

Defense Legal Costs of Oregon Workers' Compensation Insurers, 2004

Information Management Division

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by [Russ Reed](#)

In 2004, Oregon workers' compensation insurance carriers and self-insured employers (together referred to as "insurers") paid almost \$27.7 million for attorney salaries, attorney fees, and other legal services incurred in accordance with Chapter 656, Oregon Revised Statutes. These costs are primarily to defend the insurer against claims or benefits believed to be unwarranted. Costs to represent the insurer in responsibility disputes (where the outcome may not directly affect the worker) and for services provided outside of litigation (such as negotiating a claim disposition agreement) are also included. Defense costs are distinguished from fees paid to attorneys representing injured workers.

Table 1 summarizes these costs by cost type and insurer class. Costs for retained counsel were 63.4 percent of all costs. Costs for in-house attorney salaries and benefits were the highest since the peak in 1995.

Note that the total costs include "insurer-paid costs in support of retained counsel," for costs paid directly by the insurer or third party administrator for services requested by or in support of retained counsel. These costs – which were first collected for 2003 – include medical costs (exams, evaluations, reports, depositions, record reviews) and other costs (investigative, video, transpor-

tation, postage, copying, transcription, telephone, court costs, etc.). Because of differences in law firm billing and insurer accounting practices, costs of these types have sometimes been – and some by necessity are still – included in the "other in-house" and "retained counsel" cost categories.

The graph below depicts total defense legal costs for the past 10 years. Total costs in 2004 were about 2.1 percent more than in 2003. Retained counsel costs and attorney salaries, respectively, accounted for 44 and 34 percent of the cost increase.

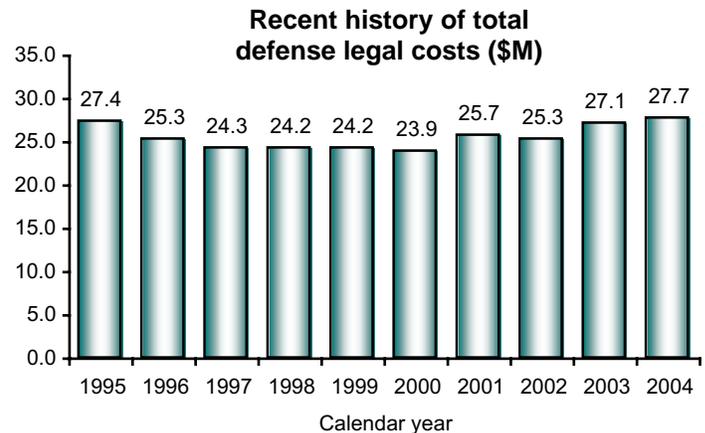


Table 1. Insurer defense legal costs (\$ thousands) by category, 2004

Insurer classification	Attorney salaries	Non-atty. salaries	Other in-house	Total in-house	Retained counsel	Support of retained cnsl.	Total costs
SAIF	\$ 3,487	\$ 829	\$ 1,585	\$ 5,901	\$ 241	\$ 24	\$ 6,166
Private insurers	1,305	1,102	917	3,324	8,461	286	12,071
SAIF plus private	4,792	1,931	2,502	9,225	8,702	310	18,237
Self-insured	160	99	77	337	8,871	253	9,460
All classes	\$ 4,952	\$ 2,030	\$ 2,580	\$ 9,562	\$ 17,573	\$ 563	\$ 27,697
Share of total	17.9%	7.3%	9.3%	34.5%	63.4%	2.0%	100.0%

Note: Values may not add to totals due to rounding.

Table 2. Other information about defense legal costs, 2004

Insurer classification	[1] Percentage of total cost	[2] Number claims	[3] Attorney staff (FTE)	[4] House costs, % of total	[5] Cost change 2004-2003
SAIF	22.3%	4,570	29.9	95.7%	-0.6%
Private insurers	43.6%	5,198	13.8	27.5%	6.5%
SAIF + private	65.8%	9,768	43.7	50.6%	4.0%
Self-Insured	34.2%	2,498	1.54	3.6%	-1.4%
All classes	100.0%	12,266	45.2	34.5%	2.1%

Note: Values may not add to totals due to rounding.

SAIF's share of total costs in 2004 (Table 2, column 1) decreased by 0.6 percentage points from 2003, while private insurers' share increased by 1.8 points. The number of claims (column 2) is the number of claims that had a change in the litigation status during the year; it is used to approximate the number of litigated claims. The total number of such claims fell for the past three years to the smallest on record (going back to 1990).

The numbers of in-house attorney staff (full-time equivalent, or FTE) are in column 3, and the percentages of all costs that are composed of in-house costs are in column 4. The number of in-house attorneys (FTE) – which had declined steadily from its 1993 peak (80.6) to a record-low 43.2 in 2003 – increased by 2.0 persons. SAIF's use of in-house staff has always exceeded the other insurer classifications. For 2004, 95.7 percent of SAIF's legal costs were in-house costs, the highest percentage since 1999. Finally, column 5 gives the 2003-2004 changes. "Private insurers" was the only insurer class that experienced an overall cost increase.

A total of \$22.5 million – 81.3 percent of all defense costs – was paid to attorneys (attorney salaries plus retained counsel), about the same as for 2003 and down from 2001's record-high 87.3 percent. We assume for this purpose that billings for retained counsel are all attorney fees, but other costs to the law firm may be included, as well (see the third paragraph, above).

This report is based on data submitted by insurers as required by ORS 656.388(5). Surveys were sent to 237 insurers that had three or more claims in litigation during the year. All insurers responded. Costs for insurers with one or two claims were estimated – based on average costs per litigated claim for similar insurers – at \$0.225 million. Estimated amounts constituted about 0.8 percent of total defense costs.

More information is available from the Department of Consumer & Business Services, Research & Analysis Section, (503) 378-8254.

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Information Management Division
 350 Winter St. NE, Room 300
 P.O. Box 14480
 Salem, OR 97309-0405
 (503) 378-8254