



## 2024 Attorney Fee Report

This attorney fee report includes attorney fees awarded or approved by the Oregon Workers' Compensation Board through the end of the 2023 calendar year. WCB strives to ensure complete, transparent, and objective reporting to the fullest extent of its technical abilities. Moving forward, WCB will be exploring new ways to improve this report.

It is acknowledged that this report is utilized for a wide range of purposes. One such usage is as a resource during the biennial attorney fee review, as required by ORS 656.388. However, it is important to note that the attorney fee information in the orders is entered consistent with the requirements and limitations of our system. In conducting a recent review of this report, there were what appeared to be discrepancies in the information. In tracking down those discrepancies, it was discovered, among other things, that the manner in which the information is being collected is not consistent with the previously reported descriptions. Because of those discoveries, the 2024 report has several changes from prior years as explained below.

First, regarding the chart for Attorney Fee Awards in which claim denials were overturned, it was observed that the chart reporting the "maximum fees" awarded at the Hearings Division level was missing a few notable attorney fee awards. In particular, in 2020, there was a very notable case in which an ALJ awarded an attorney fee of \$175,000. For 2020, the "maximum fee" award is listed only as \$58,333. This is because that case had three WCB case numbers associated with it and when there are multiple WCB case numbers assigned to a case, the reported attorney fee is divided among the assigned numbers. Thus, when the case was closed, the fee in that particular case was divided into three: \$58,333, \$58,334, and \$58,333. That is why the "maximum fee" listed in the report is \$58,333.

Second, as noted in the above example, the highest fee in that case when divided was actually \$58,334, not \$58,333. This identified the second programming issue that is impacting the attorney fee totals. The system appears to be pulling the attorney fee from the first order listed in the system, rather than all the data from a given case, as previously thought. Another example is a case at the hearing level where three orders were issued, the first a dismissal, the second an order on the merits overturning the dismissal, and the third an O&O with a \$35,000 attorney fee award. Because the third order was the only order to award an attorney fee, our system did not document an attorney fee for that case because only the initial dismissal order was recorded for the purpose of generating attorney fee data. While this processing of only the first order was evident on some charts, it is unknown if that programming is being applied to the other charts.

Third, prior years' reports included charts distinguishing attorney fee awards between an "order" and "per case (number)." However, as noted above, the "per order" attorney fees are not captured or reported correctly. As such, charts that had previously noted that the fee was "by order," have been changed to reflect that the numbers are per case number and not per order. Also, because the fees are being divided, this significantly impacts how case averages are being captured. As such, while the mean and medians have been retained, the averages have been removed.

Additionally, while WCB's current system has a built-in data entry point for the later reduction of attorney fees awarded at the hearing level, it does not have a corresponding data entry point for a subsequent increase in the hearings level fee award. As such, attorney fee awards granted at the hearings level that are later increased on Board Review are data entered for this report as if awarded on the Board Review level. For example, there is a 2019 case where the ALJ awarded a fee of \$48,000, and this fee is reported as the "maximum" Hearings Division fee for 2019. However, on Board Review, the fee for services at the hearing level in that case was increased to \$60,000. Nonetheless, that \$12,000 additional fee award was data entered as part of the Board Review attorney fee. Therefore, such increased fees are captured in the reported Board Review attorney fees, rather than the reported attorney fees for the hearings level.

Finally, on review of the compiled data reported by the Workers' Compensation Division (WCD) in their Defense Legal Costs report, the data utilized by WCD has not been based only on *reported* cases, but is based on a total amount that includes an estimated cost for *unreported* cases. This estimated total of *unreported* cases is the amount that has been utilized on this chart in the past and is used in the present chart. We have learned that the *unreported* case data and case counts in this report has been and continues to be generated based on WCD case numbers, and not WCB case numbers. WCB has requested additional data and will be making efforts to ascertain how cases counted by WCD lineup with cases litigated before WCB. The WCD's estimated costs of unreported cases for 2023 is \$900,000.

WCB is reviewing its electronic capabilities with an effort towards improving and streamlining all of its processes, including its ability to capture data. Those efforts will take time. In the short term, WCB intends to continue the current system, while simultaneously endeavoring to more accurately capture the data for the 2024 calendar year. Results of these efforts will be included in subsequent reports.

For their work in collecting all of this information and clarifications, and for being ready to partner in updating our reports and systems, we would like to acknowledge and thank all involved staff at DCBS's IT&R, as well as WCB's litigation coder and web coding specialist.

## Attorney Fees Awarded and Approved by WCB

Includes Hearings Division and Board Review

<b>Year</b>	<b>Total Assessed Fees (\$Millions)</b>	<b>Total Out of Compensation Fees (\$Millions)</b>	<b>Total Claimant Attorney Fees (\$Millions)</b>
2014	\$5,750,000	\$15,370,000	\$21,120,000
2015	\$6,130,000	\$15,350,000	\$21,480,000
2016	\$6,290,000	\$14,490,000	\$20,770,000
2017	\$5,780,000	\$16,910,000	\$22,690,000
2018	\$5,200,000	\$17,580,000	\$22,770,000
2019	\$5,560,000	\$18,690,000	\$24,250,000
2020	\$6,140,000	\$20,130,000	\$26,270,000
2021	\$6,860,000	\$20,040,000	\$26,790,000
2022	\$6,360,000	\$21,900,000	\$28,260,000
2023	\$7,070,000	\$23,140,000	\$30,200,000

### Assessed Attorney Fees at the Hearing Level in O&Os and Stipulations

<b>Year</b>	<b>Cases</b>	<b>Total fees (\$Millions)</b>
2017	1,089	\$5,370,000
2018	982	\$5,080,000
2019	986	\$5,040,000
2020	978	\$5,520,000
2021	944	\$5,820,000
2022	895	\$5,760,000
2023	984	\$6,710,000

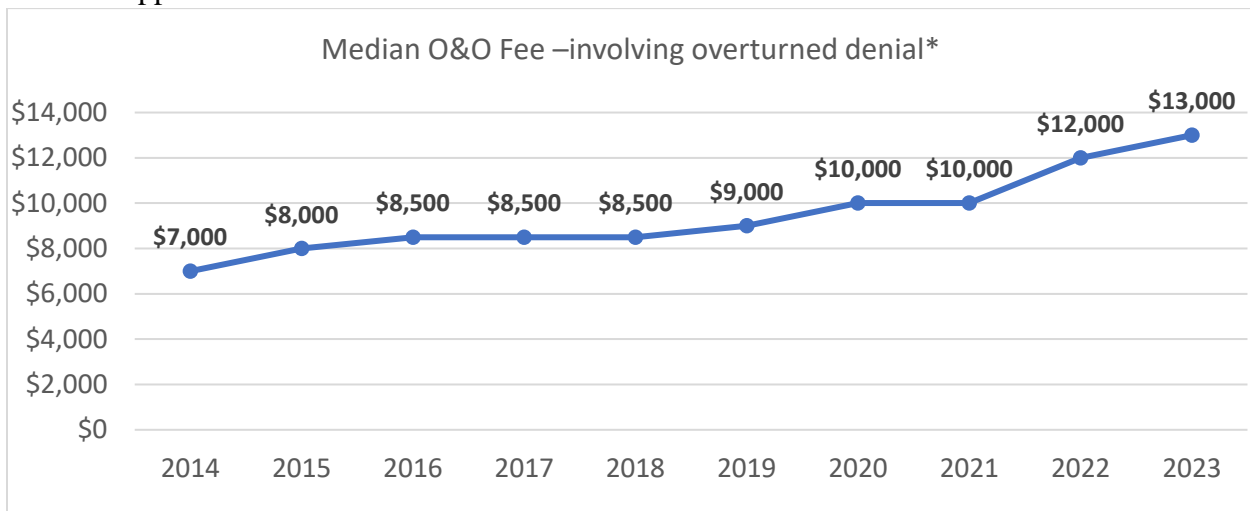
This chart has been changed from previous years in that it does not separate out the attorney fees awarded in “cases,” which means the number of case numbers assigned, from an “order” total. As noted above, this information was incorrect as the system was not actually pulling fees per “order.” Also as explained above, it is uncertain if this amount includes the attorney fees awarded in all the case numbers associated with one order, or if it is just pulling from the first case number listed in the system.

## Attorney Fee Awards – claim denials

Year	Orders in which one or more denials are overturned (O&Os)*					
	Orders	Total	Average fees per case	Minimum fee	Median fee	Maximum fee
2014	294	\$2,360,000	\$8,016	\$2,000	\$7,000	\$30,000
2015	298	\$2,660,000	\$8,921	\$1,000	\$8,000	\$43,334
2016	240	\$2,260,000	\$9,425	\$500	\$8,500	\$35,600
2017	197	\$1,930,000	\$9,815	\$3,000	\$8,500	\$28,500
2018	185	\$1,850,000	\$9,983	\$1,500	\$8,500	\$30,000
2019	162	\$1,770,000	\$10,928	\$500	\$9,000	\$48,000 <sup>1</sup>
2020	144	\$1,830,000	\$12,706	\$500	\$10,000	\$58,333 <sup>2</sup>
2021	173	\$2,160,000	\$12,489	\$300	\$10,000	\$32,500
2022	117	\$1,550,000	\$13,237	\$5,500	\$12,000	\$35,000
2023	114	\$1,670,000	\$13,584	\$4,000	\$13,000	\$33,000

\*Counts and total fees may include other issues.

This chart provides a history of fees awarded involving an overturned denial. However, because WCB only captures the global fee award at the hearing, then divides it by the number of assigned WCB case numbers,<sup>3</sup> the fees reflect work on all issues raised in these cases, not just the compensability denials. This chart does not reflect whether the fees were modified at subsequent levels of appeal.



\*Counts and total fees may include other issues.

<sup>1</sup> The maximum attorney fee for work at the hearings division in 2019 was \$60,000, but \$12,000 was awarded on Board Review and coded at that level.

<sup>2</sup> Note that this attorney fee was actually \$175,000, but there were three WCB Case Numbers assigned to this one case and the actual highest award of those three case numbers was \$58,334, but does not appear to be included.

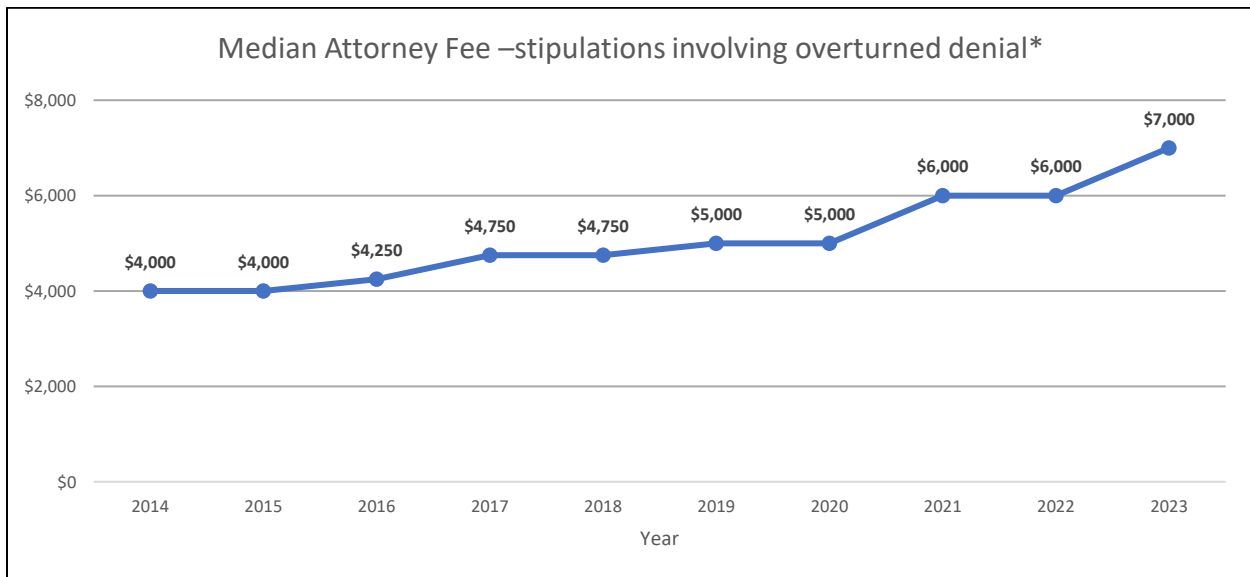
<sup>3</sup> WCB numbers assigned in error often run with the file, even where there is only one request for hearing. This can happen when a request for hearing is submitted via the portal and then is received some time later via the mail. When not detected, a second WCB Case number will be assigned to the same hearing request.

## Attorney Fees – Stipulation Agreements with Denial Rescinded

Year	Orders in which one or more denials are overturned (Stipulations)*				
	Orders	Total (\$Millions)	Minimum fees	Median fees	Maximum fees
2014	471	\$1.89	\$250	\$4,000	\$16,000
2015	400	\$1.67	\$200	\$4,000	\$18,000
2016	320	\$1.46	\$150	\$4,250	\$16,000
2017	342	\$1.72	\$500	\$4,750	\$40,000
2018	296	\$1.49	\$500	\$4,750	\$20,000
2019	281	\$1.46	\$100	\$5,000	\$18,000
2020	328	\$1.81	\$500	\$5,000	\$15,000
2021	268	\$1.68	\$500	\$6,000	\$20,000
2022	238	\$1.61	\$356	\$6,000	\$18,000
2023	236	\$1.87	\$500	\$7,000	\$20,000

\*Counts and total fees may include other issues.

This chart shows the stipulated attorney fee amounts contained in settlement agreements approved by WCB. The settlement and fee awards may include additional issues. While most of the rescissions likely occurred “pre-hearing,” some may have followed a hearing proceeding or board review.



\*Counts and total fees may include other issues.

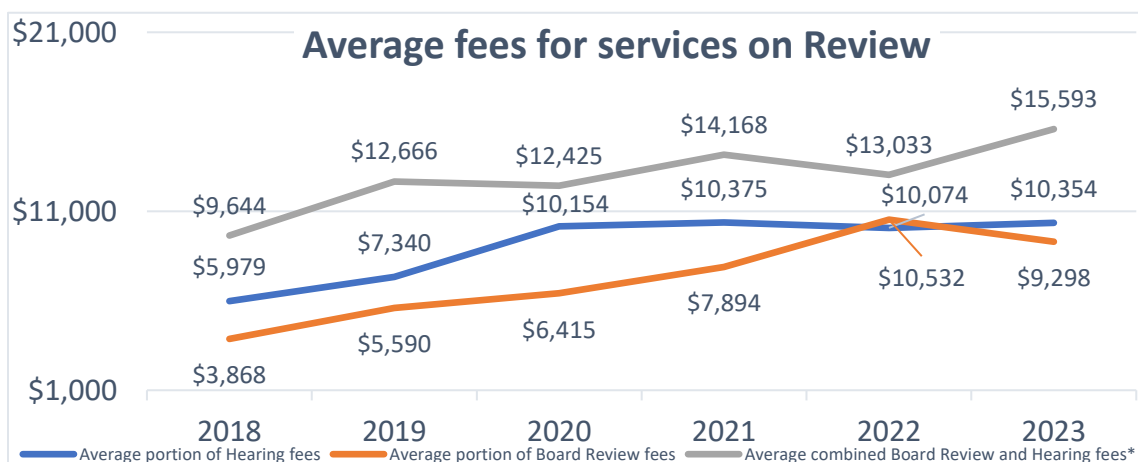
## Average Combined Assessed Fees – Compensability at Board Review

The chart and graph below involve cases where there was an overturned denial awarding fees for services at the hearing level and on Board Review. 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).

Prior WCB reports have calculated the estimate for the portion of the combined attorney fee that is attributable to services on Board Review versus the Hearings Division, based on 35% BR/65% HD split. However, it has been determined that this division split is inaccurate and inherently unreliable. Further, the average fees reported on the below chart from 2018 through 2022 cannot be reconciled with the average fees reported on the graph. Thus, while retained within this report, the chart and graph should be approached with low confidence at this time. As explained above, WCB is exploring options to include more specific data regarding fees awarded on Board Review in future reports.

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

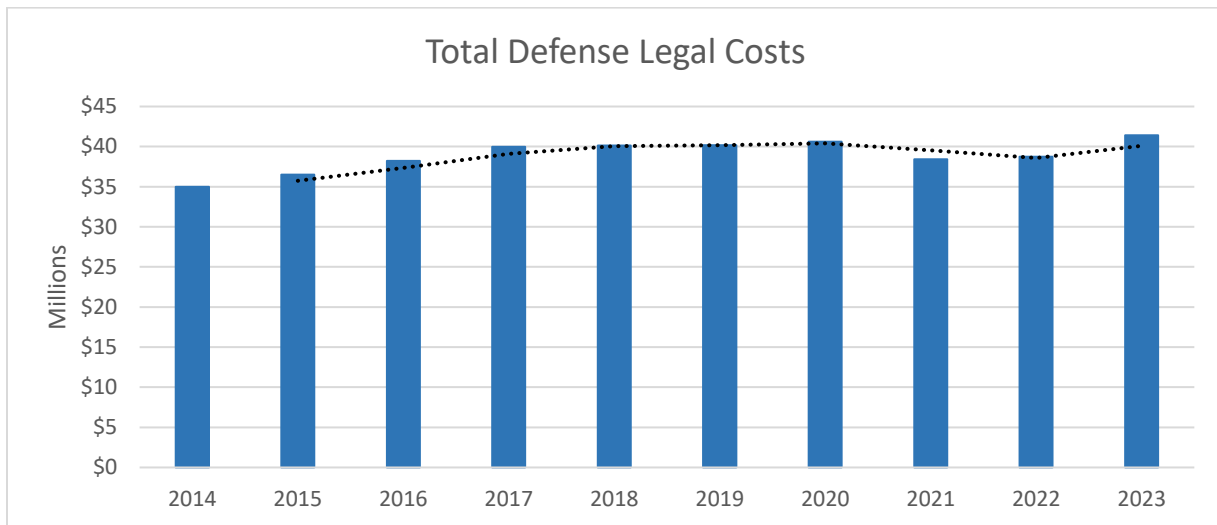
-Does not include stipulated attorney fees<sup>4</sup>



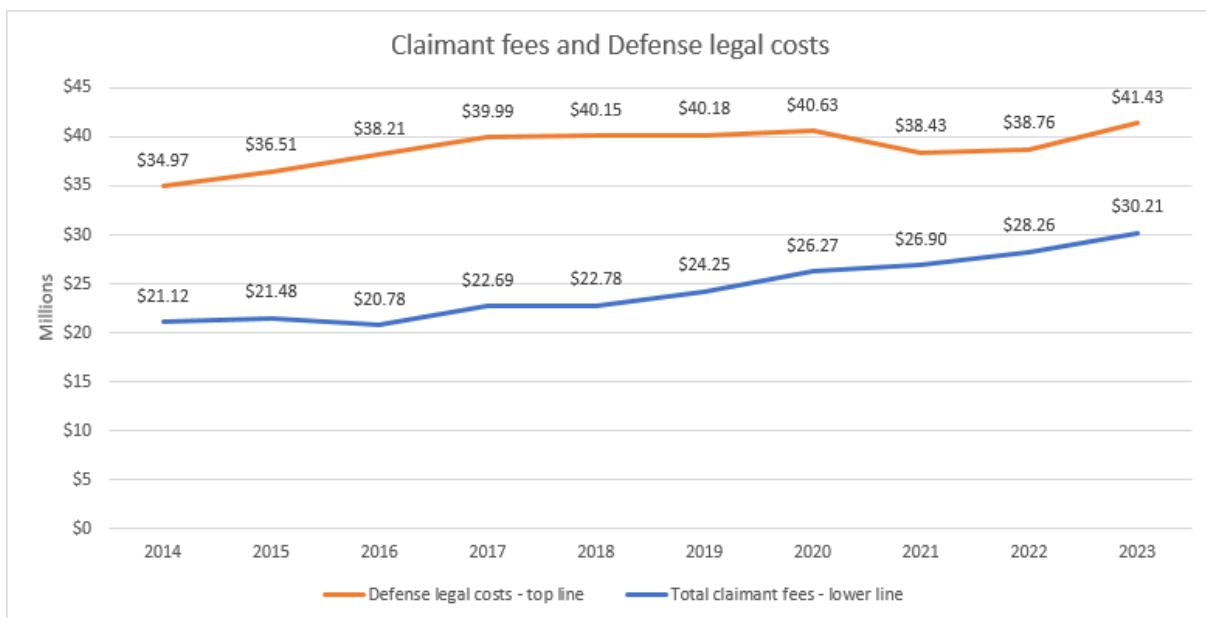
\*Average is calculated after reduced fees are subtracted from the combined Board Review and Hearings fees.

<sup>4</sup> Due to the number of concerns with this table, updated numbers were not provided to WCB for 2023.

## Comparison – Defense Legal Attorney Fees and Costs and Claimant Attorney Fees



This is a bar chart of defense legal attorney fees and costs, as reported by insurance carriers and self-insured employers (including third party administrators) to WCD. These totals may include litigation costs associated with activities unconnected to WCB cases, such as litigation at the WCD. WCD also estimates costs for cases they have coded as litigated, but fall short of the number of cases reported and adds that to their total defense costs. For 2023, for example, reported defense costs were \$40,526,000. However, adding estimated costs on unreported cases the defense cost for 2023, WCD reports the total defense fees and costs as \$41,426,000.

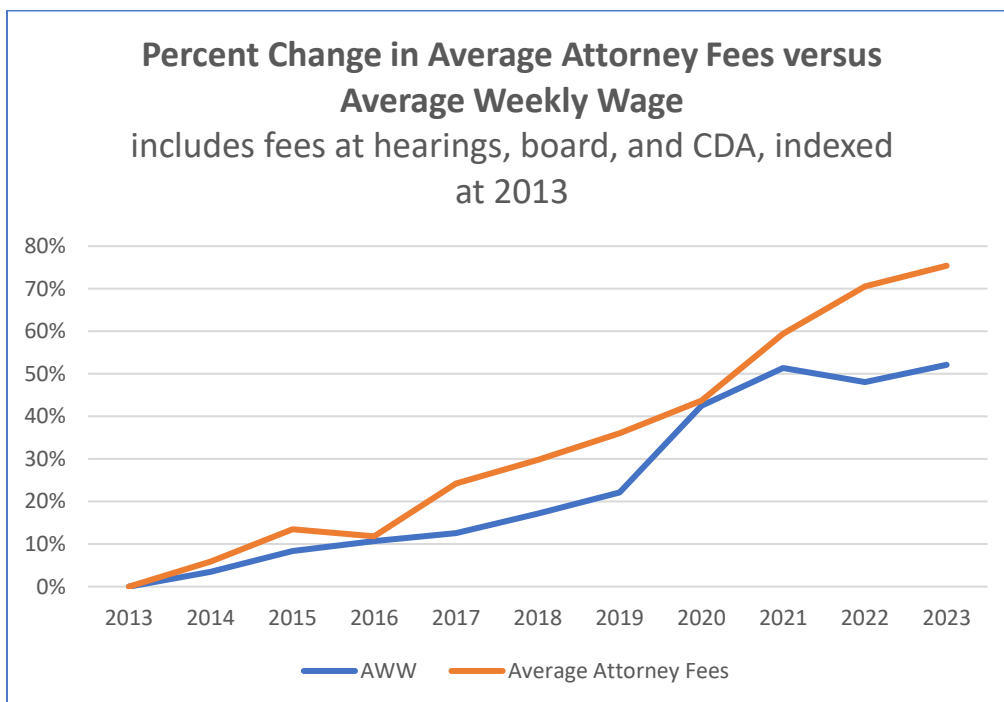


## Claimant Attorney Representation Percentage WCB Litigation and CDAs

This chart shows 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 and the first order at the Board Review level. For CDAs, the information captured is whether claimant was represented at the time of the CDA submission/request for approval.

Hearings				Board Review				CDA			
Year	Represented	Not Represented	Rep. percent	Year	Represented	Not Represented	Percent	Year	Represented	Not Represented	Percent
2014	6,604	914	87.8%	2014	355	37	90.6%	2014	2,767	520	84.2%
2015	6,280	899	87.5%	2015	363	30	92.4%	2015	2,660	606	81.4%
2016	6,225	949	86.8%	2016	324	28	92.0%	2016	2,455	605	80.2%
2017	6,088	908	87.0%	2017	338	23	93.6%	2017	2,553	607	80.8%
2018	6,322	936	87.1%	2018	242	21	92.0%	2018	2,491	544	82.1%
2019	6,622	962	87.3%	2019	249	18	93.3%	2019	2,416	562	81.1%
2020	6,537	884	88.1%	2020	202	14	93.5%	2020	2,582	711	78.4%
2021	5,973	844	87.6%	2021	219	26	89.4%	2021	2,358	534	81.5%
2022	5,744	718	88.9%	2022	196	8	96.1%	2022	2,325	581	80.0%
2023	5,932	791	88.2%	2023	163	13	92.6%	2023	2,390	621	79.4%

## 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 2013, the average awarded attorney fees per case (at any level, including settlements) is plotted against the year-over-year percent increase in the AWW.

## 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 43 percent.

Percentage of cases with fees					
Year	O&Os	Out of Compensation Fees	Assessed Fees	All Fees	Average fee including when none is awarded
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
2023	503	1%	41.7%	42.7%	\$4,728

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, however, track whether an O&O resulted in an attorney fee. This chart contains what has been considered the “average” fee awarded. However, as noted at the beginning of this report, it is uncertain that the “average” of the 503 orders listed in this chart can be given confidence, due to the manner in which the awarded fees are captured per WCB Case number and not per issued O&O.