



# Oregon

Kate Brown, Governor

## Workers' Compensation Board

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August 11, 2021

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

From: Greig Lowell, WCB Project Manager

Subject: Attorney Fee data

This is an update of statistical information previously published in June, 2020 regarding attorney fees at the Workers' Compensation Board. These tables and charts include the fees awarded in the 2020 calendar year.<sup>1</sup>

### Attorney Fee Awards by WCB (in thousands)

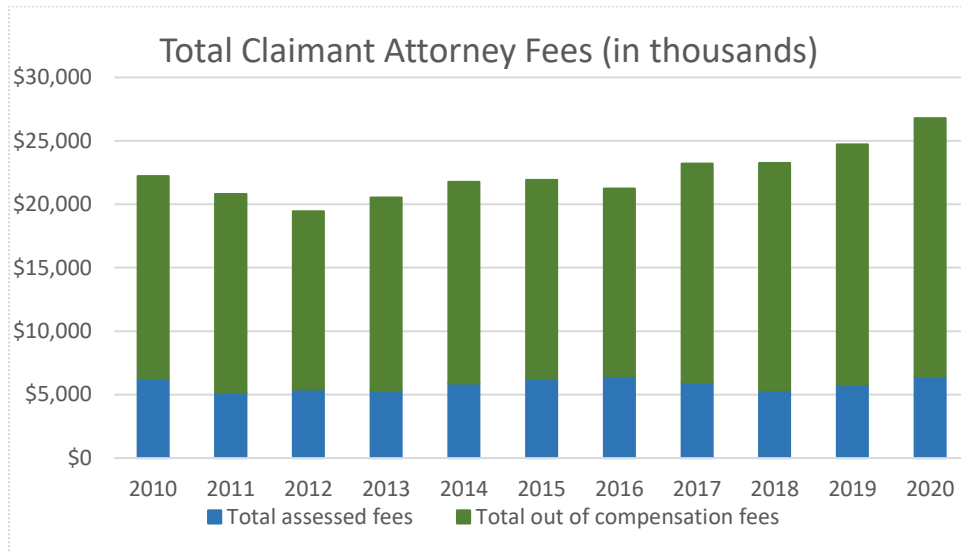
Includes Hearings and Board Review

Year	Total out of compensation fees	Total assessed fees	Total claimant attorney fees
2010	\$15,976	\$6,256	\$22,232
2011	\$15,628	\$5,186	\$20,815
2012	\$14,067	\$5,392	\$19,459
2013	\$15,249	\$5,285	\$20,534
2014	\$15,887	\$5,886	\$21,773
2015	\$15,669	\$6,248	\$21,917
2016	\$14,808	\$6,434	\$21,242
2017	\$17,285	\$5,936	\$23,222
2018	\$17,923	\$5,345	\$23,269
2019	\$18,969	\$5,752	\$24,721
2020	\$20,393	\$6,399	\$26,792

This is a 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 “assessed” awards, depending on the terms of the agreement. These totals do not include any fee awards granted by the Workers' Compensation Division (WCD).

<sup>1</sup> We have made a small adjustment in the totals from prior years, reflecting a limited number of cases in which a second “order” issued. Examples include an Order on Reconsideration or a stipulation that changed the attorney fee. The difference is less than one percent (+.076) from the totals in the 2020 publication.

## 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

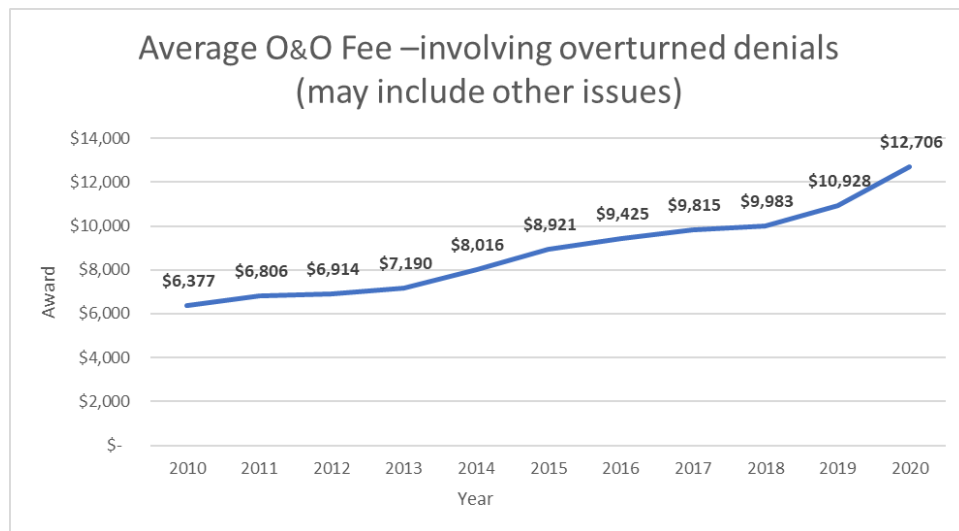
Assessed Attorney Fees at Hearings, 2015-2020					
Year	WCB Case #s	Orders	Total fees	Avg. Attorney fees	
				by case	by order
2015	1,130	1,104	\$5,459,504	\$4,831	\$4,945
2016	1,210	1,168	\$5,806,272	\$4,799	\$4,971
2017	1,089	1,048	\$5,369,969	\$4,931	\$5,124
2018	982	951	\$5,083,833	\$5,177	\$5,346
2019	983	933	\$5,028,838	\$5,116	\$5,390
2020	978	893	\$5,519,326	\$5,643	\$6,181

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 WCB case #” and “per order” basis. Some orders include multiple case numbers and issues.

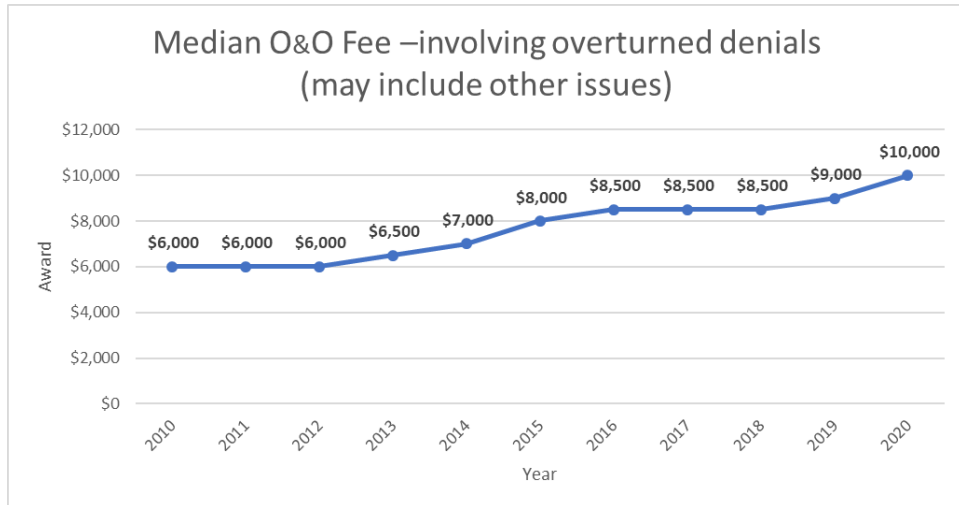
## Attorney fee awards - claim denial O&Os

Year	O&Os in which one or more denials are overturned					
	Orders	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	\$ 2,262,079	\$ 9,425	\$ 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	162	\$ 1,770,358	\$ 10,928	\$ 9,000	\$ 48,000	\$ 500
2020	144	\$ 1,829,734	\$ 12,706	\$ 10,000	\$ 58,334	\$ 500

This chart provides a history of fee awards in O&Os 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 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 overturned denials.

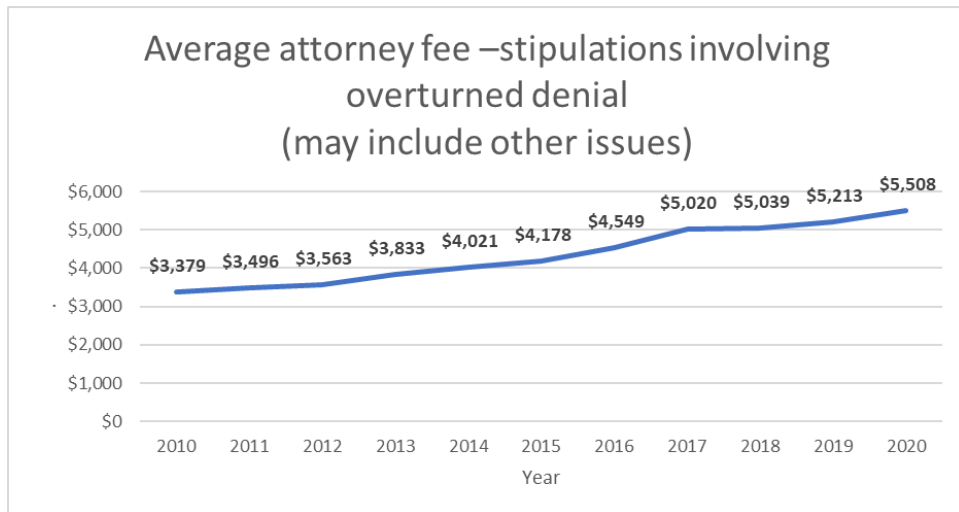


This is a graphic representation of the “median” fee in an O&O involving overturned denials.

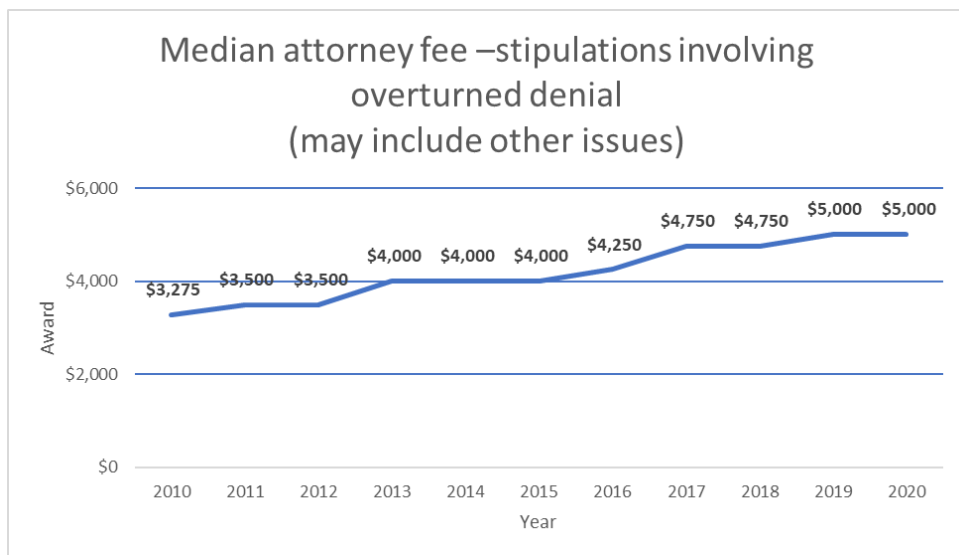
### Attorney fee awards - stips with denial rescinded

Year	Orders in which one or more denials are overturned (Stipulations)					
	Orders	Total	Average	Median	Maximum	Minimum
2010	573	\$ 1,936,219	\$ 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	464	\$ 1,778,425	\$ 3,833	\$ 4,000	\$ 12,000	\$ 250
2014	471	\$ 1,894,000	\$ 4,021	\$ 4,000	\$ 16,000	\$ 250
2015	400	\$ 1,671,258	\$ 4,178	\$ 4,000	\$ 18,000	\$ 200
2016	320	\$ 1,455,577	\$ 4,549	\$ 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
2020	328	\$ 1,806,521	\$ 5,508	\$ 5,000	\$ 15,000	\$ 500

Some denials are overturned by a stipulation (rescission of denial). This chart shows the fee awards contained in such settlement agreements 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 stipulated settlement agreement.

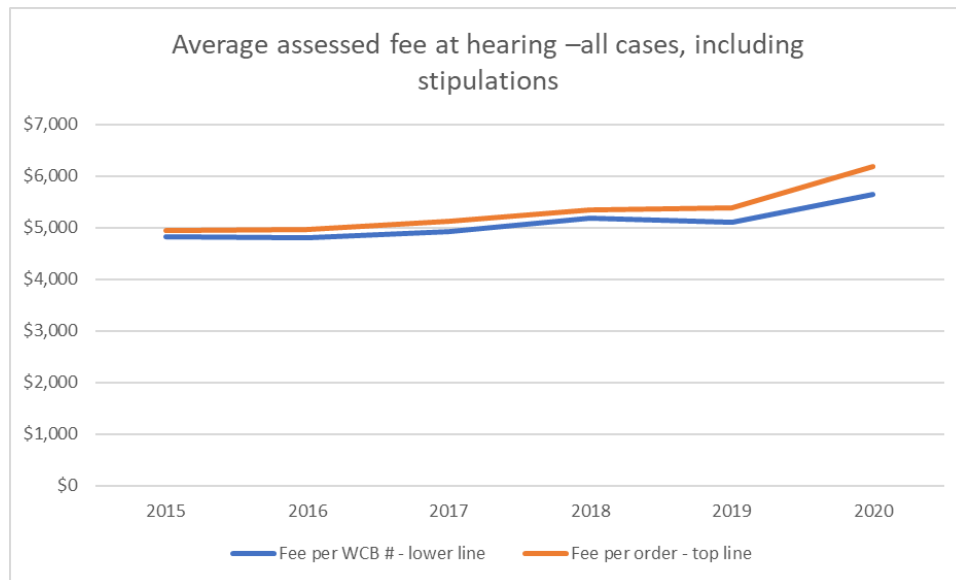


This is a graph of the “average” fee in a stipulation involving an overturned denial.

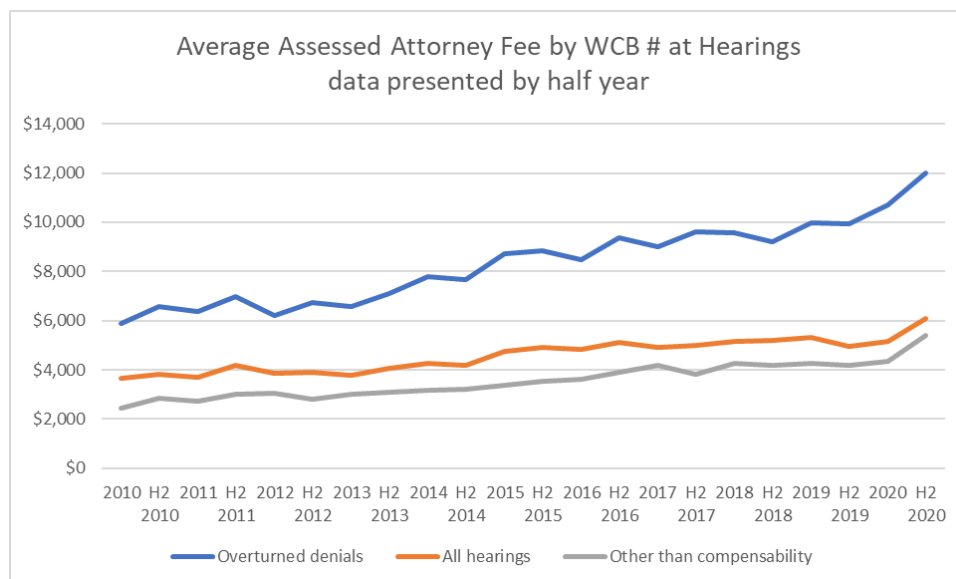


This is a graph of the “median” fee in a stipulation involving an overturned denial.

## Average assessed fee award at hearing— including stipulations

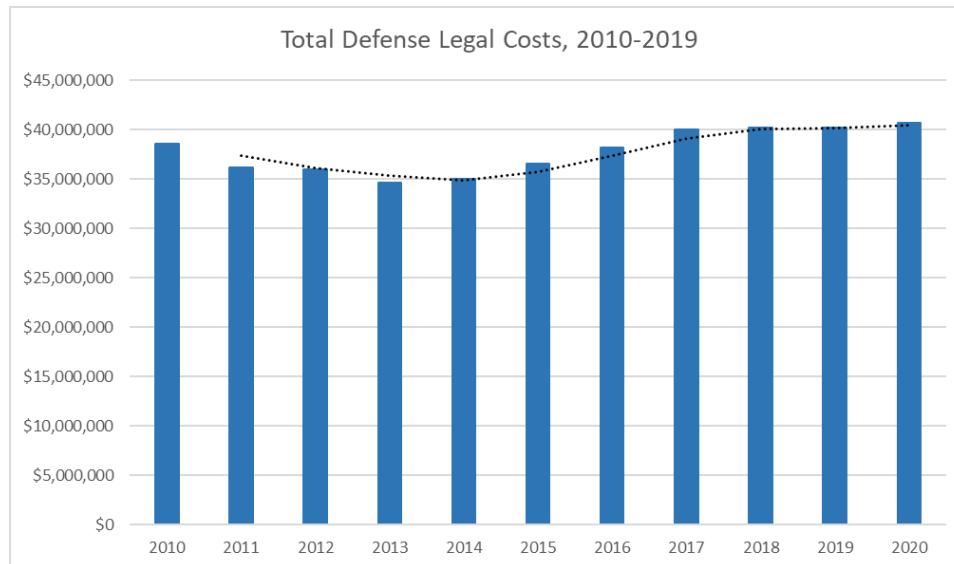


This graph shows the average “assessed” fee awarded at Hearings Division (orders and stipulations combined). The orange (top) line shows the fees per order (which may involve multiple case numbers), while the blue (lower) line reflects the fees per WCB number.

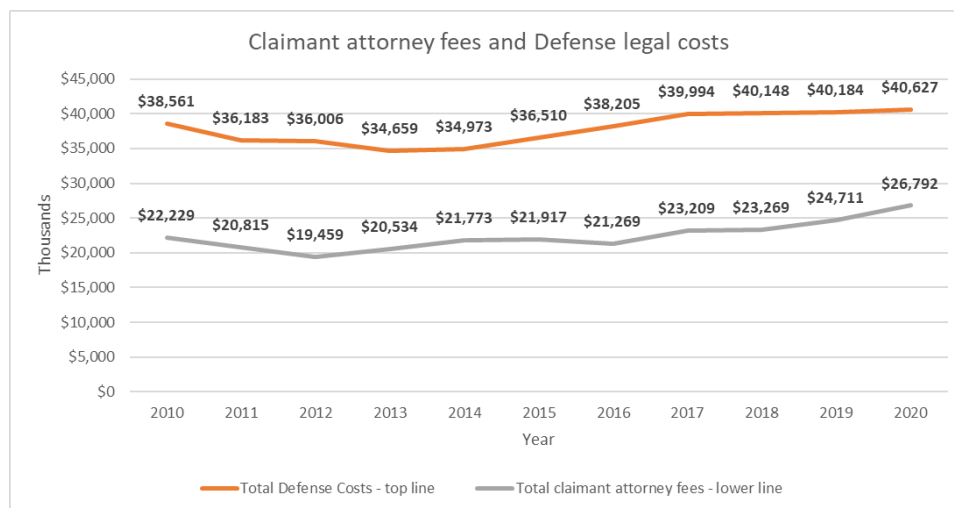


This line graph shows the development of “average” assessed attorneys per WCB #. The blue (top) line shows cases involving overturned denials (which may include other issues), the grey (bottom) line is for WCB #s other than “compensability” (denials) and the orange (middle) line includes all types of WCB #s (a combination of the other two lines).

## Comparison - Defense Legal Costs and Claimant Attorney Fees

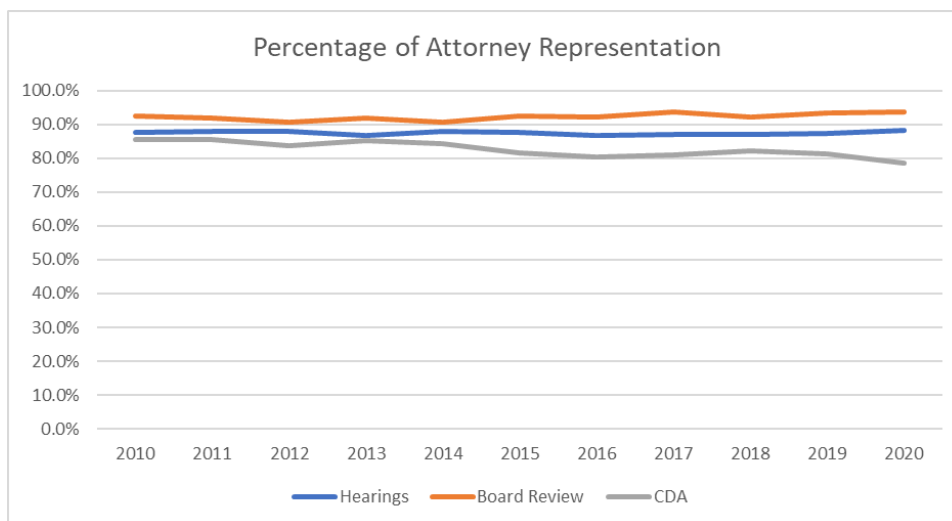


This is a bar chart of defense legal costs, as self-reported by insurance carriers and self-insured employers (including third party administrators) to WCD. These totals may include legal costs associated with activities unconnected to WCB cases, such as litigation at the Workers' Compensation Division.



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

## Claimant Attorney Representation – WCB Litigation and CDAs



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

## Average Combined\* Assessed Fees – Compensability at Board Review

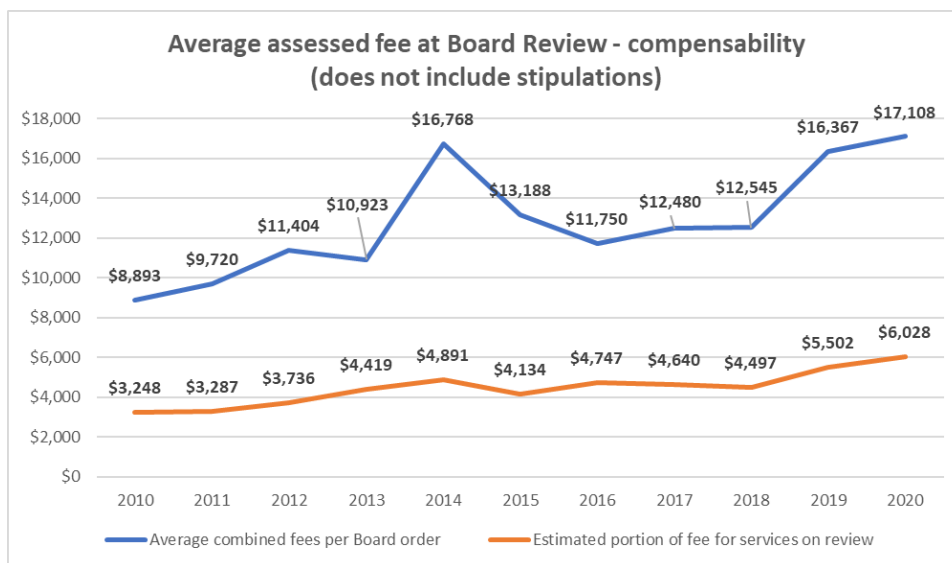
(\*Orders on Review awarding fees for services at hearing and services on review)

Year	Average combined fees per Board order	Estimated portion of fee for services on review
2010	\$8,893	\$3,248
2011	\$9,720	\$3,287
2012	\$11,404	\$3,736
2013	\$10,923	\$4,419
2014	\$16,768	\$4,891
2015	\$13,188	\$4,134
2016	\$11,750	\$4,747
2017	\$12,480	\$4,640
2018	\$12,545	\$4,497
2019	\$16,367	\$5,502
2020	\$17,108	\$6,028

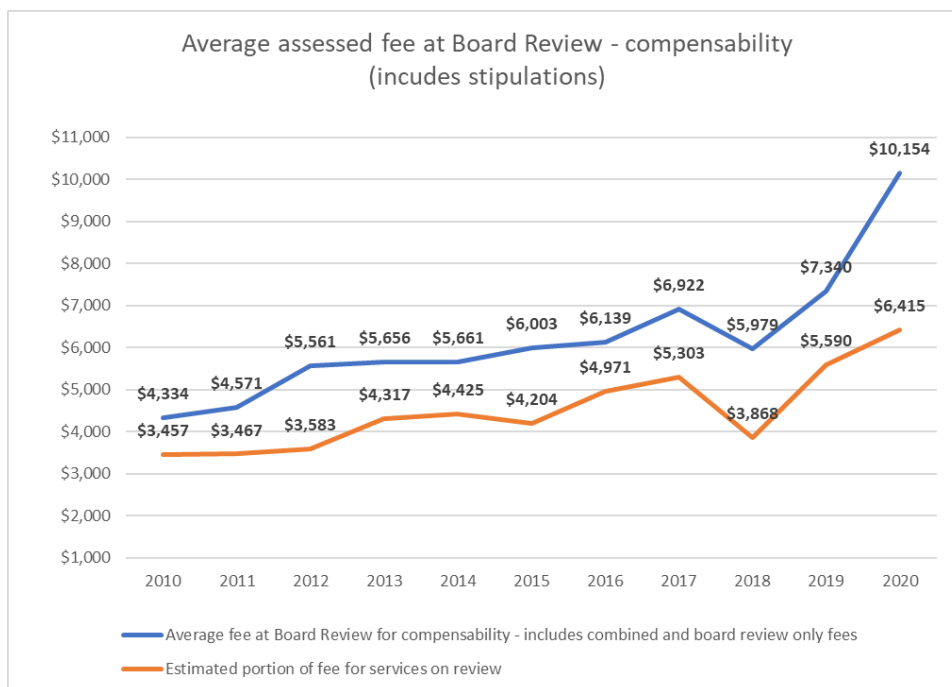
- Does not include stipulated attorney fees

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 “average board fee” award. Since fee awards are not broken down into separate awards for hearing and review in a “combined fee” award, we provide this estimate calculated by DCBS Research, using WCB’s hand count project and historical data. In general, services at hearing represent about 2/3 of a “combined fee,” with services on review representing 1/3.



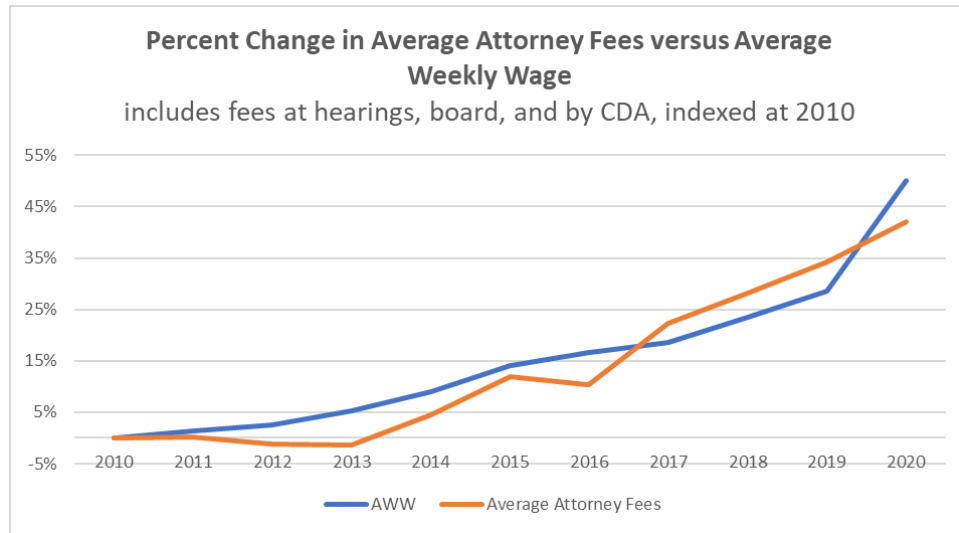


To further illustrate the average attorney fee awards for Orders on Review in compensability cases, other than stipulated attorney fees, we have prepared the above graph. This graph tracks the yearly averages for both “combined fee” awards and the estimated portion of the board’s fee awards representing services on review. The top (blue) line is an average of “combined” fee awards. The bottom (orange) line is an estimation of that portion of the “combined” fee award representing attorney services on board review. Fluctuations in the yearly averages can occur due to the relatively low volume of cases on board review.



This chart shows the average assessed Board fee award for cases that involve full or partial denials of compensability. It includes orders and stipulations. The top (blue) line is an average that is inclusive of “combined fee” awards and “board review only” awards. The bottom (orange) line is an average of the estimated portion of the fees awarded for services on “board review only.” As noted previously, this estimate is created by DCBS Research, using WCB’s hand count project and historical data.

## Comparison of Claimant Attorney Fees and AWW



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 2010, the average awarded attorney fees per case (at any level, including settlements) is plotted against the year-over-year percent increase in the AWW. The state AWW increased 14% in 2020.

## 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 orders in which the fee is greater than zero
- The chance of getting some type of attorney fee is about 40 percent

	Percentage of orders with fees				
Year	O&Os	Out of Comp	Assessed	All Fees	Average fee including when none is awarded
2015	1002	4.2%	40.2%	44.4%	\$3,146
2016	891	3.1%	40.7%	43.9%	\$3,310
2017	790	1.5%	39.4%	40.9%	\$3,208
2018	752	1.3%	39.2%	40.6%	\$3,259
2019	714	2.4%	36.7%	39.1%	\$3,158
2020	667	1.6%	37.5%	39.1%	\$3,657

WCB does not specifically track “wins and losses” in its orders. Each litigated matter 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 orders 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 now \$3,657.