



# Defense Legal Costs of Oregon Workers' Compensation Insurers, 2009

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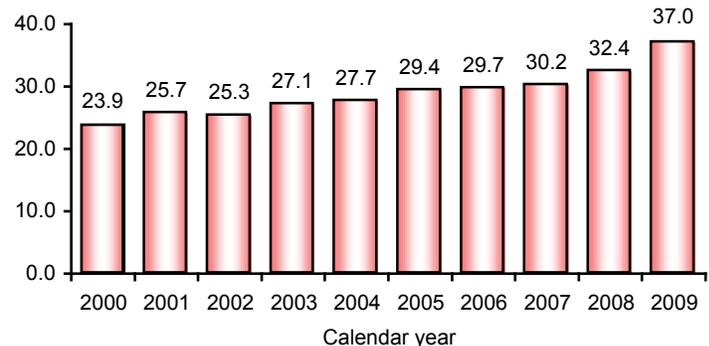
In 2009, Oregon workers' compensation insurance carriers and self-insured employers (together, "insurers") paid more than \$37.0 million for attorney salaries, attorney fees, and other legal services incurred in accordance with Chapter 656, Oregon Revised Statutes. Insurer defense costs are primarily 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 69.7 percent of all costs (Table 1), exceeding the 66.4 percent of 2008. 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 some medical costs (exams, reports, depositions, etc.) and other costs (investigative, video,

administrative, 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" or "retained counsel" costs.

The graph below depicts total defense legal costs for the past 10 years. Total costs in 2009 were 14 percent greater than 2008 costs. Costs for retained counsel accounted for 92 percent of this increase.

**Recent history of total defense legal costs (\$M)**



**Table 1. Insurer defense legal costs (\$ thousands) by category, 2009**

Insurer classification	Attorney salaries	Non-atty. salaries	Other in-house	Total in-house	Retained counsel	Support of retained cnsl.	Total costs
SAIF	\$4,528	\$985	\$2,539	\$8,052	\$349	\$23	\$8,423
Private insurers	283	109	75	468	13,338	1,322	15,128
SAIF + private	4,811	1,094	2,614	8,520	13,687	1,345	23,552
Self-Insured	142	188	57	387	12,122	985	13,493
All classes	\$4,953	\$1,282	\$2,671	\$8,907	\$25,809	\$2,330	\$37,045
Share of total	13.4%	3.5%	7.2%	24.0%	69.7%	6.3%	

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

**Table 2. Other information about defense legal costs, 2009**

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	22.7%	4,217	29.55	95.6%	1.6%
Private insurers	40.8%	3,864	2.66	3.1%	19.1%
SAIF + private	63.6%	8,081	32.21	36.2%	12.2%
Self-Insured	36.4%	2,286	1.11	2.9%	18.3%
All classes	100.0%	10,367	33.32	24.0%	14.4%

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

SAIF's share of total costs in 2009 (Table 2, column 1) decreased by 2.9 percentage points from 2008, while private insurers' share increased by 1.6 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 2.3 percent in 2009, after larger decreases the previous two years.

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 those of other insurers. For 2009, SAIF's in-house costs were a typical 95.6 percent of legal costs. Finally, column 5 gives 2008-2009 cost changes: SAIF had a 1.6 percent increase, while private insurance carriers and self-insured employers had increases exceeding 19 percent and 18 percent, respectively.

A total of \$30.8 million – 83.0 percent of all defense costs – was paid to attorneys (attorney salaries plus

retained counsel), up from 2008's 80.8 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 201 insurers that had three or more claims in litigation during the year. Due to non-receipt of surveys, we estimated costs for three insurance companies, and part of the costs for two insurance companies (not all third-party administrators reported). We also estimated costs for insurers with one or two claims. These estimates, based on average costs per litigated claim for similar insurers, totaled \$558,000 and constituted about 1.5 percent of all costs reported here.

SAIF costs for third-party recoveries and other subrogation activity by the Department of Justice, \$27,500 in 2009, are not included in SAIF costs reported above.

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

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