



Defense Legal Costs of Oregon Workers' Compensation Insurers, 2011

Information Management Division

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In 2011, Oregon workers' compensation insurance carriers and self-insured employers (together, "insurers") paid almost \$36.2 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 69.7 percent of all costs (Table 1), less than the 70.6 percent of 2010. 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 2011 were 6.2 percent less than 2010 costs. Note that 2010 reported costs have increased from \$38.3 million to \$38.6 million due to corrected data received in 2012.

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

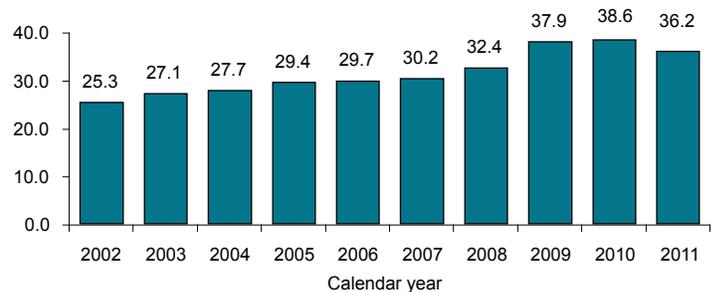


Table 1. Insurer defense legal costs (\$ thousands) by category, 2011

Insurer classification	Attorney salaries	Non-atty. salaries	Other in-house	Total in-house	Retained counsel	Support of retained cnsl.	Total costs
SAIF	4,420	981	2,363	7,764	220	15	7,998
Private insurers	239	75	50	364	13,664	1,349	15,377
SAIF + private	4,659	1,056	2,413	8,127	13,884	1,364	23,376
Self-Insured	191	107	55	354	11,323	1,131	12,808
All classes	4,850	1,163	2,468	8,481	25,207	2,495	36,183
Share of total	13.4%	3.2%	6.8%	23.4%	69.7%	6.9%	100.0%

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

Table 2. Other information about defense legal costs, 2011

Insurer classification	[1] Percentage of total cost	[2] Claim counts	[3] Attorney staff (FTE)	[4] In-house costs, % of total	[5] Cost change 2010-2011
SAIF	22.1%	3,749	26.86	97.1%	-3.2%
Private insurers	42.5%	3,335	2.26	2.4%	-8.0%
SAIF + private	64.6%	7,084	29.12	34.8%	-6.4%
Self-Insured	35.4%	2,009	1.36	2.8%	-5.7%
All classes	100.0%	9,093	30.48	23.4%	-6.2%

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

SAIF's share of total costs in 2011 (Table 2, column 1) increased by 0.7 percentage points from 2010, while private insurers' share decreased by 0.9 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 6.8 percent in 2011, 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 that of other insurer classes. For 2011, SAIF's in-house costs were 97.1 percent of its legal costs. Finally, column 5 gives 2010-2011 cost changes: SAIF had a 3.2 percent decrease, private insurance carriers had a 8.0 percent decrease, and self-insured employers had a 5.7 percent decrease.

A total of \$30.1 million – 83.1 percent of all defense costs – was paid to attorneys (attorney salaries plus retained counsel), down from 2010's 83.7 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 241 insurers that had three or more claims in litigation during the year. Due to nonreceipt of surveys, we estimated costs for two insurance carriers (in one insurer group). 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 \$323,000 and constituted less than 1 percent of all costs reported here.

SAIF costs for third-party recoveries and other subrogation activity by the Department of Justice, \$48,000 in 2011, are not included above.

More information is available from the Department of Consumer and Business Services, Central Services Division, 503-378-8254.

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