



# Oregon Supreme Court Workers' Compensation Summary, 1997-2002

Research & Analysis Section

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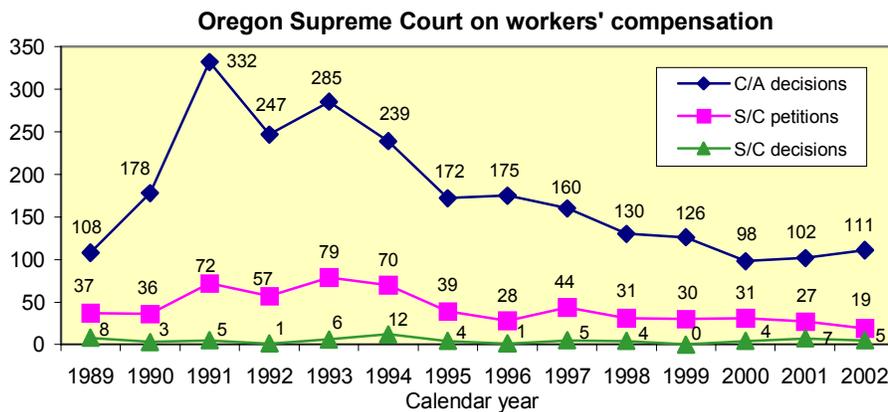
by Russell Reed

**Requests and Decisions.** There were 182 petitions for Oregon Supreme Court review of Court of Appeals decisions during calendar years 1997 through 2002. That's about 30.3 requests per year, compared to 45.7 per year for the previous three years. The appeal rate, for Court of Appeals workers' compensation cases, was 25.0 percent (compared to 23.4 percent for 1994-96).

some 13.7 percent of appealed lower court decisions were selected for review (12.4 percent for 1994-96). The percentage of Court of Appeals decisions that were reviewed by the higher court was the product of the 25.0 percent appeal rate and the 13.7 percent selection rate, or 3.4 percent. That figure for the previous 3-year period was 2.9 percent. See the graph, below.

The higher court agreed to review, and wrote **decisions** (including remands), on 25 Court of Appeals cases. Thus

The **petitioner** was the worker in 17 (68.0 percent) of the 25 cases with a Supreme Court decision.



**Issues.** Of the 25 decisions written by the court, 9 (36.0 percent) were about **compensability** (excludes one aggravation-issue case) and related issues, 5 concerned **extent of permanent disability** (there were none in 1994-1996), and 2 each were about **responsibility** and **third-party settlements**. See the table on the reverse for a list of cases and their issues.

to remand to the director because the temporary rule was unresponsive, and for the board to dismiss (one case each). The high court affirmed the **Workers' Compensation board** in 6 of the 25 cases (24.0 percent).

**Dispositions.** Of the 9 compensability cases, the high court's decision was to set aside the denial in 6 cases, affirm the denial in 2 cases, and remand in 1 case.

**Time Lags.** For the 20 cases that were argued before the court, the median time lag from **petition** for court review to court decision (slip opinion published) was 609 days (20 months), over twice the 273 days for the 1994-1996 period. Over 50 motions for time extension were filed in 15 cases, 3.4 motions per case.

**Affirmation Rates.** The Oregon Supreme Court affirmed the **Court of Appeals** in 7 of the 25 cases (28.0 percent). Of the remaining 18 decisions, 14 were remanded to the board or to the lower court. The reasons for remanding were as follows: for further proceedings (5 cases), for reconsideration (or, in one case, further proceedings) in the light of another decision by the court (5 cases), the board order was insufficient for review, the board applied the wrong legal standard, for the board

The median lag from **hearing request** to court decision was 1,959 days, so cases spent an average of 5.4 years in litigation. The median time from **injury** to decision was 2,136 days (5.8 years).

**Non-WCB Cases.** *Smothers v. Gresham Transfer, Inc.*, 332 Or 83 (2001) began as a workers' compensation case. A hearings judge affirmed the insurer denial on

the grounds that, under ORS 656.802(2)(a), the worker had failed to prove that his work exposure was the major contributing cause of his lung condition. The worker filed a negligence claim in circuit court, the circuit court dismissed due to “exclusive remedy,” and the Court of Appeals affirmed.

In a unanimous decision, the Oregon Supreme Court reversed the lower courts. The court ruled that the “major contributing cause” standard violates the Oregon Constitution because a worker with a work-related condition may have no remedy in the law. An employee whose claim has been denied based on that standard may take civil action against his employer.

### Oregon Supreme Court workers’ compensation cases and issues, 1997-2002

Year	Case reference	Issue (comments or sub-issue)	Petitioner	Disposition
<b>1997</b>				
	Schoch v. Leupold & Stevens	Attorney fees	Claimant	Reverse
	Roseburg Forest Products v. Long	Responsibility (last injurious exposure rule, LIER)	Employer	Reverse
	Strametz v. Spectrum Motorwerks	Responsibility (LIER)	Claimant	Reverse
	Fred Meyer v. Hayes	Compensability (parking lot)	Employer	Affirm
	Redman Ind. v. Lang	Compensability (assault)	Employer	Reverse
<b>1998</b>				
	Wilson v. State Farm Ins.	Compensability (skipping at work)	Claimant	Reverse
	SAIF v. Shipley	Jurisdiction (change of issue)	Insurer	Affirm
	Coman v. Dept of Corrections	Access to inmate medical records	Claimant	Reverse
	Marshall v. SAIF	Compensability (evidence)	Claimant	Affirm
<b>1999</b> (no cases)				
<b>2000</b>				
	SAIF v. Walker	Aggravation (meaning of law change)	Insurer	Affirm
	Shubert v. Blue Chips	Permanent partial disability (temporary rule)	Claimant	Reverse
	Robinson v. Nabisco	Compensability (injury during compelled medical exam)	Claimant	Reverse
	Koskela v. Willamette Industries	Permanent total disability, PTD (evidence)	Claimant	Reverse
<b>2001</b>				
	McAleny v. SAIF	Compensability (as Robinson, above)	Claimant	Vacate
	Rash v. McKinstry Co.	Third-party settlement (affect of claim disposition agreement)	Claimant	Reverse
	McKiney v. Cardinal Services	Third-party settlement (as Rash, above)	Claimant	Vacate
	Trujillo v. SAIF	PTD (as Koskela, above)	Claimant	Vacate
	Lumbermans v. Crawford	Temporary disability (retroactive authorization)	Employer	Affirm
	Mount v. SAIF	PTD (as Koskela, above)	Claimant	Vacate
	Johnson v. SAIF	PTD (as Koskela, above)	Claimant	Vacate
<b>2002</b>				
	Rubalcaba v. Nagaki Farms	Subjectivity (drove own truck for farmer)	Claimant	Reverse
	Multifoods Spec. Distr. v. McAtee	Compensability (combined condition)	Employer	Affirm
	Schuler v. Beaverton School District	Compensability (major contributing cause)	Claimant	Affirm
	SAIF v. Kurcin	Continuance of hearing	Insurer	Reverse
	SAIF v. Lewis	Compensability (objective findings)	Claimant	Reverse

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