

Claim Disposition Agreements in the Oregon Workers' Compensation System, Fiscal Year 1999

Research & Analysis Section

Department of Consumer & Business Services

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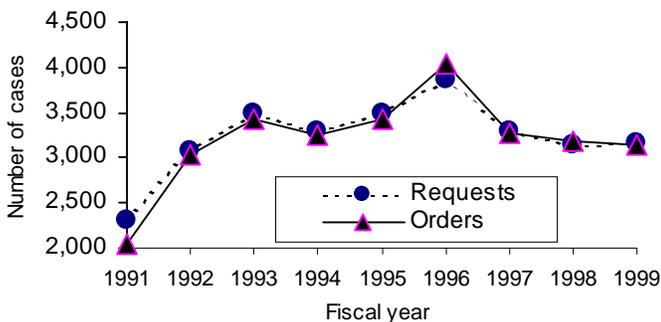
by Pilane Munidas

Introduction. Oregon Revised Statute 656.236 in part states: "parties to a claim, by agreement, may make such disposition of any or all matters regarding a claim, except for medical services, as the parties consider reasonable, subject to such terms and conditions as the Workers' Compensation Board may prescribe." This law became effective July 1, 1990.

The agreement between the worker and the insurer, called the Claim Disposition Agreement (CDA), is legal when approved by the Workers' Compensation Board (board) in accordance with rules set by the board. Some of the salient features of the CDA process are: only accepted issues can be released; medical services are still retained for life; the worker can request the board to disapprove the CDA within 30 days (commonly referred to as the cooling-off period) of the request, unless the claimant is represented by an attorney at the time the CDA is signed, and the CDA provides for a waiver of the cooling-off period; the board order approving the CDA is not subject to review; and submission of a CDA stays all other action on that claim except for medical services.

Requests and orders. During the fiscal year ending June 30, 1999, the Workers' Compensation Board received 3,172 requests for approval of CDAs—an average of 264 a month. This is an increase of 1.1 percent over the previous year. During this year 3,124 agreements were approved, four were disapproved, and three were withdrawn. This compares with 3,184 approvals, two disapprovals, and two withdrawals in FY 1998. The four disapproved this year were considered unreasonable as a matter of law. Figure 1 below gives the distribution of requests and orders for fiscal years 1991 through 1999.

Figure 1. CDAs requested and disposed, FY 1991-1999

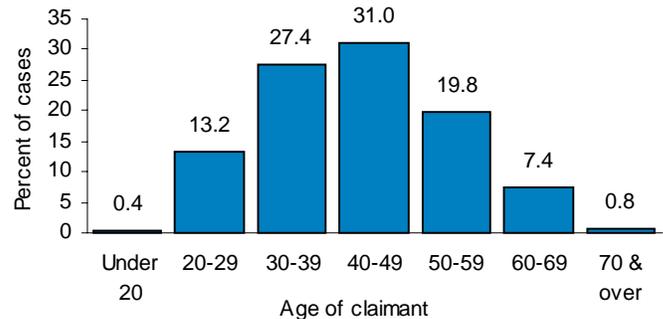


Note: Orders include approvals, disapprovals, and withdrawals.

Characteristics of Claimants Involved in Approved CDAs

Age of claimants. A little over one quarter (27.4 percent) of the claimants were between 30 and 39 years, and the large majority (91.5 percent) were between 20 and 59 years at the time of approval of the CDA. (See Figure 2.) Just over 8 percent were 60 and over; 0.4 percent

Figure 2. Percent CDAs by age of claimant, FY 1999

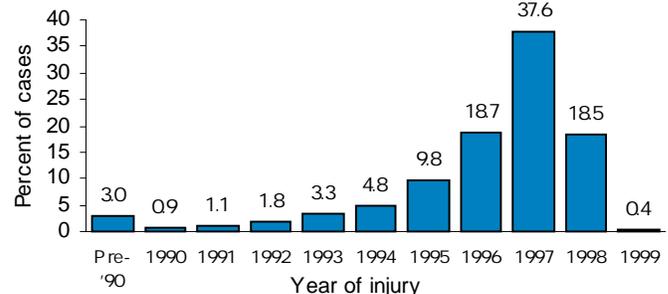


were under 20. The average age at time of CDA approval was 43.2 years, slightly more than last year. The frequency distribution of claimant age was very similar to that of FY 1998.

The average age at injury in these cases was 40.1 years, about two and a half years more than the historical average age at injury for all accepted disabling claims.

Year of injury. For CDAs approved in FY 1999, 89.4 percent of the injuries had occurred in the five-year period beginning with calendar

Figure 3. Percent CDAs by year of injury, FY 1999



year 1994. The corresponding proportion last year was 89.6 percent. The year of injury with the highest percent of the approved CDAs (37.6 percent) was 1997. In cases with more recent injuries, 18.5 percent had a 1998 date of injury and 0.4 percent (11 cases) had a 1999 injury. (See Figure 3.)

Award type. Once a claimant with an accepted claim becomes medically stationary, the claim is closed and evaluated for permanent disability. The disability level such as Permanent Partial Disability (PPD) or Permanent Total Disability (PTD) is determined at time of closure. Of the approved CDAs, 41.8 percent were on claims that had never been closed or had been closed without an award, up from 39.9 percent last year.

An award had already been made in 58.2 percent of the claims resolved by a CDA, compared to 60.1 percent last year: PPD in 38.1

percent, TTD by itself in 19.4 percent, PTD in 0.5 percent; 0.2 percent involved fatalities. (TTD may also have been awarded in those cases with a PPD or a PTD award.) Percent of cases with PPD dropped 1.8 percentage points with a corresponding increase in open or no-award claims. The proportions of other awards types were the same as last year.

Litigation. Seventy one percent of the CDAs had previous or current litigation. Litigation was pending in 740 cases at the time of filing of the CDA, 89.9 percent of which were pending at Hearings Division.

Body part. As expected, the back was the body part most frequently injured in these CDAs (27.8 percent). Injuries or illnesses involving other unscheduled body parts accounted for 40.1 percent of the CDAs, while 32.1 percent dealt with scheduled body parts (extremities such as arms and legs). This is similar to the FY 1998 distribution.

Historically, the back accounted for about 27 percent of the accepted disabling claims, and scheduled body parts for about 45 percent.

Insurer. Just over one half (50.5 percent) of the claims involving CDAs were insured by private insurers; 35.0 percent had the SAIF Corporation as the insurer, and self-insured employers accounted for 14.1 percent of the cases; for FY 1998, the respective percentages were 49.1 percent, 33.6 percent and 16.8 percent. Non-complying employers were involved in yet another 0.5 percent in FY 1999. For calendar years 1995 through 1998, the average share of accepted disabling claims for SAIF Corporation, private insurers, and self-insured employers was 30.4 percent, 49.6 percent, and 19.6 percent respectively. (See Figure 4.) Self-insured employers' use of CDAs for release of claims is significantly less than SAIF Corporation's or private insurers'.

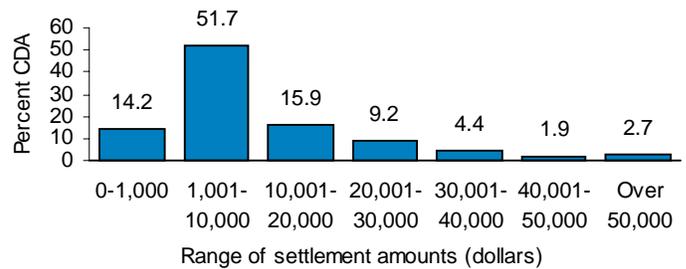
CDA Outcomes

Issues released. Of the approved CDAs, 99.8 percent released all issues (except medical services), same as last year. There were two cases with just one issue released.

Settlement amounts. The total settlement amount (inclusive of attorney fees) for the approved cases was \$39.1 million for an average of \$12,531, compared to \$40.9 million last year for an average of \$12,857. Of this, fees for the claimants' attorneys were authorized up to \$5.8 million in 2,760 cases for an average of \$2,112 per case, compared to \$5.9 million in 2,793 cases last year for an average of

\$2,102 per case. The maximum attorney fees permitted by the board rules were awarded in 77.7 percent of the 2760 cases with fees; 22.0 percent had less than the maximum and 0.4 percent had extraordinary fees. A little over half of the settlement amounts this year were over \$1,000 but less than or equal to \$10,000; 95.4 percent were \$40,000 or less. (See Figure 5.) Twenty-two cases (0.7 percent) had a settlement amount of over \$100,000. The average settlement amount decreased steadily from FY 1991, the first year CDAs were authorized, through FY 1996. This trend was interrupted with an increase in FY 1997 and decreases thereafter. (Figure 6). When cases were grouped according to various claim characteristics, the average settlement amount varied, sometimes considerably. See Table 1.

Figure 5. Distribution of CDA settlement amount, FY 1999



Note: Total percent may not equal 100 due to rounding.

Figure 6. Average CDA Settlement amount, FY 1991-1999

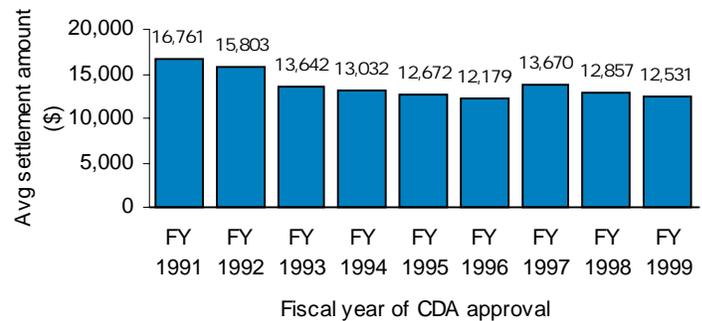
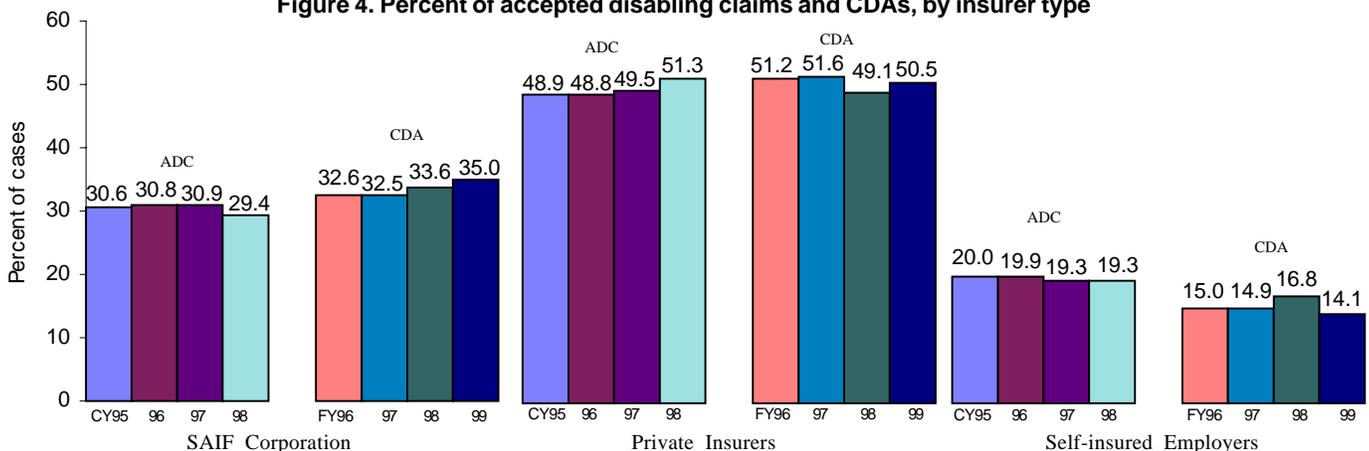


Figure 4. Percent of accepted disabling claims and CDAs, by insurer type



Notes: The first four bars in each group are accepted disabling claims (ADC) share for calendar year 1995-1998; the last four are the CDA share for fiscal years 1996-1999.

The largest variation was seen in the different benefit types. The average for TTD was the lowest at \$5,561, while the settlement amounts for fatalities and PTDs averaged \$207,209 and \$93,554 respectively.

For disabling claims, the average settlement was \$13,644, almost \$10,000 more than that for non-disabling claims. For claims involving injury to scheduled body parts, the average was \$10,882, about \$2,431 less than that for unscheduled body parts (back and other). Claims without a history of litigation were settled for an average of \$15,631, \$4,370 more than for litigated cases.

Looking at the settlement amounts by insurer type, self-insured employers had the lowest average with \$10,296; SAIF averaged \$13,819, and private carriers \$12,187.

Type of settlement. Almost all of the CDAs (99.3%) were settled by a lump sum payment, the same as last year; the rest were by structured settlement.

Reimbursements from departmental reserves. Claims of some claimants qualify for reimbursement of compensation (partially or fully) from departmental reserves. CDA settlements may also qualify for reimbursement in these cases. Insurers were reimbursed for CDA

payments in CDAs approved by the board in FY 1999 as follows: two claims from the Handicapped Workers' Reserve for \$102,848, eighteen from the Retroactive Reserve for \$965,309, thirty from the Reemployment Assistance Program for \$477,750 and one from the Reopened claims Program for \$5,399.

CDAs and disputed claim settlements (DCSs). Of the CDAs approved in FY 1998, 1,178 (37.7 percent) had some denied issue associated with the same injury or illness settled by a DCS between one and 120 days before the CDA approval. The average CDA settlement amount in these cases was \$9,130, less than that for all CDAs by 27.1 percent.

Time lags. In the CDAs that were approved by the board, the median time lag between the request and the order was seven days, same as last year; 99 percent were approved within 42 days of the request. The dramatic reduction of the request to order lag since FY 1995 was due to the waiving of the 30-day cooling-off period when the claimant was represented by an attorney. The median time lag from injury to order was 651 days (1.78 years).

Average CDA Settlement Amounts by Various Claim Characteristics, FY 1998 and FY 1999

Characteristic	Number of Cases	Percent of Total	Number of Cases	Percent of Total	Settlement Amount							
					FY 1998		FY 1999		FY 1998		FY 1999	
					Total	Percent of Total	Average	Total	Percent of Total	Average		
Insurer Type												
SAIF	1,069	33.6%	1,092	35.0%	\$14,020,644	34.2%	\$13,116	\$15,090,358	38.5%	\$13,819		
Private	1,563	49.1%	1,579	50.5%	\$21,801,654	53.3%	\$13,949	\$19,242,888	49.2%	\$12,187		
Self-insured	534	16.8%	439	14.1%	\$4,982,670	12.2%	\$9,331	\$4,520,065	11.5%	\$10,296		
Non-complying Employer	18	0.6%	14	0.4%	\$133,100	0.3%	\$7,394	\$294,873	0.8%	\$21,062		
Award Type												
Unknown	1,271	39.9%	1,305	41.8%	\$18,200,276	44.5%	\$14,320	\$17,359,893	44.3%	\$13,303		
TTD	621	19.5%	605	19.4%	\$3,282,591	8.0%	\$5,286	\$3,364,272	8.6%	\$5,561		
PPD	1,271	39.9%	1,191	38.1%	\$16,843,694	41.1%	\$13,252	\$15,590,343	39.8%	\$13,090		
PTD	16	0.5%	17	0.5%	\$1,698,506	4.1%	\$106,157	\$1,590,422	4.1%	\$93,554		
Fatal	5	0.2%	6	0.2%	\$913,000	2.2%	\$182,600	\$1,243,253	3.2%	\$207,209		
Litigation Status												
Not Litigated	985	30.9%	908	29.1%	\$14,003,801	34.2%	\$14,217	\$14,192,941	36.3%	\$15,631		
Litigated	2,199	69.1%	2,216	70.9%	\$26,934,266	65.8%	\$12,248	\$24,955,243	63.7%	\$11,261		
Body Part												
Scheduled	1,028	32.3%	1,004	32.1%	\$11,436,832	27.9%	\$11,125	\$10,925,447	27.9%	\$10,882		
Back	877	27.5%	867	27.8%	\$10,685,802	26.1%	\$12,184	\$10,715,033	27.4%	\$12,359		
Other	1,279	40.2%	1,253	40.1%	\$18,815,433	46.0%	\$14,711	\$17,507,703	44.7%	\$13,973		
First Closure Status												
With Closure	1,964	61.7%	1,872	59.9%	\$22,948,401	56.1%	\$11,685	\$22,214,991	56.7%	\$11,867		
Without Closure	1,220	38.3%	1,252	40.1%	\$17,989,666	43.9%	\$14,746	\$16,933,193	43.3%	\$13,525		
Disability Status												
Disabling	2,784	87.4%	2,774	88.8%	\$39,622,458	96.8%	\$14,232	\$37,848,635	96.7%	\$13,644		
Non-Disabling	400	12.6%	350	11.2%	\$1,315,609	3.2%	\$3,289	\$1,299,549	3.3%	\$3,713		
ALL CASES	3,184	100.0%	3,124	100.0%	\$40,938,067	100.0%	\$12,857	\$39,148,183	100.0%	\$12,531		

Notes: The "Unknown" award type consists mainly of open cases. Of the 1,252 cases in FY 1999 without first closure, 326 (26 percent) were non-disabling, compared to 30 percent in FY 1998. Percents and dollars may not sum to total due to rounding.

Trends. Fiscal year 1999 is the ninth year since CDAs were first introduced. CDA characteristics that have shown noticeable trends are graphed in Figures 6-10. The mean settlement amount which was \$16,761 in FY 1991 decreased steadily through FY 1996; this trend was broken by an increase in FY 1997 and reductions again in FY 1998 and FY 1999 (Figure 6).

There has been a consistent increase in the percent of open cases disposed of by CDA (Figure 7), rising steadily from 16.3 percent in FY91 to 40.1 in FY99, and the median time lag between injury and CDA

approval has shown a distinct downward trend (Figure 8). The average age of claimants in claims settled by a CDA has shown a slight increase during the last four years (Figure 9).

As far as benefit types are concerned, the only noticeable trend is in PPD; the percent of cases with PPD awards disposed of by a CDA shows a decreasing trend (Figure 10). Even though no particular trend is seen in TTD cases, they showed a slight but steady increase in FY 1995 and FY 1996, dropped in FY 1997 and showed a slight increase in FY 1998, remaining at the same level in FY 1999.

Figure 7. CDAs on open cases, FY 1991-1999

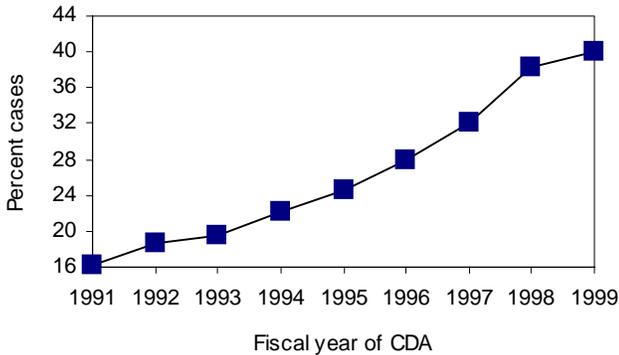
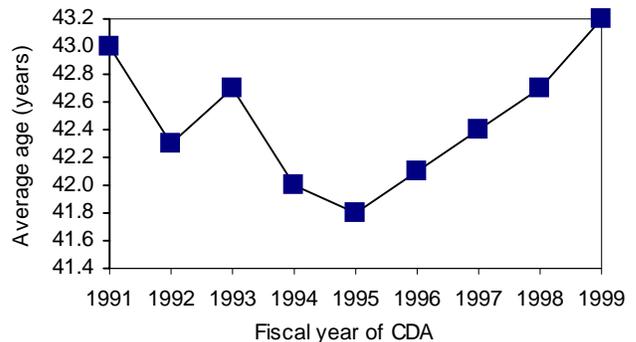


Figure 9. Average age of CDA claimants, FY 1991-1999



Note: The 1996 value has been revised

Figure 8. Median time lag between injury and CDA approval, FY 1991-1999

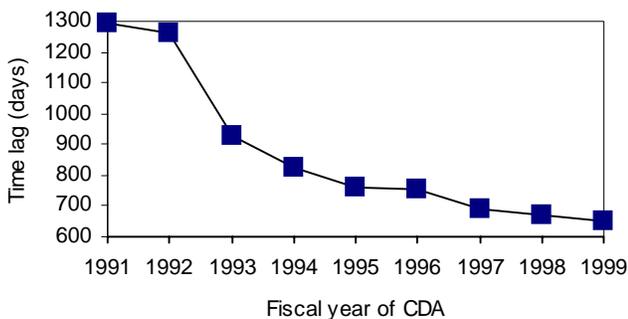
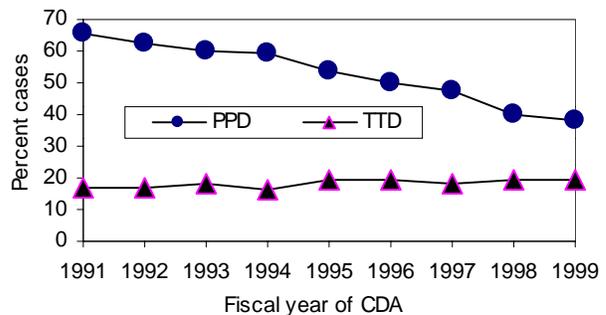


Figure 10. Percent CDAs by benefit type, FY 1991-1999



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