

**Data Compilation for the
2016 WCB Advisory Committee
on Attorney Fees**

*(Not intended to be comprehensive statistical report of all potentially relevant data.
Rather this report addresses questions posed by advisory committee members in relation
to biennial review of attorney fees.)*

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1. How often is the “cap” on an award of out-of-compensation fees hit? Referring to OAR 438-015-0040 (\$4,600 on PPD) and OAR 438-015-0045 (\$1,500 on TTD).

Year	TTD		PPD	
	\$1,500	>\$1,500	\$4,600	>\$4,600
2014	13	2	9	1
2015	20	0	2	0
	Hit	Exceeded	Hit	Exceeded

Note: As of 1/1/2016, for temporary disability cases attorney fees are assessed, rather than out-of-compensation, and the temporary disability fee "cap" no longer exists.

2. What are the numbers of Opinion and Orders, Orders on Review, CDAs, and DCSs?

Number of Opinion and Orders, Orders on Review, CDAs, and DCSs¹

<u>Year</u>	<u>O&Os</u>	<u>Orders on Review</u>	<u>Approved CDAs</u>	<u>DCSs</u>
2015	854	338	3,229	2,870
*Counted by:	Cases	Cases	Groups	Groups

*Cases = each individual case/WCB case no.

Groups = multiple cases/WCB case nos. that are banded together.

¹ Includes represented and unrepresented claimants.

3. Out-of-compensation attorney fees for CDAs and DCSs – average amounts, and amounts if threshold raised.

Using the Consumer Price Index, what was the buying power of \$17,500 in 1999 compared to now?

Combined CDA and DCS stats for 2015

CDA and DCSs for 1/1/2015 - 12/31/2015	Cases	Total of Settlements	Amount to Claimant	Atty Fees	Average Atty Fee
unrepresented	1,027	\$10,597,172	\$10,597,172	\$0	\$ -
represented <= \$17,500	4,071	\$23,113,243	\$17,835,067	\$5,278,175	\$1,297
represented > \$17,500 & <= \$50,000	1,017	\$30,871,923	\$25,599,682	\$5,272,241	\$5,184
represented > \$50,000	404	\$37,998,723	\$33,362,745	\$4,635,978	\$11,475
Totals	6,519	\$102,581,060	\$87,394,666	\$15,186,394	

Note on impact estimates:

- CDA and DCS amounts were combined for the purpose of computing an overall impact of threshold changes for settlements.
- Actual fees paid are slightly below the threshold values in WCB rule. The actual fee averages were carried throughout the impact analysis.

CDA stats 2015

CDA for 1/1/2015 - 12/31/2015	Cases	CDA \$ Total to Claimant	CDA Atty Fees	CDA \$ Total
unrepresented	606	8,691,240	0	8,691,240
rep-CDA <= \$17,500	1,690	6,858,637	2,081,241	8,939,879
rep-CDA > \$17,500 & <= \$50,000	601	15,642,346	3,165,110	18,807,456
rep-CDA > \$50,000	335	27,910,105	3,865,961	31,776,066
Totals and averages	3,232	59,102,328	9,112,312	68,214,640

DCS stats 2015

DCS for 1/1/2015 - 12/31/2015	Cases	DCS \$ Total to Claimant	DCS Atty Fees	DCS \$ Total
unrepresented	421	1,905,932	0	1,905,932
rep-DCS <= \$17,500	2,381	10,976,430	3,196,934	14,173,364
rep-DCS > \$17,500 & <= \$50,000	416	9,957,336	2,107,131	12,064,467
rep-DCS > \$50,000	69	5,452,640	770,017	6,222,657
Totals and averages	3,287	28,292,338	6,074,082	34,366,420

CDA and DCS difference between current threshold (\$17,000) and a \$50,000 threshold per year for 1/1/2015 through 12/31/2015: Total amount to claimant -\$3,440,208, total amount to attorney fees \$3,440,208.

Combined CDA and DCS stats for 2015

Actual and proposed threshold change from \$17,500 to \$50,000

CDAs and DCSs for 1/1/2015 - 12/31/2015	Cases	Amount to Claimant	Atty Fees	Total of Settlements	Average Atty Fee
unrepresented	1,027	\$10,597,172	\$0	\$10,597,172	
represented <= \$17,500	4,071	\$17,835,067	\$5,278,175	\$23,113,243	\$1,297
represented > \$17,500 & <= \$50,000	1,017	\$25,599,682	\$5,272,241	\$30,871,923	\$5,184
represented > \$50,000	404	\$33,362,745	\$4,635,978	\$37,998,723	\$11,475
Totals	6,519	\$87,394,666	\$15,186,394	\$102,581,060	

Note: These are the actual attorney fees for 2015. The table above contains the same information as on page 4, just reprinted for ease of reference.

With proposed \$50,000 threshold

CDAs and DCSs for 1/1/2015 - 12/31/2015	Cases	Amount to Claimant	Atty Fees	Total of Settlements	Average Atty Fee
unrepresented	1,027	\$10,597,172	\$0	\$10,597,172	
represented <= \$17,500	4,071	\$17,835,067	\$5,278,175	\$23,113,243	\$1,297
represented > \$17,500 & <= \$50,000	1,017	\$23,765,969	\$7,105,954	\$30,871,923	\$6,987
represented > \$50,000	404	\$31,524,545	\$6,474,178	\$37,998,723	\$16,025
Totals	6,519	\$83,722,753	\$18,858,307	\$102,581,060	

Impact of using constant (no threshold) fee of 20%

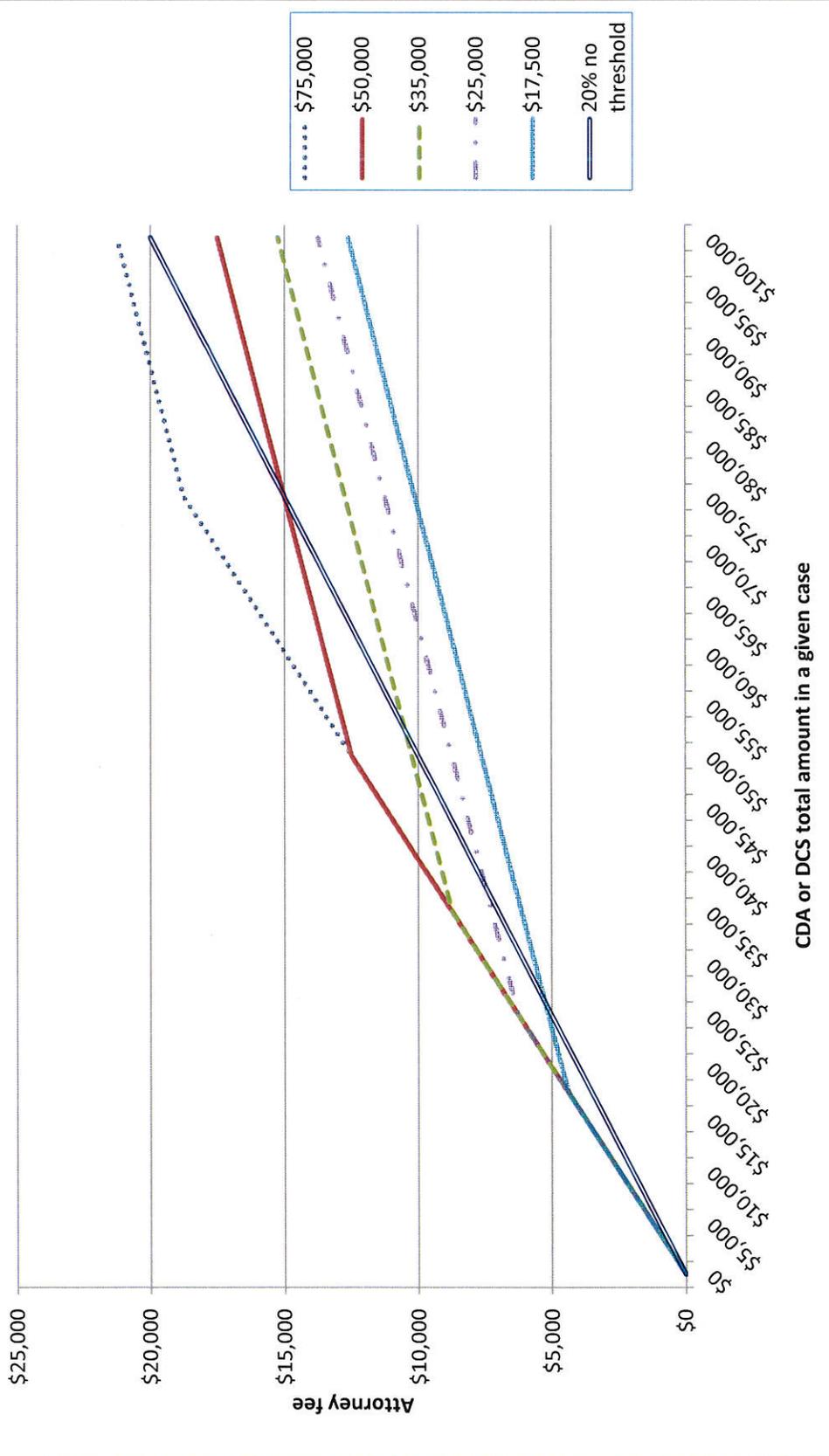
Using constant 20% fee

CDAs and DCSs for 1/1/2015 - 12/31/2015	Cases	Amount to Claimant	Atty Fees	Total of Settlements	Average Atty Fee
unrepresented	1,027	10,597,172	0	\$10,597,172	
represented <= \$17,500	4,071	18,490,594	4,622,649	\$23,113,243	\$1,136
represented > \$17,500 & <= \$50,000	1,017	24,697,538	6,174,385	\$30,871,923	\$6,071
represented > \$50,000	404	30,398,978	7,599,745	\$37,998,723	\$18,811
Totals	6,519	84,184,283	18,396,778	\$102,581,060	

Summary of change scenarios	fees (\$million)	difference (\$million)
Current fee threshold at \$17,500	\$15.2	n/a
Threshold change to \$50,000	\$18.9	\$3.7
Constant 20%	\$18.4	\$3.2

Note: difference represents increase to attorney; decrease to claimant.

Effect of threshold change on Out-of-Comp Attorney Fees vs. Total CDA or DCS Amount



2015 CDA and/or DCS Out-of-Compensation Attorney Fee Statistics using \$50,000 Threshold

Create date in CY 2015

Counts	1,027	4,071	1,421
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	\$23,113,243	\$30,871,923	\$37,998,723
CDA and/or DCS total Claimant amount	\$17,835,067	\$23,765,969	\$31,524,545
Attorney amount	\$5,278,175	\$7,105,954	\$6,474,178

Unrepresented	CDA/DCS <= \$17,500
\$17,500 portion	> \$17,500 portion
CDA/DCS > \$17,500	CDA/DCS > \$17,500

Column width proportional to case count and row height proportional to Dollar amount

Using the CPI Inflation Calculator <http://data.bls.gov/cgi-bin/cpicalc.pl> of the US Bureau of Labor Statistics, \$17,500 in 1999 has the same buying power as \$24,906 in 2016.

CPI Inflation Calculator

\$

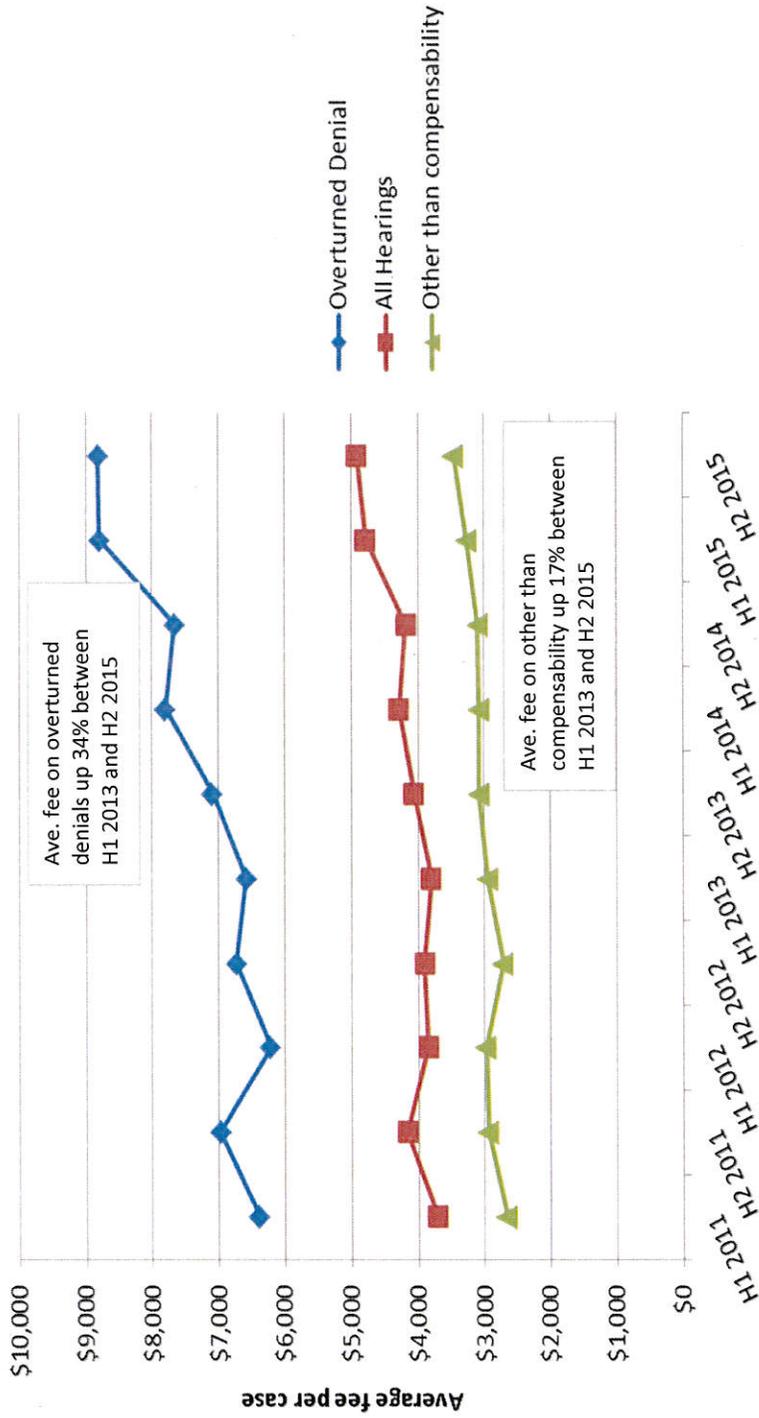
in ▼

Has the same buying power as:

in ▼

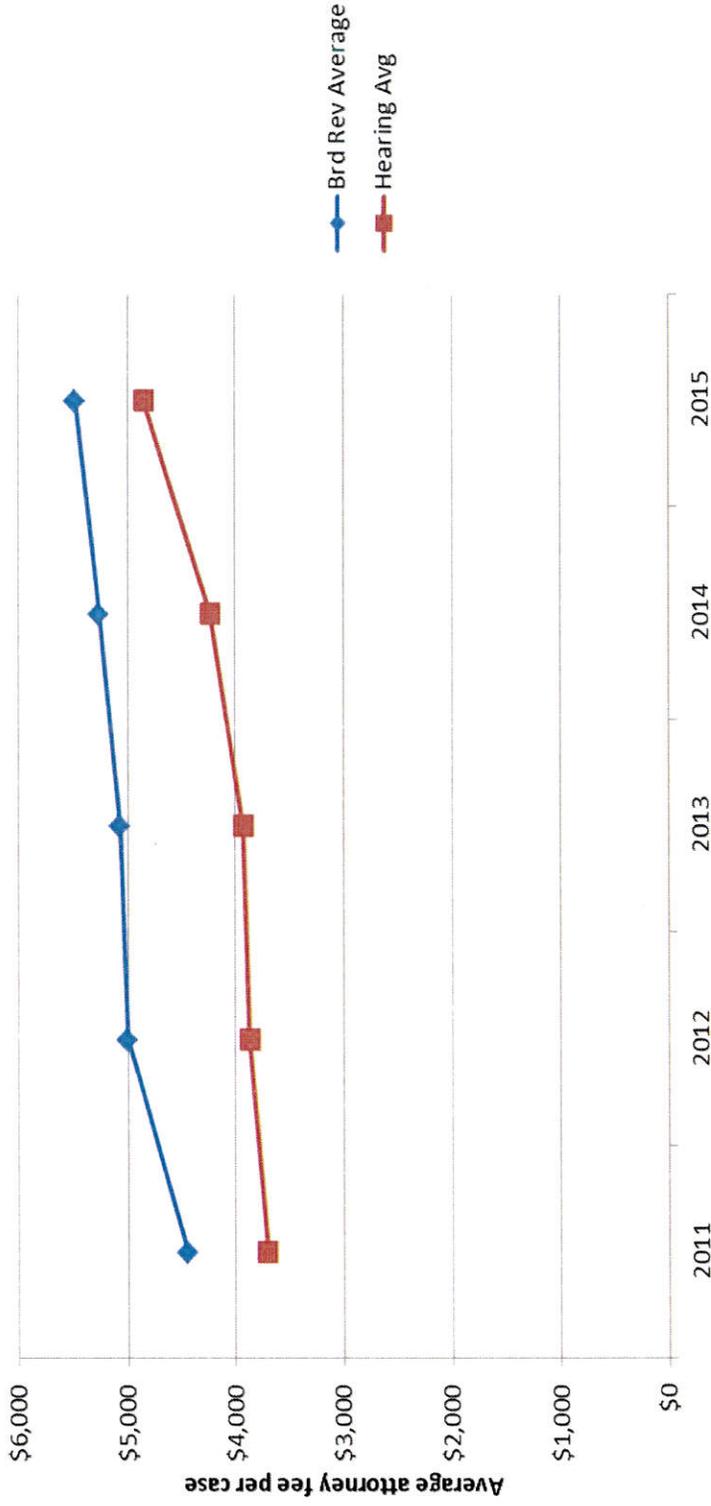
4. What are the assessed fee trends at hearing and at Board review?

Hearings Cases with Assessed attorney fees average fee by half-year, 2011 - 2015



From Assessed and out-of-compensation attorney fees 2011 thru 2015.xlsx

Board Review and Hearings Cases Average Assessed fee per case with fees, 2011 - 2015



From "assessed and out-of-compensation attorney fees 2011 thru 2015.xlsx."
 These averages include all issues with assessed fees at that level.

Hearings compensability assessed attorney fees (employer paid) statistics by half year, for the period of 1/1/2011 - 12/31/2015.

date range	Total O&Os by Case Counts	Overtured Denials with Assessed Atty Fees	Total	Average	Median	Average % Increase from 1st Half 2013
	1/1/2011-6/30/2011	672	183	1,168,750	6,387	6,000
7/1/2011-12/31/2011	549	167	1,165,117	6,977	6,000	
1/1/2012-6/30/2012	619	165	1,025,850	6,217	6,000	
7/1/2012-12/31/2012	616	169	1,138,200	6,735	6,000	
1/1/2013-6/30/2013	524	144	947,657	6,581	6,500	3%
7/1/2013-12/31/2013	488	137	971,969	7,095	7,000	11%
1/1/2014-6/30/2014	496	152	1,185,247	7,798	7,000	22%
7/1/2014-12/31/2014	476	153	1,171,539	7,657	7,000	20%
1/1/2015-6/30/2015	540	159	1,398,709	8,797	8,000	38%
7/1/2015-12/31/2015	457	146	1,287,346	8,817	8,000	38%

All hearings cases with assessed attorney fees (employer paid) statistics by half year, for the period of 1/1/2011 - 12/31/2015.

date range	Total Cases	All Cases with Assessed Atty Fees	Total	Average	Median	Average % Increase from 1st Half 2013
	1/1/2011-6/30/2011	3,850	653	2,421,626	3,708	3,500
7/1/2011-12/31/2011	3,658	551	2,295,436	4,166	3,900	
1/1/2012-6/30/2012	3,735	621	2,387,598	3,845	3,500	
7/1/2012-12/31/2012	3,534	577	2,250,235	3,900	3,500	
1/1/2013-6/30/2013	3,800	619	2,352,218	3,800	3,500	2%
7/1/2013-12/31/2013	3,632	562	2,281,679	4,060	3,850	9%
1/1/2014-6/30/2014	3,773	598	2,561,749	4,284	4,000	16%
7/1/2014-12/31/2014	3,517	644	2,695,377	4,185	3,575	13%
1/1/2015-6/30/2015	3,632	578	2,768,984	4,791	4,000	29%
7/1/2015-12/31/2015	3,303	539	2,649,930	4,916	4,000	33%

Hearings non-compensability cases with assessed attorney fees statistics by half year, for the period of 1/1/2011 - 12/31/2015.

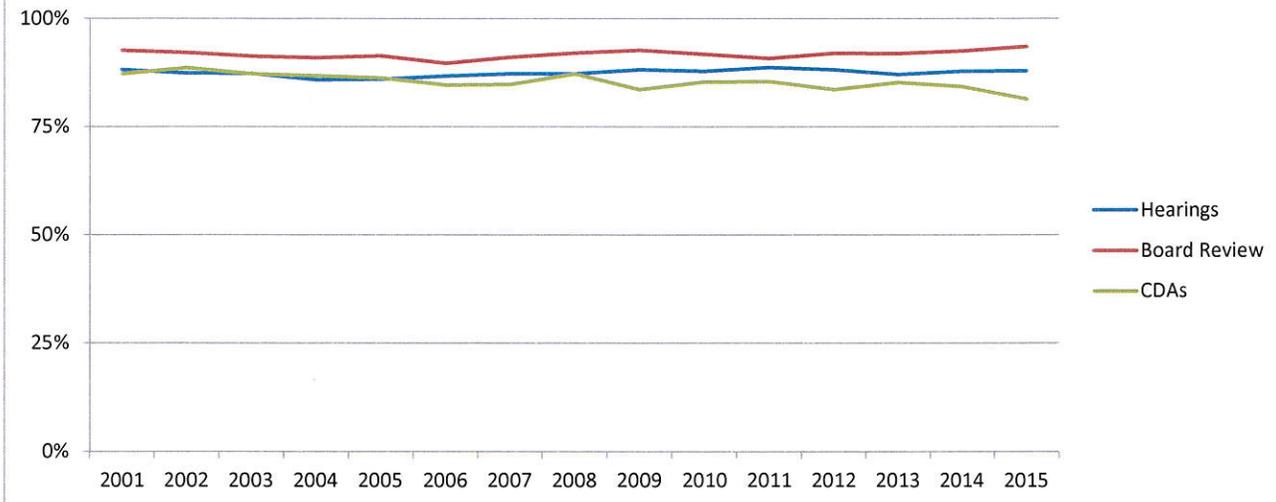
Date Range	Total Non O&O Cases	Non-comp Cases with Assessed Atty Fees	Total	Average	Average % increase from 1st Half 2013
	1/1/2011-6/30/2011	3,178	470	1,252,876	2,666
7/1/2011-12/31/2011	3,109	384	1,130,319	2,944	
1/1/2012-6/30/2012	3,116	456	1,361,748	2,986	
7/1/2012-12/31/2012	2,918	408	1,112,035	2,726	
1/1/2013-6/30/2013	3,276	475	1,404,561	2,957	11%
7/1/2013-12/31/2013	3,144	425	1,309,710	3,082	16%
1/1/2014-6/30/2014	3,277	446	1,376,502	3,086	16%
7/1/2014-12/31/2014	3,041	491	1,523,838	3,104	16%
1/1/2015-6/30/2015	3,092	419	1,370,275	3,270	23%
7/1/2015-12/31/2015	2,846	393	1,362,584	3,467	30%

Assessed attorney fees at Board Review

Year	Brd Rev Tot Orders	Assessed Atty Fees					Bd Rev Avg	Avg % increase from 2011
		Ords Without	Ords With	Total \$	Median			
2011	665	505	160	711,547	3,100	4,447	0%	
2012	610	458	152	760,813	3,500	5,005	13%	
2013	590	448	142	720,277	3,875	5,072	14%	
2014	467	343	124	652,812	4,000	5,265	18%	
2015	486	346	140	767,687	4,000	5,483	23%	

5. How have the number of *pro se* claimants increased/decreased over the last 15 years?

Percentage of Representation at Hearing, Board Review, and for CDAs: 2001 - 2015



Percentage of cases with representation at different levels

Year	Percentage representation		
	Hearings	Board Review	CDAs
2001	88.2%	92.7%	87.2%
2002	87.3%	92.2%	88.6%
2003	87.3%	91.4%	87.2%
2004	85.8%	90.9%	86.8%
2005	86.0%	91.4%	86.2%
2006	86.7%	89.7%	84.6%
2007	87.2%	91.1%	84.8%
2008	87.2%	92.1%	87.2%
2009	88.2%	92.8%	83.6%
2010	87.8%	91.8%	85.4%
2011	88.7%	90.9%	85.4%
2012	88.2%	92.0%	83.6%
2013	87.1%	92.0%	85.2%
2014	87.8%	92.6%	84.3%
2015	87.9%	93.5%	81.4%

6. In the last 18 months (approximately), how many times has the Board reduced the ALJ's fee award? How often has the Board increased the ALJ's fee award? (In both cases, referring to the fee awarded at hearing, not the fee for Review).

Board Review Reduction of Hearing Level Assessed Fees 2014 - 2015

Excluding cases where the Board changed the disposition of the issue(s), the Board has lowered assessed fees in 2 cases for 2014-2015.

Supporting Data:

322 cases of which 61 are at the Board currently leaving 261 of these cases have gone through Board Review and have Board Orders

60%	157 Cases affirmed
9%	24 Cases modified; i.e., affirmed in part and reversed in part
9%	23 Cases were reversed by the Board
10%	27 Dismissed or withdrawn
3%	7 Stipulations
8%	21 Received DCS
0%	1 Remanded to hearing
0%	1 Subjectivity
100%	261

Data for the Hearings Order Date Between 1/1/2014 through 12/31/2015

<u>WCB Case No.</u>	<u>Order Date</u>	<u>Hearings</u>	<u>Board Review</u>	
12-02168	2/12/2015	2,000	2,750	ALJ out-of-comp fee reversed - PPD reduced.
12-05546	2/25/2015	10,000	3,000	ALJ fee affirmed by Board.
13-00198	1/8/2014	5,000	0	Multiple issues, some reversed. ALJ \$9,000 award changed to \$9,500 for Hearing and on Review – there were two cases on this O&O.
13-02929	6/16/2015	13,250	3,000	ALJ fee turned to "contingent" fee pending WCD review.
13-03242	4/23/2014	7,500	2,500	Compensability reversed in part. ALJ \$7,500 fee converted to \$10,000 for Hearing and on Review.
13-03868	8/29/2014	10,000	4,500	Aggravation claim vacated. \$4,500 on review for affirming new/omitted claims. Unclear what hearing fee was for or those conditions.
13-04060	2/21/2014	10,500	7,500	One of the conditions reversed. Fee adjusted accordingly. \$7,500 total award for Hearing and on Review.
13-05123	3/20/2014	1,000	5,750	ALJ penalty-related fee increased from \$1,000 to \$1,250 and \$4,000 on Review for cross-appeal.
13-05174	8/21/2014	250	0	PPD award reduced. Fee reversed also. Only thing "affirmed" was the evidentiary issue.
13-05669	6/20/2014	6,000	0	This was actually a complete claim reversal. Should not be in the "modify" group.
13-06234	7/15/2014	6,000	4,500	Penalty awarded on Review. No change in award.
14-00124	12/31/2014	8,000	3,000	.262(1) fee reversed on Review. \$3,000 fee on Review for compensability.
14-00153	10/29/2014	6,000	0	Compensability reversed and fee reversed with it. Otherwise, affirmed on cross-appeal of evicence issue.
14-01052	9/18/2014	6,668	0	Closure issue reversed in part. OOR reinstated and penalty/fee reversed.
14-01336	8/13/2014	5,400	0	ALJ's penalty and fee award reversed on the merits. Parts of order affirmed.
14-01634	1/14/2015	18,000	0	ALJ's \$18,000 fee reduced to \$15,000. Only issue on Review was the attorney fee.
14-02134	2/18/2015	7,500	0	Denial reinstated. ALJ's fee reversed also. Claimant's cross-request was unsuccessful. ALJ affirmed on those conditions.
14-02686	10/2/2014	15,000	5,000	On Review, penalty/fee awarded. On merits, ALJ fee affirmed and \$5,000 on Review.
14-02714	3/10/2015	6,000	0	Board reduced ALJ's fee, finding it was <i>not</i> an extraordinary .308 case. Reduced from \$6,000 to \$2,885.
14-02757	12/26/2014	5,000	4,995	Part of ALJ order vacated. Fee changed to \$1,665 for each disputed medical bill (unclear how much the fee will ultimately be).
14-03199	4/7/2015	12,000	4,000	ALJ's \$12,000 fee for Hearing reduced to \$8,000. \$4,000 for Review awarded.
14-03494	10/28/2014	200	1,000	ALJ's \$200 penalty-related fee increased to \$1,200.
14-04175	3/30/2015	9,000	0	ALJ's 3 separate \$3,000 penalty-related fees. One was changed from \$3,000 to \$1,500 on the penalty issue. Otherwise affirmed.
14-05553	6/15/2015	6,000	3,462	ALJ's \$6,000 fee affirmed. Board also awarded \$3,642 penalty-related fee for unreasonable denial.

7. For purposes of comparison with claimants' attorney fees, provide data on defense attorney fees.

Data for claimant and defense fees are collected using different methods and definitions, and thus are not strictly comparable. In particular, defense legal costs are reported only in aggregate, not for individual cases. Without defense fee data in individual cases, comparable figures are not available. (The data collection forms used by insurers are included.)

**Instructions for completing Insurer Annual Report of
Oregon Workers Compensation (ORS Chapter 656)
Defense Legal Service Costs**

General

1. Data may be **combined** for related companies.
2. Enter costs **rounded**, do not enter cents.
3. Self-insured employers should not enter carrier-paid costs.
4. If actual costs are not available, **estimate** them and indicate which costs are estimated.
5. If you need more space for retained-counsel firms, enter them in Comments or submit another report (indicate such in Comments in each report).
6. Direct **questions** to Central Services Division, (503) 947-7367 or E-mail Hannah.A.Osinga@oregon.gov

Section A, Identification

Identify the insurer **about whom this information is provided**. Also provide DBA name or previous names under which this report has been made, if applicable. Enter the insurer number(s) (four-digit) of all companies included in the report. Enter the date on which report is submitted.

Section B, Preparer

Enter name, phone number, e-mail, and address of **person to contact** if there are questions about the report. Enter the name of the company for which preparer works **if it is not** the company identified in Section A.

Section C1, Number of attorneys

Enter the number of attorneys employed in-house and engaged in legal defense work related to Oregon workers' compensation. If such duties are not full-time, estimate and report the full-time equivalent (FTE). For example, if one attorney worked full-time and another half-time on Oregon workers' compensation, then the FTE is 1.5. If none, so state. If it varied during the year, enter the average. This figure should be consistent with item C2a.

Section C2a, Attorney salaries and fringe benefits

Based on the number of attorneys determined for Section C1, enter the dollar cost of attorney salaries and benefits for legal defense work related to Oregon workers' compensation. This figure should be consistent with item C1.

Section C2b, Administrative-support-staff salary costs.

Enter the cost of salaries and benefits for other (non-attorney) staff involved in Oregon workers' compensation legal services. If such legal duties are not full time, base costs on the FTE.

Section C2c, Other

Enter costs not provided elsewhere in this report. Include supplies, overhead, supervision, and **medical** and **other** costs listed for Section E, below, *when requested by or for in-house legal operations*.

Section D

Enter the the name, location and total dollar amount billed by retained counsel for Oregon Workers' compensation legal work. Enter total retained counsel costs (**even if zero**) on the last line of this section.

Section E, Insurer-paid costs in support of retained counsel.

Enter total **medical** costs (exams, evaluations, reports, depositions, record reviews) and **other** costs (investigative, video, transportation, postage, copying, phone, transcription, court costs, witness fees, etc.) for services requested by attorneys or otherwise in support of litigation that are *not reported elsewhere*. However, costs in support of *in-house* operations are reported in Section C2c. Estimate costs, if necessary.

Section F, Comments

If this is a **partial report** for the insurer or employer, please so indicate and tell who should be reporting the remaining costs. If you are **no longer self-insured**, there may still be costs arising from a previous self-insured period: please indicate the date that carrier coverage became effective. Tell us if we should send the survey to a **different address**. Indicate if this is a **corrected report**. Indicate if a report has been, or will be, **continued** in another submission.



**Insurer Annual Report of
Oregon Workers' Compensation
(ORS Chapter 656) Defense
Legal Service Costs for
Calendar Year _____**

— For Fax Transmission —
To: DCBS Central Services Division
Fax: (503) 947-7085
Number of pages: _____

A. Identification (Insurer or self-insured employer)

1. Name: _____
 2. Insurer no.(s): _____ 3. Date: _____

B. Preparer

1. Name: _____ 2. Phone: _____
 3. Company (if not as in A1, above): _____
 4. Address: _____
 5. E-mail: _____

C. In-house legal operations

1. Number of attorneys (full-time equivalent): _____
 2. Costs for workers' compensation legal services:
 a. Attorney salaries and fringe benefits..... Check if estimated \$.00
 b. Administrative support staff salary costs Check if estimated \$.00
 c. Other (see instructions) Check if estimated \$.00

D. Legal services performed by retained counsel

1. Firm name: _____ City/State: _____
 Retained counsel costs (all costs billed to insurer) \$.00
 2. Firm name: _____ City/State: _____
 Retained counsel costs (all costs billed to insurer) \$.00
 3. Firm name: _____ City/State: _____
 Retained counsel costs (all costs billed to insurer) \$.00
 4. Firm name: _____ City/State: _____
 Retained counsel costs (all costs billed to insurer) \$.00
 5. Firm name: _____ City/State: _____
 Retained counsel costs (all costs billed to insurer) \$.00
Total retained counsel costs \$.00

E. Insurer-paid costs in support of retained counsel

Enter "0" if none Check if estimated \$.00

F. Comments: _____

