



September 6, 2023

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

From: Workers' Compensation Board (WCB) Staff and DCBS Information Technology & Research Division (IT&R)

Subject: Attorney Fee Report

This annual report includes attorney fees awarded or approved by WCB in the 2022 calendar year. We anticipate issuing the next annual report (which will include 2023 data) by June 2024. Moving forward, WCB is exploring ways to improve the attorney fee report by providing more specific data regarding the statutory bases for attorney fees awarded at the hearing level and on Board review, distinguishing fees awarded at the hearing level from fees approved pursuant to stipulations, and providing more detailed information regarding combined attorney fee awards on Board review.

**Background:** In 2015, the Oregon Legislature made significant modifications to statutory provisions related to attorney fee awards for attorneys representing injured workers. Those modifications mandate that the Workers' Compensation Board review all attorney fee schedules biennially for adjustment, considering the contingent nature of the practice of workers' compensation law, the necessity of allowing the broadest access to attorneys by injured workers, and the fees earned by attorneys for insurers and self-insured employers.

In 2015, WCB engaged in rulemaking to implement the statutory changes. In 2016, WCB engaged in further rulemaking in response to proposed attorney fee rule concepts. WCB utilized advisory committees and worked with IT&R to compile data relevant to its biennial attorney fee review and rulemaking, and provided the resulting data to its advisory committees.

In August 2018, WCB began the next biennial attorney fee review. During that review, WCB continued to work with its internal resources, including WCB's litigation coder and IT&R, to produce a comprehensive attorney fee report including key data germane to the statutory factors and responsive to stakeholder comments and requests. The resultant attorney fee report was published on June 12, 2020, and included data through calendar year 2019. This report was viewed as setting benchmarks which could be used thereafter and updated annually. In June and October 2020, the 2018 biennial review process culminated in WCB's permanent amendment and adoption of several attorney fee rules.

In November 2020, WCB announced that it would take up the next biennial review at its December 15, 2020, Board meeting. At that meeting, after discussion and public comment, the Board voted to allow more time to pass, given the recent extensive biennial review and the recent rule changes, which would take time to assess. There was also consensus to defer review, pending the appointment of the next member with a background and understanding of employee concerns, as one board position was vacant. On August 11, 2021, WCB published the annual attorney fee report, updated to include data through calendar year 2020.

On January 19, 2023, WCB updated the annual attorney fee report to reflect attorney fee data through calendar year 2021. At its March 2023 Board Meeting, the Board began discussion regarding the next biennial attorney fee review and comments it had received from stakeholders regarding attorney fees. To aid in the biennial review, WCB continued to work with WCB's litigation coder and IT&R to provide updated data for this report, which reflects attorney fee data through calendar 2022.

We acknowledge and thank all involved staff at IT&R, and WCB's litigation coder and web coding specialist, without whose precise work and dedication this report would not be possible.

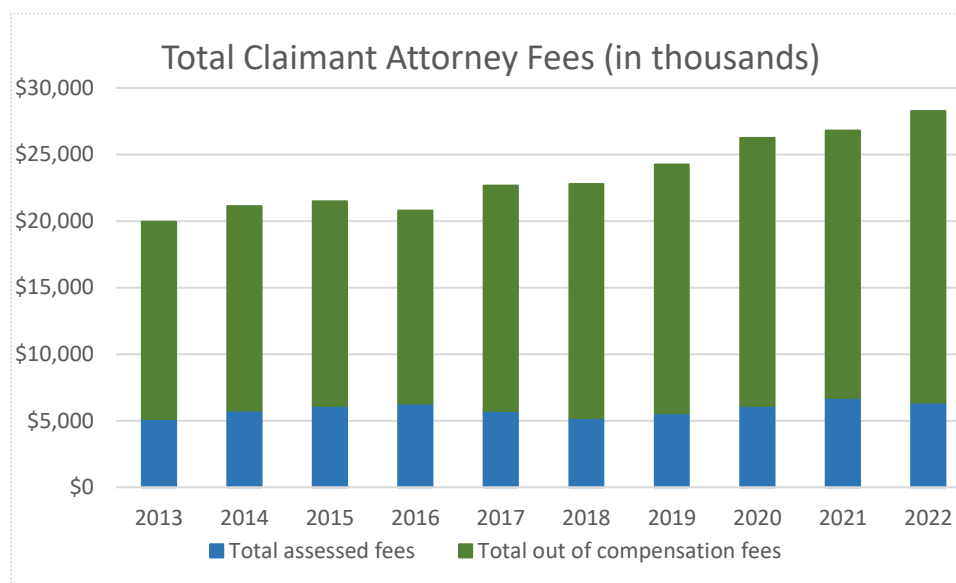
### Attorney Fees Awarded and Approved by WCB (in thousands)

Includes Hearings Division and Board Review

<b>Year</b>	<b>Total claimant attorney fees</b>	<b>Total assessed fees</b>	<b>Total out of compensation fees</b>
2013	\$19,949	\$5,132	\$14,817
2014	\$21,117	\$5,751	\$15,366
2015	\$21,478	\$6,129	\$15,348
2016	\$20,771	\$6,285	\$14,486
2017	\$22,654	\$5,742	\$16,912
2018	\$22,779	\$5,201	\$17,578
2019	\$24,251	\$5,565	\$18,686
2020	\$26,250	\$6,120	\$20,130
2021	\$26,789	\$6,730	\$20,060
2022	\$28,260	\$6,360	\$21,900

This is a summary of all fees arising from cases and claims before the WCB. It includes “assessed” and “out of compensation” fees awarded at the hearing level and on Board review. It also includes “assessed” and “out of compensation” fees approved pursuant to Stipulations. Finally, it includes all “out-of-compensation” fees approved pursuant to Disputed Claim Settlements (DCS) and Claim Disposition Agreements (CDA). The totals do not include any fees awarded by the Workers' Compensation Division (WCD).

## All Attorney Fees Awarded and Approved by WCB (includes attorney fees approved pursuant to settlements)



This is a graphic representation of all attorney fees awarded or approved by WCB.

## Assessed Fees at the Hearing Level – all cases including stipulations

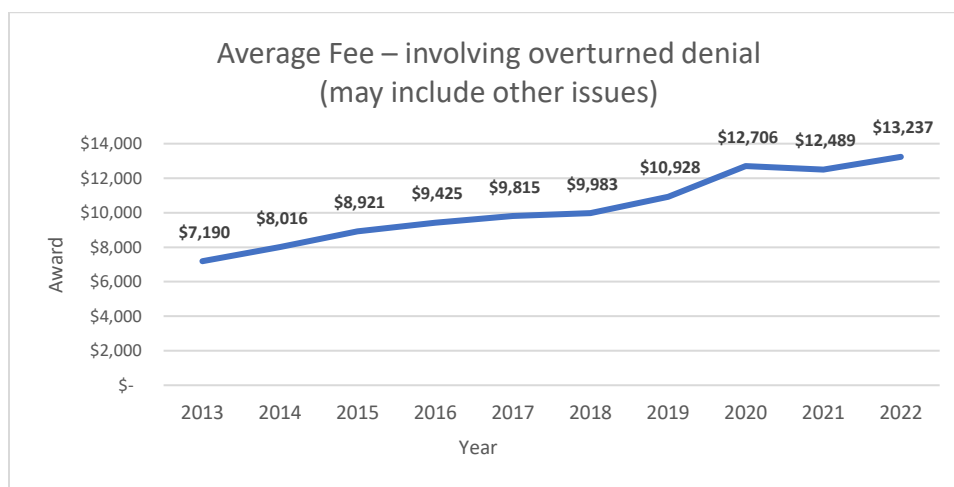
<b>Assessed Fees at the Hearing Level, 2016-2022</b>					
<b>Year</b>	<b>WCB Cases #s</b>	<b>Orders</b>	<b>Total fees</b>	<b>Avg. Attorney fees</b>	
				<b>by case</b>	<b>by order</b>
2016	1,210	1,168	\$5,806,272	4,799	\$4,971
2017	1,089	1,048	\$5,369,969	4,931	\$5,124
2018	982	951	\$5,083,833	\$5,178	\$5,346
2019	986	934	\$5,037,838	\$5,109	\$5,394
2020	979	894	\$5,519,333	\$5,638	\$6,174
2021	941	883	\$5,774,942	\$6,137	\$6,540
2022	895	844	\$5,757,658	\$6,433	\$6,822

This chart shows “assessed” fees awarded or approved by the Hearings Division, including Opinion and Orders (O&Os) and stipulations awarding or approving 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.

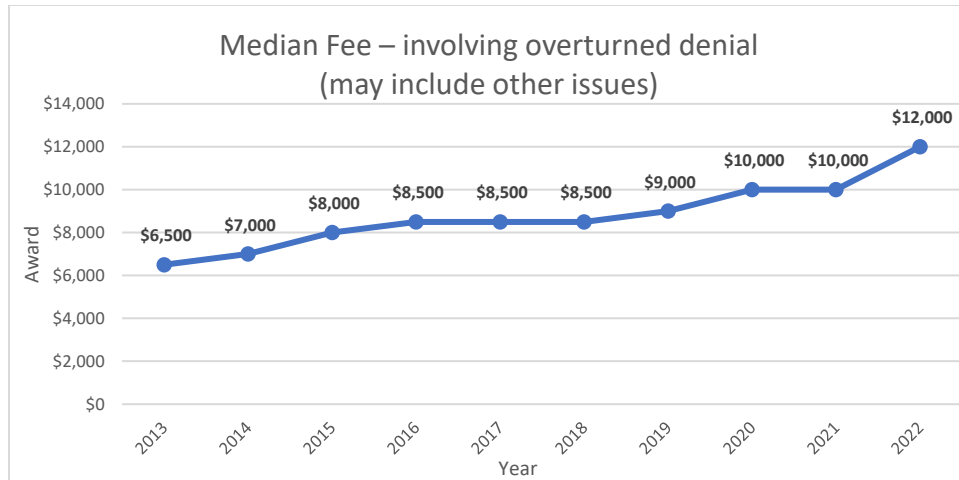
## Attorney Fee Awards – claim denial all orders

Year	Orders in which one or more denials are overturned*					
	Orders	Total	Average	Median	Maximum	Minimum
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	\$ 58,333	\$ 500
2021	173	\$ 2,160,538	\$ 12,489	\$ 10,000	\$ 32,500	\$ 300
2022	117	\$ 1,548,686	\$ 13,237	\$ 12,000	\$ 35,000	\$ 5,500

This chart provides a history of fees awarded by all orders involving an overturned denial. Those cases may have also involved other issues, 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 fees awarded by the Hearings Division.



This is a graphic representation of the “average” fees awarded by Hearings Division orders involving overturned denials.

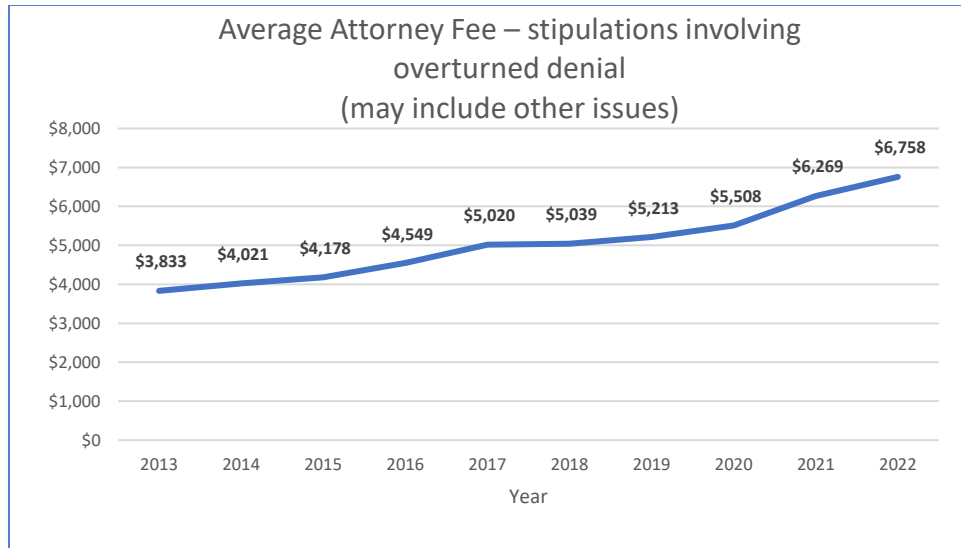


This is a graphic representation of the “median” fees awarded by orders involving overturned denials.

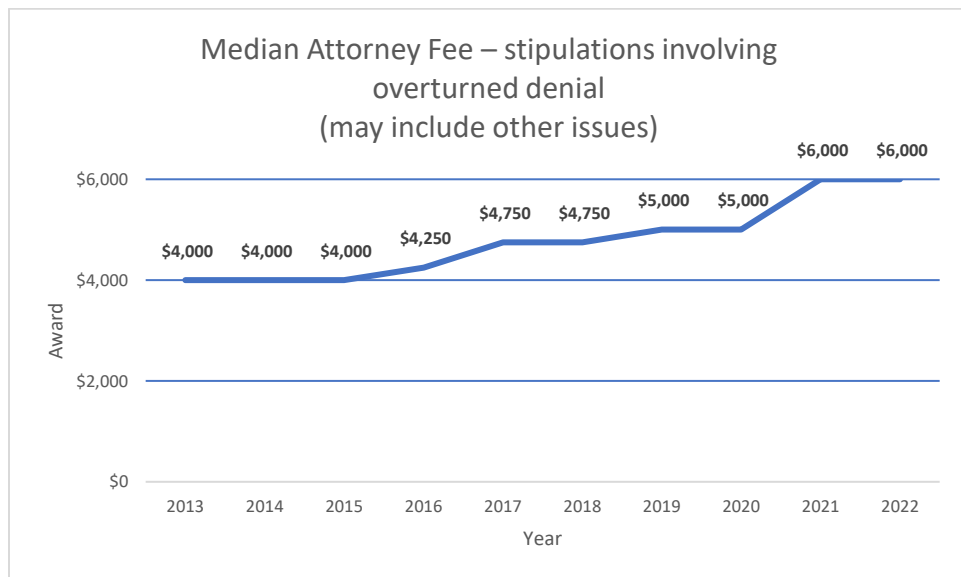
### Attorney Fees – stipulations with denial rescinded

Year	Orders in which one or more denials are overturned (Stipulations)*					
	Orders	Total	Average	Median	Maximum	Minimum
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
2021	268	\$ 1,680,129	\$ 6,269	\$ 6,000	\$ 20,000	\$ 500
2022	238	\$ 1,608,457	\$ 6,758	\$ 6,000	\$ 18,000	\$ 356

Some denials are overturned by a stipulation (rescission of denial). This chart shows the fee amounts contained in such settlement agreements approved by WCB. The settlement and fee awards may include additional issues other than the rescinded denial. While most of the rescissions likely occurred “pre-hearing,” some may have followed a hearing or board order.

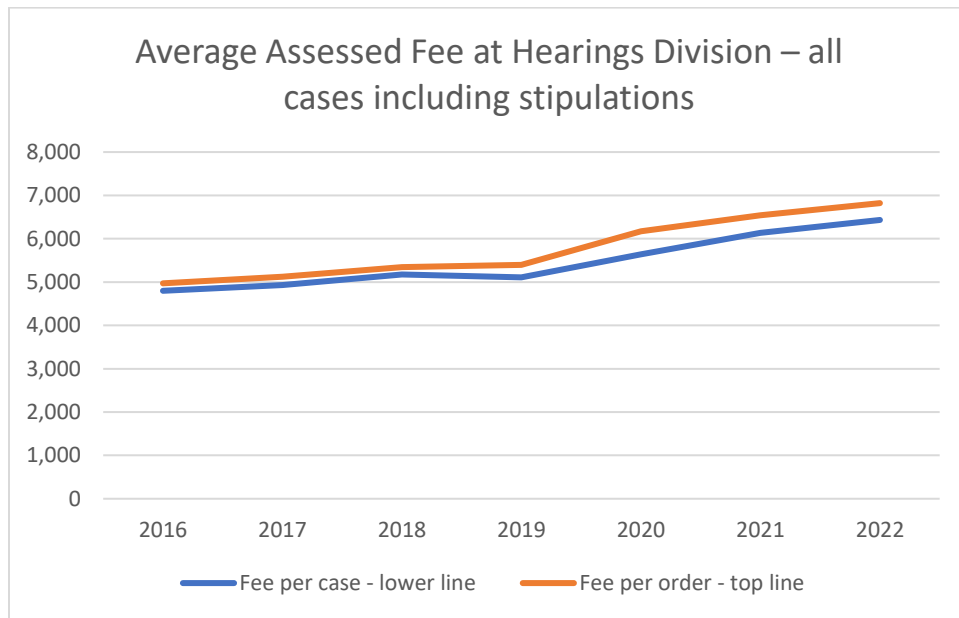


This is a graph of the “average” fees in stipulations involving overturned denials.

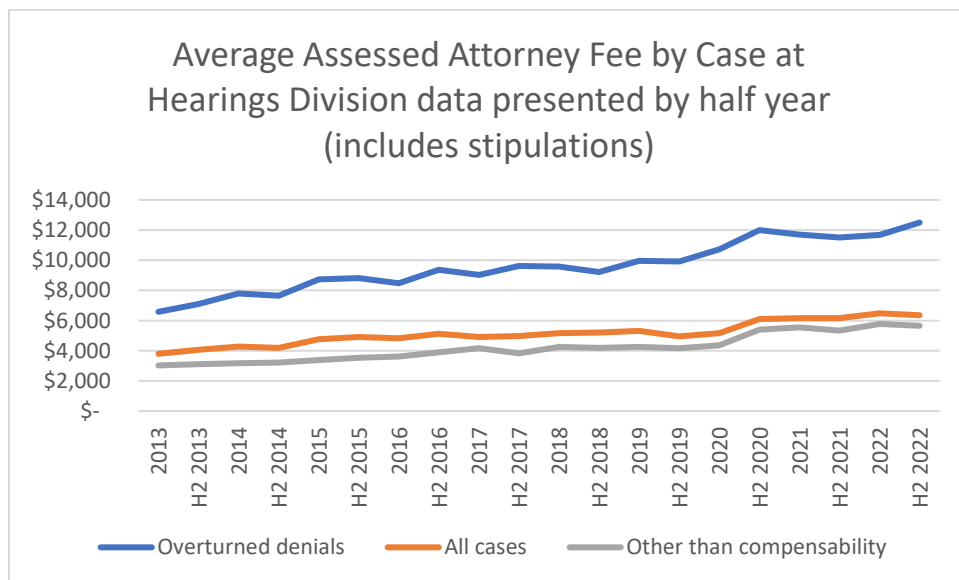


This is a graph of the “median” fees in stipulations involving overturned denials.

## Average Assessed Fee Awarded or Approved at the Hearing Level – including stipulations

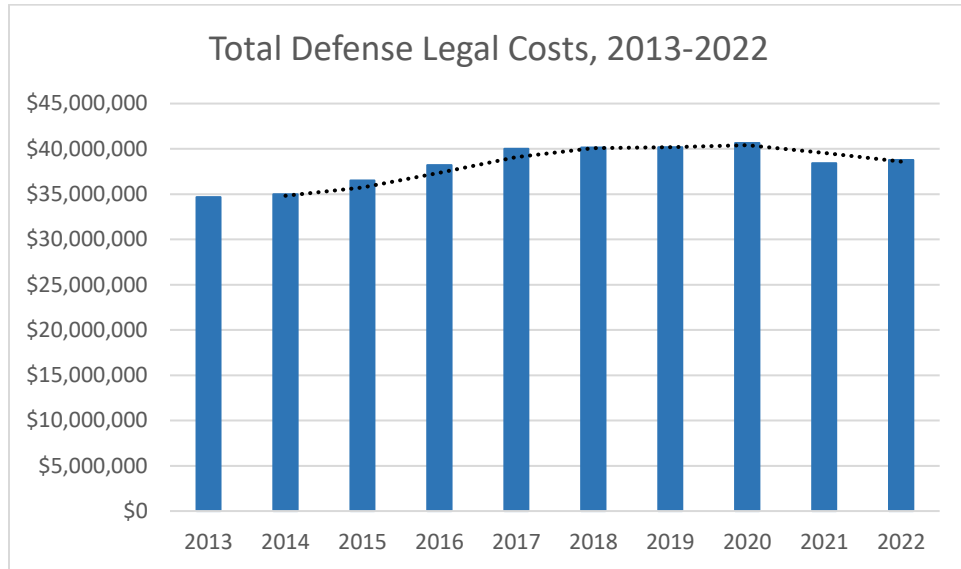


This graph shows the average “assessed” fee awarded or approved by the Hearings Division (includes stipulations). The orange (top) line shows the fees per order (which may involve multiple case numbers), while the blue (lower) line reflects the fees per WCB number.

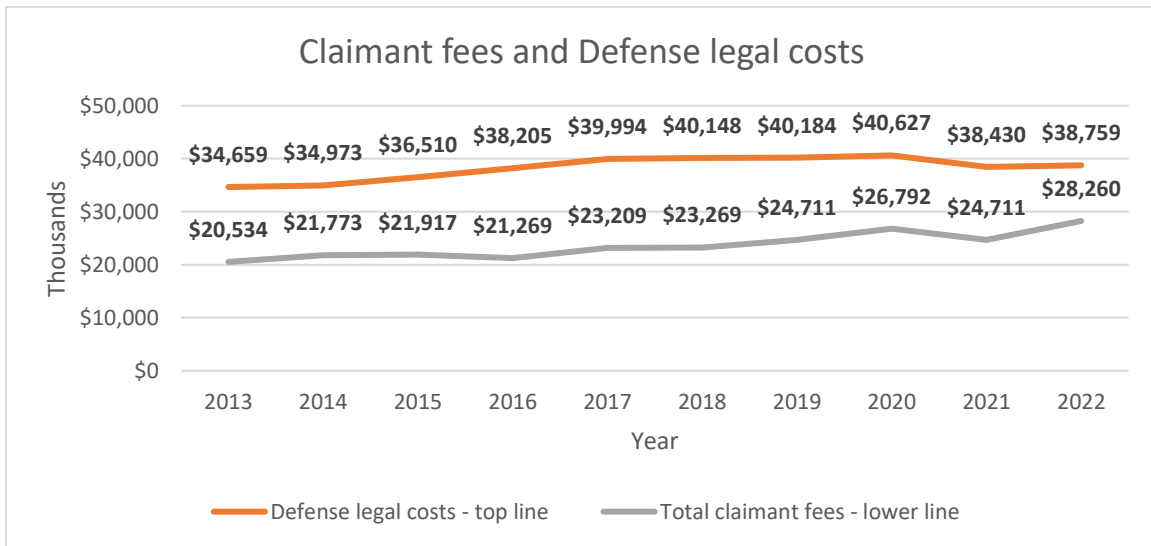


This graph reflects the average “assessed” fee per WCB #. The blue (top) line shows cases involving overturned denials (which may include other issues), the grey (bottom) line is for WCB #s not involving overturned denials and the orange (middle) line includes all types of WCB #s (a combination of the other two lines). Note: “H2” denotes the second half of a given year.

## Comparison – Defense Legal Costs and Claimant Attorney Fees



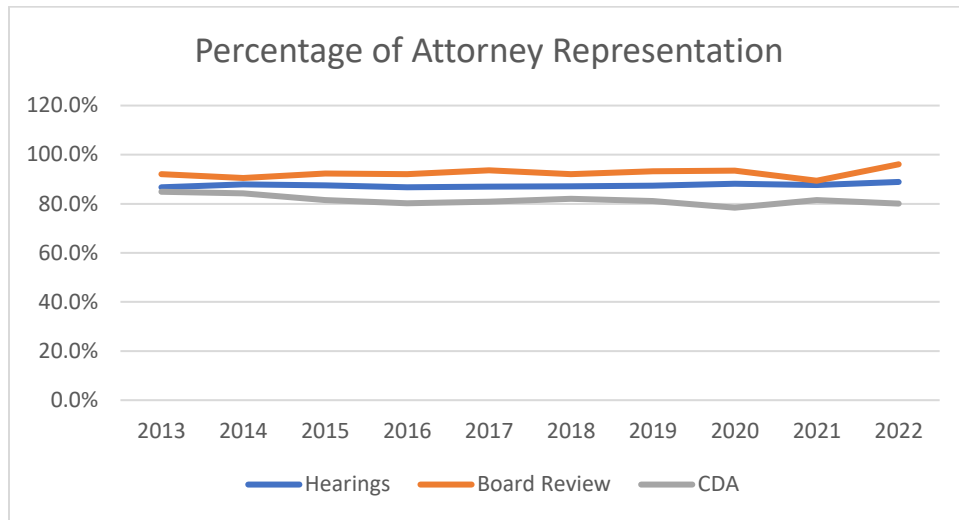
This is a bar chart of defense legal costs, as reported by insurance carriers and self-insured employers (including third party administrators) to WCD. These totals may include legal costs associated with activities unconnected to WCB cases, such as litigation at the Workers' Compensation Division.



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 and claims in which the claimant is represented by an attorney. For litigation before the Hearings Division and on Board review, this information is captured 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 CDA submission/request for approval.

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

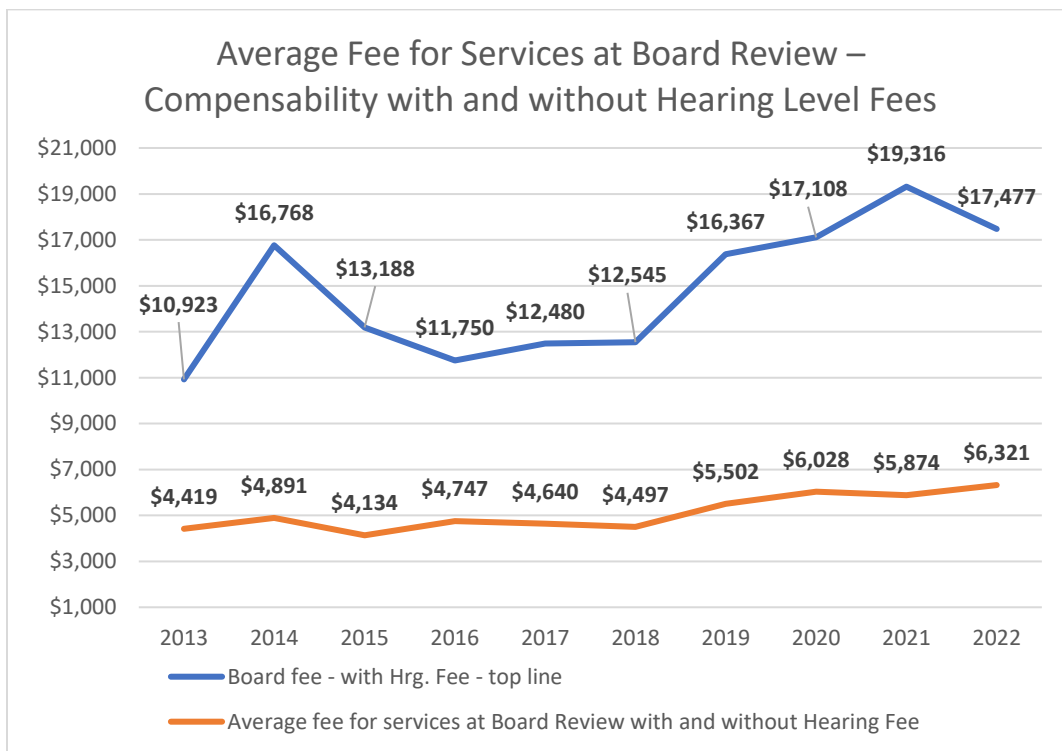
(\*Orders on Review involving an overturned denial awarding fees for services at the hearing level and on Board review)

Year	Average combined fees per Board order	Estimated portion of fee for services on review
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
2021	\$19,316	\$5,874
2022	\$17,477	\$6,321

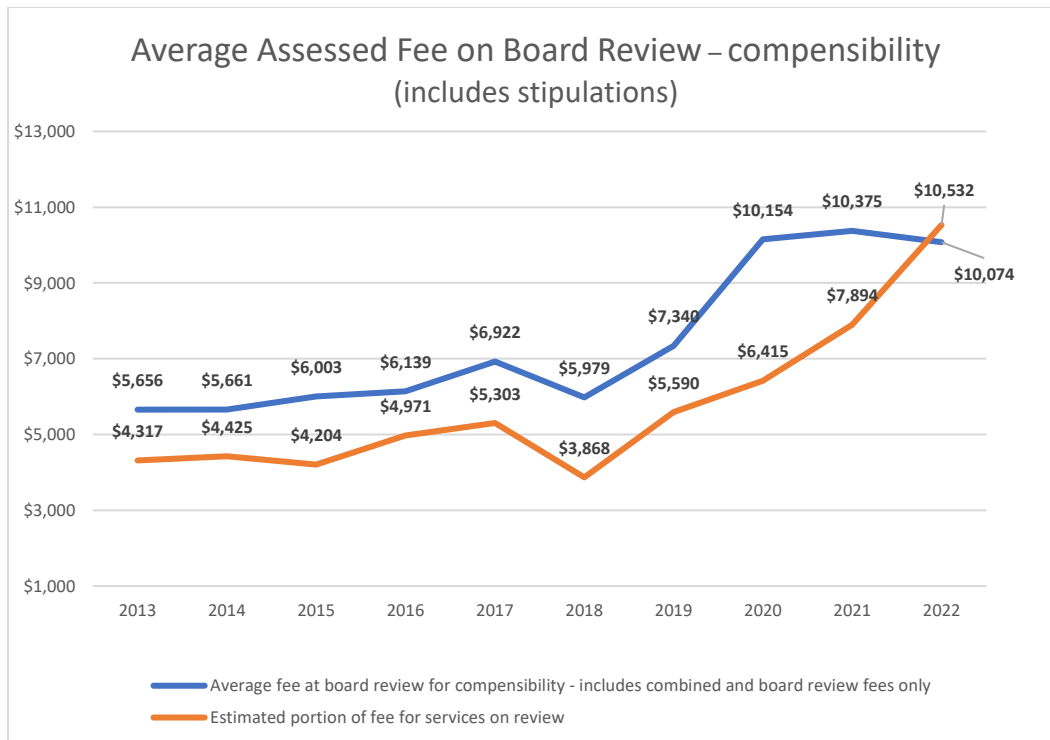
-Does not include stipulated attorney fees

Attorney fees awarded at the Board review level when a denial is overturned may include a fee award for services performed at the hearing level in addition to services performed on Board review. Board orders generally do not break these fees down into separate awards for the services at the hearing level and services on Board review. Rather, the fee is awarded as a

combined attorney fee under ORS 656.386(1). Using WCB’s hand count project, DCBS research has calculated an estimate for the portion of the combined attorney fee that is attributable to services on Board review. That estimate is generally around 35 percent of the combined fee. We emphasize that this estimate reflects an administrative calculation, rather than an assessment of the attorney fee factors by the Board Members in a particular case. Further, we note that the Board may also award combined fees for issues other than compensability under ORS 656.262(11)(a), ORS 656.383(2), and ORS 656.382(2). As explained above, we are exploring options to include more specific data regarding combined fees in future reports.

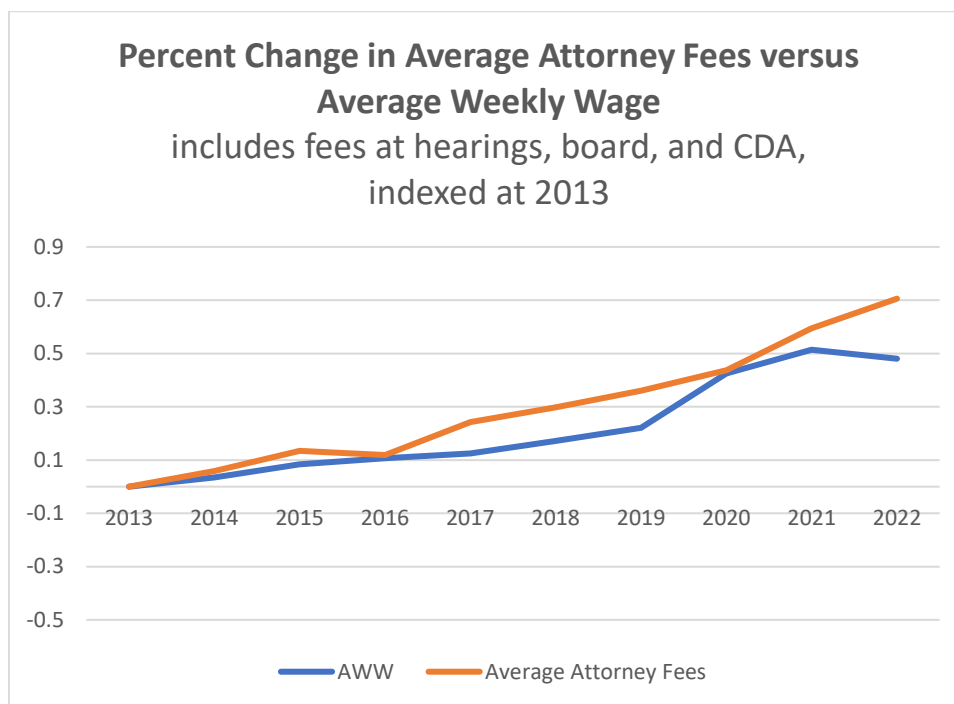


To further illustrate the average attorney fee awards for Orders on Review involving an overturned denial, we have prepared the above graph. The top (blue) line is an average of “combined” fee awards for cases involving an overturned denial. The bottom (orange) line is an estimation of the portion of those “combined” fee awards representing services on board review for cases involving an overturned denial. Fluctuations in the yearly averages can occur due to the relatively low volume of cases on board review.



This chart shows the average assessed fees awarded on Board review and approved by the Board pursuant to stipulation for cases that involve full or partial compensability denials. The top (blue) line is an average that is inclusive of “combined fee” awards and “board review” awards. The bottom (orange) line is an average of the estimated portion of the fees awarded for services on “board review.” As noted previously, this estimate is created by DCBS Research using WCB’s hand count project and does not represent the Members assessment of the attorney fee factors.

## 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 2012, 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 6.26 percent in 2022.

## Percentage of O&Os Resulting in an Attorney Fee Award

- The chart below shows the percentage of O&Os in which the fee is greater than zero
- The chance of getting an attorney fee is about 40 percent

Year	Percentage of cases with fees				Average fee including when none is awarded
	O&Os	Out of Comp	Assessed	All Fees	
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	715	2.4%	36.8%	39.2%	\$3,158
2020	667	1.6%	37.5%	39.1%	\$3,657
2021	721	1.2%	37.4%	38.7%	\$3,735
2022	562	1.1%	36.7%	37.7%	\$3,765

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 seven 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 \$3,765.