

# Defense Legal Costs of Oregon Workers' Compensation Insurers, 2003

Research & Analysis Section

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In 2003 Oregon workers' compensation insurance carriers and self-insured employers (together referred to as "insurers") paid over \$27.1 million for attorney salaries, attorney fees, and other costs of legal services incurred in accordance with Chapter 656, Oregon Revised Statutes. These costs are primarily to defend the insurer against claims and the payment of

compensation believed to be unwarranted, but may also include costs for representation in responsibility disputes and for services provided outside of litigation (such as negotiating a claim disposition agreement). These costs are distinguished from fees paid to attorneys representing injured workers.

**Table 1. Insurer defense legal costs (\$ thousands) by category, 2003**

Insurer classification	Attorney salaries	Non-att. salaries	Other in-house	Total in-house	Retained counsel	Support of retained cnsl.	Total costs
SAIF	\$ 3,222	\$ 791	\$ 1,848	\$ 5,861	\$ 296	\$ 50	\$ 6,206
Private insurers	1,400	1,044	478	2,923	8,127	286	11,336
SAIF plus private insurers	4,623	1,834	2,326	8,783	8,423	336	17,542
Self-insured employers	137	96	189	422	8,902	268	9,592
<b>All insurer classes</b>	<b>\$ 4,760</b>	<b>\$ 1,930</b>	<b>\$ 2,515</b>	<b>\$ 9,205</b>	<b>\$ 17,326</b>	<b>\$ 604</b>	<b>\$ 27,134</b>
Share of total costs	17.5%	7.1%	9.3%	33.9%	63.9%	2.2%	100.0%

Note: Values may not add to totals due to rounding.

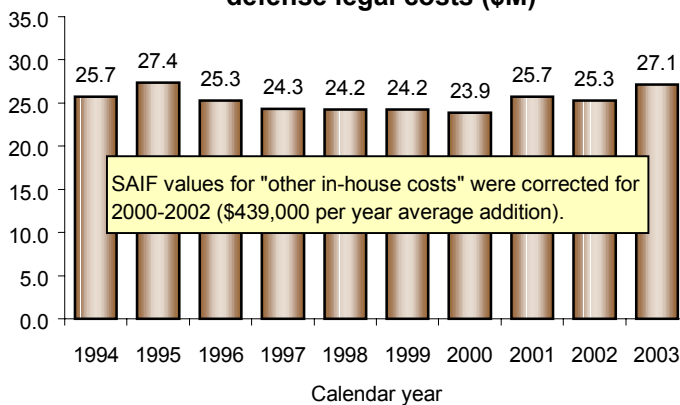
Table 1 summarizes these costs. The bottom row of the table depicts the breakdown of costs by category: costs for retained counsel were 63.9 percent of all costs. Note that the 2003 cost total includes costs in a **new cost category**, "insurer-paid costs in support of retained counsel," for costs paid directly by the insurer or third party administrator for services requested by or in support of retained counsel. These costs include medical costs (exams, evaluations, reports, depositions, record

reviews) and other costs (investigative, video, transportation, postage, copying, transcription, telephone, court costs, etc.). Because of differences in law firm billing and insurer accounting practices, some insurers are not able to identify part or all of their costs that belong to this new cost category; instead, they report these costs in the "other in-house" or "retained counsel" cost categories.

The graph (see note about data corrections for 2000-2002) depicts total defense legal costs for the past 10 years. Total costs in 2003 were up more than 7.3 percent over those of 2002. Each of the following contributed about a third to this increase: insurer-paid costs in support of retained counsel, changes to in-house costs, and changes to retained counsel costs.

For each insurer classification, information on share of costs, numbers of litigated claims, in-house attorney staff, in-house costs as a percentage of all costs, and 2002-2003 cost changes are given in Table 2.

**Recent history of total defense legal costs (\$M)**



**Table 2. Other information about defense legal costs, 2003**

Insurer classification	(1) Percentage of total cost	(2) Number of claims	(3) In-house atty. staff (FTE)	(4) In-house costs, % of ins. total	(5) Total cost change 2002-2003
SAIF	22.9%	4,619	27.9	94.4%	4.4%
Private insurers	41.8%	5,786	14.0	25.8%	4.7%
SAIF plus private insurers	64.7%	10,405	41.9	50.1%	4.6%
Self-insured employers	35.4%	2,767	1.3	4.4%	12.6%
<b>All insurer classes</b>	<b>100.0%</b>	<b>13,172</b>	<b>43.2</b>	<b>33.9%</b>	<b>7.3%</b>

Note: Values may not add to totals due to rounding.

SAIF's share of total costs in 2003 (column 1) was the highest since 1998. Its share increased by 0.7 percentage points from 2002, while private insurers' share decreased by 1.8 points. The share for self-insured employers increased by 1.1 percentage points. The number of claims (column 2) is the number of claims that had a change in the litigation status during the year; it is used to approximate the number of litigated claims. The total number of such claims fell for the past two years; there were 1.1 percent fewer in 2003 than in 2002.

The numbers of in-house attorney staff (full-time equivalent, or FTE) are given in column 3, and the percentages of all costs that are composed of in-house costs are given in column 4. The number of in-house attorneys (FTE) has declined steadily since its peak in 1993 (80.6) to a record low 43.2 in 2003. SAIF's use of in-house staff has always exceeded that of self-insured employers and private insurers. For 2003, 94.4 percent of SAIF's legal costs were in-house costs, slightly below 2002's 95.1 percent. Finally, column 5 gives the 2002-2003 changes. Costs increased for all insurer classes; the largest increase was for self-insured employers (12.6 percent).

A total of \$22.1 million – 81.4 percent of all defense costs – was paid to attorneys (attorney salaries plus retained counsel), down from 2001's record-high 87.3 percent. (We assume for this purpose that billings for retained counsel are all attorney fees, but other costs to the law firm may be included, as well.)

This report is based on data submitted by insurers as required by ORS 656.388(5). Surveys were sent to 249 insurers that had three or more claims in litigation during the year. Costs for insurers with one or two claims were estimated at \$0.25 million. Costs for 10 non-responding insurers were estimated to be \$0.44 million. Altogether, estimated amounts constituted about 2.5 percent of total costs. Estimates were based on average costs per litigated claim for similar insurers and historical costs per claim for the insurer in question.

More information is available from the Department of Consumer & Business Services, Research & Analysis Section, (503) 378-8254.

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