

Defense Legal Costs of Oregon Workers' Compensation Insurers, 2005

Information Management Division

Department of Consumer & Business Services

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In 2005, Oregon workers' compensation insurance carriers and self-insured employers (together referred to as "insurers") paid almost \$29.4 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. They also include 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). Defense costs are distinguished from fees paid to attorneys representing injured workers.

Table 1 summarizes these costs by cost type and insurer classification. Costs for retained counsel were 61.5 percent of all costs. Costs for in-house attorney salaries and benefits were the highest on record at \$5,140,000, surpassing the 1995 peak of \$5,051,000.

Note that the total costs include "insurer-paid costs in support of retained counsel," which are 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 2005 were about 6.1 percent more than in 2004 and were the highest on record. Retained counsel costs and "other in-house costs," respectively, accounted for 29 percent and 27 percent of the cost increase.

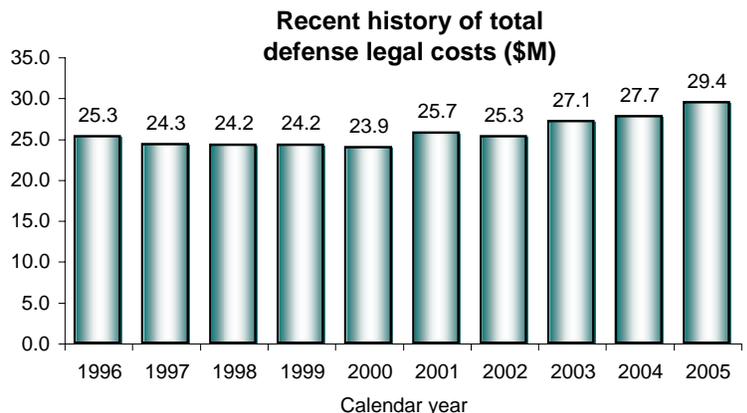


Table 1. Insurer defense legal costs (\$ thousands) by category, 2005

Insurer classification	Attorney salaries	Non-atty. salaries	Other in-house	Total in-house	Retained counsel	Support of retained cnsl.	Total costs
SAIF	3,651	907	1,982	6,539	270	24	6,833
Private insurers	1,380	1,156	969	3,504	8,001	602	12,107
SAIF plus private	5,031	2,063	2,950	10,044	8,271	626	18,941
Self-insured	109	100	79	288	9,789	364	10,441
All classes	\$ 5,140	\$ 2,163	\$ 3,030	\$ 10,332	\$ 18,060	\$ 990	\$ 29,382
Share of total	17.5%	7.4%	10.3%	35.2%	61.5%	3.4%	100.0%

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

Table 2. Other information about defense legal costs, 2005

Insurer classification	[1] Percentage of total cost	[2] Number claims	[3] Attorney staff (FTE)	[4] House costs, % of total	[5] Cost change 2004-2005
SAIF	23.3%	5,135	29.9	95.7%	10.8%
Private insurers	41.2%	5,450	13.9	28.9%	0.3%
SAIF + private	64.5%	10,585	43.8	53.0%	3.9%
Self-Insured	35.5%	2,683	1.0	2.8%	10.4%
All classes	100.0%	13,268	44.8	35.2%	6.084%

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

SAIF's share of total costs in 2005 (Table 2, column 1) increased by 1.0 percentage point from 2004, while private insurers' share decreased by 2.4 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 rose 8 percent in 2005, after falling for the previous three years.

The number of in-house attorney staff (full-time equivalent, or FTE) is given in column 3, and the percentage of all costs that are composed of in-house costs is given in column 4. SAIF's use of in-house staff has always exceeded the other insurer classifications. For 2005, 95.7 percent of SAIF's legal costs were in-house costs, tying 2004 as the highest percentage since 1999's 95.9 percent. Finally, column 5 gives the 2004-2005 change. SAIF and self-insured employers had the greatest percentage cost increases.

Almost 79.0 percent of all defense costs – a total of \$23.2 million – was paid to attorneys (attorney salaries plus retained counsel) in 2005, down from 2001's

record-high 87.3 percent and the second-lowest value on record. We assume that billings for retained counsel are all attorney fees, but other costs to the law firm also may be included (see the third paragraph, first page).

This report is based on data submitted by insurers as required by ORS 656.388(5). Surveys were sent to 227 insurers that had three or more claims in litigation during the year. Due to nonreceipt of surveys, we estimated costs for one insurer and partial costs for two insurer groups. We also estimated costs for insurers with one or two claims – based on average costs per litigated claim for similar insurers – at \$268,000. Total estimated amounts constituted about 1.8 percent of total defense costs.

More information is available from the Department of Consumer & Business Services, Information Management Division, (503) 378-8254.

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