

Claim Disposition Agreements in the Oregon Workers' Compensation System, Fiscal Year 1996

Research & Analysis Section

Department of Consumer & Business Services

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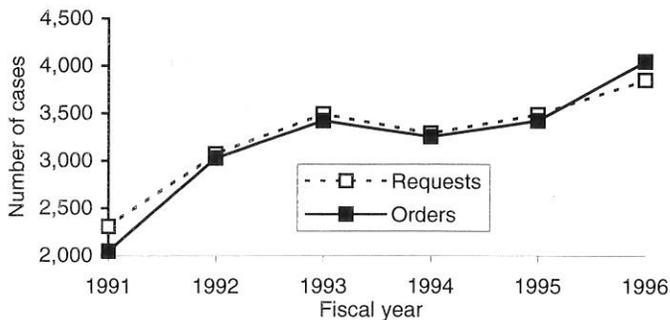
by Pilane Munidasa

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 director [Department of Consumer & Business Services] 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 director and 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; the board order is not subject to review; and submission of a CDA stays all other action on that claim, except for medical services. *Note: Effective June 7, 1995 Senate Bill 369 waived the 30-day cooling-off period if the claimant was represented by an attorney at the time the CDA was signed.*

Requests and orders. During the fiscal year ending June 30, 1996, the Workers' Compensation Board received 3,854 requests for approval of CDAs – an average of 321 a month. This is an increase of 10.5 percent over the previous year. During this year 4,037 agreements were approved, three were disapproved, and seven were withdrawn. This compares with 3,399 approvals, seven disapprovals, and 17 withdrawals in FY 1995. All three 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 1996. FY 1996 is the first year with more orders than requests, due in large part to the speedier disposal of cases consequent to the waiver of the cooling-off period by SB 369.

Figure 1. CDAs requested and disposed, FY 1991-1996

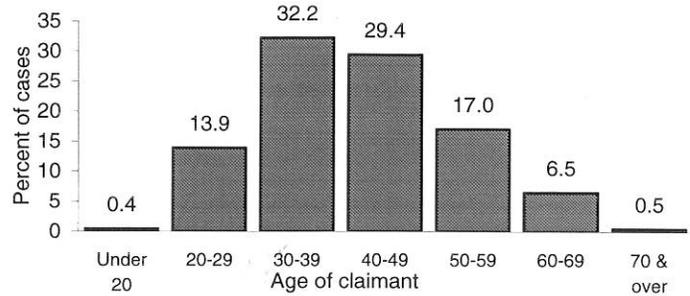


Note: Orders include approvals, disapprovals, and withdrawals.

Characteristics of Claimants Involved in Approved CDAs

Age of claimants. Almost a third of the claimants were between 30 and 39 years, and the large majority (92.5 percent) were between 20 and 59 years at the time of approval of the CDA. (See Figure 2.) Seven percent were 60 and over; just 0.4 percent were under 20. The average age at time of CDA approval was 41.4 years, five months less than last year. The frequency distribution of claimant age was very similar to that of FY 1995.

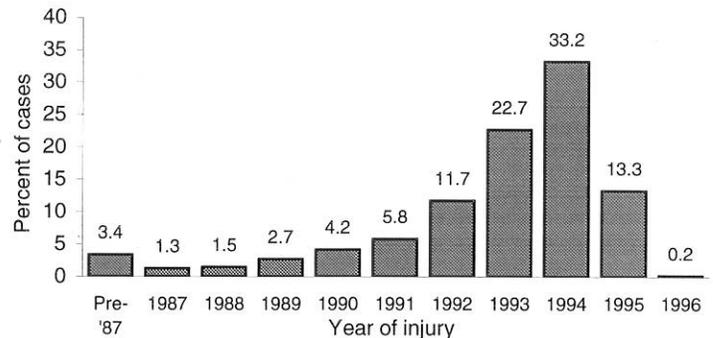
Figure 2. Percent CDAs by age of claimant, FY 1996



The average age at injury in these cases was 38.8 years, about 22 months more than the historical average age at injury for all accepted disabling claims.

Year of injury. For CDAs approved in FY 1995, 86.7 percent of the injuries had occurred in the five-year period beginning with calendar year 1991. The corresponding proportion last year was 87.6 percent. The year of injury with the highest percent of the approved CDAs (33.2 percent) was 1994. In cases with more recent injuries, 13.3 percent had a 1995 date of injury and 0.2 percent (eight cases) had a 1996 injury. (See Figure 3.)

Figure 3. Percent CDAs by year of injury, FY 1996



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, 29.4 percent were on claims that had never been closed or had been closed without an award, up from 26.2 percent last year.

An award had already been made in 70.6 percent of the claims resolved by a CDA, compared to 73.8 percent last year: PPD in 50.4 percent, TTD by itself in 19.6 percent, PTD in 0.4 percent; 0.2 percent involved fatalities. (TTD may also have been awarded in those cases with a PPD or a PTD award.) This distribution is similar to last year's except that cases with PPD dropped nearly five percentage points with a corresponding increase in open or no-award claims.

Litigation. Seventy-seven percent of the CDAs had previous or current litigation, the same as last year. Some 1,190 claims had pending litigation at the time of filing of the CDA, 89.2 percent of which were pending at Hearings Division.

Body part. As expected, the back was the body part most frequently injured in these CDAs (30.8 percent). Injuries or illnesses involving other unscheduled body parts accounted for 39.4 percent of the CDAs, while 29.8 percent dealt with scheduled body parts (extremities such as arms and legs). This is similar to the FY 1995 distribution.

Historically, the distribution of accepted disabling claims by body part has been somewhat different. In these claims, the back accounts for about 28 percent of the claims, and scheduled body parts for about 43 percent.

Insurer. Over one half (51.2 percent) of the claims involving CDAs were insured by private insurers; 32.6 percent had the SAIF Corporation as the insurer, and self-insured employers accounted for 15.0 percent of the cases; for FY 1995, the respective percentages were 54.3 percent, 31.0 percent and 13.6 percent. Non-complying employers were involved in yet another 1.1 percent in FY 1996. For calendar years 1992 through 1995, the average share of accepted disabling claims for SAIF Corporation, private insurers, and self-insured employers was 29.7 percent, 49.4 percent, and 20.2 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, 99.7 percent released all issues (except medical services), as compared to 99.8 percent last year. There were three cases with just one issue released, one fully (PPD) and the other two partially (vocational assistance and survivors' benefits).

Settlement amounts. The total settlement amount (inclusive of attorney fees) for the approved cases was \$49.2 million for an average of \$12,179, compared to \$43.1 million last year for an average of \$12,672. Of this, fees for the claimants' attorneys were authorized up to \$7.5 million in 3,660 cases for an average of \$2,043 per case, compared to \$6.6 million in 3,030 cases last year

for an average of \$2,179 per case. Over half (52.8 percent) of the settlement amounts this year were between \$1,000 and \$10,000; 95.8 percent were \$40,000 or less. (See Figure 5.) Only 25 cases (0.6 percent) had a settlement amount of over \$100,000. The average settlement amount decreased steadily from FY 1991, the first year CDAs were authorized (Figure 6). When cases were grouped according to various claim characteristics, the average settlement amount varied, sometimes considerably. See Table 1.

The largest variation was seen in the different benefit types. The

Figure 5. Distribution of CDA settlement amount, FY 1996

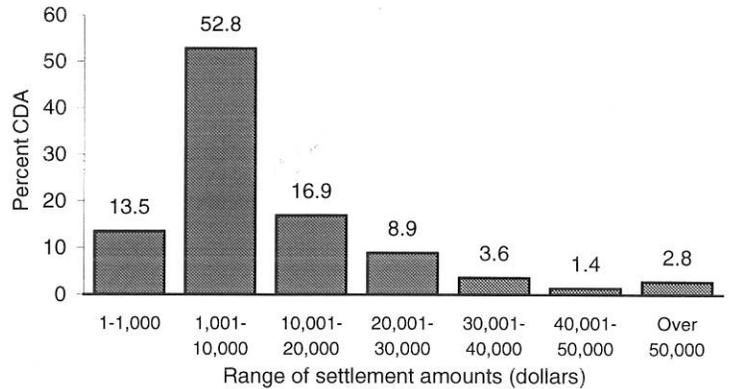


Figure 6. Average CDA settlement amount, FY 1991-1996

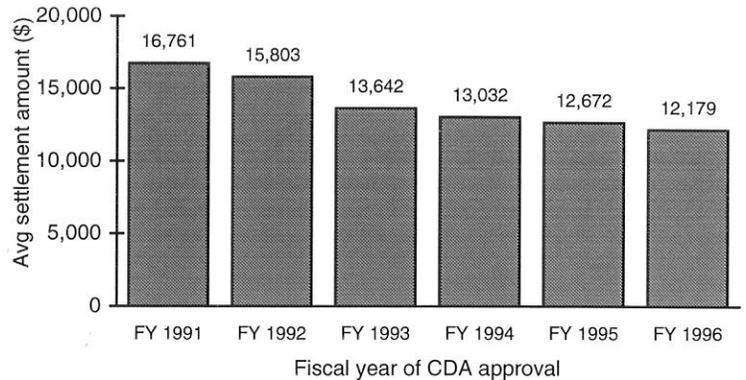
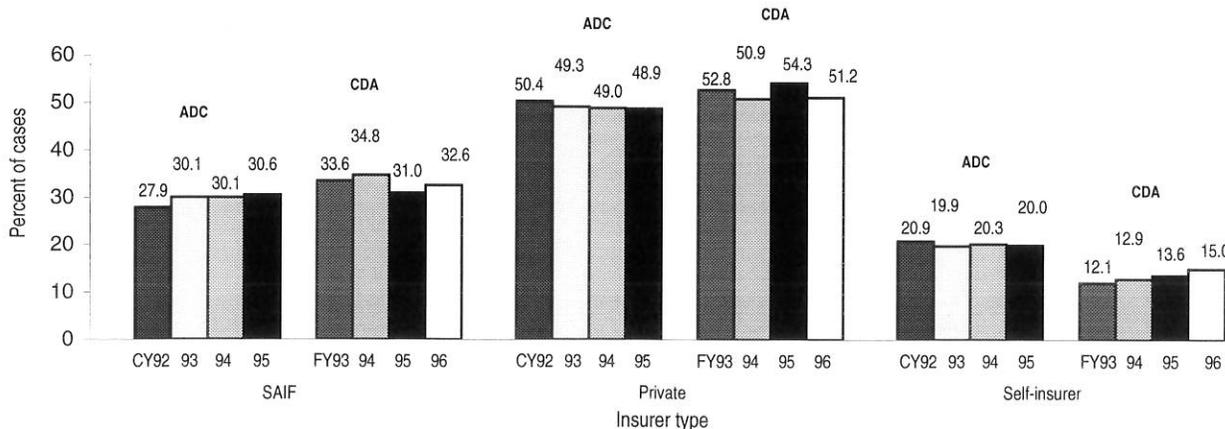


Figure 4. Percent of accepted disabling claims and CDAs, by insurer type



Note: The first four bars in each group are accepted disabling claims (ADC) share for calendar years 1992-1995; the last four are the CDA share for fiscal years 1993-1996.

average for TTD was the lowest at \$5,008, while the settlement amounts for fatalities and PTDs averaged \$167,931 and \$117,969 respectively.

For disabling claims, the average settlement was \$13,094, over \$10,000 more than that for non-disabling claims. For claims involving injury to scheduled body parts, the average was \$11,148, about \$1,469 less than that for unscheduled body parts. Claims without a history of litigation were settled for an average of \$13,320, \$1,553 more than for litigated cases.

Looking at the settlement amounts by insurer type, self-insured employers had the lowest average with \$8,821; private carriers averaged \$12,329. SAIF had the highest average with \$13,548, which would go down by \$100 if the non-complying employer cases (which SAIF handles) are also added to their count.

Type of settlement. Almost all of the CDAs (99.6%) were settled by a lump sum payment, 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

1996 as follows: four claims from the Handicapped Workers' Reserve for \$181,850, 18 from the Retroactive Reserve for \$883,784 and 29 from the Reemployment Assistance Reserve for \$320,900.

CDAs and disputed claim settlements (DCSs). Of the CDAs approved in FY 1996, 1,299 (32.2 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 \$9,075, 25.5 percent less than that for all CDAs.

Time lags. In the CDAs that were approved by the board, the median time lag between the request and the order was seven days, compared to 32 days the last two years; 99 percent were approved within 48 days of the request. The dramatic reduction of the request to order lag was due to the waiving of the 30-day cooling-off period where the claimant was represented by an attorney. The median time lag from injury to order was 752 days (2.1 years).

Trends. Fiscal year 1996 is the sixth 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 has decreased steadily, but the rate of decrease has slowed down over the last three years (Figure 6).

Table 1. Average CDA settlement amounts by various claim characteristics, FY 1995 and FY 1996

Characteristic	FY1995		FY1996		Settlement Amount					
	Number of cases	% of total	Number of cases	% of total	FY1995			FY1996		
					Total	% of total	Average	Total	% of total	Average
Insurer type										
SAIF	1,053	31.0%	1,318	32.6%	\$14,140,007	32.8%	\$13,428	\$17,856,736	36.3%	\$13,548
Private	1,846	54.3%	2,068	51.2%	\$22,933,821	53.2%	\$12,424	\$25,495,591	51.9%	\$12,329
Self-insured	463	13.6%	607	15.0%	\$5,595,571	13.0%	\$12,085	\$5,354,209	10.9%	\$8,821
Non-comp. employer	37	1.1%	44	1.1%	\$402,371	0.9%	\$10,875	\$459,018	0.9%	\$10,432
Award type										
Unknown	890	26.2%	1,187	29.4%	\$12,926,560	30.0%	\$14,524	\$14,960,994	30.4%	\$12,604
TTD	659	19.4%	791	19.6%	\$3,494,450	8.1%	\$5,303	\$3,960,978	8.1%	\$5,008
PPD	1,834	54.0%	2,035	50.4%	\$24,986,492	58.0%	\$13,624	\$26,962,675	54.8%	\$13,249
PTD	10	0.3%	15	0.4%	\$759,750	1.8%	\$75,975	\$1,769,530	3.6%	\$117,969
Fatal	6	0.2%	9	0.2%	\$904,517	2.1%	\$150,753	\$1,511,378	3.1%	\$167,931
Litigation status										
Not litigated	796	23.4%	1,070	26.5%	\$10,800,167	25.1%	\$13,568	\$14,252,452	29.0%	\$13,320
Litigated	2,603	76.6%	2,967	73.5%	\$32,271,603	74.9%	\$12,398	\$34,913,103	71.0%	\$11,767
Body part										
Scheduled	1,034	30.4%	1,205	29.8%	\$10,659,119	24.7%	\$10,309	\$13,433,332	27.3%	\$11,148
Back	1,088	32.0%	1,243	30.8%	\$14,212,937	33.0%	\$13,063	\$15,120,377	30.8%	\$12,164
Other	1,277	37.6%	1,589	39.4%	\$18,199,714	42.3%	\$14,252	\$20,611,846	41.9%	\$12,972
First closure status										
With closure	2,568	75.6%	2,909	72.1%	\$30,685,523	71.2%	\$11,949	\$34,633,221	70.4%	\$11,906
W/o closure	831	24.4%	1,128	27.9%	\$12,386,247	28.8%	\$14,905	\$14,532,334	29.6%	\$12,883
Disability status										
Disabling	3,160	93.0%	3,672	91.0%	\$42,163,922	97.9%	\$13,343	\$48,079,442	97.8%	\$13,094
Non-disabling	239	7.0%	365	9.0%	\$907,848	2.1%	\$3,799	\$1,086,113	2.2%	\$2,976
ALL CASES	3,399	100.0%	4,037	100.0%	\$43,071,770	100.0%	\$12,672	\$49,165,555	100.0%	\$12,179

Notes: Non-complying employer claims are also handled by SAIF. The "Unknown" award type consists mainly of open cases. Of the 1,128 cases without first closure, 339 (30 percent) were non-disabling, compared to 26 percent last fiscal year.

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 27.9 in FY96, 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 also been showing a decreasing trend except for a slight increase in FY 1993 (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 (although slight) (Figure 10). Even though no particular trend is seen in TTD cases, they have shown a slight but steady increase over the last three years.

Figure 7. CDAs on open cases, FY 1991-1996

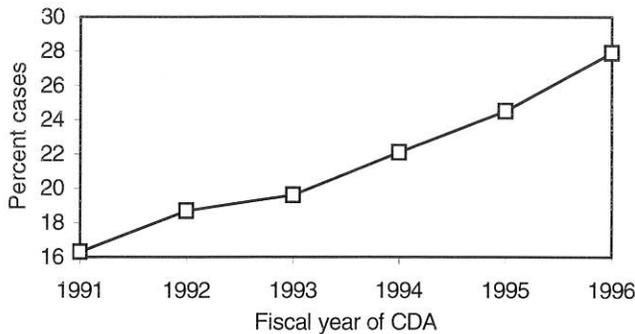


Figure 9. Average age of CDA claimants, FY 1991-1996

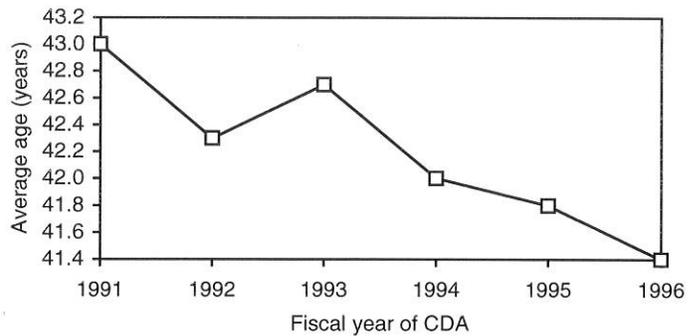


Figure 8. Median time lag between injury and CDA approval, FY 1991-1996

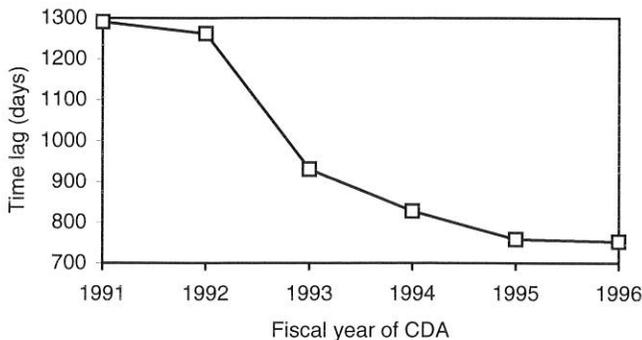
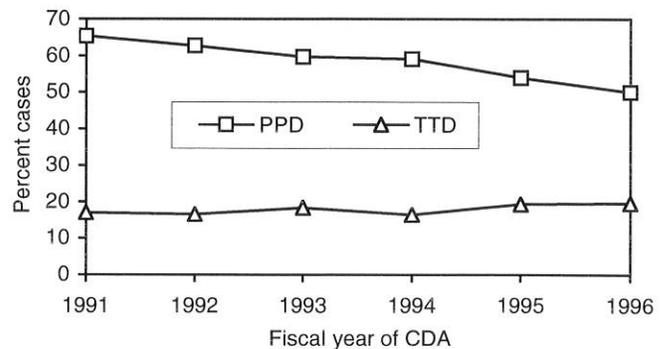


Figure 10. Percent CDAs by benefit type, FY 1991-1996



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