



Oregon

Kate Brown, Governor

Exhibit 39
Workers' Compensation Board

2601 25th St SE, Ste 150

Salem, OR 97302-1280

503-378-3308

1-877-311-8061

www.wcb.oregon.gov

June 12, 2020

To: Workers' Compensation Board Members & Workers' Compensation Community

From: Greig Lowell, WCB Project Manager

Subject: Attorney Fee data

In response to requests from Board Members and stakeholders, WCB and DCBS Research staff have produced statistical information about attorney fee awards. This information includes final data calculations from the 2019 calendar year, which became available in the last few weeks.

Attorney Fee Awards by WCB (in thousands)

Includes Hearings and Board Review

Year	Out-of-Compensation fees	Assessed fees	Total claimant Attorney fees
2010	\$15,935	\$6,256	\$22,191
2011	\$15,617	\$5,184	\$20,801
2012	\$14,052	\$5,391	\$19,443
2013	\$15,243	\$5,332	\$20,575
2014	\$15,853	\$5,885	\$21,738
2015	\$15,645	\$6,247	\$21,892
2016	\$14,796	\$6,421	\$21,217
2017	\$17,282	\$5,936	\$23,218
2018	\$17,887	\$5,347	\$23,234
2019	\$18,938	\$5,771	\$24,709

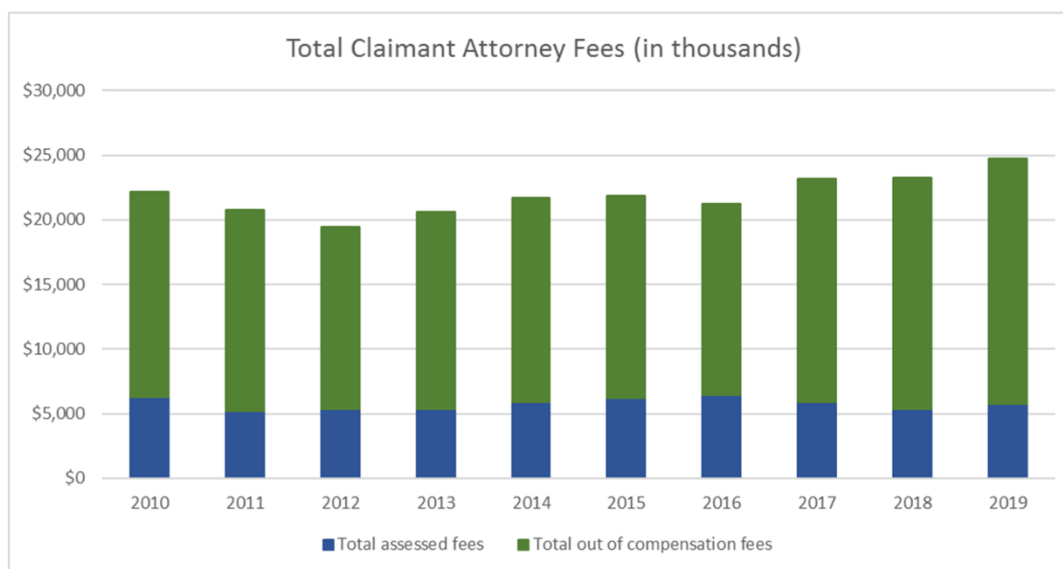
This is a 10-year summary of all fees awarded by WCB. It includes “assessed” fees awarded at hearing and on board review, and all “out-of-compensation” fee awards. Disputed claim settlements (DCS) and claims disposition agreements (CDA) are collected in the “out-of-compensation” column. Stipulations may include “out-of-compensation” or an “assessed” award, depending on the terms of the agreement. These totals do not include any fee awards granted by the Workers' Compensation Division (WCD).

The numbers are reported in thousands of dollars. For example, the total claimant attorney fees awarded in 2019 was \$24.7 million.

Fees “awarded” by WCB may not reflect the precise amount of fees ultimately “paid” by carriers. Interest on fees paid after appeal are not captured. Furthermore, WCB does not capture fees awarded by the Court of Appeals and Supreme Court.

All Attorney Fee Awards by WCB

(includes settlements)



This is a graphic representation of all attorney fee awards by WCB.

Assessed fees at hearing – all cases, including stipulations

Assessed Attorney Fees at Hearings, 2015-2019

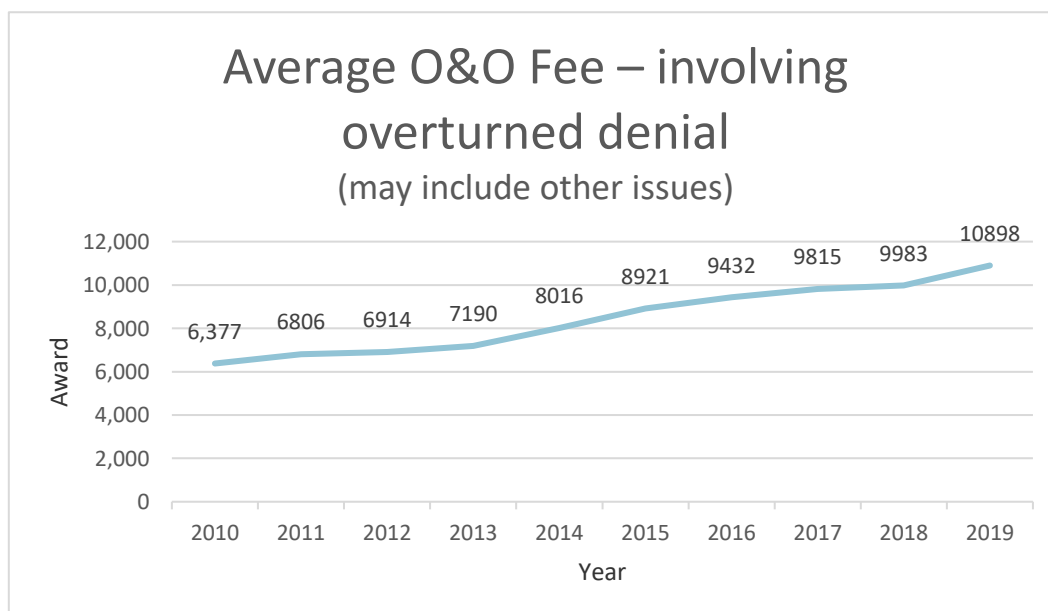
Year	Cases	Orders	Total fees	Avg. Attorney fees	
				by case	by order
2015	1130	1104	5,459,504	4,831	4,945
2016	1209	1167	5,779,187	4,780	4,952
2017	1089	1048	5,369,969	4,931	5,124
2018	982	951	5,083,833	5,177	5,346
2019	984	934	5,034,838	5,117	5,391

Stakeholders have asked for information regarding changes and trends in “assessed” attorney fee awards, at hearing and on review. This chart shows “assessed” fee awards from the Hearings Division, including Opinion and Orders and Stipulations that grant an “assessed” fee. On the far right of the chart, we have broken down the fee awards on a “per case” and “per order” basis. Some orders include multiple case numbers and issues.

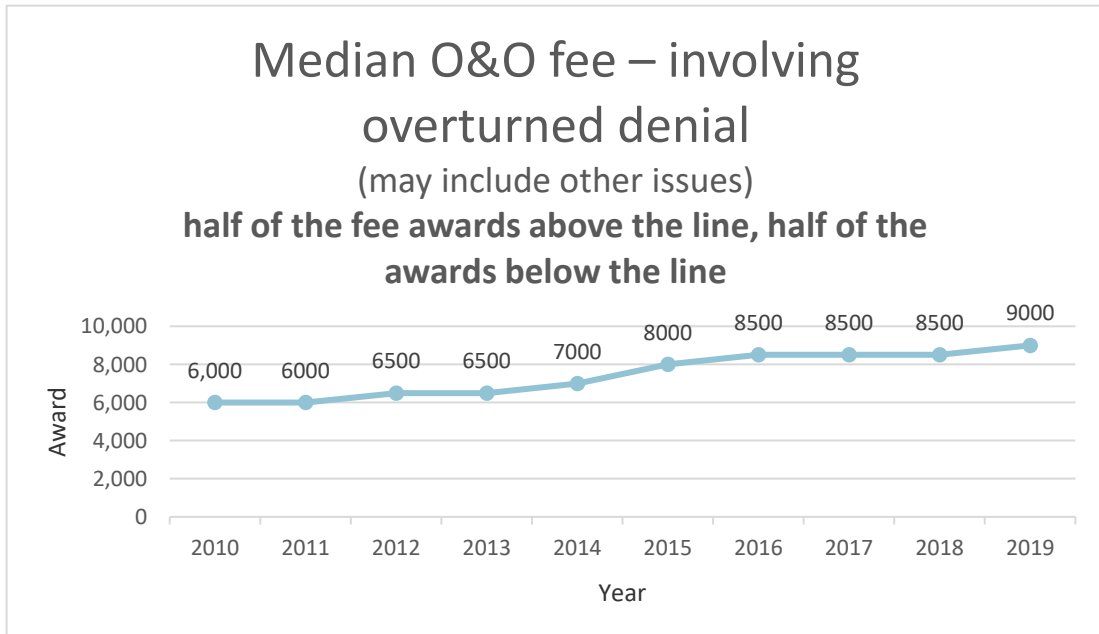
Attorney fee awards – claim denial O&Os

Year	Attorney fee for O&Os that involve an overturned denial					
	Number of Cases	Total	Average	Median	Maximum	Minimum
2010	417	\$2,659,345	\$ 6,377	\$ 6,000	\$20,000	\$ 250
2011	343	\$2,334,367	\$ 6,806	\$ 6,000	\$27,000	\$ 1,500
2012	313	\$2,164,050	\$ 6,914	\$ 6,000	\$40,000	\$ 1,000
2013	267	\$1,919,626	\$ 7,190	\$ 6,500	\$25,000	\$ 1,000
2014	294	\$2,356,786	\$ 8,016	\$ 7,000	\$30,000	\$ 2,000
2015	298	\$2,658,555	\$ 8,921	\$ 8,000	\$43,334	\$ 1,000
2016	240	\$2,263,579	\$ 9,432	\$ 8,500	\$35,600	\$ 500
2017	197	\$1,933,647	\$ 9,815	\$ 8,500	\$28,500	\$ 3,000
2018	185	\$1,846,783	\$ 9,983	\$ 8,500	\$30,000	\$ 1,500
2019	163	\$1,776,358	\$10,898	\$ 9,000	\$48,000	\$ 500

Several attorney firms sought information regarding fee awards for overturning a denial. This chart provides a 10-year history of fee awards in cases involving an overturned denial. Additional issues may be involved in those cases, such as penalties. WCB captures only the global fee award at the hearing, so the fees may reflect work on companion issues to the denial. This chart shows an average, median (½ the cases above this line, and ½ half below), plus maximums and minimums. This chart does not reflect whether the fees were reversed or modified at subsequent levels of appeal. It simply shows the fee awarded by Hearings Division.



This is a graphic representation of the “average” fee in an O&O involving an overturned denial over the course of the last 10 years.

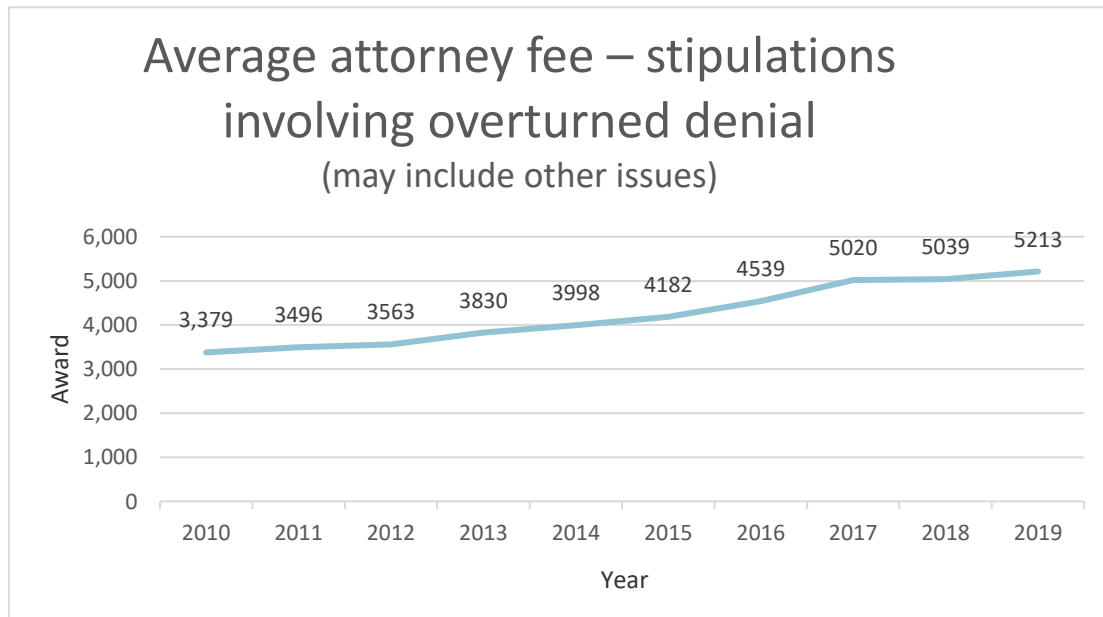


This is a graphic representation of the “median” fee in an O&O involving an overturned denial over the course of the last 10 years.

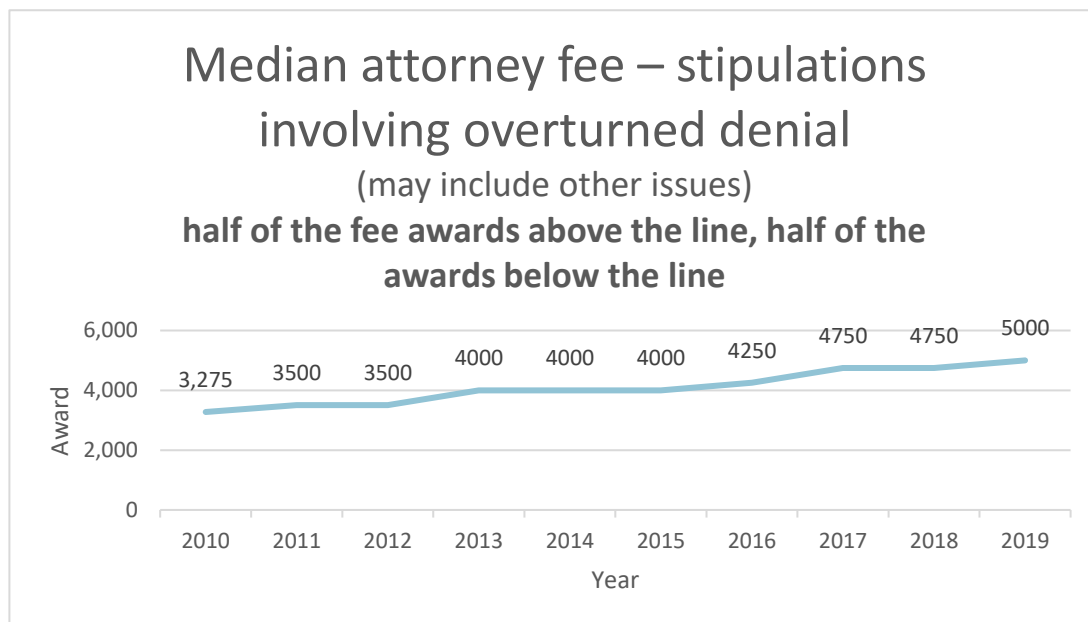
Attorney fee awards – stipulations with denial rescinded

Year	Attorney fee for all stipulations with overturned denial					
	Number of Cases	Total	Average	Median	Maximum	Minimum
2010	571	\$1,929,219	\$3,379	\$3,275	\$ 18,751	\$ 200
2011	461	\$1,611,493	\$3,496	\$3,500	\$ 10,000	\$ 100
2012	452	\$1,610,656	\$3,563	\$3,500	\$ 10,000	\$ 500
2013	463	\$1,773,425	\$3,830	\$4,000	\$ 12,000	\$ 250
2014	469	\$1,875,000	\$3,998	\$4,000	\$ 16,000	\$ 250
2015	399	\$1,668,758	\$4,182	\$4,000	\$ 18,000	\$ 200
2016	318	\$1,443,327	\$4,539	\$4,250	\$ 16,000	\$ 150
2017	342	\$1,716,950	\$5,020	\$4,750	\$ 40,000	\$ 500
2018	296	\$1,491,442	\$5,039	\$4,750	\$ 20,000	\$ 500
2019	281	\$1,464,992	\$5,213	\$5,000	\$ 18,000	\$ 100

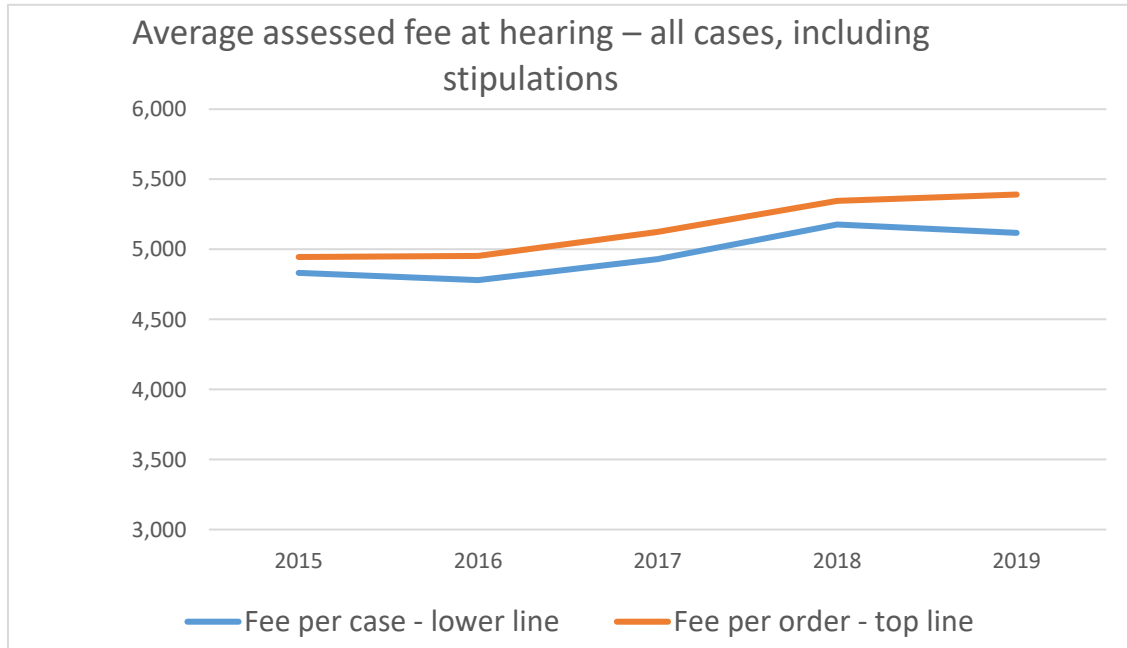
Some denials are overturned by a stipulation (rescission of denial). This chart shows the fee awards contained in such a settlement agreement approved by WCB. The settlement and fee awards may include other issues besides a denial. While most of these are likely “pre-hearing” rescissions, some may be rescissions following a hearing or board order. The fee awards in this chart reflect the amounts contained in the settlement stipulation agreement.



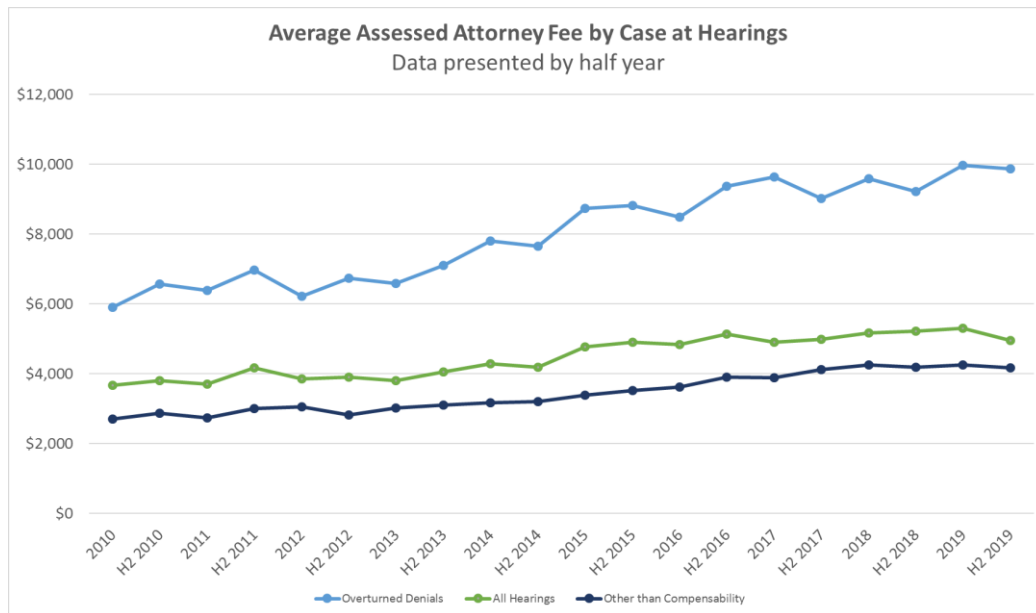
This is a graphic representation of the “average” fee in a stipulation involving an overturned denial over the last 10 years.



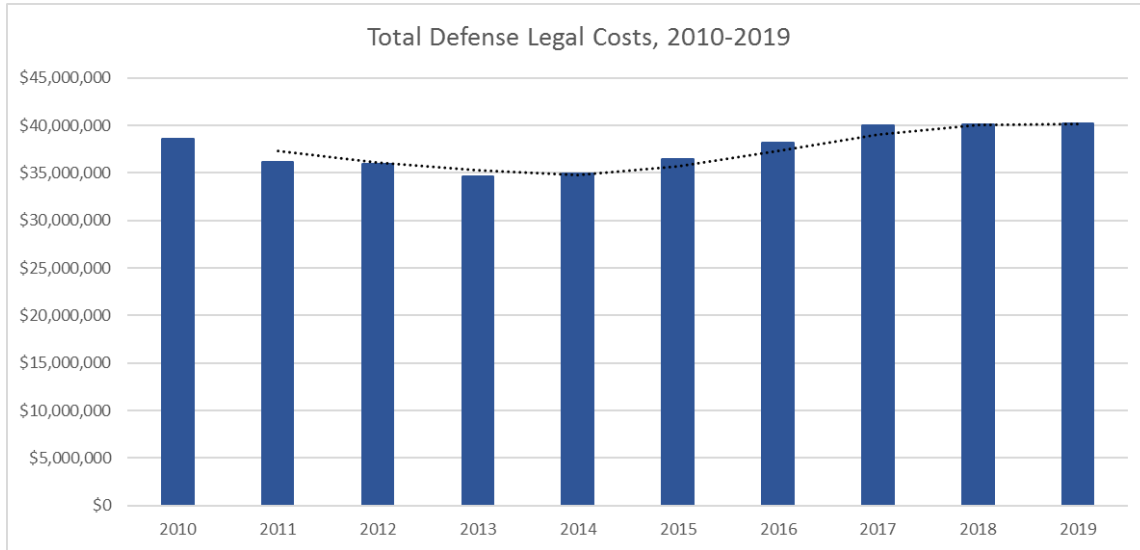
This is a graphic representation of the “median” fee in a stipulation involving an overturned denial over the last 10 years.



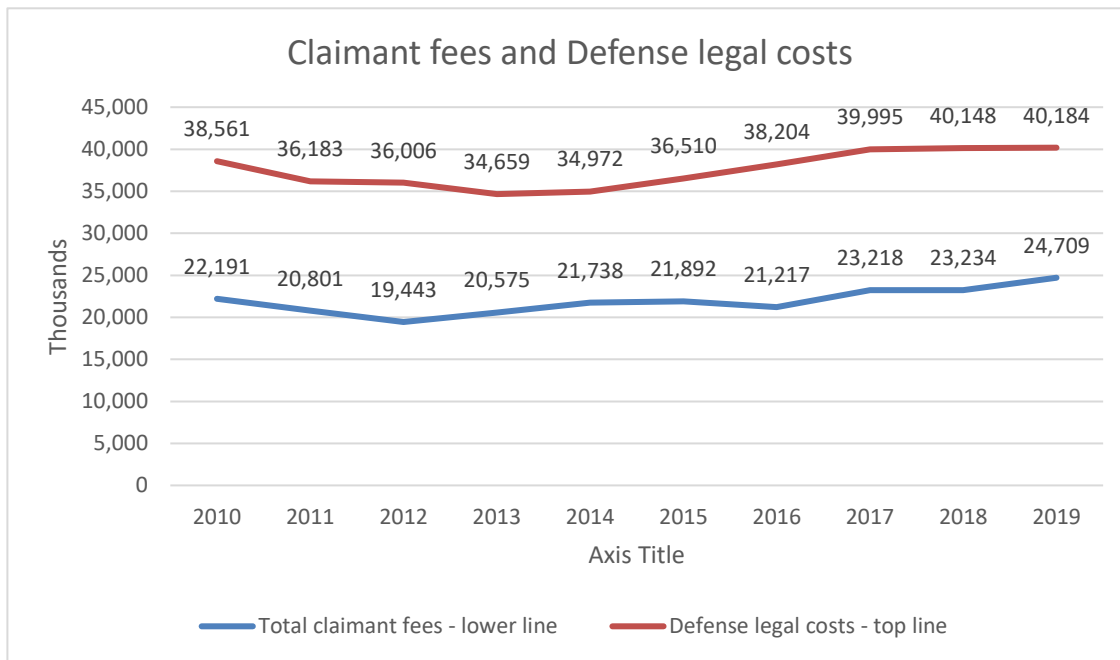
This shows the average “assessed” fee awarded at Hearings Division (orders and stipulations combined). The orange (top) line shows the fees per order (which may involve multiple case numbers), while the blue (lower) line reflects the fees per individual case.



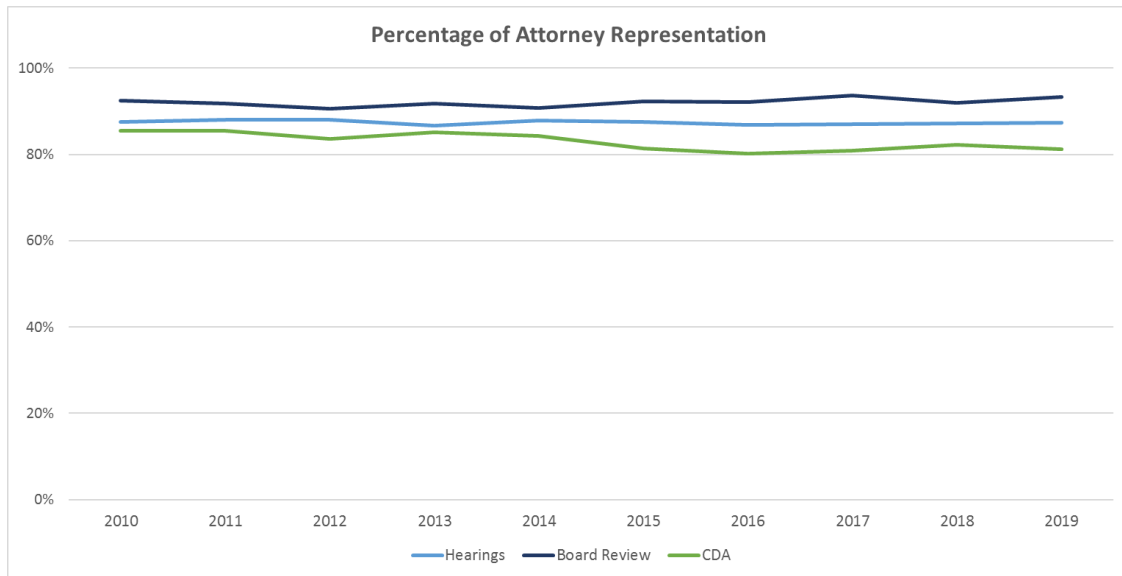
This line graph shows the development of “average” assessed attorneys per *case* over the last 10 years. The light blue (top) line shows cases involving overturned denials (which may include other issues), the dark blue (bottom) line is for cases other than “compensability” (denials) and the green (middle) line includes all types of cases (a combination of the other two lines).



This is a graphic representation of defense legal costs over the last 10 years, as self-reported by insurance carriers and self-insured employers (including third party administrators) to WCD. These totals may include legal costs associated with activities unconnected to WCB cases, such as litigation at the Workers' Compensation Division.



This is a same-page comparison of the changes in total claimant attorney fees and the changes in defense legal costs for the last 10 years.

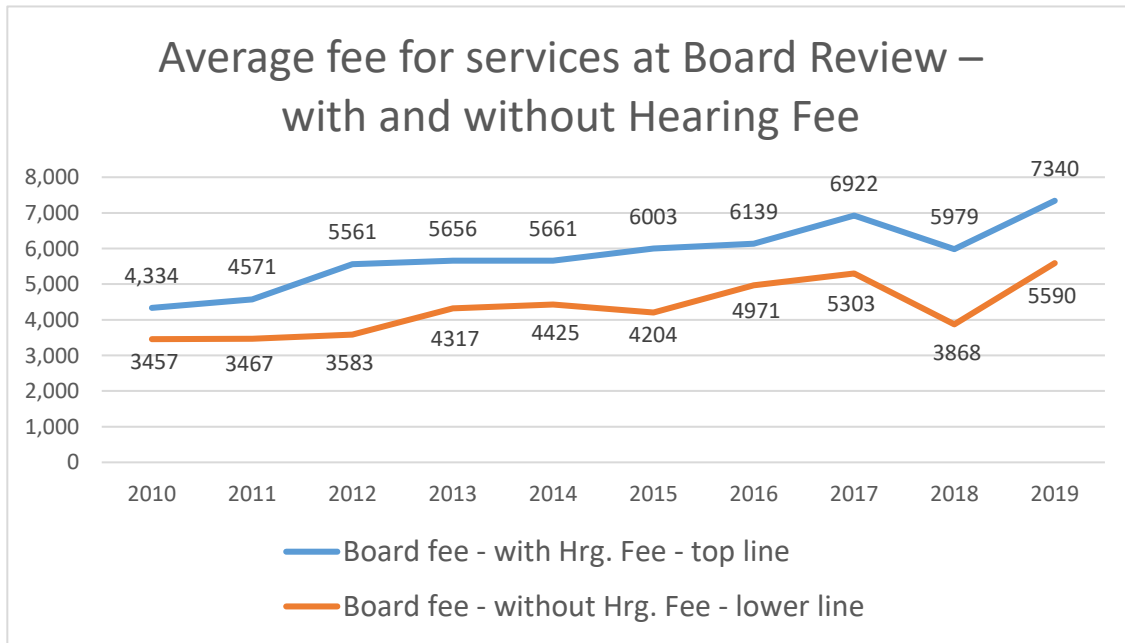


This is a line graph showing the percentage of cases involving attorney representation for claimants at the time of the first order at hearings (middle line) and first order at board review (top line). For CDAs (bottom line), we capture whether claimant was represented at the time of the submission/request for approval.

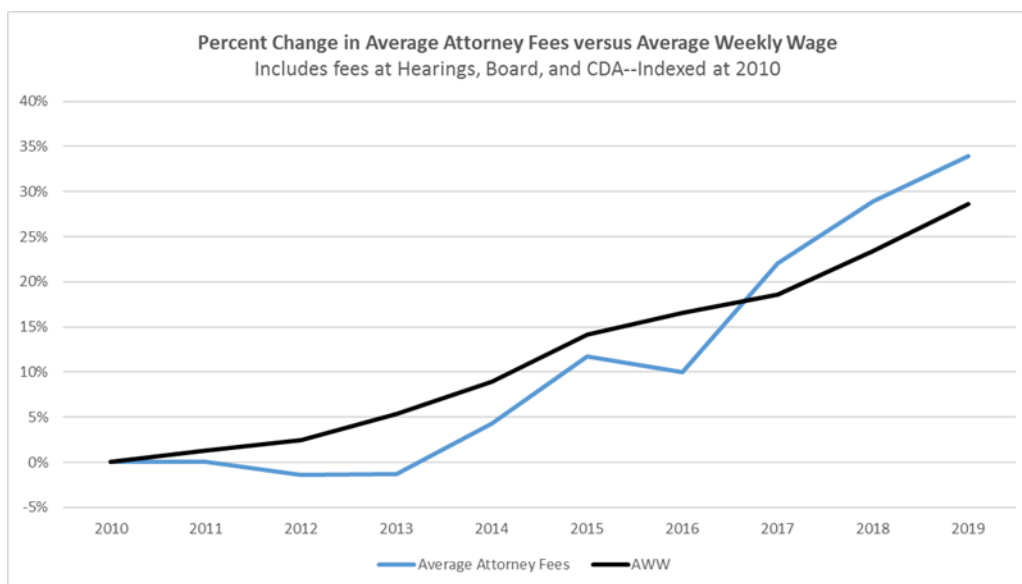
“Combined” fees at the Board

- When a single fee is given by the Board for services at Hearing and on Board Review (2018-2019):
 - Full claim denial - Average “combined” fee is \$17,063
 - Partial claim denial – Average “combined” fee is \$15,000

As noted previously, several stakeholders expressed interest in “average” fee awards at hearings and board review. However, when a denial is affirmed at hearing but set aside at board review, the board will award a “combined” fee for services at both levels. That single amount is captured in the WCB statistics. In order to tease those apart, the Board did a hand-count project for all Board cases in 2018 and 2019, identifying those orders with a “combined” fee award. This statistic shows the average “combined” fees for full claim denial cases and partial denial cases (such as a new/omitted condition).



Using data from the hand-count project, combined with historical data of awards at hearing and board review, DCBS Research staff developed an approximation of what fees would be if the “combined” fee were pulled apart into separate components. The attorney fees awarded at board review may include services at hearing (when a decision is reversed in favor of the claimant), which can inflate the apparent the “average fee” awarded at board review. In order to determine a more accurate “average fee” for services at the board review level, DCBS Research extrapolated data from the hand-count project and historical data. In general, services at hearing represent about 2/3 of a “combined fee,” with services at review representing 1/3. This graph better illustrates the average fees at the Board, both with, and without, the “hearing fee.” Fluctuations in the average can occur due to the relatively low volume of cases at board review.



To determine whether the changes in claimant attorney fee awards have tracked with overall changes in economic growth in Oregon, we have produced a graph comparing the average attorney fee award *per case* against the changes in the state average weekly wage (AWW) as determined by the Oregon Employment Department. Choosing a baseline of 2009, the average awarded attorney fees *per case* (at any level, including settlements) is plotted against the year-over-year percent increase in the AWW.

Going to hearing

- WCB does not collect a “wins and losses” statistic, but we do know if an O&O resulted in a fee
- The chart below shows % of cases in which fee is greater than zero
- The chance of getting some type of attorney fee is about 40 percent

Year	O&Os	Out of Comp	Assessed	All Fees	Average fee, including when none awarded
2015	1002	4.2%	40.2%	42.6%	\$3,146
2016	891	3.1%	40.6%	43.4%	\$3,280
2017	790	1.5%	39.4%	40.8%	\$3,206
2018	752	1.3%	39.4%	40.7%	\$3,276
2019	479	1.5%	38.4%	39.7%	\$3,223

Several claimant attorneys have requested data regarding the percent chance of “winning” a case at hearing. WCB does not specifically track “wins and losses” in case decisions. Cases may have multiple issues, with a variety of outcomes per decision. WCB does track, however, whether an O&O resulted in an attorney fee. To the extent that an attorney fee award can be considered at least a partial “win,” we produced this data showing the percentage of O&O decisions in which a fee was awarded. The percentage of decisions in which a fee (of any amount) is awarded has been about 40 percent over the last five years. The final column in this chart shows the “average” fee when all O&Os are calculated (including cases where no fee is awarded). As shown, a claimant attorney’s average fee for taking a case to an O&O, when both wins and losses are considered, is about \$3,200.