

# Defense Legal Costs of Oregon Workers' Compensation Insurers, 2007

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by [Russ Reed](#) and [James Burke](#)

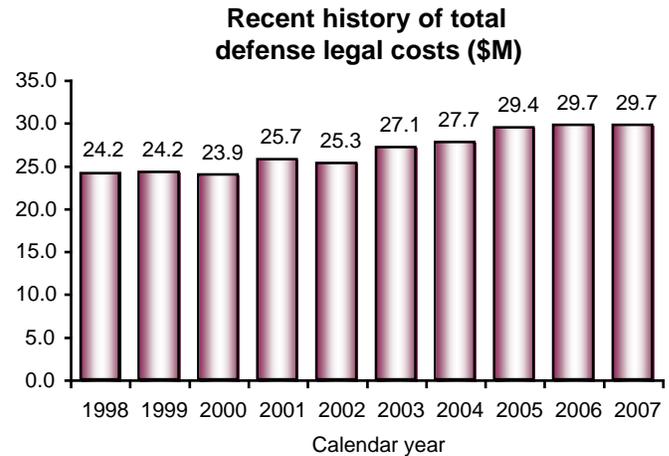
In 2007 Oregon workers' compensation insurance carriers and self-insured employers (together, "insurers") paid almost \$29.7 million for attorney salaries, attorney fees, and other legal services incurred in accordance with Chapter 656, Oregon Revised Statutes. Insurers defense costs are primarily to defend the insurer against claims or benefits believed to be unwarranted; they may also include costs to represent the insurer in responsibility disputes (where the outcomes may not directly affect workers) and for services outside of litigation (such as negotiating claim disposition agreements). Defense costs are distinguished from fees paid to attorneys representing injured workers.

Costs for retained counsel were 64.1 percent of all costs (Table 1). For 2006, Liberty Group began treating former in-house operations as retained counsel, leading to a decrease in attorney salaries and other in-house costs, and an increase in retained-counsel costs among private insurers after 2005.

Total costs include insurer-paid costs in support of retained counsel, costs paid directly by the insurer or third party administrator for services requested by or in

support of retained counsel. These costs – first collected for 2003 – include medical costs (exams, evaluations, reports, depositions, record reviews) and other costs (investigative, video, transportation, postage, transcription, telephone, court costs, etc.). Because of differences in law firm billing and insurer accounting practices, these costs have often been – and some by necessity are still – included as "other in-house" and "retained counsel" costs.

The graph below depicts total defense legal costs for the past 10 years. Total costs in 2007 were about the same as 2006 costs, the highest on record.



**Table 1. Insurer defense legal costs (\$ thousands) by category, 2007**

Insurer classification	Attorney salaries	Non-atty. salaries	Other in-house	Total in-house	Retained counsel	Support of retained cnsl.	Total costs
SAIF	\$ 4,140	\$ 949	\$ 2,255	\$ 7,344	\$ 299	\$ 55	\$ 7,699
Private insurers	329	121	76	527	8,212	1,620	10,359
SAIF + private	4,469	1,070	2,332	7,871	8,511	1,675	18,057
Self-Insured	81	89	53	224	10,481	889	11,593
<b>Total</b>	<b>\$ 4,551</b>	<b>\$ 1,159</b>	<b>\$ 2,384</b>	<b>\$ 8,094</b>	<b>\$ 18,992</b>	<b>\$ 2,565</b>	<b>\$ 29,651</b>
Share of total	15.3%	3.9%	8.0%	27.3%	64.1%	8.7%	100.0%

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

**Table 2. Other information about defense legal costs, 2007**

Insurer classification	[1] Percentage of total cost	[2] Number claims	[3] Attorney staff (FTE)	[4] In-house costs, % of total	[5] Cost change 2006-2007
SAIF	26.0%	4,593	31.9	95.4%	3.1%
Private insurers	34.9%	4,366	3.7	5.1%	-13.2%
SAIF + private	60.9%	8,959	35.6	43.6%	-6.9%
Self-Insured	39.1%	2,227	0.8	1.9%	13.0%
All classes	100.0%	11,186	36.3	27.3%	-0.02%

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

SAIF's share of total costs in 2007 (Table 2, column 1) increased by 0.8 percentage points from 2006, while private insurers' share decreased by 5.3 percentage points. The claims count (column 2) is the number of claims that had a change in litigation status during the year; it approximates the number of litigated claims. The total number of such claims fell by 8.2 percent in 2007, after a similar decrease the previous year.

The numbers of in-house attorney staff (full-time equivalent, or FTE) are given in column 3, and the percentages of all costs that are composed of in-house costs are given in column 4. SAIF's use of in-house staff has always exceeded the other insurer classifications. For 2007, SAIF's in-house costs were a typical 95.4 percent of legal costs. Finally, column 5 gives 2006-2007 changes: SAIF and self-insured companies had cost increases, while private insurers had a cost decrease.

A total of \$23.5 million – 79.4 percent of all defense costs – was paid to attorneys (attorney salaries plus retained counsel), down from 2006's 82.1 percent. We assume costs reported for retained counsel are all attorney fees, but other costs to the law firm are included.

Cost data are provided by insurers as required by ORS 656.388(6). Surveys were sent to 212 insurers that had three or more claims in litigation during the year. Due to non-receipt of surveys, we estimated costs for two self-insured employers, three insurance companies, and part of one insurer group. We also estimated costs for insurers with one or two claims. These estimates, based on average costs per litigated claim for similar insurers, totaled \$602,500 and constituted about 2.0 percent of all 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