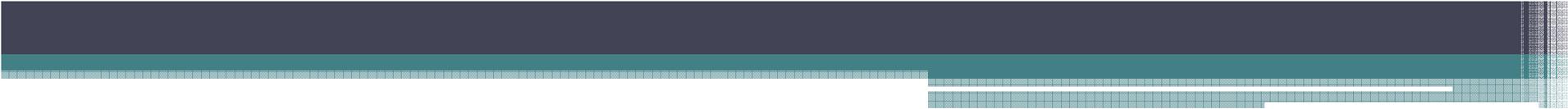


## System Objectives (continued)

- To provide a fair and just administrative system for delivery of medical and financial benefits to injured workers that reduces litigation and eliminates the adversary nature of the compensation proceedings, to the greatest extent practicable

# System Objectives (continued)

- To restore the injured worker physically and economically to a self-sufficient status
- To encourage maximum employer implementation of accident study, analysis and prevention programs
- To provide the sole and exclusive source and means by which subject workers, their beneficiaries and anyone otherwise entitled... shall seek and qualify for remedies for such conditions



## Reasons for claimant attorney fees

- Reversing a denial
- Obtaining an increase in compensation
- Getting Penalties/Sanctions
- Preventing a decrease in compensation
- Negotiating Settlements

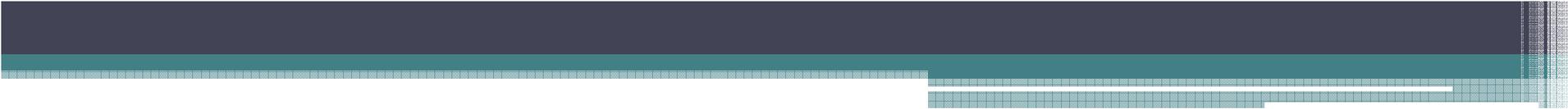
# Sources of claimant fees

## Out-of-compensation fee

- Paid out of worker's award or settlement
- Based on % formula
- Typically for settlements or disability benefits increase
- Limits in statute and rules

## Assessed fee

- Paid by insurer/SI, in addition to compensation
- Does not reduce benefits to worker
- Not based on % formula
- Based on adjudicator's judgment of reasonable fee

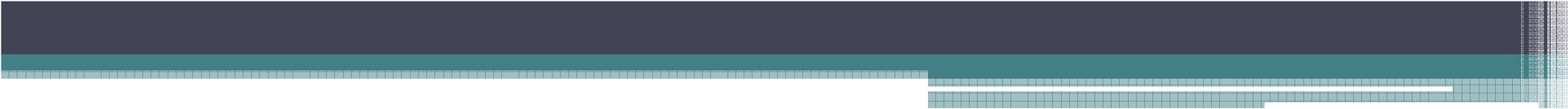


# General principles for a “reasonable” assessed fee (*WCB and WCD Rules*)

- Time devoted
- Complexity of the issues
- Value of the interest involved
- Skill of the attorneys
- Nature of the proceedings
- Benefit secured
- Risk of the attorney going uncompensated
- Frivolous issues or defenses

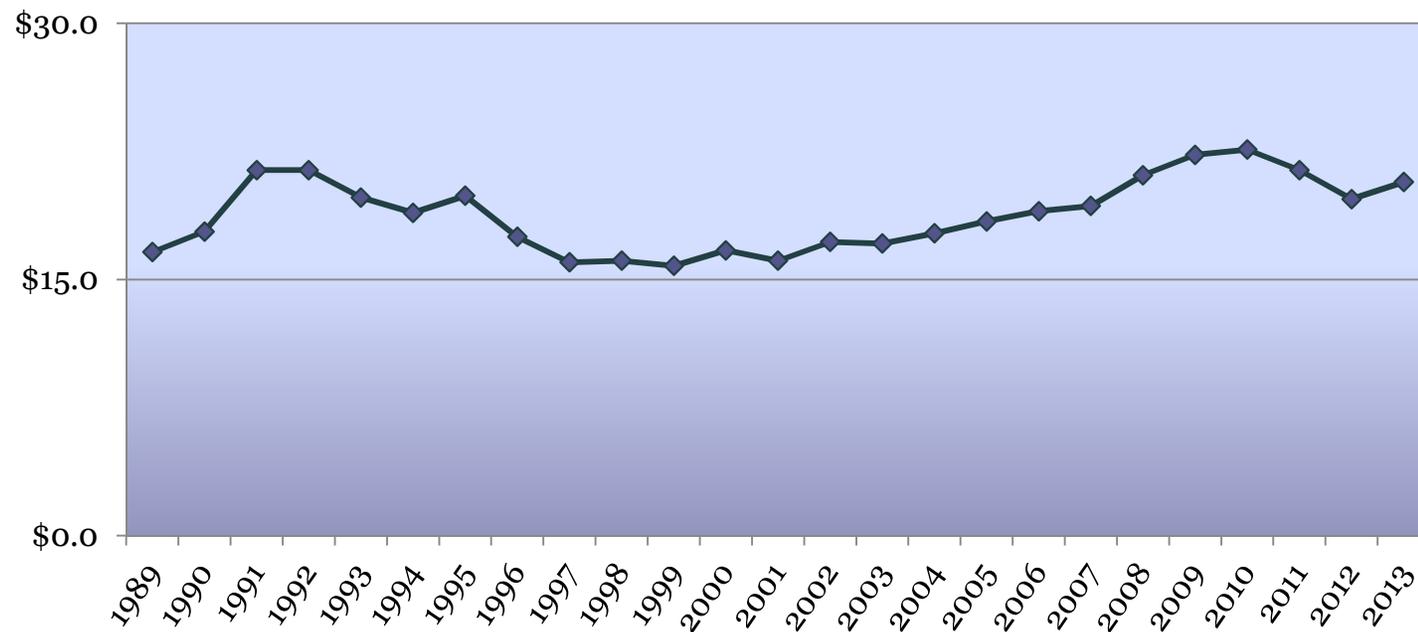
# Recent History

- 1999: Threshold change for settlement fees
- 2003: Penalty amount to worker with an employer-paid atty fee (matrix for penalty fees)
- 2003: Fees for medical & vocational disputes (WCD rules use “factor” approach.)
- 2007: Litigation costs paid for denied claims
- 2007: Attorney fee liens if attorney was instrumental in obtaining compensation
- 2009: Fees available in new circumstances; fee caps indexed to inflation
- 2013: Report on 2009 change: no major system cost impact identified

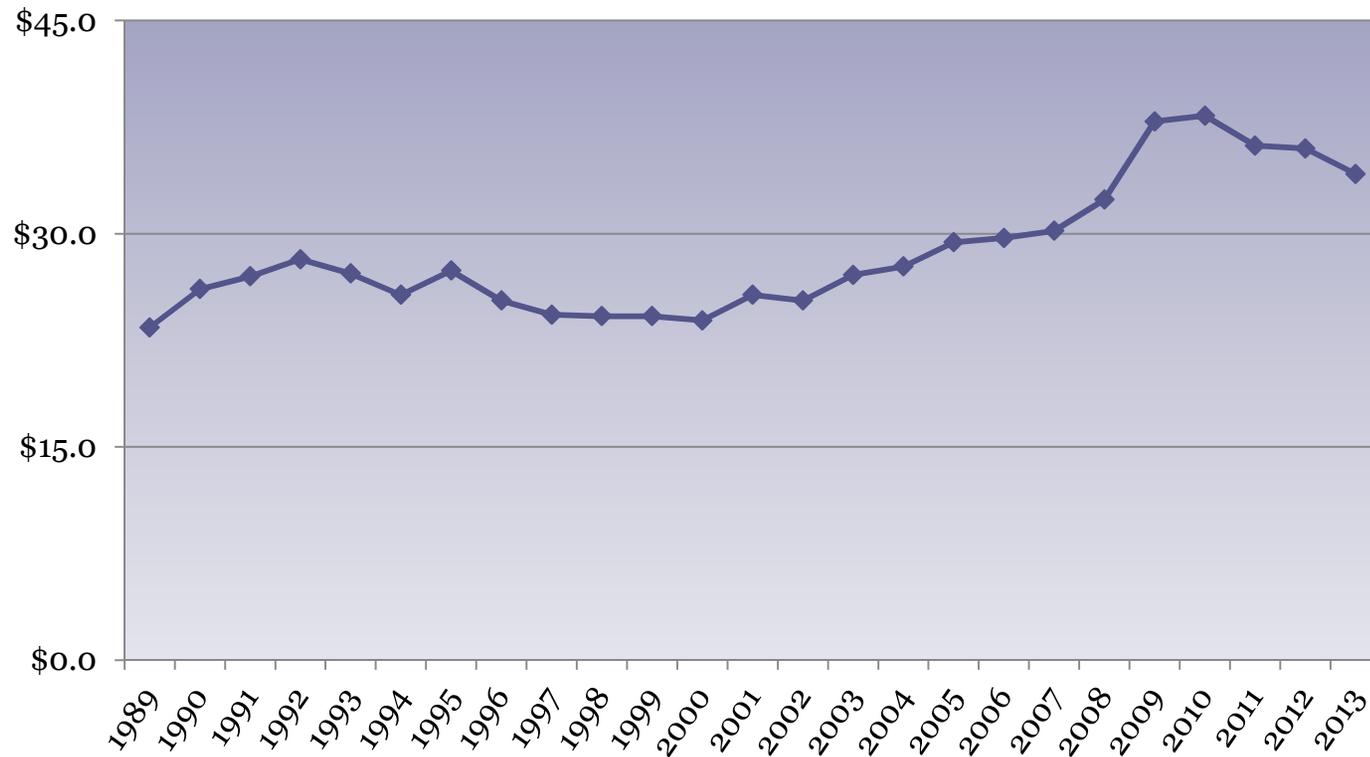


# System trends

# Claimant Fee trends 1989-present (\$ millions)

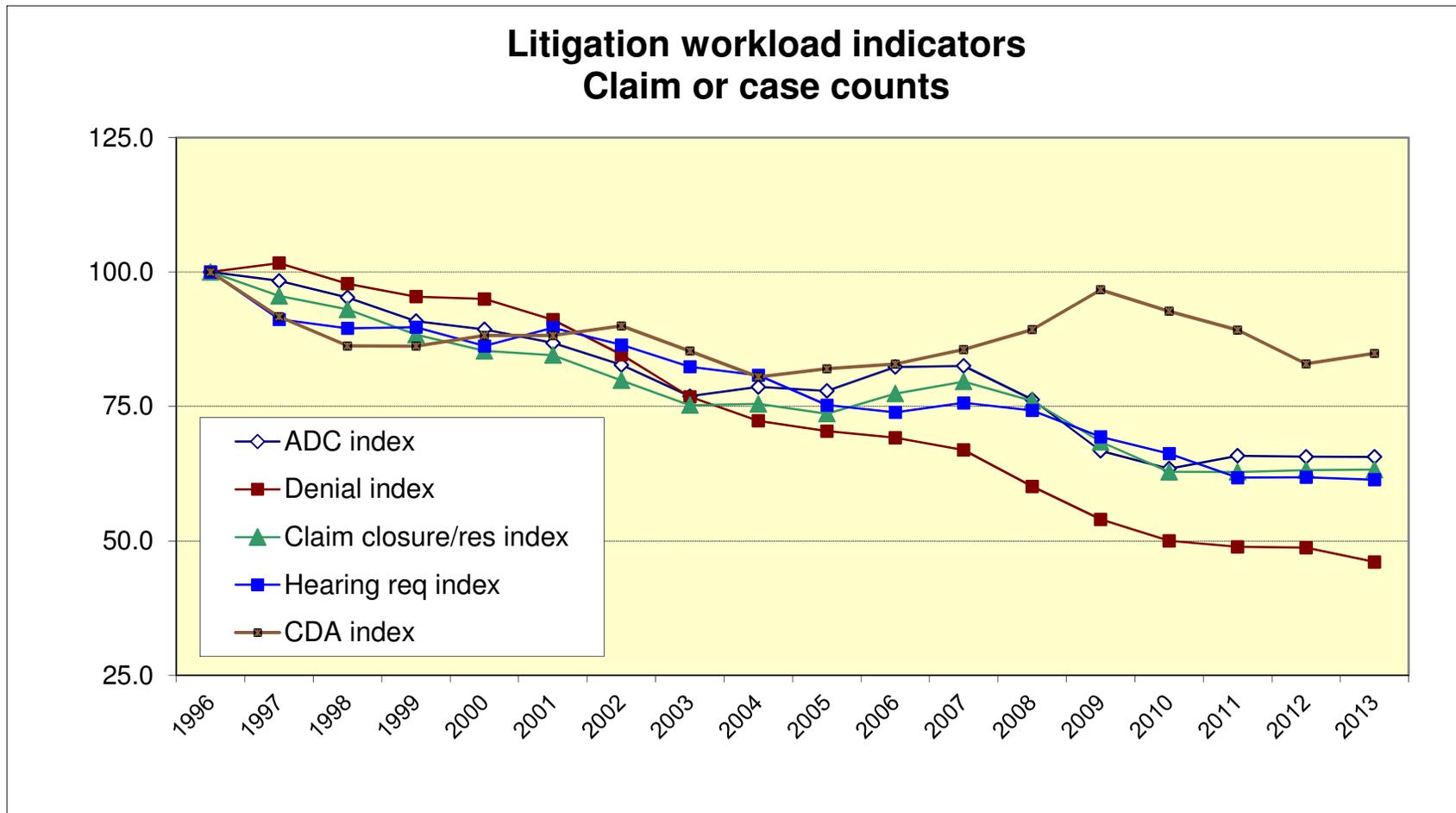


# Defense legal cost trends 1989-present (\$ millions)

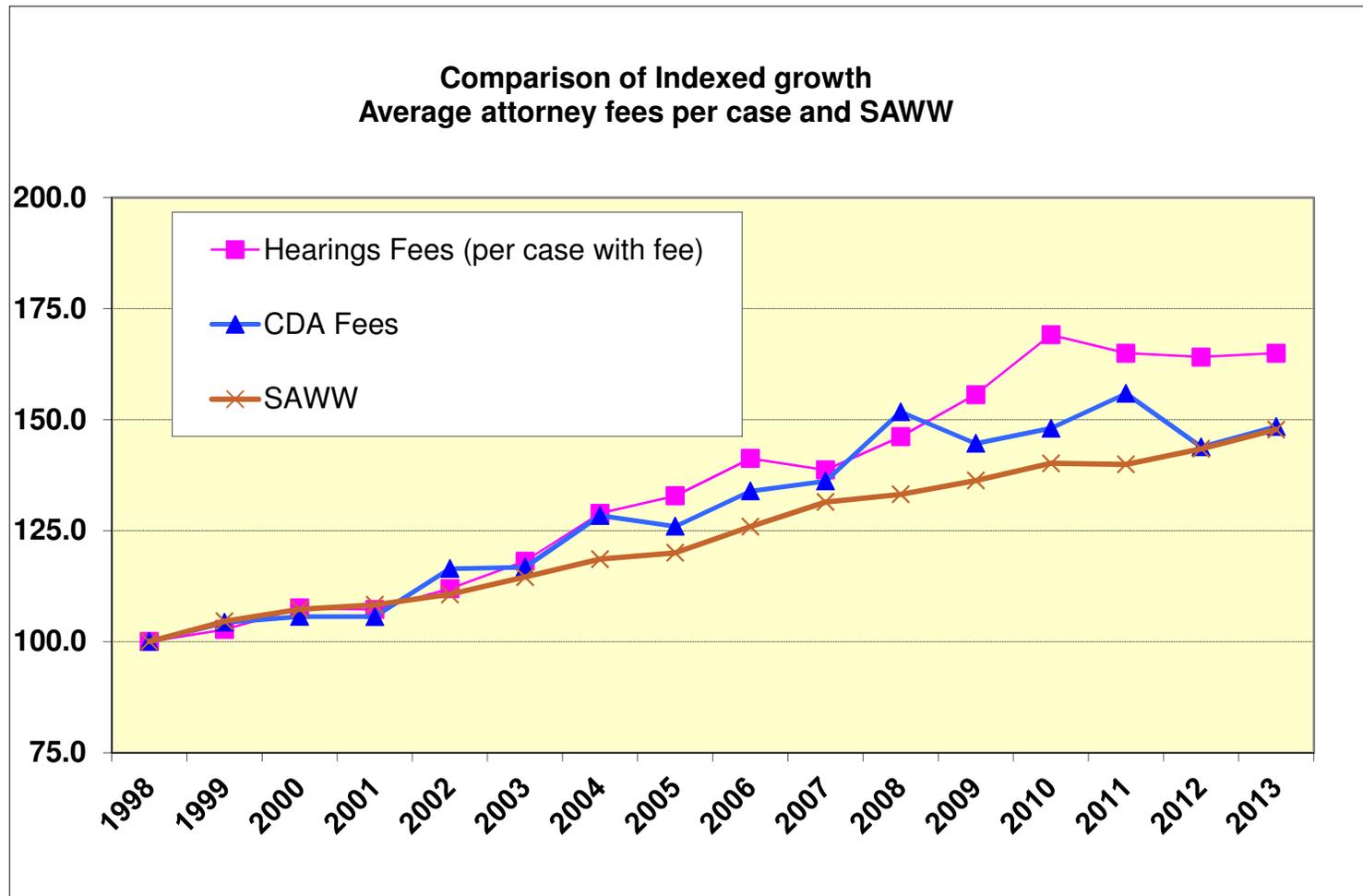


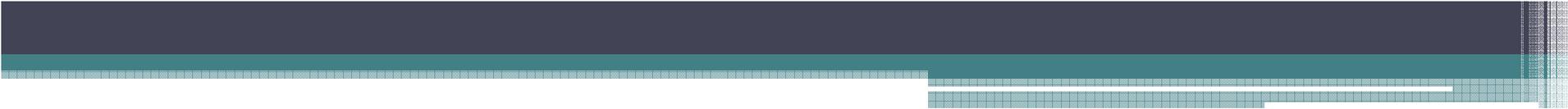
# System Workload trends

(Index 1996 = 100)

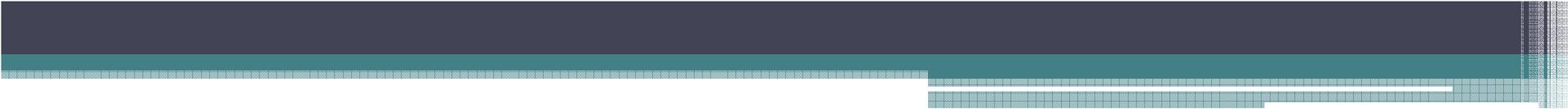


# Ave. fees/case trend compared to average wage growth (Index 1998 = 100)





# Defining some terms



# Fee regulation terms

- Rate: a percentage of a dollar amount obtained.
- Threshold: a point where a percentage rate changes.
- Cap: a fixed dollar amount that can't be exceeded in ordinary circumstances.

Questions?

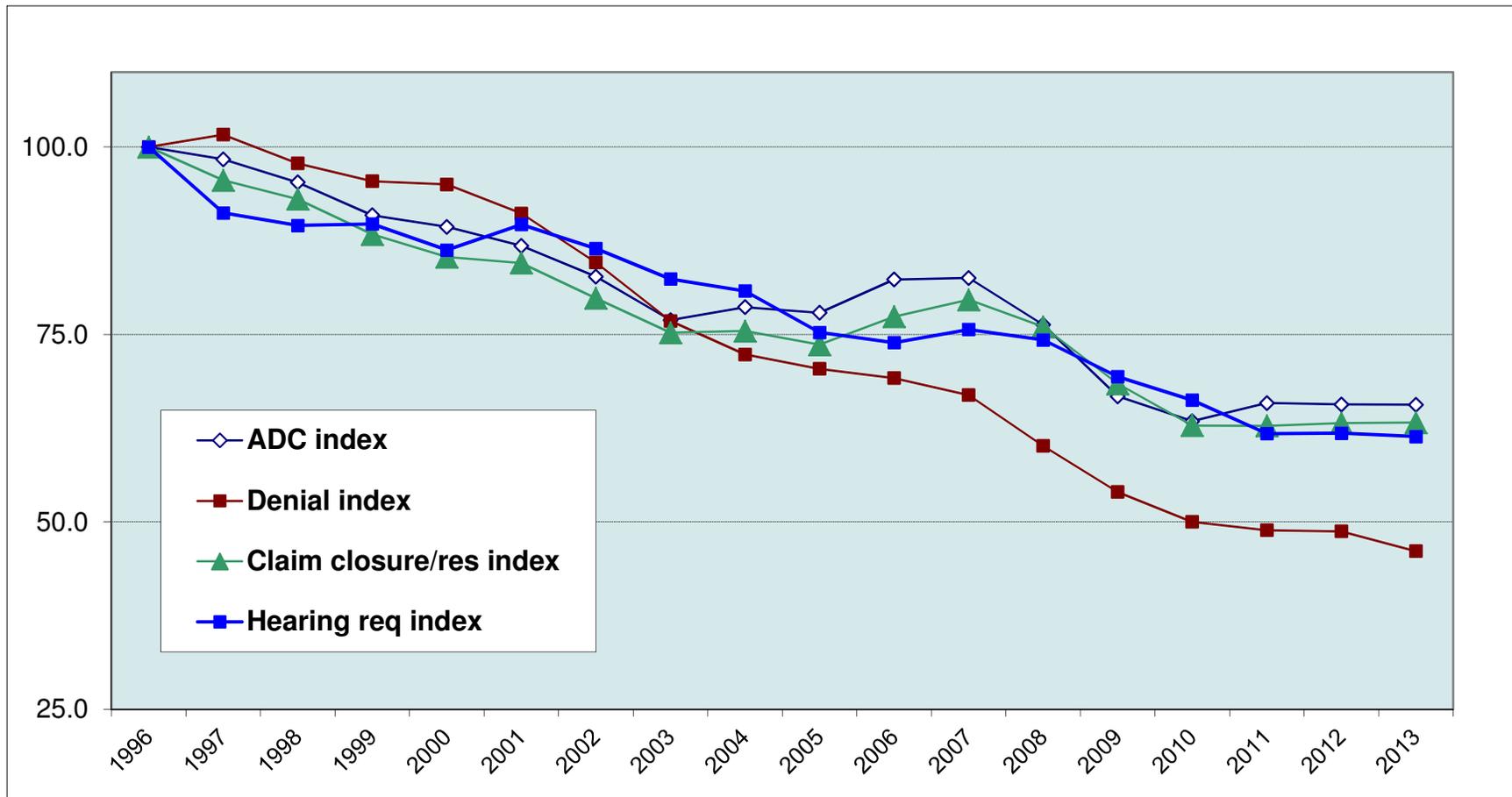
# Thank you

DCBS research reports on WC are available at:

***<http://www4.cbs.state.or.us/ex/imd/external/reports/index.cfm?fuseaction=dir&ItemID=1991>***

# System Workload trends

(Index 1996 = 100)



# Areas of attorney involvement

Medical, Time Loss, Penalties, Partial Den.

Compen-  
sability

Extent of  
disability

Voc

Agg

Own  
Motion

*Life of a claim*

Date of  
Injury

Claim  
closure

CDA