

Defense Legal Costs of Oregon Workers' Compensation Insurers, 2008

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In 2008, Oregon workers' compensation insurance carriers and self-insured employers (together, "insurers") paid almost \$32.4 million for attorney salaries, attorney fees, and other legal services incurred in accordance with Chapter 656, Oregon Revised Statutes. Insurer defense costs are primarily for defending 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 66.4 percent of all costs (Table 1), exceeding the 63.5 percent of 2007. 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 2008 were 7.2 percent greater than 2007 costs. (Note that 2007 costs, originally reported to be about \$29.7 million, have been revised to \$30.2 million.)

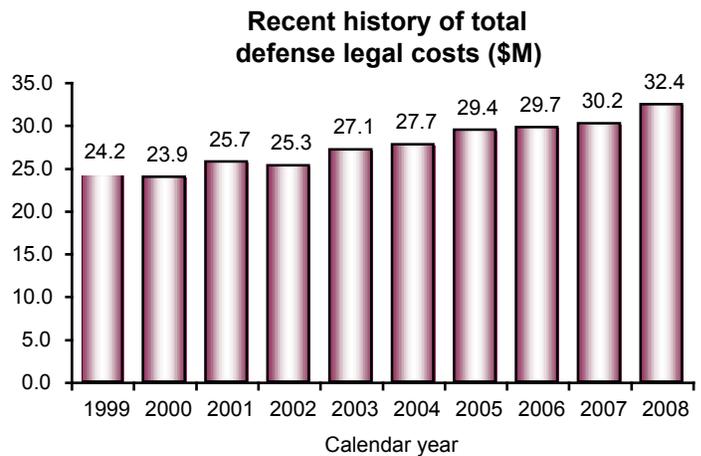


Table 1. Insurer defense legal costs (\$ thousands) by category, 2008

Insurer classification	Attorney salaries	Non-atty. salaries	Other in-house	Total in-house	Retained counsel	Support of retained cnsl.	Total costs
SAIF	\$4,291	\$1,065	\$2,562	\$7,918	\$348	\$22	\$8,287
Private insurers	267	93	82	443	10,687	1,568	12,698
SAIF + private	4,558	1,158	2,644	8,360	11,035	1,590	20,985
Self-Insured	103	105	49	257	10,483	664	11,404
All classes	\$4,661	\$1,263	\$2,693	\$8,617	\$21,518	\$2,254	\$32,389
Share of total	14.4%	3.9%	8.3%	26.6%	66.4%	7.0%	100.0%

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

Table 2. Other information about defense legal costs, 2008

Insurer classification	[1] Percentage of total cost	[2] Claim counts	[3] Attorney staff (FTE)	[4] In-house costs, % of total	[5] Cost change 2007-2008
SAIF	25.6%	4,301	28.6	95.5%	3.9%
Private insurers	39.2%	4,136	3.2	3.5%	19.2%
SAIF + private	64.8%	8,437	31.8	39.8%	12.7%
Self-Insured	35.2%	2,172	0.7	2.3%	-1.6%
All classes	100.0%	10,609	32.5	26.6%	7.2%

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

SAIF's share of total costs in 2008 (Table 2, column 1) decreased by 0.8 percentage points from 2007, while private insurers' share increased by 4.0 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 5.2 percent in 2008, after a larger 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 2008, SAIF's in-house costs were a typical 95.5 percent of legal costs. Finally, column 5 gives 2007-2008 changes: SAIF and private insurance carriers had cost increases, while self-insured employers had a cost decrease.

A total of \$26.2 million – 80.8 percent of all defense costs – was paid to attorneys (attorney salaries plus retained counsel), up from 2007's 78.5 percent. Costs reported for retained counsel, in addition to attorney fees, include other costs incurred by the law firm.

Cost data are provided by insurers as required by ORS 656.388(6). Surveys were sent to 209 insurers that had three or more claims in litigation during the year. Due to non-receipt of surveys, we estimated costs for five self-insured employers, two insurance companies, and 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 \$630,000 and constituted about 1.9 percent of all defense costs.

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

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