

Defense Legal Costs of Oregon Workers' Compensation Insurers, 2010

Information Management Division

Department of Consumer and Business Services

August 2011

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In 2010, Oregon workers' compensation insurance carriers and self-insured employers (together, "insurers") paid more than \$38.3 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 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 70.6 percent of all costs (Table 1), exceeding the 70.1 percent of 2009. 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 2010 were 1.0 percent greater than 2009 costs. Note that 2009 reported costs have increased from \$37.0 million to \$37.9 million due to corrected data received in 2011.

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

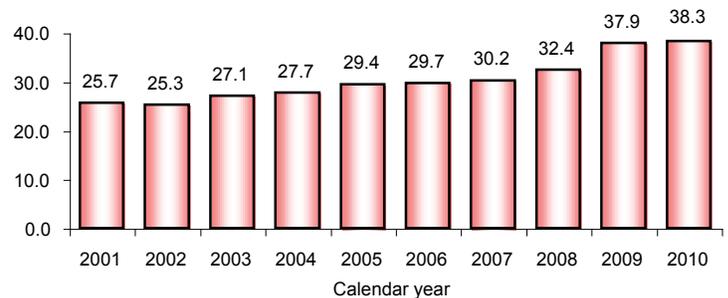


Table 1. Insurer defense legal costs (\$ thousands) by category, 2010

Insurer classification	Attorney salaries	Non-atty. salaries	Other in-house	Total in-house	Retained counsel	Support of retained cnsl.	Total costs
SAIF	\$4,653	\$954	\$2,394	\$8,001	\$250	\$15	\$8,266
Private insurers	217	70	57	344	14,650	1,725	16,720
SAIF + private	4,870	1,024	2,451	8,345	14,901	1,740	24,986
Self-Insured	154	104	54	312	12,155	869	13,336
All classes	\$5,024	\$1,128	\$2,504	\$8,657	\$27,056	\$2,608	\$38,321
Share of total	13.1%	2.9%	6.5%	22.6%	70.6%	6.8%	100.0%

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

Table 2. Other information about defense legal costs, 2010

Insurer classification	[1] Percentage of total cost	[2] Claim counts	[3] Attorney staff (FTE)	[4] In-house costs, % of total	[5] Cost change 2009-2010
SAIF	21.6%	4,036	29.83	96.8%	-1.9%
Private insurers	43.6%	3,605	2.16	2.1%	4.5%
SAIF + private	65.2%	7,641	31.99	33.4%	2.3%
Self-Insured	34.8%	2,114	1.13	2.3%	-1.2%
All classes	100.0%	9,755	33.12	22.6%	1.0%

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

SAIF's share of total costs in 2010 (Table 2, column 1) decreased by 0.6 percentage points from 2009, while private insurers' share increased by 1.4 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 5.9 percent in 2010, after a smaller 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 those of other insurers. For 2010, SAIF's in-house costs were 96.8 percent of its legal costs. Finally, column 5 gives 2009-2010 cost changes: SAIF had a 1.9 percent decrease and self-insured employers had a 1.2 percent decrease, while private insurance carriers had a 4.5 percent increase.

A total of \$32.1 million – 83.7 percent of all defense costs – was paid to attorneys (attorney salaries plus

retained counsel), up from 2009's 83.0 percent. Costs reported for retained counsel may include, in addition to attorney fees, other costs incurred by the law firm.

Cost data are provided by insurers as required by ORS 656.388(6). Surveys were sent to 196 insurers that had three or more claims in litigation during the year. Due to nonreceipt of surveys, we estimated costs for seven insurance carriers and two self-insured employers.

We also estimated costs for insurers with one or two claims. These estimates, based on average costs per litigated claim for insurers similar in class and number of litigated claims, totaled \$461,000 and constituted about 1.2 percent of all costs reported here.

SAIF costs for third-party recoveries and other subrogation activity by the Department of Justice, \$19,000 in 2010, are not included here.

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

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