

# Hearings Division Statistical Report Calendar Year 1999



Research & Analysis Section  
Oregon Department of  
Consumer & Business Services



July 2001

# Hearings Division Statistical Report Calendar Year 1999

## Department of Consumer & Business Services

Director, Mary Neidig

### Information Management Division

Administrator, Dan Adelman

### Research & Analysis Section

Manager, Ed Bissell

Research Team Supervisor, Pamela Lundsten

Research Analyst, Russ Reed

### Workers' Compensation Board

Chair, Maureen Bock

Central Support Manager, Terry Taylor

### Coders:

Terrie Smith

Bonnie Jeglin

Bruce Hammond

Kimberly Turnbow

Irene Hamilton

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Information Management Division  
350 Winter St. NE, Room 300  
Salem, Oregon 97301-3880  
Tel. (503) 378-8254

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## Introduction

The **Hearings Division** of the Workers' Compensation Board (WCB) provides a forum for appeal in the Oregon workers' compensation system. Hearings administrative law judges (ALJs, or judges) carry out this function. Parties to a workers' compensation claim who are dissatisfied with an insurer or Workers' Compensation Division decision may appeal to the Hearings Division.

This report covers cases for which hearing orders were written during 1999, regardless of date of injury or date the hearing was requested or held. However, the basic unit of data is the **case**, not the written order. (A case is established and assigned a case number at time of the hearing request.) Sometimes an order may close two or more cases, so there will be more cases closed than orders written.

Safety cases (ORS Chapter 654) are excluded from this report. With the exception of the number of hearing requests and cases closed, only cases dealing with claimant compensation or directly related issues are included here. Cases where the issue is noncomplying employer status

or civil penalty assessment are not included. Also, orders issued subsequent to an opinion and order, stipulation, or dismissal – such as amendments, reconsiderations, orders of abatement, opinion and orders on remand, and orders of reinstatement – are not included. Inmate injury fund cases are also excluded.

The **data** for this report were collected by the WCB from source documents such as Department of Consumer & Business Services (DCBS) Form 801 (report of occupational injury or disease), orders on reconsideration, hearing request, and hearing orders. Data were transmitted by magnetic tape to DCBS, Research & Analysis Section, where computer edits were performed and attempts were made to resolve discrepancies, correct errors, and provide missing data.

1978 is the first year with detailed statistical records. Data on some parameters are available for earlier periods. Unless otherwise indicated, trends and record-high/low values are for the period 1978 through 1999.

## Highlights and Major Trends

In 1999 the Hearings Division of the Oregon Workers' Compensation Board received 11,084 requests for hearing, 0.2 percent more than in 1998.

There were 10,846 closing orders issued by the Hearings Division in 1999, about 3.8 percent fewer than in 1998.

The percentage of cases closed by O&O was 23.6 percent.

The worker filed the request in 88.4 percent of the cases, the smallest percentage on record.

SAIF was the insurer in a record-low 30.5 percent of the cases, while the percentage for private insurers was over 50 percent.

Administrative law judges completed 216 mediations during the year, of which about 90 percent resulted in settlement (usually in the form of a disputed claim settlement). The average mediation required over 13 work-hours on the part of the judge.

Claim denial was the most frequent issue with 42.5 percent of all cases, and partial denial was the next most frequent issue with a near-record 33.9 percent.

In 1999 insurers paid over \$19.6 million to workers in 3,721 disputed claim settlements. DCSs accounted for 34.3 percent of all closing hearing orders and over \$3.8 million in claimant attorney fees.

There were 606 cases involving extent of permanent disability in 1999, 3.2 percent below 1998's record-low 626 cases. The 7.8 percent relative frequency was greater than 1998's record-low percentage.

The net permanent partial disability awarded at hearing in 1999 was \$335 thousand. There were five permanent total disability grants, no affirmations of PTD awards, and two PTD rescissions.

For opinion and order cases, the median time from hearing request to order was 170 days, 10 days longer than in 1998. For O&O cases without a postponement, the median request-to-order time was only 129 days.

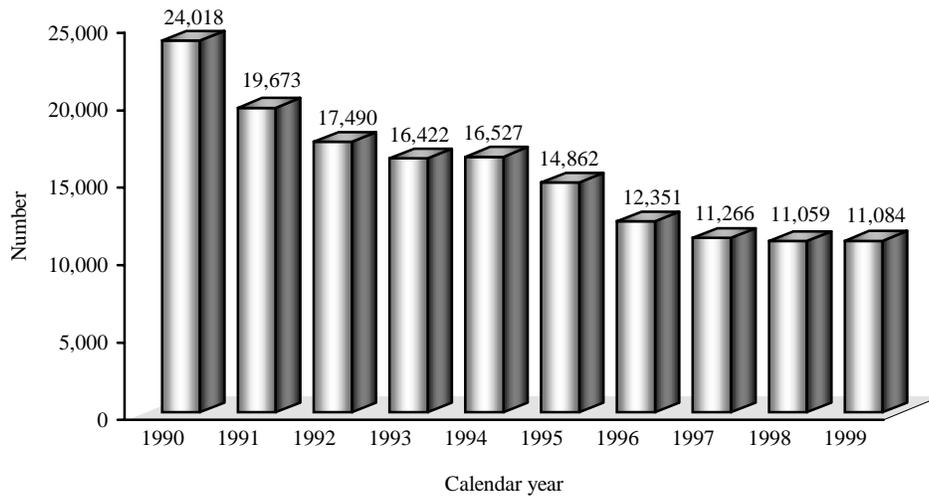
Claimant attorney fees totaling about \$8.5 million were approved for payment out of worker compensation or assessed against insurers in 1999 hearing orders, 3.7 percent less than in 1998. The average fee was \$1,549.

## Requests for Hearing

In 1999 the Hearings Division of the Oregon Workers' Compensation Board received 11,084 requests for hearing, a slight increase of 0.2 percent over 1998. See

Figure 1. The number of requests includes 897 "received stipulations," stipulations that were received without a prior hearing request.

**Figure 1. Requests for hearing, Oregon, 1990 - 1999**



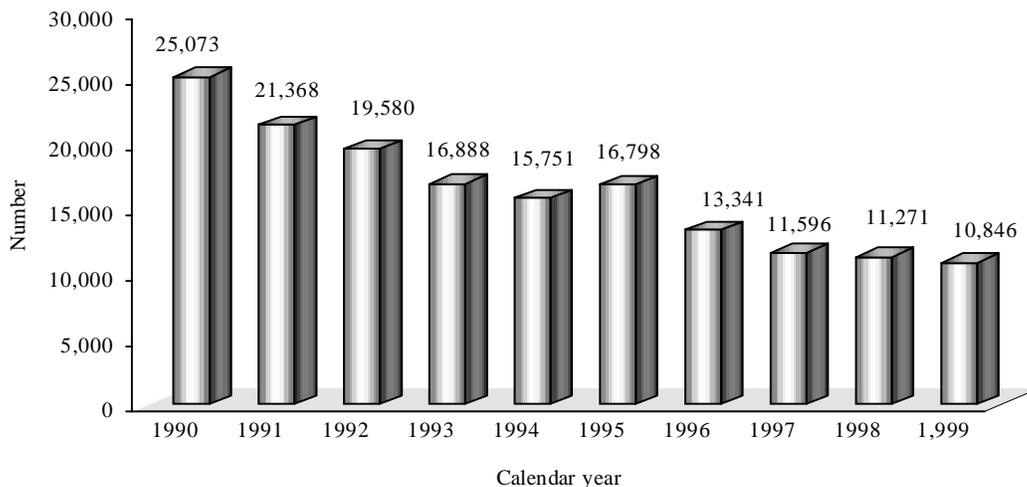
## Cases Closed

There were 10,846 closing orders issued by the Hearings Division in 1999, about 3.8 percent fewer than in 1998 and the fewest since 1980 (Figure 2).

Table 1 provides data on cases closed, by order type. An opinion and order is written when a hearing is conducted and the judge decides the issues. (Sometimes, the judge decides the case on the written record, alone.) A stipulation is an order written to record and approve an agreement of the parties. Stipulations include disputed claim settlements. In a dismissal, the judge dismisses

the hearing request and there generally is no hearing. Dismissals are written when (1) the hearing requester withdraws the request; (2) the judge rules to dismiss for untimely filing, lack of jurisdiction, abandonment, or other legal basis; (3) the Workers' Compensation Board approves a claim disposition agreement that disposes of all contested issues; and (4) a judge determines that there is no substantial evidence to support a responsibility finding against a particular insurer, per ORS 656.308(2)(c).

**Figure 2. Hearing cases closed, all orders, Oregon, 1990- 1999**



The percentage of cases closed by O&O, 23.6 percent, was the smallest percentage since 1995's 23.3 percent. The percentage closed by stipulation was just below 1998's percentage, but otherwise was the highest since 1992. See Figure 3. About 71.0 percent of the dismissals were issued because the requester withdrew the hearing request.

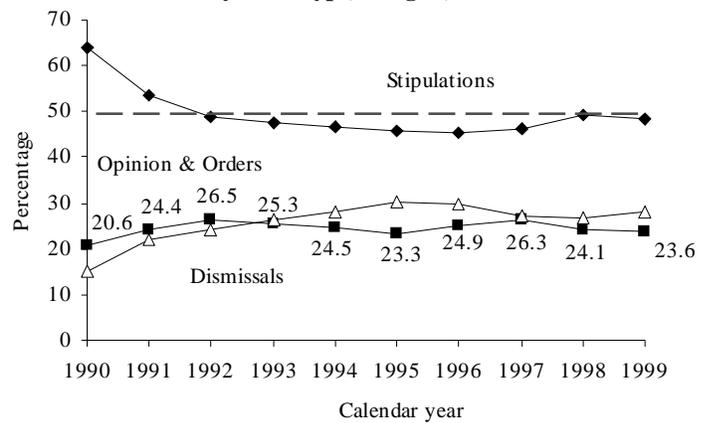
The breakout of cases by requester is given in Table 2. The worker filed the request in 88.4 percent of the cases, the smallest percentage on record. Received stipulations are classified as "joint" requests.

SAIF was the insurer in just 30.5 percent of the cases, the ninth successive decrease and eighth successive record-low value. The percentage for private insurers, 52.8 percent, was the highest or second highest on record. (The values reported for private insurer and self-insured employer for 1998 were inaccurate due to wrong insurer classification in some cases.) See Table 3 and Figure 4. Responsibility disputes are treated as multiple cases, each with its own insurer. Some of the cases with an "unknown" insurer are appeals of department non-subjectivity determinations (disputes about whether the worker, or the employer, is subject to workers' compensation law).

**Table 1. Hearing compensation cases closed by order type, Oregon, 1999**

Type of order	Number	Percentage
Opinion & Order	2,561	23.6
Stipulation	5,254	48.5
Dismissal	3,022	27.9
Total	10,837	100.0

**Figure 3. Distribution of hearing cases closed by order type, Oregon, 1990 - 1999**



**Table 2. Hearing compensation cases by requester and order type, Oregon, 1999**

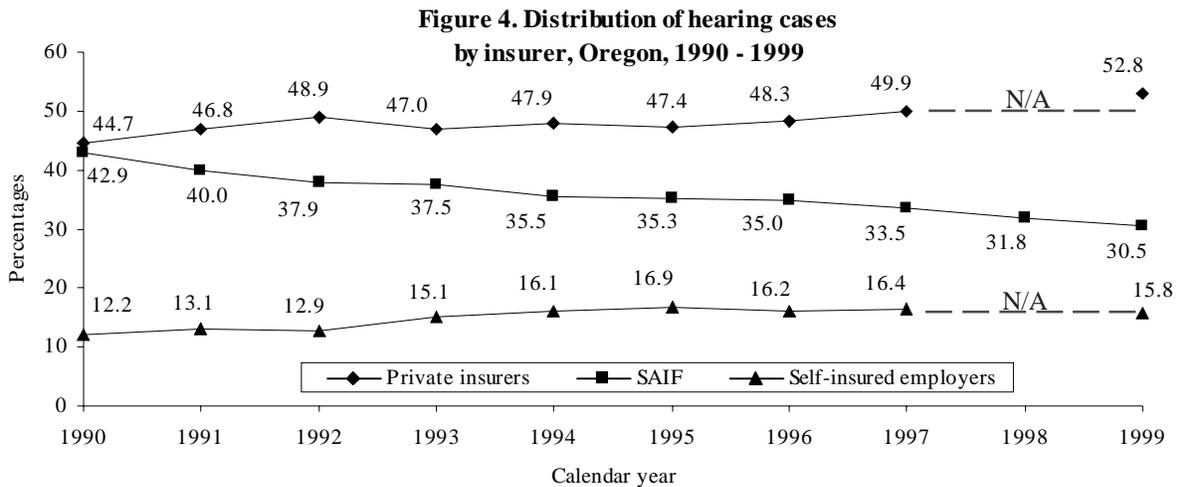
Requester	Opinion & Order		Stipulation		Dismissal		Withdrawal		Total cases	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
Claimant	2,390	93.3	4,283	81.5	825	94.2	2,085	97.2	9,583	88.4
Employer	13	0.5	8	0.2	5	0.6	10	0.5	36	0.3
Joint	1	0.0	888	16.9	2	0.2	-	-	891	8.2
Insurer	154	6.0	71	1.4	42	4.8	47	2.2	314	2.9
Director	3	0.1	4	0.1	2	0.2	4	0.2	13	0.1
Total	2,561	100.0	5,254	100.0	876	100.0	2,146	100.0	10,837	100.0

Note: Due to rounding, the sum of percentages may not equal 100.

**Table 3. Hearing compensation cases by insurer and order type, Oregon, 1999**

Insurer	Opinion & Order		Stipulation		Dismissal		Withdrawal		Total cases	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
SAIF	788	30.8	1,564	29.8	275	31.4	674	31.4	3,301	30.5
Private	1,272	49.7	2,882	54.9	488	55.7	1,076	50.1	5,718	52.8
Self-Insured	464	18.1	776	14.8	99	11.3	373	17.4	1,712	15.8
Non-complying	35	1.4	31	0.6	13	1.5	23	1.1	102	0.9
Unknown	2	0.1	1	0.0	1	0.1	-	-	4	0.0
Total	2,561	100.0	5,254	100.0	876	100.0	2,146	100.0	10,837	100.0

Note: Due to rounding, the sum of percentages may not equal 100.



Note: 1998 data for Private & Self-insured unavailable.

## Mediations

To help settle disputes without formal litigation, administrative law judges completed 216 mediations during the year. About 90 percent resulted in settlement, of which some 84 percent were in the form of a disputed claim settlement. The average mediated DCS consideration was over \$10,700 (per case, not per mediation), very close to twice the average for *all* DCSs.

Almost 46 percent of the mediations included issues in addition to workers' compensation (employment rights, Americans with Disability Act, tort, etc.). The average mediation required about 13 work-hours on the part of the judge.

About 54 percent of successfully mediated cases had the issue of partial denial, and most of the rest were about whole-claim denial. Almost 63 percent were about disease claims, and over 37 percent included mental disease (compared to 44 percent and 30 percent, respectively, in 1998).

The median time from mediation request to the date of the mediation was 64 days, and the median time from the mediation to the order (for cases where the mediation resulted in settlement) was 43 days. Overall, the median time from *hearing request* to order for the mediated cases was 247 days.

## Issues

These 11 issues are recorded for hearing opinion and order and stipulation cases:

- (1) extent of permanent disability — the number of degrees of permanent partial disability or whether the worker is permanently and totally disabled.
- (2) extent of temporary disability — eligibility for, or duration of, temporary disability (often called “time loss”), including interim compensation awarded pending an insurer decision to accept or deny a claim.
- (3) claim denial — denial of a new claim, denial of the whole claim.
- (4) partial denial — denial of part of a claim, denial of a new condition in an accepted claim.
- (5) aggravation — worsening after the latest compensation award, whether the claim should be reopened.
- (6) responsibility — which insurer should accept a claim and pay benefits.
- (7) premature closure — whether the claim was closed before claimant was medically stationary.
- (8) medical services — whether the insurer should provide or pay for medical treatment when the underlying issue is *not* whether the condition to be treated is work-related.
- (9) penalties — “additional amounts” paid by the insurer to the worker and/or worker’s attorney, usually for unreasonable claims processing conduct.
- (10) attorney fees — whether claimant’s attorney should be awarded fees, and how much, for efforts or results achieved *outside* of hearings.
- (11) other issue — any issue not specified above.

Notes about issues:

- (1) Claim denial excludes claims denied for reasons other than work-relatedness (“course and scope”). Examples of excluded issues are denial because the worker failed to cooperate [ORS 656.262(15)], the worker or employer is not subject to workers’ compensation law (ORS 656.027), another insurer is responsible (ORS 656.307), and the claim was not timely. Flare-up of a preexisting condition due to *work activities* is classified as this issue.
- (2) Partial denial includes consequential conditions, flare-up of a preexisting condition due to a *compensable injury*, scope of acceptance disputes in accordance with ORS 656.262(6)(d), and current condition disputes.
- (3) The issue of responsibility, even though raised, is not recorded in a DCS (it’s really the compensability denial

that is sustained). Also, it isn’t coded when the claim is found not compensable (the responsibility issue is not reached).

- (4) The issue of claimant attorney fees is recorded when fees are requested for the attorney’s efforts or results outside of hearings, *not* when fees are requested for the hearing outcome.

The 7,815 O&O and stipulation cases in 1999 included a total of 9,117 issues, or 1.17 issues per case. Only issues that are resolved (decided by the judge, or settled by the parties) are recorded for a case. See Table 4 for numbers of issues in cases. No issue is recorded for a case when (1) all raised issues are “reserved” or “preserved” to be resolved later, (2) the hearing request is dismissed in an order captioned as an O&O, (3) all issues are withdrawn at hearing in an order *not* captioned as a dismissal, and (4) the numbers of cases exceeds the number of distinct denials.

Extent of temporary disability was an issue in 3.7 percent of all cases, the lowest percentage on record. Claim denial was the most frequent issue (as it’s been every year since 1988), with 42.5 percent of the cases. The percentage of cases with partial denial was 33.9 percent, near 1996’s record-high 34.4 percent. The percentage of cases with the issues of insurer penalty was 7.8 percent. Responsibility was an issue in 232 O&O and stipulation cases. Permanent disability is discussed in a separate section of this report.

**Table 4. Number of issues per hearing compensation case, Oregon, 1999**

Number of issues	Cases
One	6,422
Two	1,003
Three	187
Four	32
Five	0
<b>Total issues</b>	<b>9,117</b>
More than one issue	1,222
No issues	171

Note: Issues in 7,815 O&O and stipulation cases.

## Opinion and Orders

Hearings judges in 1999 decided 3,407 issues in 2,561 cases, an average of 1.33 issues per case. Information on the relative frequency of the various issues is given in the “percentage of cases” column of Table 6. Claim denial was the most frequent issue, and partial denial was the next most frequent issue in O&Os, followed by permanent disability and penalty.

Table 5 and Figure 5 provide information about the number of O&O cases with extent of disability (temporary and/or permanent) at issue and the type of disability increase. In 1999 the worker’s disability award was increased in 210 cases (the sum of the last four columns of the table), about 37 percent of the 575 disability cases.

The right column of Table 6 provides information about the disposition of issues in O&O cases. Figures 6 through 9 provide historical data on O&O dispositions for the various issues.

The “acceptance” rate for claim denial was the same as 1998’s 43.6 percent, which was the third lowest on record; historically, this rate has been consistent, ranging from 41 to 49 percent. The “acceptance” rate for partial denial was 48.7 percent, the highest since 1993. The 38.1 percent penalty “yes” rate was the lowest on record.

The 32.3 percent “increase” rate for permanent disability was up from 1998’s record-low 30.0 percent, while the 16.6 percent “decrease” rate was the highest ever. For temporary disability, the 48.1 percent “increase” rate was the lowest on record, while the 47.4 percent “affirm” and 4.4 percent “decrease” rates were the highest ever.

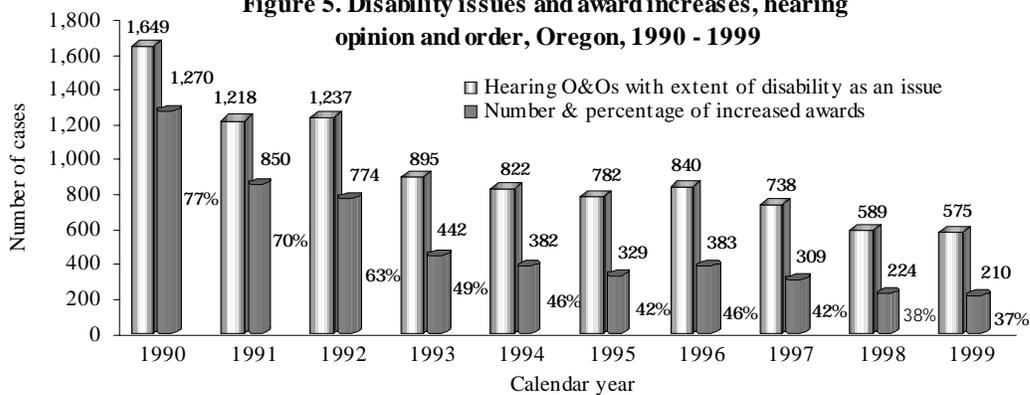
The percentage of O&O cases decided in favor of the claimant for permanent and temporary disability were 45.3 and 51.1 percent, respectively. (In 1998 these percentages were 43.0 and 64.4 percent, respectively.) These “favorable” rates reflect award increases plus cases with no change in the award when the insurer or employer requested the hearing.

ORS 656.390 allows a judge to impose sanctions against an attorney for a hearing request that is frivolous, made in bad faith, or for the purpose of harassment. Data are not collected automatically about the sanctions issue, but three cases are known. In each, sanctions were requested against claimant’s attorney. The judge denied sanctions in two of the cases, and imposed a \$200 sanction in the other case.

**Table 5. Disability issues and type of disability increase, hearing opinion and order, Oregon, 1990-1999**

Calendar year	Extent of disability as an issue	PPD awards increased over previous award	PPD awards no previous PPD award	PTDs awarded	TTD award increase and no increased PPD award
1990	1,649	717	243	45	265
1991	1,218	428	113	32	277
1992	1,237	391	103	23	257
1993	895	228	58	7	149
1994	822	167	61	11	143
1995	782	169	46	6	108
1996	840	217	59	7	100
1997	738	155	70	4	80
1998	589	100	38	4	82
1999	575	99	49	2	60

**Figure 5. Disability issues and award increases, hearing opinion and order, Oregon, 1990 - 1999**

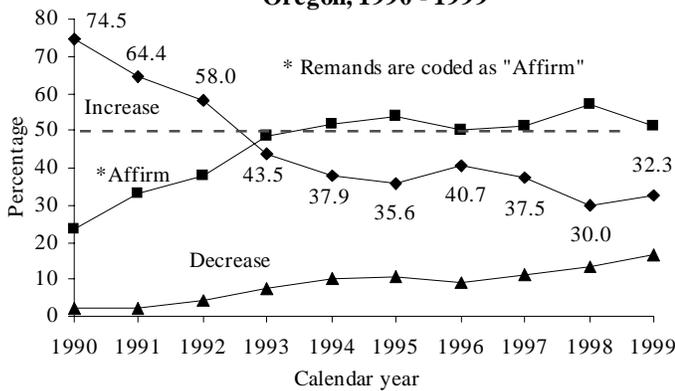


**Table 6. Opinion and order cases by issue, disposition, and insurer, Oregon, 1999**

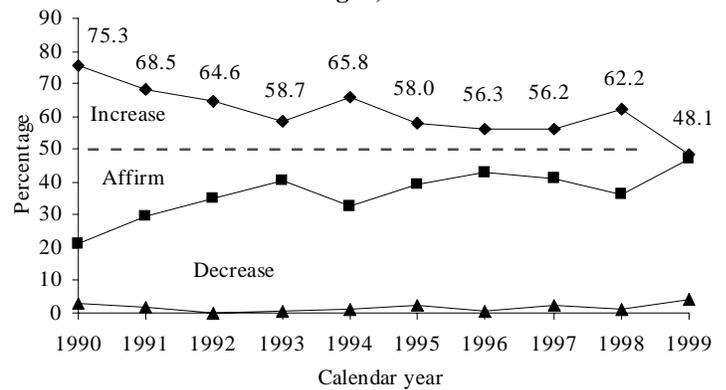
Issues & disposition	Insurer				Percentage of cases	Percentage disposition
	SAIF	Private	Self-insured	All insurers		
<b>Permanent disability</b>						
Affirm	63	135	39	237	-	51.1
Decrease	22	39	16	77	-	16.6
Increase	49	79	22	150	-	32.3
Total cases	134	253	77	464	18.1	100.0
<b>Temporary disability</b>						
Affirm	14	39	11	64	-	47.4
Decrease	3	2	1	6	-	4.4
Increase	20	33	11	65	-	48.1
Total cases	37	74	23	135	5.3	100.0
<b>Claim denial</b>						
Accept	127	201	75	413	-	43.6
Deny	166	250	116	534	-	56.4
Total cases	293	451	191	947	37.0	100.0
<b>Partial denial</b>						
Accept	70	169	50	290	-	48.7
Deny	120	127	57	305	-	51.3
Total cases	190	296	107	595	23.2	100.0
<b>Aggravation</b>						
Accept	8	18	13	39	-	30.7
Deny	20	53	15	88	-	69.3
Total cases	28	71	28	127	5.0	100.0
<b>Responsibility</b>						
No	44	65	7	117	-	56.0
Yes	32	46	11	92	-	44.0
Total cases	76	111	18	209	8.2	100.0
<b>Premature closure</b>						
No	17	26	7	50	-	58.8
Yes	5	25	5	35	-	41.2
Total cases	22	51	12	85	3.3	100.0
<b>Medical services</b>						
No	0	0	1	1	-	50.0
Yes	1	0	0	1	-	50.0
Total cases	1	0	1	2	0.1	100.00
<b>Penalty</b>						
No	58	130	42	232	-	61.9
Yes	38	73	31	143	-	38.1
Total cases	96	203	73	375	14.6	100.0
<b>Attorney fee</b>						
No	15	31	14	60	-	33.7
Yes	36	58	23	118	-	66.3
Total cases	51	89	37	178	7.0	100.0
<b>Other issue</b>						
No	49	85	42	187	-	64.5
Yes	31	52	12	103	-	35.5
Total cases	80	137	54	290	11.3	100.0
No issues*	16	22	14	53	2.1	
Total issues	1,008	1,736	621	3,407		

Notes: "Percentage of cases" is the fraction of all cases that contain each issue; many cases have more than one issue, so the sum of these percentages will exceed 100. "Percentage disposition" gives the breakout of how the issues were decided; for each issue, the sum of these percentages will equal 100 (except for rounding). "All insurers" includes cases with multiple insurers, no insurer, or unknown insurer. Cases remanded to the director on extent of permanent disability are coded as "affirm." \* See the *Issues* section for situations where no issues are recorded for an order.

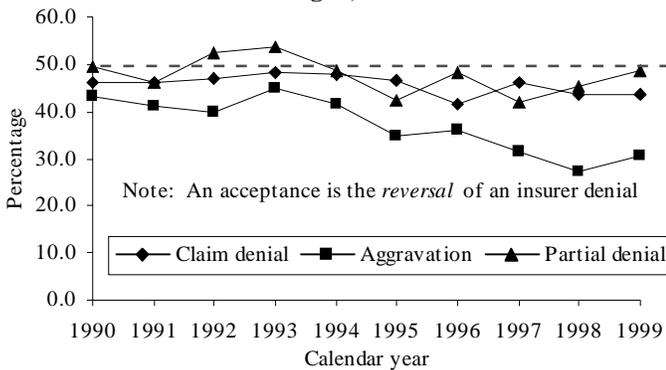
**Figure 6. Disposition of extent of permanent disability cases, hearing opinion and order, Oregon, 1990 - 1999**



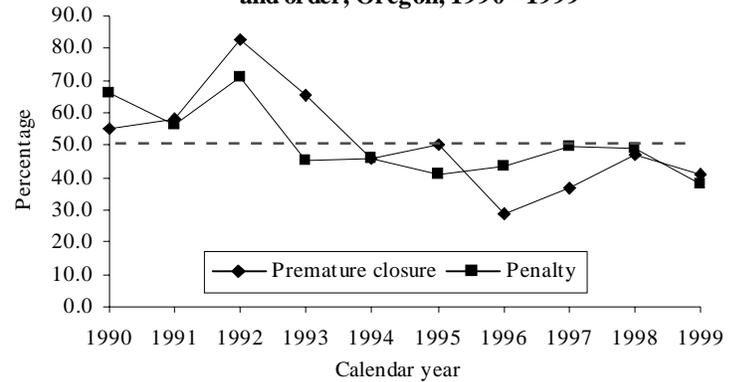
**Figure 7. Disposition of extent of temporary disability cases, hearing opinion and order, Oregon, 1990 - 1999**



**Figure 8. Acceptance rates for compensability cases, hearing opinion and order, Oregon, 1990 - 1999**



**Figure 9. Percentage of decisions favorable to claimants for miscellaneous issues, hearing opinion and order, Oregon, 1990 - 1999**



## Stipulations

In 1999, disputing parties settled 5,710 issues in 5,254 stipulated cases. Table 7 gives information about issue relative frequency and disposition. Claim denial and partial denial were by far the most frequent issues, which is typical. Dispositions of “accept” for the compensability issues are always low because stipulations include DCSs, where the denial is always sustained (no longer contested) in exchange for consideration (usually cash).

### Disputed claim settlements

In 1999 insurers paid over \$19.6 million to workers in 3,721 DCSs. See Table 8. For all issues, the average payment was \$5,265 (less than 1.5 percent greater than in 1998). The largest amount paid in a single settlement was \$233,500. The DCS amount was unspecified in two cases (usually, this happens when the insurer is to pay medical bills and the amount was not mentioned in the order).

The percentage of DCS cases with the issue of claim denial was up almost 5 percentage points over 1996’s

record-low 47.0 percent, while percentages of cases with partial denial and aggravation issues were the second-highest and lowest on record, respectively.

DCSs accounted for 70.8 percent of all stipulations, typical of the past several years but just one percentage point below 1997’s record-high 71.8 percent. They also constituted a near-record high 34.3 percent of all closing hearing orders and a record 77.4 percent of all claims denied at hearing (excludes aggravations). Figure 10 provides historical information on DCSs. The number and total values of hearing DCSs have been quite constant over the past 6 years, while counts of other order types have fallen.

DCSs accounted for claimant attorney fees of over \$3.8 million, 44.7 percent of all fees at hearing. The average DCS fee was \$1,026, the highest on record. About 99.2 percent of DCS fees were paid out of the DCS consideration amount.

**Table 7. Stipulation cases by issue, disposition, and insurer, Oregon, 1999**

Issue & disposition	Insurer				Percentage of cases	Percentage disposition
	SAIF	Private	Self-insured	All insurers		
<b>Permanent disability</b>						
Affirm	4	8	7	19	-	13.4
Decrease	6	9	9	24	-	16.9
Increase	28	53	18	99	-	69.7
Total cases	38	70	34	142	2.7	100.0
<b>Temporary disability</b>						
Affirm	3	9	3	15	-	9.6
Increase	35	81	25	142	-	90.4
Total cases	38	90	28	157	3.0	100.0
<b>Claim denial</b>						
Accept	124	217	75	416	-	17.5
Deny	679	997	269	1,959	-	82.5
Total cases	803	1,214	344	2,375	45.2	100.0
<b>Partial denial</b>						
Accept	106	156	41	305	-	14.8
Deny	459	1,033	255	1,752	-	85.2
Total cases	565	1,189	296	2,057	39.2	100.0
<b>Aggravation</b>						
Accept	15	21	10	46	-	17.2
Deny	46	144	31	221	-	82.8
Total cases	61	165	41	267	5.1	100.0
<b>Responsibility</b>						
No	2	12	0	14	-	60.9
Yes	3	4	2	9	-	39.1
Total cases	5	16	2	23	0.4	100.0
<b>Premature closure</b>						
No	1	3	2	6	-	46.2
Yes	5	2	0	7	-	53.8
Total cases	6	5	2	13	0.2	100.0
<b>Penalty</b>						
No	2	12	3	17	-	7.3
Yes	44	140	33	217	-	92.7
Total cases	46	152	36	234	4.5	100.0
<b>Attorney fee</b>						
No	2	6	0	8	-	5.2
Yes	18	106	21	145	-	94.8
Total cases	20	112	21	153	2.9	100.0
<b>Other issue</b>						
No	16	42	12	78	-	27.0
Yes	53	127	31	211	-	73.0
Total cases	69	169	43	289	5.5	100.0
No issues*	29	61	25	118	2.2	
<b>Total issues</b>	<b>1,651</b>	<b>3,182</b>	<b>847</b>	<b>5,710</b>		

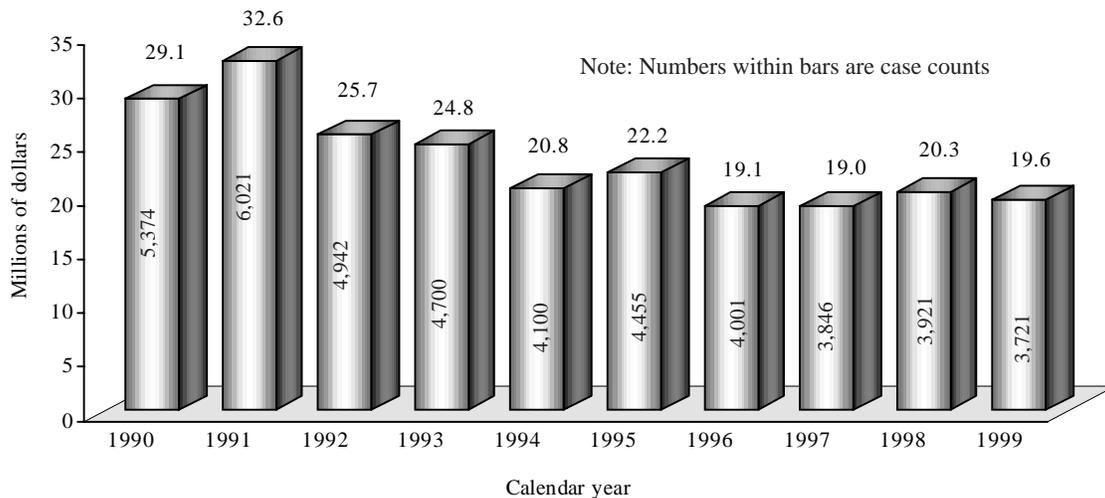
Notes: "Percentage of cases" is the fraction of all cases that contain each issue; many cases have more than one issue, so the sum of these percentages will exceed 100. "Percentage disposition" gives the breakout of how the issues were decided; for each issue, the sum of these percentages will equal 100 (except for rounding). "All insurers" includes cases with multiple insurers, no insurer, or unknown insurer. \* See the *Issues* section for situations where no issues are recorded for an order.

**Table 8. Hearing disputed claim settlements by principal issue, Oregon, 1999**

Principal issue*	Number of cases	Percentage of cases	Total amount	Average amount	Total fees
Claim denial	1,929	51.8	\$10,505,000	\$5,446	\$2,082,000
Partial denial	1,712	46.0	8,865,000	5,178	1,689,000
Aggravation	71	1.9	204,000	2,871	42,000
All other issues	9	0.2	17,000	1,900	4,000
All issues	3,721	100.0	\$19,591,000	\$5,265	\$3,817,000

\*Only the highest-ranking issue is identified with each case. Values may not add to all issues totals due to rounding.

**Figure 10. Hearing disputed claim settlement amounts, Oregon, 1990 - 1999**



## Permanent Disability

There were 606 cases involving extent of permanent disability in 1999, the fewest on record and 3.2 percent below 1998's 626 cases. The 7.8 percent relative frequency was slightly above 1998's record-low percentage. Case dispositions were as follows: increase the award, 41.1 percent (the second smallest percentage on record); decrease the award, 16.7 percent; and no change in the award, 42.2 percent (these figures include stipulations).

The number and size of hearing permanent disability awards, by most measures, have generally been decreasing over the past 10 years. There seem to be three primary reasons for this change. First, the number of accepted

disabling claims has been decreasing. Second, law changes enacted in May 1990 by Senate Bill 1197: required reconsideration, medical arbiters for impairment disputes, "tighter" disability standards, and claim disposition agreements. Finally, law changes enacted in June 1995 by Senate Bill 369: limitation of evidence at hearing, prohibition of issues that were not raised at nor arise out of the reconsideration, and the limitation on disability when a worker returns to work.

### Permanent partial disability

Information about cases where PPD awards were increased is provided in Tables 9 and 10 for cases with and without a prior award, respectively. "No prior award"

means that there had been no previous award of PPD, either scheduled or unscheduled, at the time of the hearing award. The average scheduled award increases were 11.1 scheduled degrees and 23.9 unscheduled degrees. Combining scheduled and unscheduled disability awards, the average award increase was 17.8 degrees.

There were 57 and 45 cases where scheduled and unscheduled awards, respectively, were decreased. The average decreases were 19.4 scheduled degrees and 31.7 unscheduled degrees.

The net amount awarded for PPD at hearing in 1999 was \$335 thousand, the 12th consecutive decrease in that total and the smallest value on record. See Figure 11. The value of each degree of disability is based on the date of injury.

Table 11 depicts the overall disposition of hearing PPD cases. Here, the dollar values of scheduled and unscheduled awards are considered in determining whether the case is classified as an increase or decrease when there's an increase in one award type and a decrease in the other.

### Permanent total disability

There were a record-low five PTD grants (includes reinstatements) in 1999, as shown in Figure 12. Three of the grants were by stipulation. There were no affirmations of PTD awards, and two rescissions, so the net number of PTD awards was three. The average previous PPD award was 104 degrees (combined scheduled and unscheduled); in one of the stipulated grants there was no prior PPD awarded.

**Table 9. Hearing PPD award increase over previous award, by order type, Oregon, 1999**

Type of order	Scheduled disability				Unscheduled disability				Total hearing \$ increases
	Number of cases	Average prior award	Average hearing award	Total hearing \$ increases	Number of cases	Average prior award	Average hearing award	Total hearing \$ increases	
Opinion & order	50	19.2	13.7	\$280,000	53	47.3	22.9	\$204,000	\$485,000
Stipulation	39	17.0	7.2	118,000	35	45.4	19.6	97,000	214,000
All orders	89	18.3	10.9	\$398,000	88	46.5	21.6	\$301,000	\$699,000

Note: Award units are degrees. Dollar increases are based on degree value for the date of injury. Dollar values may not add to totals due to rounding.

**Table 10. Hearing PPD awards, no previous award, by order type, Oregon, 1999**

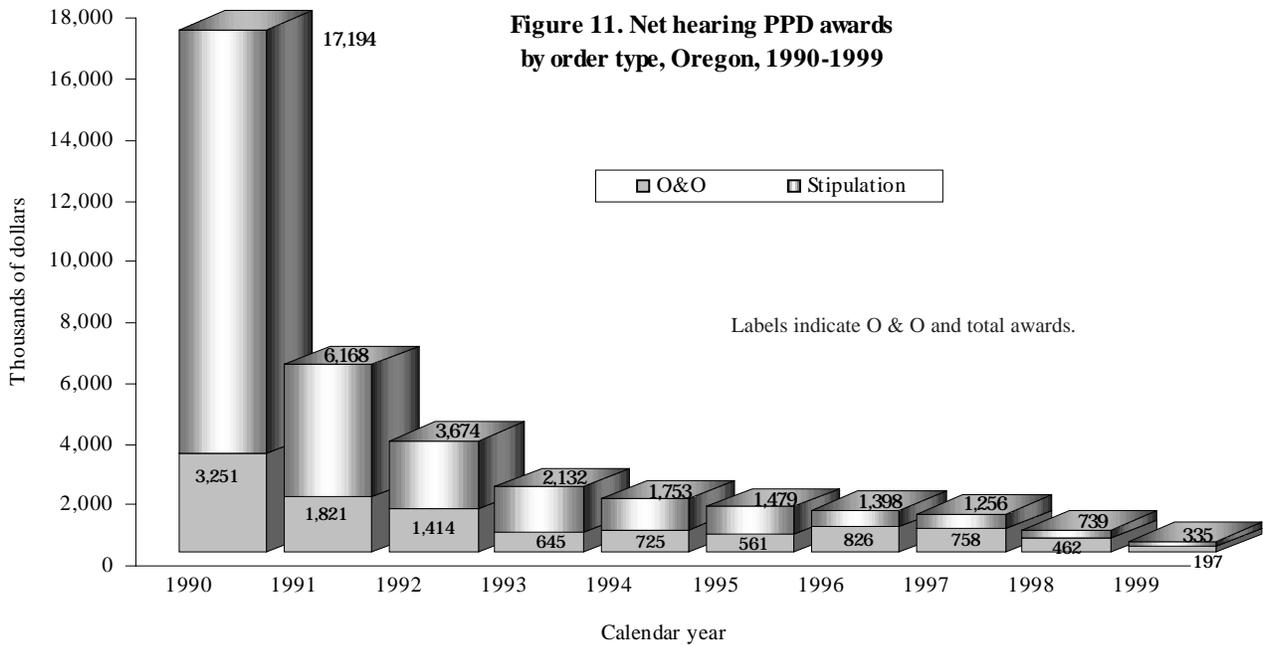
Type of order	Scheduled disability			Unscheduled disability			Total dollar award
	Number of cases	Average hearing award	Total dollar award	Number of cases	Average hearing award	Total dollar award	
Opinion & order	21	13.3	\$119,000	30	31.8	\$134,000	\$253,000
Stipulation	10	8.3	35,000	14	21.9	41,000	76,000
All orders	31	11.7	\$154,000	44	28.7	\$175,000	\$329,000

Note: Award units are degrees. Dollar increases are based on degree value for the date of injury. Dollar values may not add to totals due to rounding.

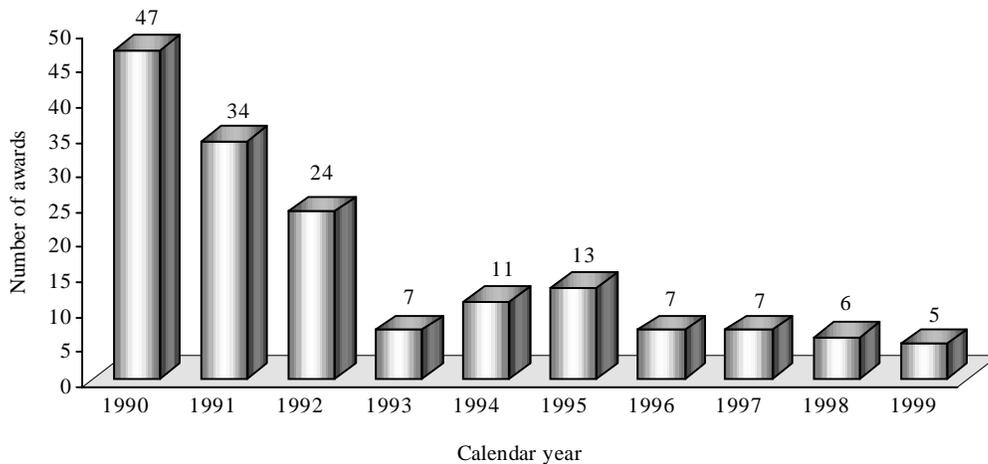
**Table 11. Disposition of hearing PPD cases by order type and prior award, Oregon, 1999**

Order type & disposition	No prior award		Prior award			All cases			All
	Increase	Affirm	Increase	Decrease	Affirm	Increase	Decrease	Affirm	
Opinion & order	49 29.2%	119 70.8%	99 33.9%	75 25.7%	118 40.4%	148 32.2%	75 16.3%	237 51.5%	460
Stipulation	24 72.7%	9 27.3%	72 67.9%	24 22.6%	10 9.4%	96 69.1%	24 17.3%	19 13.7%	139
All orders	73 36.3%	128 63.7%	171 43.0%	99 24.9%	128 32.2%	244 40.7%	99 16.5%	256 42.7%	599

Note: Table entries are the number of cases (top number) and the percentage of each order type that has the given disposition (so percentages add to 100 in the horizontal, except for rounding).



**Figure 12. PTD awards granted at hearing, Oregon, 1990 - 1999**



## Time Lags

For all hearing orders in 1999, the median time from injury to hearing request was 300 days, the same as in 1998. The median request-to-order lag was 124 days; the 1992-to-1998 range of this time lag was 119-125. Table 12 provides various time lags by order type and insurer classification.

For opinion and order cases, the median time from hearing request to order was 170 days (5.6 months), 10 days longer than in 1998 and the longest since 1987. See Figure 13. These figures are for all O&O cases. For O&O

cases without a postponement, the median request-to-order time was only 129 days (4.2 months). The percentage of O&Os with at least one postponement was 36.1 percent, compared to the 1991-1998 average of 40.4 percent.

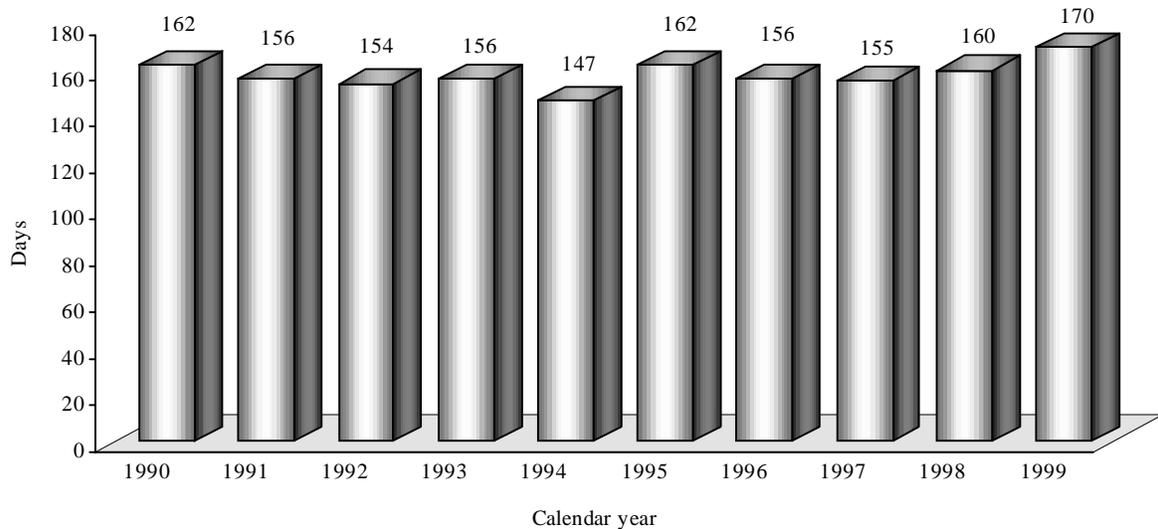
Note that request-to-order time lags include time that the record was kept open, after the hearing was concluded, before the record was closed. Such times were most frequently 0 days, but the median was 3 days and the mean, almost 40 days.

**Table 12. Median hearing time lags by insurer and order type, Oregon, 1999**

Lag periods	Opinion & order				Stipulation				Dis-missal	All cases
	SAIF	Private insurer	Self-insured employer	All cases	SAIF	Private insurer	Self-insured employer	All cases		
Injury date to request date	333	343	322	335	202	269	277	248	328	300
Injury date to order date	539	570	570	562	365	439	474	423	497	485
Request date to order date	155	172	188	170	112	119	128	118	108	124
Request date to held date	91	91	92	91	-	-	-	-	-	91
Held date to closed date	0	8	3	3	-	-	-	-	-	3
Closed date to order date	29	28	28	28	-	-	-	-	-	28

Note: Dashes indicate that time lags are not applicable. Lag time segments do not add to total lag times because figures are medians.

**Figure 13. Median time lags, hearing request to order, opinion and order cases, Oregon, 1990 - 1999**



## Claimant Attorney Fees

Claimant attorney fees totaling over \$8.5 million were approved for payment out of worker compensation or assessed against insurers in 1999 hearing orders. See Table 13. Total fees decreased by 3.7 percent from 1998, and were 46.5 percent below their peak in 1988.

About 48.8 percent of the fees were paid out of compensation. The average fee was \$1,549, about 2.7 percent greater than for 1998 and the highest ever. Figure 14 depicts average fees, by source, for the past 10 years.

Out-of-compensation fees in 1999 were 23.4 percent above those in 1990, while assessed fees are 145.8 percent greater than 1990. Fewer extent of disability cases and a smaller percentage of disability increases explains the large fall in total “other out-of-compensation” attorney fees (Figure 15).

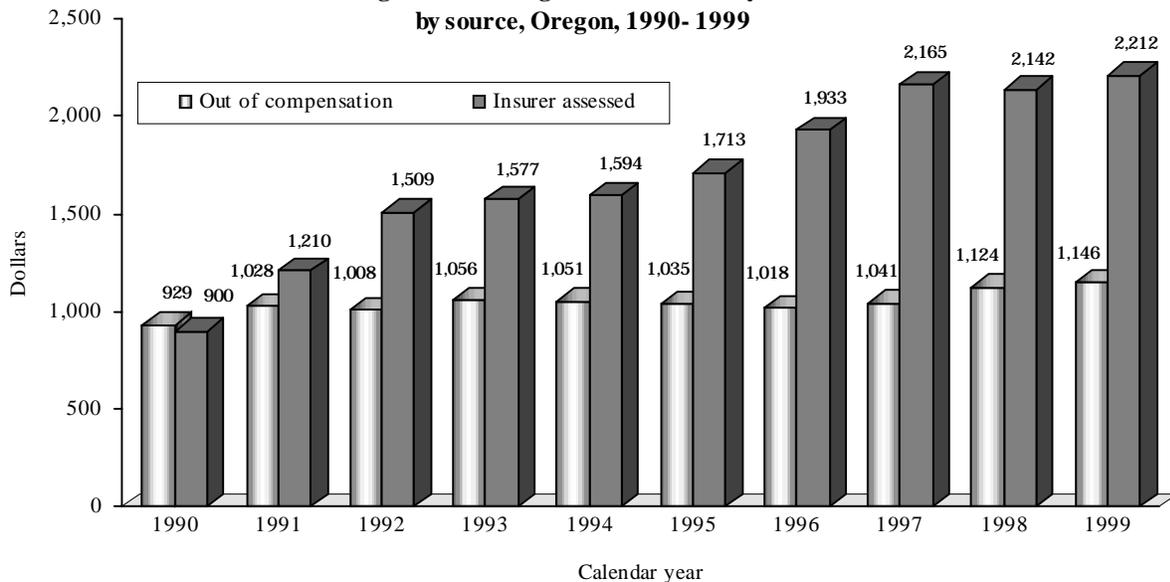
The percentage of claimants represented by counsel was about 94.5 percent for O&O cases and 89.1 percent for all cases.

**Table 13. Claimant attorney fees by order type and source, Oregon, 1999**

Source of fees	Opinion and order	Stipulation	Dismissal	Order awarding attorney fees	Total cases
<b>Out of claimant compensation</b>					
Cases with fees	205	3,432	0	1	3,638
Total fees	\$245,000	\$3,921,000	\$0	\$2,000	\$4,168,000
Average fee	\$1,195	\$1,142	-	\$2,000	\$1,146
<b>Assessed against insurer</b>					
Cases with fees	918	1,055	0	2	1,975
Total fees	\$2,885,000	\$1,480,000	\$0	\$3,880	\$4,370,000
Average fee	\$3,143	\$1,403	-	\$1,940	\$2,212
<b>From both sources</b>					
Cases with fees	1,087	4,422	0	3	5,512
Total fees	\$3,130,000	\$5,401,000	\$0	\$5,880	\$8,537,000
Average fee	\$2,880	\$1,221	-	\$1,960	\$1,549

Notes: Fees were paid both out of compensation and assessed against the insurer in 85 cases, so the number cases for each source will not add to the number from both sources. Fees may not add to totals due to rounding.

**Figure 14. Average claimant attorney fees by source, Oregon, 1990- 1999**



Attorneys representing workers receive fees for getting a denial overturned, getting an increase in compensation, and for preventing a decrease in compensation. Most fees are determined at hearing for attorney efforts and results on issues raised at hearing. Other fees are determined by hearings judges for attorney efforts and results achieved *outside* of hearings. They include cases where attorney fees was an issue at hearing, and also fees decided in “order awarding attorney fee” cases.

Attorney fees that are recorded for hearing cases are not necessarily the actual amounts paid. For example, in cases where the duration of time loss is extended and the ending date is not specified, the fees recorded are the maximum allowable amount (\$1,050 or after the rule change in 1999, \$1,500). In other cases, the fees may be

reversed (reduced or eliminated) when the judge’s decision in favor of the claimant is reversed or modified by the board or courts, or when the amount of the fee is successfully challenged.

Attorney fees are missing (could not be determined from information published in the order) in 57 cases. In 63 percent of these cases, the fee was based, at least in part, on penalties against the insurer. In 30 percent of these cases, the fee was based on increase in the *rate* at which time loss was paid. (These figures exclude cases where *part* of a fee is missing, as with a denial reversal and an unknown penalty fee.) The total amount of these unknown fees of both types is probably less than 1 percent of the total value of known fees.

