Exhibit 14

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December 10, 2018

Workers' Compensation Board
2601 25th Street SE, Suite 150
Salem, OR 97302-1282

Re: Biennial Attorney Fee Review pursuant to ORS 656.388(4)

Dear Board Members,

I want to thank Board Member Lanning for his efforts to instill a multiplier into consideration as part of the contingent factor in cases. This is well-received in concept, and I hope that it is embraced by the Board.

The purpose of the 2015 legislative changes, particularly the Biennial Review and the consideration of defense fees, is to increase the attorney fees that compensate attorneys representing injured workers so that new talent can be attracted to build our ranks and allow "the broadest access to attorneys by injured workers." Ultimately, how this rule is applied is of the utmost importance. If it reduces attorney fees or allows manipulation by the defense, then the rule will not work. If the fees are increased and new attorneys join our ranks, then it will be successful.

A few comments.

Consideration as part of (4) (g)

The rule is written specifically to require the multiplier as part of the contingent factor under OAR 438-015-0010(4). Nothing in the proposed rule negates enhancing an attorney fee based upon the other factors. For example, a very experienced attorney may be able to ask for a higher rate under (4)(d), or a higher fee awarded for a complex case under (4)(b), etc.

Consideration of Private Defense Counsel, but not In-house Counsel

As the proposed rules are written, they indicates the defense attorney fee is considered based upon an hourly "fee" and an hourly rate that is charged to the client. This necessarily exempts in-house counsel fees as being the base fee for the multiplier, and it should. In-house counsel

typically do not actually charge clients – employers and the insurers – and are not paid by those clients for that billing.

As well, in-house counsel do not pay PLF fees, nor do they seriously risk malpractice claims. SAIF is tax-exempt. Liberty attorneys assign a substantially low rate to a file (less than $100/hour for newer attorneys), and must bill approximately 8.2 per day. Claimant's Bar is not allowed to "value bill" (bill a pre-assigned amount to a file regardless of the actual time spent). There is no way we can match 8.2 hours per day without value billing.

In-house counsel's staff overhead is covered differently. Additional resources are paid separately, such as offices, utilities, computers and IT, staff, HR, investigators, cashiers, postage, copiers, and more. If claimant's Bar were limited to twice the hourly fee of in-house counsel, this rule would effectively close our practices. Thus, as written and if interpreted as I do, the rule would include only private defense counsel.

Consideration of Legal Staff

Defense counsel usually separately charge for legal staff work. Recently, I was privy to a billing (and have seen similar ones in the past) where a defense legal assistant charged over five (5) hours to provide discovery. This was done at the rate of $90 per hour, and postage and copy costs were charged in addition. The same day a newer attorney charged slightly over an hour at $175 per hour to review and work on the file. Do the math. This is over $625 to provide discovery.

In response to this same discovery, claimant's counsel has staff who must scan, file, bookmark, etc. the file. Claimant's counsel would probably spend 1-2 hours (or more) reviewing the file depending on its size. According to the formula, if claimant's attorney prevailed, she would receive the sum of $350 to 700 for 1-2 hours spent reviewing the discovery. Yet, defense counsel was paid around $700 (time and costs). Yet, claimant's counsel has worked on a contingent basis. Thus, this formuala, because it does not consider the staff time and expenses charged in addition, fails to accomplish its goal.

Speaking from the appellate side, there is significant legal assistant work done scanning and bookmarking, formatting briefs, sending letters and creating the simple appellate forms with instruction (extensions, for example), but my practice does not charge separately for the legal assistant time. That overhead expense is all considered as

part of my hourly rate, under a more traditional attorney fee arrangement. It would be very difficult to have my legal assistant capture all of the phone messages he takes, the mailing of letters, and more, as part of an hourly log. Yet, staff is one of the larger expenses I have.

Discovery of the ultimate billing

In years past, there was a time when defense counsel was required to obtain approval of its billing to their clients. The older attorneys indicate that seeing defense fees made a strong impact on the attorney fees awarded to injured workers.

The statute continues to exist that requires the Board to regulate defense attorney fees. Both the statute and this rule provide authority that defense bills are discoverable.

Knowing the actual charges would help inform the Board as to the true hourly rate. For example, if every email and every letter is .2 of an hour at $225/hour, then the rate is not $225 per hour, but actually $450, because they can charge twice the time spent - .2 when it only takes .1 to review a letter or email. Such a comparison may assist in resolving this chronic problem of a gap in fees between claimant's and defense Bars.

Alternative

That being said, starting a fight with the defense may not be the best way to resolve the problem of underpaid attorney fees.

The Board should consider a neutral source like the OSB Economic Survey, with an annual increase between the Surveys. The Survey provides information of attorney fees across the board, which would put us on equal footing with all practices. That would allow us to attract and retain new attorneys to this practice instead of them running to other practices that pay better.

Biennial Review

I very much like this concept of instilling a multiplier. It is really needed. As well, continued monitoring of changes to determine if they are having the desired effect is important. To assist the Board, I am

providing copies of the last litigation reports done - the year 2011. These reports were important to me in preparing a business plan for my practice. They would be helpful to the Board in monitoring part of the contingent nature of the practice – the win/loss ratio at all levels, including the court levels. These reports should be reinstated, and updated with appropriate information to track specifically the gap between claimant's and defense Bars.

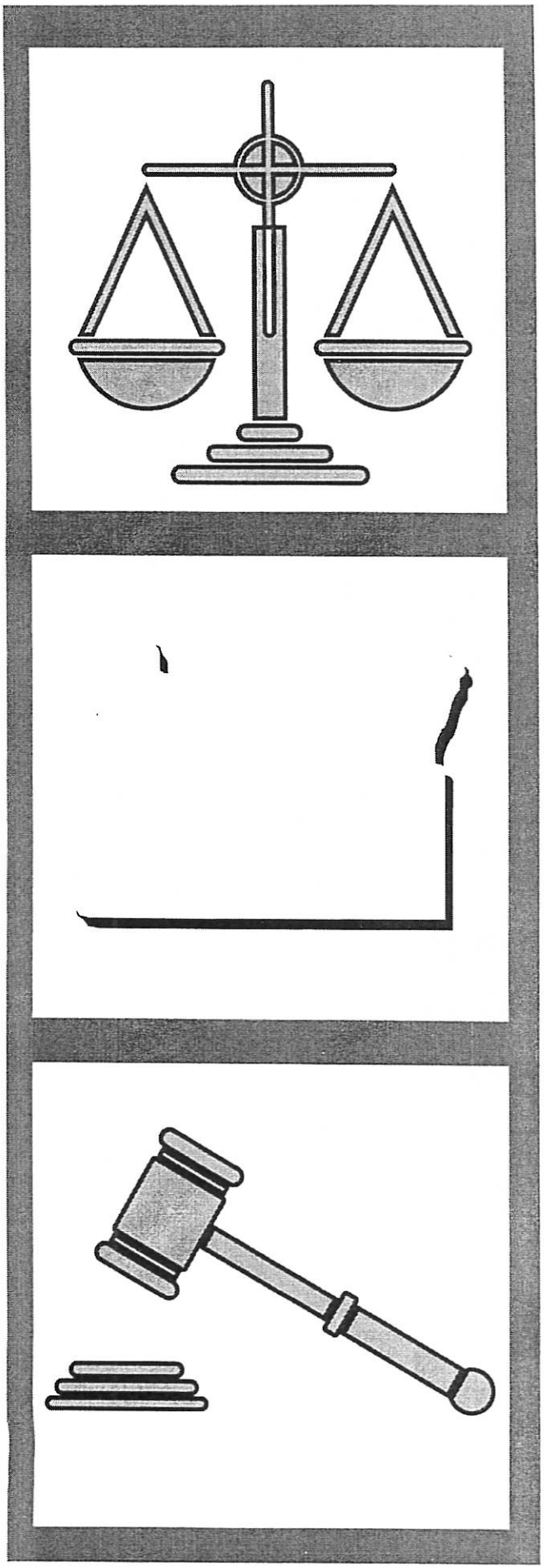
I appreciate the Board in conducting this review and believe it can plant the seeds for continued and meaningful review of the impact of the changes it decides this year.

If you have any questions, please do not hesitate to contact me. Thank you for your assistance with this matter.

Sincerely,

Julene M. Quinn, Attorney at Law

cc: Keith Semple, Chair, OWCA Policy Committee



Workers' Compensation Board

Hearings Division Statistical Report

Calendar Year 2011

Central Services Division

February 2013

Oregon Department of Consumer and Business Services

Hearings Division Statistical Report
Calendar Year 2011

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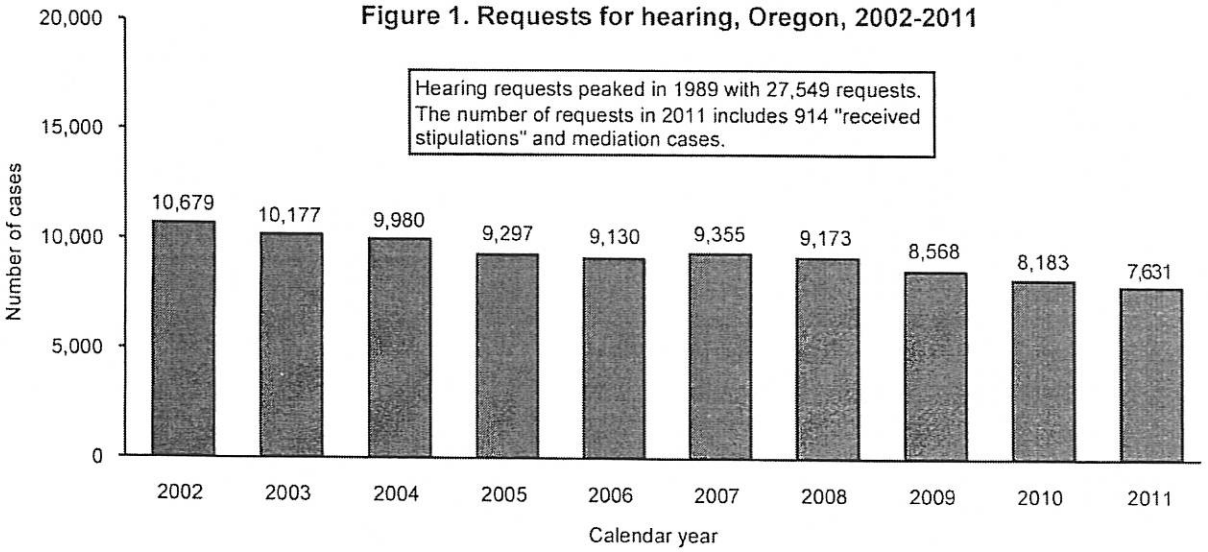
Hearing requests, cases closed

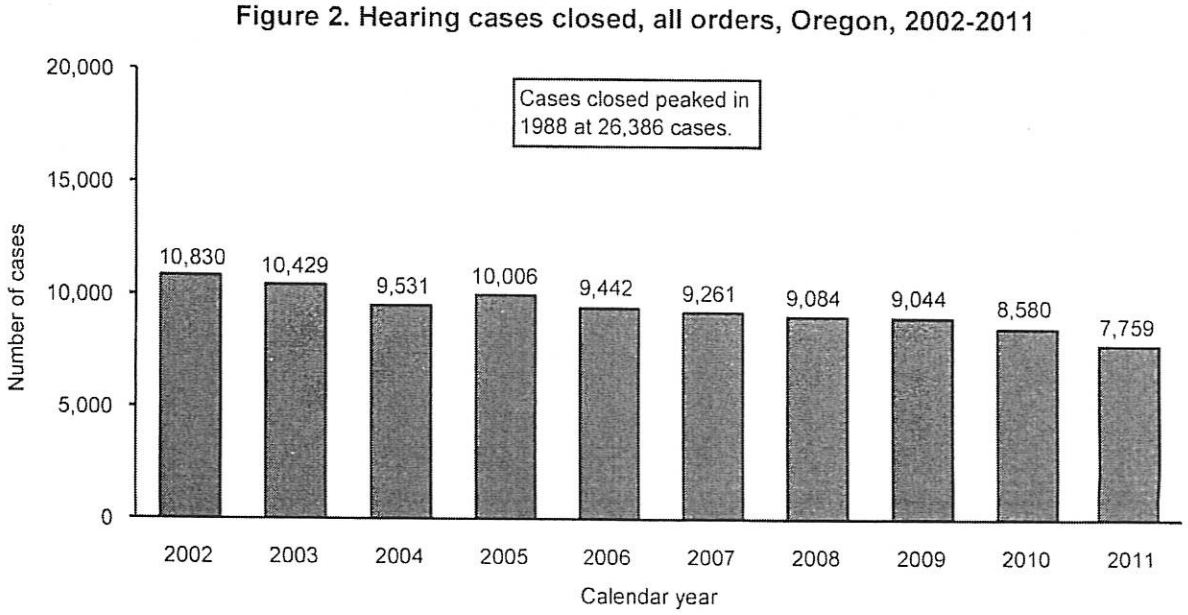
In 2011 the Hearings Division of the Oregon Workers' Compensation Board received 7,631 requests for hearing, 6.7 percent fewer than in 2010 (Figure 1).

The Hearings Division closed 7,759 cases in 2011, 9.6 percent fewer than the previous year (Figure 2). Some orders close more than one case, so there are fewer distinct orders than cases. In 2011, the average number of cases per order was 1.14. Request and order counts in figures 1 and 2 include cases solely about non-complying employer status or civil penalty assessment (case types NC and CP); these case types and issues are not included in the other analyses, below.

The percentage of cases that involved a judge's decision on the merits (order types "opinion and order" and "WCD proposed and final order") was a record-low 16.4



Note: "Mediation cases" are those set up to record the results of a mediation.



percent (Table 1 and Figure 3). This percentage is due in part to large numbers of Board-conducted mediations, of which almost 90 percent result in settlement. The percentage of cases closed by dismissal was 27.4 percent. About 74.8 percent of these dismissals were issued because the requester withdrew the hearing request. WCD contested cases are included in the above counts (see "Order types" in the appendix). Unless otherwise stated, counts and analyses here, except Figure 1, Figure 2, Figure 3, and Table 1, do not include the WCD contested-case orders.

The worker filed the request in 85.3 percent of the closed cases (Table 2); this percentage excludes stipulations received without a prior hearing request.

Table 1. Hearing compensation cases closed, by order type, Oregon, 2011

Type of order	Number of cases	Percentage of all cases	Percentage of sub-type*
Opinion and order	1,223	15.8%	100.0%
Stipulation	1,041	13.4%	23.9%
DCS	3,307	42.7%	76.0%
Order on stipulation	3	0.0%	0.1%
All stipulations	**4,351**	**56.2%**	100.0%
Dismissal	223	2.9%	11.2%
Dismiss for CDA	261	3.4%	13.1%
Withdrawal	1,501	19.4%	75.6%
Above dismissals	**1,985**	**25.6%**	100.0%
WCD proposed & final order	49	0.6%	27.1%
WCD final order of dismissal	82	1.1%	45.3%
WCD proposed and final order of dismissal	50	0.6%	27.6%
All "WCD orders"	**181**	**2.3%**	100.0%
Total Orders	7,740	100.0%	

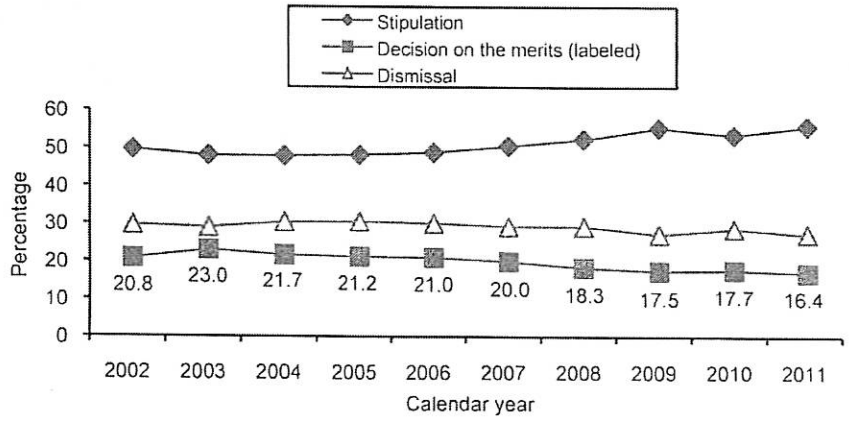
* For example, percentage of "all stipulations" and of "all dismissals."
"Total orders" differs from the Figure 2 count because some cases (e.g., noncomplying employer and civil penalty assessment) are excluded here.

Table 2. Hearing compensation cases closed, by requester, Oregon, 2011

Requester	Number of cases	Percentage of cases
Claimant	6,605	85.3%
Employer	26	0.3%
SAIF	40	0.5%
Private insurer	144	1.9%
Joint	879	11.4%
Other	46	0.6%
All	7,740	100.0%

For settlements received without a prior hearing request, the requester is considered to be "joint." "Other" requester includes medical providers and unknown requesters. Due to rounding, the sum of percentages may not equal 100.

Figure 3. Distribution of hearing cases closed, by order type, Oregon, 2002-2011



Note: Includes WCD cases beginning in 2006.

Mediations

To help settle disputes without formal litigation, WCB administrative law judges completed 406 mediations in 2011 (Table 3). About 90 percent of mediations resulted in a settlement. The average dollar amount for a disputed claim settlement (DCS) resulting from mediation ($16,500) was nearly twice as large as the average value of non-mediated DCSs.

Table 3. Workers' Compensation Board mediations, Oregon, 2002-2011

Statistic	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	Mean
Completed [1]	285	241	268	270	356	346	398	487	439	406	350
Result settled (%) [2]	86	86	84	87	88	89	90	89	91	90	88
Settled by DCS (%) [3]	85	88	81	82	77	79	76	80	81	82	81
Disease Claims (%) [4]	42	41	31	67	46	64	72	73	68	70	57
Issues (%) [4]											
Claim denial	43	41	32	30	28	30	25	26	26	22	30
Partial denial	65	66	74	73	53	62	53	55	58	60	62
All compensability	95	99	97	94	81	81	79	80	83	83	87
Non-WCB	55	45	50	47	42	43	43	44	35	36	44
Request to mediation [5]	80	79	95	78	73	72	77	69	65	63	75
Mediation to order [6]	37	39	41	41	47	47	35	34	33	30	38

Notes:
Percentages, except "settlement resulted," indicate share of all *settled* mediations.
1. Count is mediations completed in the given year, regardless of order date. Includes all WCB mediations, including those where the dispute is at board review or in the courts. Data through 2005 are based on mediation worksheets; data from 2006 are based on mediation events in the board's data system.
2. Excludes those cases settled after pre-mediation conference calls.
3. A mediation is classified as closed by disputed claim settlement (DCS) if any included case is so closed.
4. A mediation is so classified if any included case is about this condition or issue.
5. Work-hours includes travel time; values are for all *completed* mediations, regardless of outcome.
6. Time lags are median values, in days.

Issues

The 5,574 opinion & order and settlement cases closed in 2011 included 5,962 issues, or 1.07 issues per case (Table 4).

For all order types, partial denial was the most frequent issue, as it has been since 2007. Approximately 47.3 percent of cases included partial denial, tying 2010's record-high percentage. Whole-claim denial was a distant second, with 35.8 percent. The next most frequent issue was insurer penalty, at 5.8 percent of cases (the lowest percentage on record). Extent of permanent and temporary disability were issues in 2.8 and 2.0 percent of the cases, respectively; both are record-low values. Including aggravation, compensability was an issue in about 83 percent of all hearings orders that resolved issues in 2011.

Note: For issue counts and percentages, we do not consider "attorney fees" to be an issue when fees are requested for the hearings outcome.

Table 4. Number of issues per hearing compensation case, Oregon, 2011

Number of issues	Percentage of cases*
One	90.5%
Two	8.4%
Three	1.0%
Four	0.1%
Five	0.0%
Six	0.0%
More than one	9.5%

*Based on total cases with issues.

Table 5. Hearing cases by order type, issue, and disposition, Oregon, 2011

Issue	Disposition	Opinion and order			Stipulation		
		Counts	Percentage disposition	Percentage of cases	Counts	Percentage disposition	Percentage of cases
Permanent disability	Affirm	96	70.6%		5	26.3%	
	Decrease	12	8.8%		7	36.8%	
	Increase	28	20.6%		7	36.8%	
	Total cases	**136**		**11.1%**	**19**		0.4%
Temporary disability	Affirm	20	44.4%		1	1.4%	
	Decrease	5	11.1%		0	0.0%	
	Increase	20	44.4%		68	98.6%	
	Total cases	**45**		**3.7%**	**69**		1.6%
Claim denial	Set aside	189	44.1%		250	16.0%	
	Affirm	240	55.9%		1,314	84.0%	
	Total cases	**429**		**35.1%**	**1,564**		35.9%
Partial denial	Set aside	170	43.1%		232	10.4%	
	Affirm	224	56.9%		2,008	89.6%	
	Total cases	**394**		**32.2%**	**2,240**		**51.5%**
Aggravation denial	Set aside	6	20.7%		7	6.7%	
	Affirm	23	79.3%		98	93.3%	
	Total cases	**29**		**2.4%**	**105**		2.4%
Responsibility	**Total cases**	**34**		**2.8%**	**7**		0.2%
Premature closure	No	16	66.7%		3	100.0%	
	Yes	8	33.3%		0	0.0%	
	Total cases	**24**		**2.0%**	**3**		0.1%
Insurer penalty	No	101	61.6%		4	2.5%	
	Yes	63	38.4%		158	97.5%	
	Total cases	**164**		**13.4%**	**162**		3.7%
Attorney fee*	No	7	29.2%		0	0.0%	
	Yes	17	70.8%		111	100.0%	
	Total cases	**24**		**2.0%**	**111**		2.6%
Subjectivity	No	4	66.7%		4	100.0%	
	Yes	2	33.3%		0	0.0%	
	Total cases	**6**		**0.5%**	**4**		0.1%
Rate of time loss	Affirm	12	85.7%		1	3.0%	
	Decrease	0	0.0%		0	0.0%	
	Increase	2	14.3%		32	97.0%	
	Total cases	**14**		**1.1%**	**33**		0.8%
Other issue	No	133	71.1%		36	22.6%	
	Yes	54	28.9%		123	77.4%	
	Total cases	**187**		**15.3%**	**159**		3.7%
No issues		36			148		
Total issues		1,486			4,476		

"Percentage disposition" gives the breakout of how issues were resolved; for each issue, the sum of these percentages equals 100 (except for rounding). "Percentage of cases" is the fraction of all cases that contain each issue; many cases have more than one issue, so the sum of these percentages exceeds 100. See the appendix for situations where no issue is recorded for a case.

*Note: Issue counts and percentages exclude cases where fees are requested *for the hearings outcome*.

Opinion and orders

Hearings judges decided 1,486 issues in 1,223 O&O cases, an average of 1.22 issues per case. Information on the relative frequency of the various issues is given in the "percentage of cases" column of Table 5. The percentage of cases about permanent disability was a record-low 11.1 percent. Whole claim denial, at 35.1 percent, was the most frequent issue, as it's been since 1989. Partial denial was the second most frequent issue in O&Os, at 32.2 percent. About 13.4 percent of O&O cases included the issue of insurer penalty.

Table 6 and Figure 4 provide information about the number of O&O cases with extent of disability (temporary, permanent, or both) at issue and the type of disability increase. In 2011 workers' disability awards were increased in 48 cases (the sum of the last three table columns), about 27 percent of the 180 O&O disability-issue cases.

The "percentage" column of Table 5 provides data about issue disposition in O&O cases.

Figures 5 and 6 provide historical values of O&O dispositions on extent of disability. The percentage of disability cases decided in favor of workers (includes insurer appeals where the award is affirmed) for permanent and temporary disability were 34.6 percent and 44.4 percent, respectively.

The "set-aside-denial" rate was 44.1 percent for whole claim denial, and 43.1 percent for partial denial; for aggravation, it was 20.7 percent, greater than 2010's record-low 13.0 percent. See Figure 7. The "yes" rate for insurer penalty was 38.4 percent, the lowest since 2004 (Figure 8).

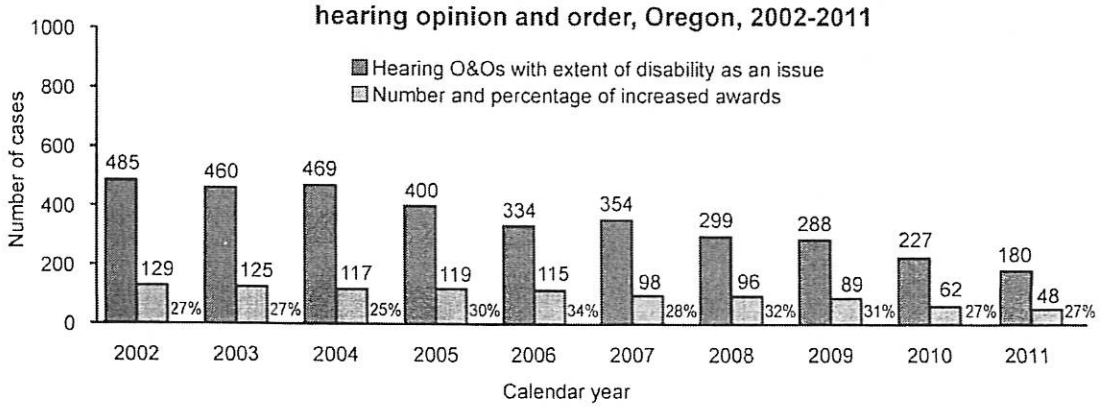
In seven cases, six insurers and one worker requested sanctions against opposing attorneys for appeals that

Table 6. Disability issues and type of disability increase, hearing opinion and order, Oregon, 2002-2011

Calendar year	Extent of disability issue	PPD award	PTD award	TD increase with no PPD increase
2002	485	75	1	53
2003	460	73	1	51
2004	469	66	0	51
2005	400	65	1	53
2006	334	66	0	49
2007	354	52	0	46
2008	299	56	0	40
2009	288	53	0	36
2010	227	33	0	29
2011	180	27	1	20

"Extent of disability issue" means that either permanent disability or temporary disability (time loss), or both, were decided. PPD is permanent partial disability, PTD is permanent total disability, and TD is temporary disability.

Figure 4. Disability issues and award increases, hearing opinion and order, Oregon, 2002-2011



were considered frivolous, filed in bad faith, or for harassment purposes (ORS 656.390). Judges denied sanctions in six cases, and allowed a sanction of $3,691 against an attorney representing an injured worker.

Stipulations, disputed claim settlements

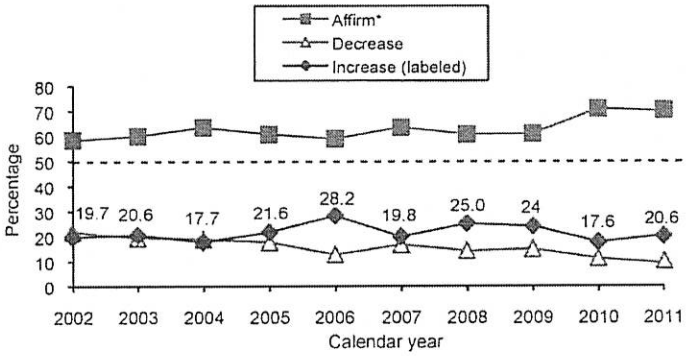
In 2011, disputing parties settled 4,476 issues in 4,351 stipulated cases, about 1.03 issues per case. Claim denial and partial denial were by far the most frequent issues (Table 5), which is typical. Unlike the issues in O&Os, partial denial was the more common issue in settlements. The percentage of compensability issues, and the percentage of dispositions that affirm the denial, are always high because most settlements are DCSs, which are about sustaining compensability denials.

In 2011 insurers paid more than $31.4 million to workers in 3,307 disputed claim settlement cases (Table 7 and Figure 9), less than the amount paid in 2010 but more than any other year since 1991's then-record $32.6 million. The average DCS amount was $9,509 and the median amount and the most frequent amount were both $5,000 (the same as in 2010). The DCS amount was unspecified in three cases, and the largest amount paid in a single settlement was $581,000.

The percentage of DCS cases about partial denial, 59.9 percent, was below 2010's record-high 61.2 percent. DCSs accounted for 76.0 percent of all settlements, a record-high 42.7 percent of all closing orders, and 83.8 percent of claims denied at hearing (excludes aggravation).

DCSs accounted for claimant attorney fees of over $5.5 million, a record-high 53.0 percent of all fees at hearing. The average DCS fee was $1,898 (considering only non-zero out-of-proceeds fees). About 99.7 percent of DCS fees were paid out of the DCS consideration.

Figure 5. Disposition of extent of permanent disability cases, hearing opinion and order, Oregon, 2002-2011



* Remands are coded as "Affirm"

Figure 7. Set-aside-denial rates for compensability cases, hearing opinion and order, Oregon, 2002-2011

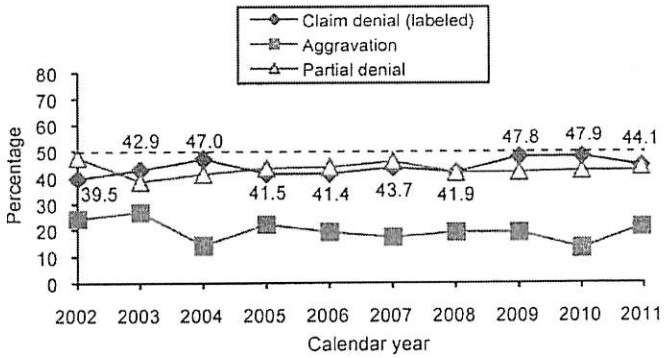
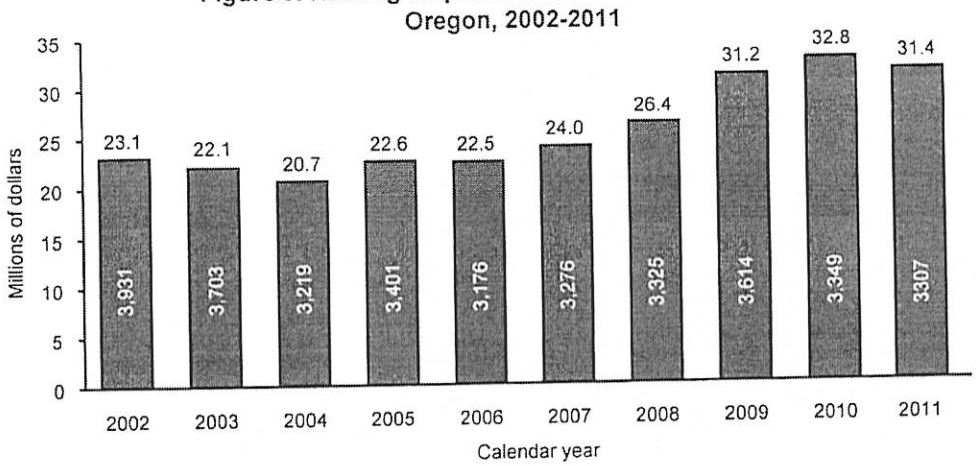


Table 7. Hearing disputed claim settlements, by principal issue, Oregon, 2011

Principal issue	Number of cases	Percentage of cases	Total DCS amount ($k)	Average amount ($)	Total fees* ($k)
Claim denial	1,302	39.4%	11,986	9,206	2,286
Partial denial	1,981	59.9%	19,319	9,752	3,198
Aggravation denial	15	0.5%	94	6,287	18
Other issues	9	0.3%	47	5,211	6
All issues	3,307	100.0%	31,446	9,509	5,507

Only the highest-ranking issue is identified with each case. Values may not add to all-issues totals due to rounding.
* Includes some assessed fees.

Figure 9. Hearing disputed claim settlement amounts, Oregon, 2002-2011



Note: Numbers within bars are case counts.

Permanent disability

Pre-2005 scheduled and unscheduled disability:

In 2011 there were only seven hearing cases about permanent disability where the injury date was before January 2005. Awards were increased in four cases, and affirmed in three cases. The result was a net increase in awards of almost $50,000.

Whole-body impairment and work disability:

Cases about permanent disability with injury date in

Of the 14 O&O work-disability-increase cases mentioned above, seven workers had been previously awarded impairment and were awarded work disability at hearings for the first time. Another five O&O cases reduced work disability, and one reduced work disability to zero but still allowed impairment. So in at least eight (7 + 1) cases, hearings judges and the Workers' Compensation Division made different findings of whether workers returned to regular work.

Permanent disability was decreased by stipulation in seven cases (from Table 8, 19 total cases minus 12

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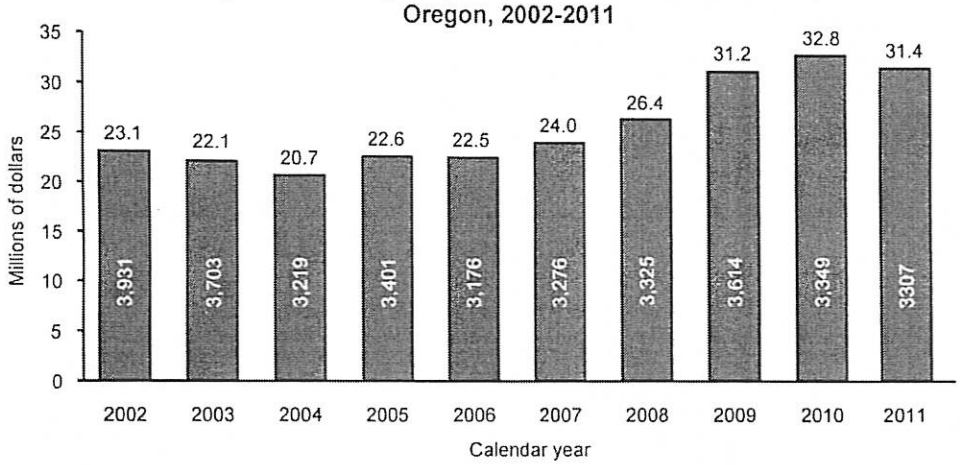
Only the highest-ranking issue is identified with each case. Values may not add to all-issues totals due to rounding.
* Includes some assessed fees.

Figure 9. Hearing disputed claim settlement amounts, Oregon, 2002-2011



Note: Numbers within bars are case counts.

Permanent disability

Pre-2005 scheduled and unscheduled disability:

In 2011 there were only seven hearing cases about permanent disability where the injury date was before January 2005. Awards were increased in four cases, and affirmed in three cases. The result was a net increase in awards of almost $50,000.

Whole-body impairment and work disability:

Cases about permanent disability with injury date in 2005 or later constituted about 95 percent of all 2011 hearings permanent-disability cases. Table 8 provides data about these cases. For example, 23 opinion and order cases increased disability (shaded section of the table). Of these cases, 14 cases increased impairment, and 14 cases increased work disability (both counts include five cases with both impairment and work-disability increases). The average impairment increase was 5.9 percent. See the appendix for a brief explanation of PPD determination.

Of the 14 O&O work-disability-increase cases mentioned above, seven workers had been previously awarded impairment and were awarded work disability at hearings for the first time. Another five O&O cases reduced work disability, and one reduced work disability to zero but still allowed impairment. So in at least eight (7 + 1) cases, hearings judges and the Workers' Compensation Division made different findings of whether workers returned to regular work.

Permanent disability was decreased by stipulation in seven cases (from Table 8, 19 total cases minus 12 O&O cases). Disability was reduced to zero in four of these cases, and all four of these settlements were in conjunction with a claim disposition agreement.

All disability cases:

In all, 155 cases involved extent of permanent disability in 2011, a record-low 2.8 percent of all hearings cases. Dispositions were as follows (includes stipulations): increase the award, 22.6 percent; decrease the award, 12.3 percent; and affirm the award, 65.2 percent. See Table 9 for case counts by order type and disposition.

Table 8. Hearing PPD award changes, Oregon, 2011

Increases	Opinion and order		All order types	
Type of PPD award	Number of cases	Average change*	Number of cases	Average change*
Impairment (%)	14	5.9	20	5.3
Work Disability (%)	14	14.7	16	13.4
(cases with both types)	(5)		(7)	
Total cases	23		29	

Decreases	Opinion and order		All order types	
Type of PPD award	Number of cases	Average change*	Number of cases	Average change*
Impairment (%)	11	7.9	18	8.3
Work Disability (%)	5	10.0	8	11.5
(cases with both types)	(4)		(7)	
Total cases	12		19	

Includes only PPD cases in claims with injury date in 2005 or later, where impairment or work disability, or both, are changed. "Avg. Chg." (average change, for cases with a change) awards are in units of percentages. A case may have award changes in both impairment and work disability (see counts in parentheses). Cases where an award of PTD is granted or rescinded are not included.

The net amount awarded for PPD at hearing in 2011 was $149,000 (Figure 10). O&Os increased awards by about $220,000 and settlements decreased awards by $71,000. Some stipulations are a compromise between the parties; they make a smaller award change than that requested by the petitioner. Stipulated awards and net PPD paid are not perfect indications of the accuracy of awards granted at closure or department reconsideration because some stipulations reduce PPD awards to zero in conjunction with a claim disposition agreement.

There was one hearing permanent total disability grant in 2011, by opinion and order (Figure 11). There were no rescissions, so the net number of PTD awards at hearing was one.

The number and size of hearing permanent disability awards, by most measures, have generally been decreasing over the past two decades or so. Four primary reasons for this change:

- Decreasing numbers and severity of injuries, and fewer accepted disabling claims
- House Bill 2900 (1987): primarily, enacting disability standards
- Senate Bill 1197 (1990): required reconsideration, medical arbiters for impairment disputes, "tighter" disability standards, and claim disposition agreements
- Senate Bill 369 (1995): limitation of evidence at hearing, prohibition of issues that were not raised at nor arose out of the reconsideration, and the limitation on disability when a worker returns to work

Table 9. Disposition of hearing permanent disability cases, by order type, Oregon, 2011

Order type	Dispositions			
	Increase	Decrease	Affirm	All
Opinion and order	**28** 20.6%	**12** 8.8%	**96** 70.6%	**136** 100.0%
Stipulation	**7** 36.8%	**7** 36.8%	**5** 26.3%	**19** 100.0%
All orders	**35** 22.6%	**19** 12.3%	**101** 65.2%	**155** 100.0%

Note: Table entries are number of cases (top number) and the percentage of each order type that has the given disposition (so percentages add to 100 in the horizontal, except for rounding). Includes cases with the award of permanent total disability granted or rescinded.

Figure 10. Net hearing PPD awards by order type, Oregon, 2002-2011

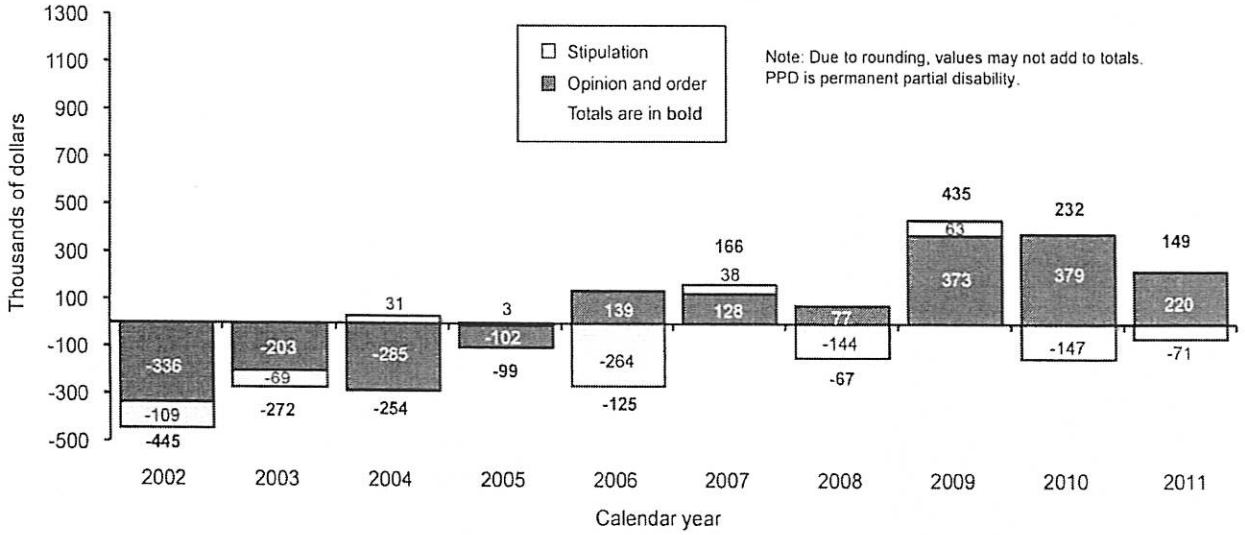
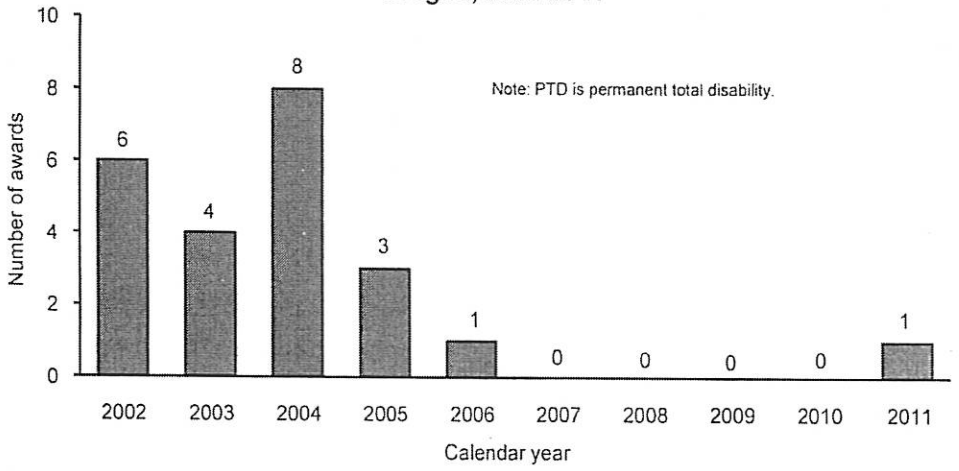


Figure 11. PTD awards granted at hearing, Oregon, 2002-2011



Time lags

For all hearing orders in 2011 (Table 10), the median time from injury to hearing request was 343 days (11.3 months), and the median request-to-order time was 127 days (4.2 months). The request-to-order time lag for a withdrawal or settlement overstates a dispute's duration because the hearing may be canceled well before the closing order is issued.

For opinion and order cases (Figure 12), the median time from hearing request to order was 227 days (7.5 months), three days less than in 2010. For O&O cases without a postponement, the median request-to-order time was 151 days (5.0 months). The percentage of O&Os with at least one postponement was 46.4 percent, the highest percentage on record.

O&O request-to-order time lags include time that the record was kept open, after the hearing concluded. The median hearing-to-close time lag was 39 days, while the most frequent value was zero (cases closed on the hearing day). The median close-to-order time lag was 28 days, and the most frequent time was 30 days.

For 2011 O&Os, 98.3 percent were timely (issued within 30 days of record closure, or on the next work day if the 30th day was not a work day).

Claimant attorney fees

Claimants were represented by counsel in at least 91.8 percent of O&O cases and 88.9 percent of all cases with a 2011 hearings closing order (excluding WCD contested cases).

Claimant attorney fees totaling almost $10.4 million were approved for payment out of worker compensation awards, from disputed claim settlement proceeds, or assessed against insurers in 2011 hearing orders (Table 11). The average fee of $2,496 was about 2.2 percent smaller than in 2010 (Figure 13). Total fees were 10.5 percent less than for 2010 (Figure 14). Data here exclude fees in WCD cases.

About 54.2 percent of the fees were paid out of compensation or DCS consideration, the highest since 1991.

Note: the Hearings Division does not approve defense attorney fees; see the appendix for information on how they are reported.

Table 10. Median hearing time lags, by order type, Oregon, 2011

Lag period (dates)	Opinion and order	Received stipulation	Other stipulation	Dismissal, withdrawal	All orders
Injury - request	365	551	268	382	343
Injury - order	659	558	472	547	539
Request - order	227	7	144	95	127
Request - hearing	98				
Hearing - closed	39				
Closed - order	28				

Units are calendar days. Hearing and closed dates apply to opinion and order cases only. Time-lag segments do not add to totals because figures are medians, not means. "Received stipulation" refers to settlements received without a prior hearing request; "Other stipulation" includes all other settlements.

Figure 12. Median time lags, hearing request to order, opinion and order cases, Oregon, 2002-2011

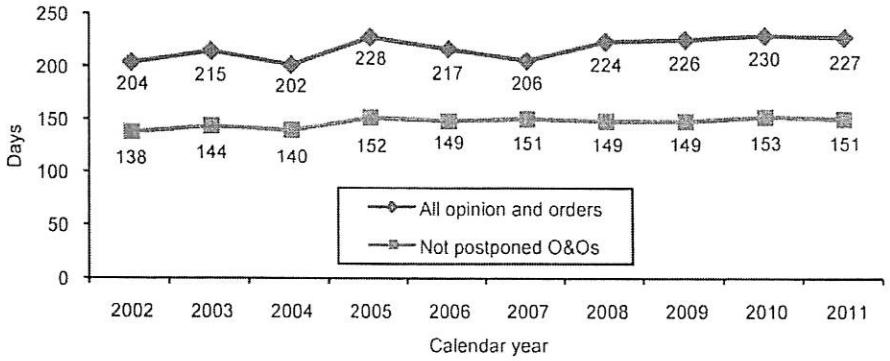


Figure 13. Average claimant attorney fees by type, Oregon, 2002-2011

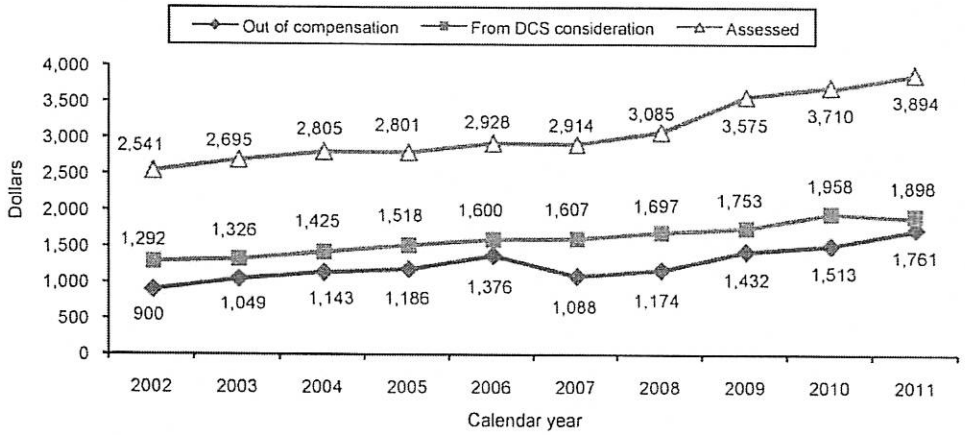


Figure 14. Total hearing claimant attorney fees, Oregon, 2002-2011

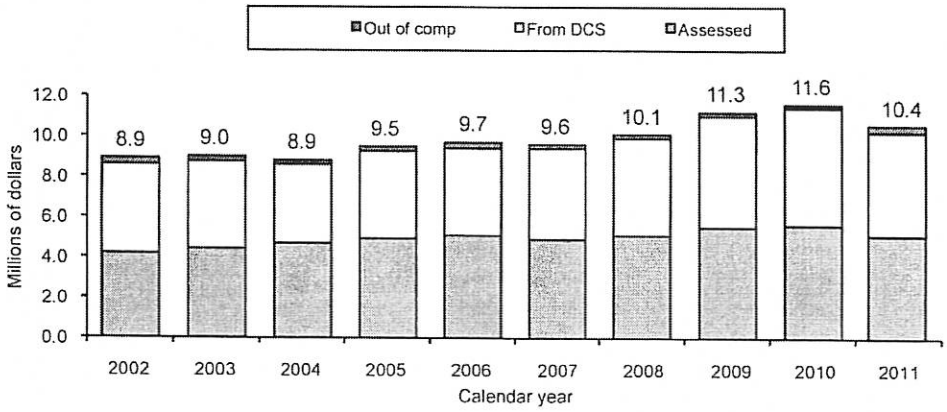


Table 11. Claimant attorney fees, by order and fee type, Oregon, 2011

Fee type	Order type: Opinion and order	Stipulation	Dismissal	All types	Percentage of all fees
Out of compensation:					
Total ($)	97,000	38,000	2,000	137,000	1.3%
Average ($)	2,164	1,193	2,000	1,761	
Cases	45	32	1	78	
DCS consideration:					
Total ($)		5,490,000		5,490,000	52.9%
Average ($)		1,898		1,898	
Cases		2,893		2,893	
Assessed:					
Total ($)	2,609,000	2,146,000		4,755,000	45.8%
Average ($)	5,942	2,745		3,894	
Cases	439	782		1,221	
All types:					
Total ($)	2,706,000	7,674,000	2,000	10,382,000	100.0%
Average ($)	5,746	2,081	2,000	2,496	
Cases	471	3,688	1	4,160	

DCS fees are those from DCS consideration, only. Fees may not add to totals due to rounding. Cases may not add to all-types cases because some cases have more than one fee type. Occasionally DCSs include assessed fees; they are included here as assessed fees. Attorney fees allowed in claim disposition agreements approved by judges are not included here.

Appendix

Background and context

The Hearings Division of the Oregon Workers' Compensation Board provides a forum for impartial dispute resolution in the Oregon workers' compensation system. Administrative law judges carry out this hearings function. Parties who are dissatisfied with a decision of an insurer or the Workers' Compensation Division of the Department of Consumer and Business Services may request a hearing. ORS 656.283.

This report covers cases for which hearing orders were written during the subject calendar year, regardless of the date the hearing was requested or held. The basic unit of data is the case, not the written order. Some orders close more than one case.

Excluded from this report are (1) safety cases, per Oregon Revised Statutes Chapter 654; (2) inmate injury fund cases; and (3) cases not dealing with workers' compensation claims, such as those about noncomplying employer status or civil penalty assessment [exception: these cases are included in hearing request and order counts].

Data for this report were collected by the Workers' Compensation Board staff from various source documents, but primarily from the hearing order itself. Data were written to data sheets and then entered into the board's data system. Computer edits were performed in order to identify and correct data that were inconsistent or otherwise questionable.

Generally, 1978 is the first year with detailed statistical records. Unless otherwise indicated, record-high or record-low values are for the period beginning with 1978.

Terminology

For other terminology, see the Workers' Compensation Division's list of terms and abbreviations: http://wcd.oregon.gov/communications/publications/terms.html. Other terms are defined in the law and WCB rules.

Administrative law judge (ALJ) – a WCB Hearings Division judge. Formerly called "referees," ALJs conduct hearings, decide cases, write opinion and orders, dismiss hearing requests, approve settlements, and conduct mediations.

Attorney fees – fees paid to attorneys representing injured workers. Attorney fees may be awarded for these outcomes: getting a denial overturned, obtaining an increase in compensation, and preventing a decrease in compensation.

Comments about attorney fees:

- Most fees are determined at hearing for attorney efforts and results on issues raised at hearing. Other fees are determined by hearings judges for attorney efforts and results achieved outside of hearings. They include cases in which attorney fees were an issue in the hearing request.
- Attorney fees that are recorded for hearings cases are not necessarily the actual amounts paid. For example, if the duration of time loss is increased and the ending date is not specified, the fees recorded are the maximum allowable ($1,500). In other cases, the fees may be reversed (reduced or eliminated) when the judge's decision in favor of the claimant is reversed or modified by the board or courts, or when the amount of the fee is successfully challenged.
- Sometimes, fee amounts cannot be determined from the order. In most such cases, the fee is based, at least in part, on penalties against the insurer.

Types of attorney fees:

- Out of compensation – fees that are taken out of an increase in compensation.
- Out of DCS consideration – fees in disputed claim settlements usually come from the DCS proceeds.
- Assessed – fees assessed against the insurer. This type of fee is most frequently awarded when the attorney is instrumental in getting an insurer denial reversed. Penalty-related fees are considered to be this type of fee.

Defense attorney fees are not approved by the Hearings Division. They are reported separately, at http://www4.cbs.state.or.us/ex/imd/external/reports/index.cfm?fuseaction=dir&ItemID=1999.

Restrictions on attorney fees –

During the year covered by this report, Oregon law or WCB rules placed these restrictions on claimant attorney fees at hearings (stated amounts could be exceeded only in extraordinary circumstances):

- Out of compensation – 25 percent of the increase; to a maximum of $1,500 for time loss, $4,600 for permanent partial disability, and $12,500 for permanent total disability.
- Out of DCS consideration – 25 percent of the first $17,500; 10 percent of proceeds above that threshold.
- Assessed – Effective 7/01/2011, allowable fees were changed as follows (annual adjustment required by HB3345): penalty-related fees, from $3,070 to $3,157; responsibility-issue fees, from $2,559 to $2,631 (values are rounded). Otherwise, there were no restrictions on assessed fees.

Case – a dispute. A case is established and assigned a case number at the time of the hearing request. A case may have several contested issues.

Favorable-to-worker rate – the percentage of dispositions in favor of the worker. For the issues of temporary disability and permanent disability, this rate reflects award increases plus affirmations of the prior order when the insurer or employer requested the hearing.

Hearing – a proceeding similar to a civil trial where matters are decided by the judge and there is no jury. The parties to a dispute and their representatives provide evidence and argument, and the hearing is normally followed by the ALJ writing an opinion and order.

Insurer class – SAIF, private insurance carrier, or self-insured employer. Some cases with an "unknown" insurer are appeals of department nonsubjectivity determinations (disputes about whether the worker or the employer is subject to the workers' compensation law). Class may be unknown when a claim is processed by a third-party administrator (TPA).

Issue – the subject(s) of a dispute. Only issues that are resolved (decided by the judge or settled by the parties) are recorded with a disposition.

These issues are recorded:

1. Extent of permanent disability – the amount of permanent partial disability or whether the worker is permanently and totally disabled. ORS 656.206 and 656.214.
2. Extent of temporary disability – eligibility for, or duration of, temporary disability (often called "time loss"), including interim compensation awarded pending an insurer decision to accept or deny a claim. ORS 656.210 and 656.212.
3. Claim denial – denial of a new claim, denial of the whole claim for reasons of work-relatedness ("course and scope"); this issue excludes denial because the worker failed to cooperate (ORS 656.262(14)), the worker or employer is not subject to workers' compensation law (ORS 656.027), another insurer is responsible (ORS 656.307), the insurer didn't provide coverage on the date of injury, and the claim was not timely. Flare-up of a pre-existing condition due to work activities is considered to be this issue.
4. Partial denial – denial of part of a claim, denial of a new condition in an accepted claim. This issue includes consequential conditions, flare-up of a pre-existing condition due to a compensable injury, scope of acceptance disputes in accordance with ORS 656.262(6)(d), current condition disputes, new medical condition claims, and disputes about whether there's a causal relationship between medical services and a compensable injury.
5. Aggravation – worsening of the compensable condition since the most recent award. It raises the question of whether the claim should be reopened. ORS 656.273.
6. Responsibility – which insurer should accept a claim and pay benefits. This issue, even though raised, is not recorded in a DCS (it's really the compensability denial that is sustained). Also, it isn't coded when the claim is found not compensable (the responsibility issue is not reached). ORS 656.307.
7. Premature closure – whether the claim was closed before the worker was medically stationary. ORS 656.268.
8. Penalties – "additional amounts" paid by the insurer to the worker and/or worker's attorney, usually for unreasonable claims processing conduct. ORS 656.262(11) and (12), 656.268(5), and 656.291(2).

9. Attorney fee – whether claimant's attorney should be awarded fees, and how much, for efforts or results achieved outside of hearings. This issue is not recorded when fees are requested for the hearing outcome. ORS 656.262(11), 656.291(2), 656.307(5), 656.308(2), 656.382, 656.386, and 656.388.

10. Subjectivity – whether the worker or employer is subject to Oregon workers' compensation law. ORS 656.027. This issue was first coded in 2000; previously, it was coded as "other" issue.

11. Temporary disability rate – the rate at which time loss should be paid. Usually, this issue involves what wage should be used in the computation of TD rate. (Note: if the question is whether temporary total disability or temporary partial disability should be paid, the issue is coded as "extent of temporary disability," not this issue.) This issue was first coded in 2004.

12. Other issue – any issue not specified above.

No issue is recorded for a case when (1) all raised issues are "reserved" or "preserved" to be resolved later, (2) the hearing request is dismissed in an order captioned as an opinion and order, (3) all issues are withdrawn at hearing in an order not captioned as a dismissal, and (4) the numbers of cases exceeds the number of distinct denials.

Mediation – a process in which the Workers' Compensation Board provides (without cost) facilities and a mediator (a specially trained administrative law judge) to settle disputes without formal litigation. Mediations are held only when parties agree to mediate.

Mediation case – a case created for a mediation, if necessary, to record the results of the mediation. This most frequently happens when a mediation is scheduled and there is no prior active hearing request.

Order types:

1. Dismissal – an order by an ALJ dismissing the hearing request; there generally is no hearing. Dismissals are written when (1) the hearing requester withdraws the request; (2) the judge rules to dismiss for untimely filing, lack of jurisdiction, or other legal basis; (3) the Workers' Compensation Board approves a claim disposition agreement that disposes of all contested issues; and (4) a judge determines that there is not substantial evidence to support a responsibility finding against a particular insurer, per ORS 656.308(2)(c).

2. Disputed claim settlement – resolution of a compensability dispute wherein the parties agree to leave a claim or medical condition denied, in exchange for some consideration (usually cash paid to the worker). ORS 656.289(4). DCSs are a type of stipulation. DCSs affirm a compensability denial, but sometimes include other issues. The DCS amount is sometimes unspecified; usually this happens when the insurer is to pay medical bills and the amount is not mentioned in the order.

3. Opinion and order – an order of the administrative law judge that records a decision on the merits and the rationale for it. Usually, an opinion and order is written when a hearing is conducted, but a judge may decide the case on the written record alone.

4. Order on stipulation – an order written by a judge, based on an agreement of the parties. In this report, we don't distinguish between orders on stipulation and other stipulations.

5. Stipulation – an order written to record, approve, and make enforceable an agreement of the parties. In its broadest use, it includes disputed claim settlements. In almost all uses, it includes "orders on stipulation."

6. WCD/Proposed and final order – An ALJ's decision on the merits of the case, usually about medical or vocational services. Appeal of this order is to WCD (not board review), and the subsequent review level is the Court of Appeals.

7. WCD/Final order of dismissal – A dismissal, usually due to withdrawal by the petitioner. In most WCB reports, these are treated as withdrawals.

8. WCD/Proposed and final order of dismissal – A dismissal, usually due to a settlement. In most WCB reports, these are treated as dismissals.

Permanent disability:

Permanent total disability (PTD) – the loss of use or function of any portion of the body which permanently incapacitates the worker from regularly performing work at a gainful and suitable occupation. ORS 656.206.

Permanent partial disability (PPD), ORS 656.214:

1. Impairment (injuries in 2005 or later) – the impairment for all body parts is combined into whole-body impairment, measured in percent (1-100). It is paid at the state average weekly wage. For example, for injuries between July 1, 2008, and June 30, 2009 (typical of cases at hearing in 2011), $790.38 is paid for each percentage of impairment.

2. Work disability (injuries in or after 2005) – awarded if a worker cannot return to regular work at the job held at injury. It combines impairment with a value based on age, education, and adaptability factors; it is given in percent, and exceeds impairment because the factors are all positive. Each percentage is paid at 1.5 times the worker's average weekly wage (but the wage used is not less than 50 percent, nor more than 133 percent, of the state average weekly wage).

3. Scheduled disability (injuries before 2005) – awarded for loss of use or function of arms, legs, extremities, eye sight, or hearing. It's measured in degrees (maximum degrees depends on the body part), and the amount paid for each degree depends on the injury date.

4. Unscheduled disability (injuries before 2005) – awarded based on loss of earning capacity, for body parts other than scheduled parts, above. It's measured in degrees (maximum of 320 degrees), and paid at a rate that depends on the injury date and the number of degrees awarded.

Received stipulation – a settlement received without a prior hearing request. Such orders are classified as "joint" requests. The order type may be stipulation or disputed claim settlement.

Responsibility dispute – a dispute about which insurer is responsible for a claim. In a "pure responsibility dispute," no insurer denies compensability, and the department publishes a "307 paying agent order" to designate an insurer to pay benefits until responsibility is determined. Responsibility disputes involve multiple cases, one from each of the worker's hearing requests contesting an insurer's denial. ORS 656.307 and 656.308.

Sanction – a payment to an opposing party that a judge may order against an attorney for an appeal that is frivolous, filed in bad faith, or for the purpose of harassment. ORS 656.390. Data are not automatically collected about attorney sanctions.

Time lag, request to order – the time from the original hearing request to the closing order. It includes the time from the request to the scheduled time of the hearing, the time from the hearing to record closure (i.e., it includes time that the record is kept open after the hearing was concluded), and the time required for the ALJ to write the order. Postponements greatly extend this time.

DEPARTMENT OF CONSUMER & BUSINESS SERVICES
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Workers' Compensation Board
2011 Board-Review Summary

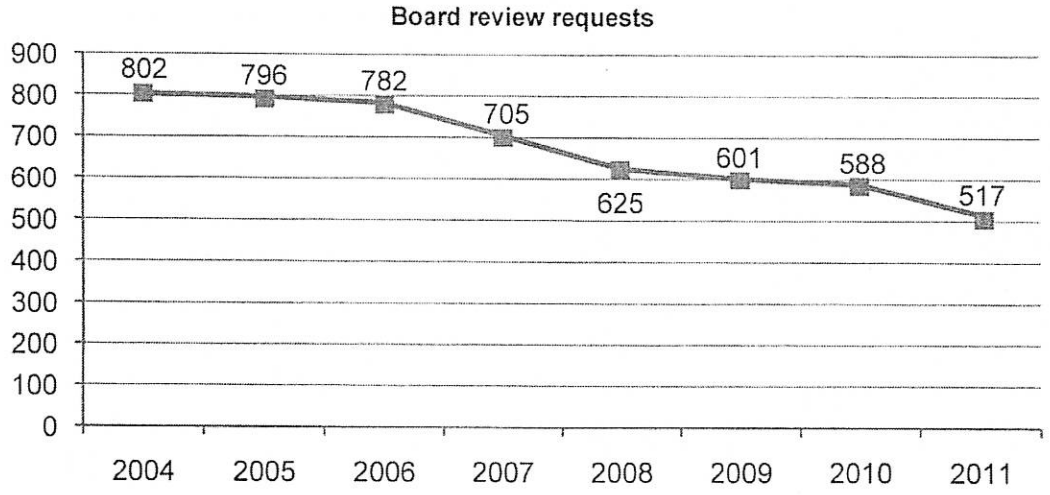
Information Management Division

Department of Consumer and Business Services September 2012

by Russ Reed

Requests

In 2011, the Oregon Workers' Compensation Board received 517 requests for review of hearings decisions, 12 percent fewer than in 2010 (see graph). Workers made 68 percent of these requests.



Original orders

The board issued 551 original orders in 2011, 10 percent fewer than in 2010. Counts exclude reconsiderations, orders on remand from the courts, 14 third-party orders, and four crime victim orders. The breakout by order type: orders on review (including remands to hearing), 82 percent; settlements, 7 percent; and dismissals, 11 percent.

Analyzed orders

To describe dispute outcomes, the analyses below considered (1) unappealed orders in 2011, (2) orders affirmed or dismissed for cause by the courts in 2011, (3) board on-remand orders in 2011, and (4) 2011 board-approved settlements after court appeal. See Table 1. Cases pending court review or board order on remand will be analyzed when their outcomes become final.

Issues

Issue frequencies for orders on review and orders on remand are given in Table 2, "percentage of orders" column. The percentage of cases about whole-claim or partial denial (51 percent + 37 percent = 88 percent) was the highest on record. The percentages of cases about permanent disability (less than 12 percent) and temporary disability (1.6 percent) were record-low values. The percentage of cases about insurer penalty (9 percent) was the lowest since 2004.

Table 1. Order types for board-review orders finally resolving contested issues, 2011

Order type	Count	Percentage
Original Orders		
Order on review	434	78.1%
Stipulation	7	1.3%
Disputed claim (DCS)	33	5.9%
Dismissal	63	11.3%
Subtotal	**537**	**96.6%**
After court action		
Order on remand	5	0.9%
Stipulation	3	0.5%
DCS	11	2.0%
Subtotal	**19**	**3.4%**
All order types	556	100.0%

See explanation in text. Excludes remands to hearing. Court action may be to remand or dismiss for settlement.

Compensability

The board reversed insurer denials in 27 percent of claim-denial cases and 39 percent of partial-denial cases. Together, the board set aside compensability denials (excluding aggravation) in 32 percent of the cases, tying the record-low value of 1983. ("Reversed insurer denials" includes board affirmation of ALJ orders setting aside a denial, and reversal of ALJ orders upholding a denial.)

Permanent disability

The board, in 2011, issued 52 orders, including stipulations, on permanent disability. Their dispositions: affirm award, 79 percent; decrease award, 8 percent; and increase award, 13 percent. Table 2 gives dispositions for orders on review and orders on remand, only.

In PPD cases with injury date after 2004, members increased seven awards and decreased four. Six orders increased work disability, while three decreased it to zero (one of which still allowed impairment). Total net PPD awarded was approximately $64,000. The board, on review, made no permanent total disability award changes in 2011.

Hearing affirmation rates

The board affirmed administrative law judges (ALJs) on permanent and temporary disability issues at 80 percent and 57 percent, respectively (Table 2, right column). Affirmation rates were 91 percent for claim denial, 84 percent for partial denial, and 63 percent for penalty. (Table 2 gives dispositions of these issues, except for penalty, with respect to the insurer decision. Denial-issue affirmation rates include cases where ALJs upheld or set aside denials.)

In 2011, board orders on review and orders on remand affirmed 82 percent of ALJ decisions on all issues (based on the affirm/reverse/modify classifications). About 10 percent of these orders reversed the ALJ, and 8 percent affirmed part of the judge's order.

Attorney fees

The board directed payment of fees totaling $900,000 to claimant attorneys. The average fee was $4,160 ($4,120 in 2010). About 76 percent of all fees were assessed against insurers, 22 percent were from disputed claim settlement (DCS) proceeds, and 2 percent were from disability award increases. The board also reduced fees awarded in appealed hearings orders by $382,000 in 2011.

Table 2. Issues and dispositions of orders on review and orders on remand, 2010

Issue and disposition	Number of orders	Percentage of orders**	Percentage disposition
Claim denial	**226**	51.5%	
Set aside denial	61		27.0%
Affirm denial	165		73.0%
Partial denial	**161**	36.7%	
Set aside denial	63		39.1%
Affirm denial	98		60.9%
Aggravation denial	**6**	1.4%	
Set aside denial	3		50.0%
Affirm denial	3		50.0%
Permanent disability	**51**	11.6%	
Increase*	6		11.8%
Decrease*	4		7.8%
Affirm*	41		80.4%
Temporary disability	**7**	1.6%	
Increase*	2		28.6%
Decrease*	1		14.3%
Affirm*	4		57.1%
Responsbility	**9**	2.1%	
Penalty	**40**	9.1%	
Yes	19		47.5%
No	21		52.5%
Subjectivity	**3**	0.7%	
Yes	1		33.3%
No	2		66.7%
Premature closure	**7**	1.6%	
Yes	2		28.6%
No	5		71.4%
Attorney Fee	**21**	4.8%	
Yes	14		66.7%
No	7		33.3%
Temp. disab. Rate	**2**	0.5%	
Increase*	0		0.0%
Decrease*	0		0.0%
Affirm*	2		100.0%

Notes: Excludes settlements. *Dispositions stated with respect to the hearing award. **Orders may resolve more than one issue, so percentages add to more than 100.

Other Data

The median time lag from request to order on review was 194 days (6.4 months). The median time from docket (date the briefing schedule is completed) to order date was 108 days. The board approved 44 DCSs in 2011 (includes orders after court remand or dismissal). Insurers paid $927,000 ($21,000 per settlement) for not contesting denials. SAIF was the insurer in 36 percent of 2011 cases. The board declined to impose attorney sanctions for frivolous appeal requested by one claimant and one employer (ORS 656.390).

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DEPARTMENT OF CONSUMER & BUSINESS SERVICES

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Oregon Court of Appeals
2011 Workers' Compensation Summary

Information Management Division

Department of Consumer and Business Services June 2012

By Russ Reed

Note: Unless otherwise indicated, data here exclude third party, board own motion, safety, and Workers' Compensation Division cases.

Appeals

In 2011, there were 77 Workers' Compensation Board (WCB) decisions appealed to the Oregon Court of Appeals, one more than in 2010. See Figure 1. The rate at which board orders on review were appealed to the court was 17 percent. The petitioner was the worker in 49 percent of the cases with a 2011 court decision or remand, the lowest percentage on record.

Orders

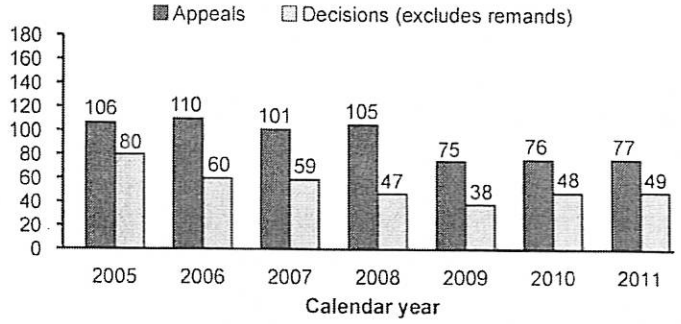
Court decisions on WCB orders in 2011 (based on the date of the slip opinion) numbered 49, which is close to the average for the period 2007-2010. These court decisions were affirmations or reversals of WCB on workers' compensation cases. The count excludes:

• Court dismissals (41 cases). The reasons for court dismissal were as follows: settlement, 41 percent; petitioner motion, 27 percent; petitioner in default or want of prosecution, 20 percent; timeliness, 10 percent; and unknown reason, 2 percent.

• Court remands to the board (four cases). An order is classified as a "remand" when the court does not rule on the primary issue, nor direct a specific resolution by the board. The reasons for remanding: the board didn't have the benefit of a recent court decision (two cases), the court found that the board did not adequately explain its conclusion (one case), and board findings were not supported by substantial evidence (one case).

• WCD contested cases (three cases). The court affirmed a department order finding a worker ineligible for medical benefits pending the insurer's claim denial. The court also remanded a department order that found the insurer had properly terminated vocational services benefits, finding that the conclusion lacked substantial reasoning. Finally, the court affirmed a department order that SAIF is liable for surgery costs, despite the medical provider's failure to submit a timely recertification request.

Figure 1. Number of appeals and decisions



2011 Court of Appeals issues, frequencies, dispositions, WCB affirmation rates, and remands

Issue and disposition	Cases*	% of cases*	Rate WCB affirmed*	Remands
Extent of perm. disability	10	20.4	80%	0
Affirm	8			
Decrease	2			
Extent of temp. disability	0	0.0	n/a	0
ALL EXTENT OF DISABILITY	10	20.4	80%	0
Claim denial	10	20.4	90.0%	1
WCB set aside denial	3			
Court set aside denial	3			
Court affirm denial	0			
WCB affirm denial	7			
Court set aside denial	1			
Court affirm denial	6			
Partial denial	15	30.6	80.0%	1
WCB set aside denial	10			
Court set aside denial	7			
Court affirm denial	3			
WCB affirm denial	5			
Court set aside denial	0			
Court affirm denial	5			
Aggravation denial	1	2.0	100%	0
WCB set aside denial	1			
Court set aside denial	1			
Court affirm denial	0			
ALL COMPENSABILITY	26	53.1	84.6%	2
OTHER ISSUES	13	26.5	84.6%	2
ALL ISSUES	49	100.0	83.7%	4

* Remands are excluded from these counts and calculations.
Dispositions for extent of disability are stated with respect to worker award levels after the WCB order; for the compensability issues, they are stated with respect to the insurer denial.
Percentages may not add to totals due to rounding.

Issues

The number and relative frequency of each issue are given in the table ("cases" and "% of cases" columns). Cases without one of the specified issues are counted in the "other issues" category. The relative frequency of the compensability issues (53.1 percent) was the smallest since 1999, while the relative frequency of cases about extent of permanent or temporary disability (20.4 percent) was the highest since 2005. The most frequent **other issues** (including those in cases with a specified issue) were insurer penalty, seven cases; attorney fees, six cases; timeliness, four cases; and evidence, four cases.

Issue disposition

Court dispositions and WCB affirmation rates are given in the table. On compensability issues, the court **set aside denials** in 12 of 26 cases (46.2 percent). The board had ruled that denials should be set aside in 14 of these 26 cases (53.8 percent).

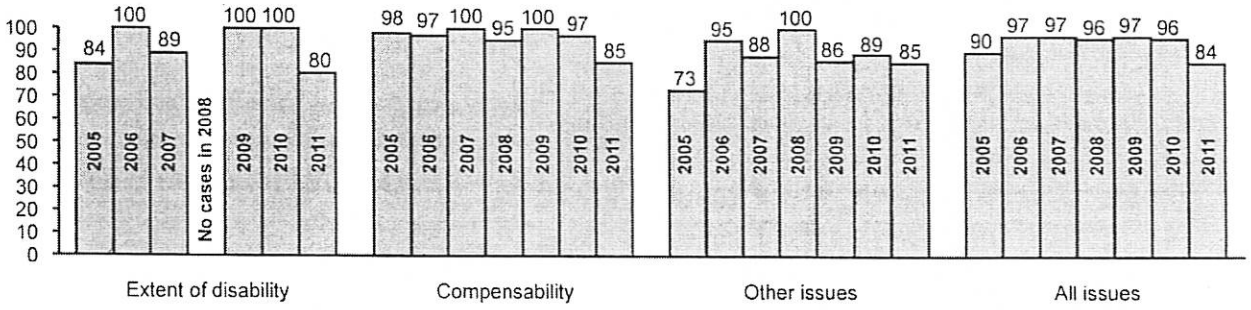
WCB affirmation rates

The court affirmed the board in 80.0 percent of extent of disability cases, 84.6 percent of compensability cases, and 84.6 percent of other-issue cases. The overall affirmation rate was 83.7 percent, compared to 2010's 95.8 percent. See Figure 2. (These counts and percentages exclude remands; remand counts are also given in the table.)

Other data

SAIF Corporation was the **insurer** in 45.3 percent of cases (includes multiple-insurer disputes). No **permanent total disability** cases (PTD awarded at some level) were decided by the court in 2011. The median **time lag** from appeal to order was 586 days (19.3 months), 13 days longer than 2010's then-record-high value. The median time from injury to order was 1,681 days (4.6 years). **Attorney fees** in 14 appellate judgments (issued in 2011, typically two months or more after the slip opinion) totaled $105,500; the average fee was $7,540. There were no cases where parties requested **attorney sanctions** against opposing counsel for an appeal that was frivolous, made in bad faith, or for harassment purposes (ORS 656.390).

Figure 2. WCB affirmation rates (percent)



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Department of Consumer and Business Services June 2012

By Russ Reed

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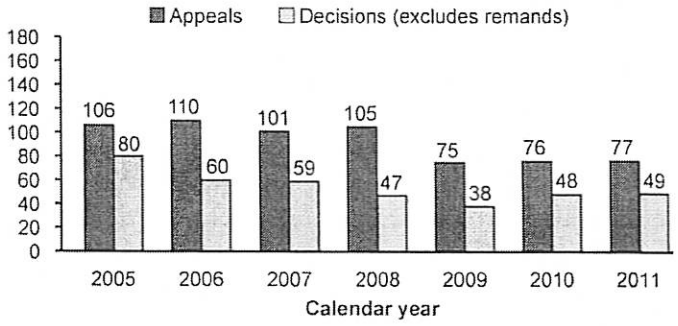

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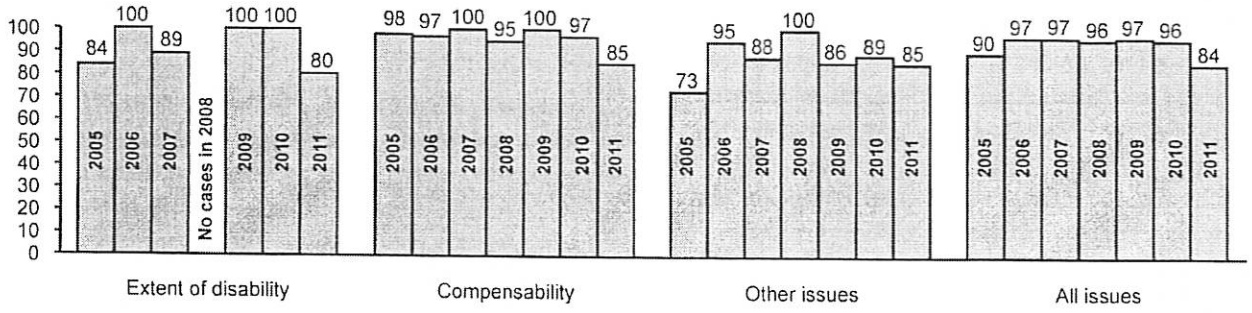

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Oregon Supreme Court Workers' Compensation Summary, 2003-2005

Information Management Division

Department of Consumer & Business Services April 2006

by Russ Reed

Requests and decisions

There were 50 **petitions** for Oregon Supreme Court review of Court of Appeals decisions on Workers' Compensation Board cases during calendar years 2003-2005. That's 16.7 requests per year, compared with 30.3 per year for 1997-2002. The appeal rate for Court of Appeals WCB cases was 19.4 percent, compared with 25 percent for 1997-2002.

The higher court wrote **decisions** (including remands) on nine Court of Appeals WCB cases. Thus 18 percent of petitioned lower court decisions were selected for review, compared with 13.7 percent for 1997-2002. The percentage of Court of Appeals decisions that were reviewed by the higher court was 3.5 percent; in 1997-2002, it was 3.4 percent. See the graph below.

The **petitioner** was the worker in eight of the nine Supreme Court cases.

Issues

Permanent disability and worker noncooperation denial each were issues in two cases. See the table on the reverse.

Affirmation rates

The Oregon Supreme Court affirmed the **Court of Appeals** in two of nine cases. The high court affirmed the **Workers' Compensation Board** in three cases. (Because "whether the Court of Appeals decision appears to be wrong" is a criterion for granting review, these figures should be used for information only, and not to rate the court or board.)

Time lags

The median time lag from **petition** to court decision (slip opinion published) was 602 days (20 months), slightly shorter than the 609 days for 1997-2002. The median lag from **hearing request** to court decision was 5.3 years. The median time from **injury** to decision was 8.1 years.

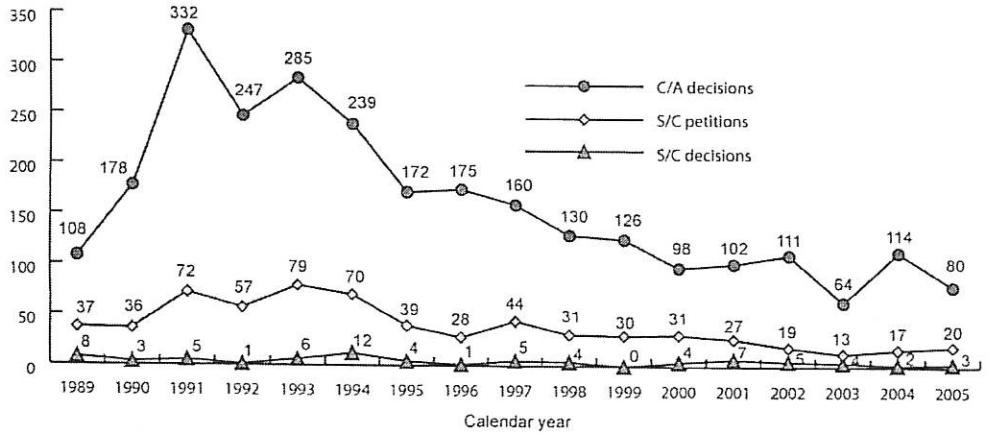
Summary of significant WCB cases:

In *SAIF Corp. v. Dubose*, 335 Or 579 (2003), SAIF denied a claim for worker noncooperation, the board set aside the denial, and the Court of Appeals reversed the board because the worker had not requested an *expedited* hearing. The Oregon Supreme Court reversed the lower court, ruling that in ORS 656.291 the Legislature did not intend — in requiring an *expedited* hearing on a noncooperation denial — to impose a burden on the worker, but instead to direct how the board should handle the case.

In *Vsetecka v. Safeway Stores Inc.*, 337 Or 502 (2004), the court found that ORS 656.265 explicitly does not require a formalistic injury notice, but rather requires injured workers to include enough information for the employer to know that there may be a compensable injury. Claimant's three written entries in the injury log were sufficient.

In *Lewis v. Cigna*, 339 Or 342 (2005), the high court ruled that a claim could not be denied for worker refusal to submit to an insurer-requested medical exam. The Legislature intended to limit sanctions in such cases to suspension of benefits.

Oregon Supreme Court on workers' compensation (WCB)



In *Morales v. SAIF Corp.*, 339 Or 574 (2005), the court determined that SAIF could reduce the time-loss rate because the worker was released to modified work, though he couldn't actually return because he had been terminated for violating work rules. The employer had satisfied the requirements of ORS 656.325(5) by creating a modified job to accommodate the worker and implementing a written policy of offering modified jobs.

Non-WCB cases:

In *Kahn v. Providence Health Plan*, 335 Or 460 (2003), the court stated that ORS 656.260(8) appears to preclude an injured worker from bringing an action for damages arising out of a managed care organization's conclusion that a proposed medical treatment is unnecessary. The circuit court did not decide on that ground, so the high court remanded. The MCO's conclusion had come out of its "utilization review" process.

In *Day v. Advanced M&D Sales*, 336 Or 511 (2004), the court found that a worker, after filing a workers' compensation claim and receiving benefits, is not barred from later alleging that he is not a worker subject to workers' compensation law.

In *Managed Healthcare Northwest v. Department of Consumer and Business Services*, 338 Or 92 (2005), the issue was a rule prohibiting managed care organizations from using "past practices" as a basis to deny authorization of nonmember physicians from treating subject workers. The court found that the rule did not exceed agency authority, nor did it conflict with other statute or policy.

Oregon Supreme Court workers' compensation cases and issues, 2003-2005

Year Case reference	Issue (comments or sub-issue)	Petitioner	Disposition	WCB[1]
2003				
Gode v. SAIF Corp.	Permanent disability (objective findings)	Claimant	Vacate/remand per Lewis[2]	
Northwest Spas v. Huff	Compensability (objective findings)	Employer	Vacate/remand per Lewis[2]	
SAIF Corp. v. Dubose	Noncooperation denial (required to request *expedited* hearing?)	Claimant	Reverse	Affirmed
Lewis v. Cigna	Noncooperation denial (required to request *expedited* hearing?)	Claimant	Vacate/remand per Dubose, above	
2004				
Trujillo, Logsdon, Mount v. SAIF Corp.[3]	Permanent disability (right to present new evidence at hearing, per Koskela)	Claimants	Affirmed	Affirmed
Vsetecka v. Safeway Stores Inc.	Notice of workplace injury (must notice be in writing?)	Claimant	Reversed	Reversed
2005				
Dougan v. SAIF Corp.	Board "own motion" order (no permanent disability award). Not appealable under prior statute.	Claimant	Vacate/dismiss for jurisdiction	
Lewis v. Cigna[4]	Sanctions for worker noncooperation (deny claim or merely suspend?)	Claimant	Reverse	Reversed
Morales v. SAIF Corp.	Time-loss (reduce rate on release for modified job,[5] but terminated)	Claimant	Affirmed	Affirmed

[1]Disposition with respect to WCB.
[2]SAIF Corp. v. Lewis, 335 Or 92 (2002).
[3]Three cases consolidated for review; Koskela v. Willamette Industries, 331 Or 362 (2000).
[4]This is the same case as in 2003.
[5]The job to which the worker would have been released had he not been terminated.

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