

Defense Legal Costs of Oregon Workers' Compensation Insurers, 2006

Information Management Division

Department of Consumer & Business Services

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In 2006 Oregon workers' compensation insurance carriers and self-insured employers (together, "insurers") paid almost \$29.7 million for attorney salaries, attorney fees, and other legal services incurred in accordance with Chapter 656, Oregon Revised Statutes. These costs are primarily to defend the insurer against claims or benefits believed to be unwarranted. Costs to represent the insurer in responsibility disputes (where the outcome may not directly affect the worker) and for services outside of litigation (such as negotiating a claim disposition agreement) are included. Defense costs are distinguished from fees paid to attorneys representing injured workers.

Costs for retained counsel were 67.5 percent of all costs (Table 1). In 2006, Liberty Group started treating in-house costs as retained-counsel costs. Because of this change, there was a decrease in attorney salaries and other in-house costs and an increase in retained-counsel costs among private insurers from 2005 to 2006.

Total costs include "insurer-paid costs in support of retained-counsel," costs paid directly by the insurer or third party administrator for services requested by or in support of retained counsel. These costs – first collected for 2003 – include medical costs (exams,

evaluations, reports, depositions, record reviews) and other costs (investigative, video, transportation, postage, transcription, telephone, court costs, etc.). Because of differences in law firm billing and insurer accounting practices, these costs have often been – and some by necessity are still – included as "other in-house" and "retained-counsel" costs.

The graph below depicts total defense legal costs for the past 10 years. Total costs in 2006 were about 0.94 percent more than in 2005 and were the highest on record.

SAIF's share of total costs in 2006 (Table 2, column 1) increased by 1.9 percentage points from 2005, while private insurers' share decreased by 1.0 percentage

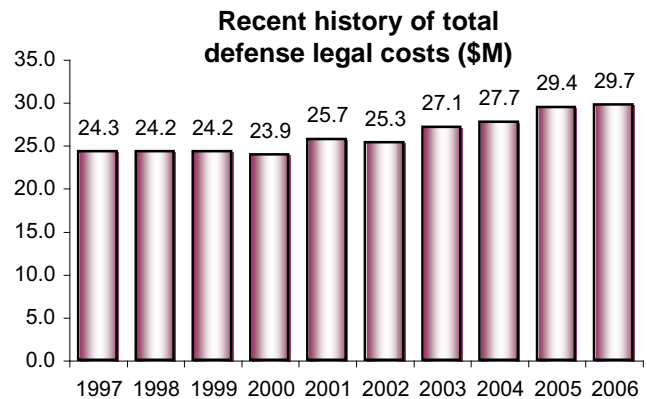


Table 1. Insurer defense legal costs (\$ thousands) by category, 2006

Insurer classification	Attorney salaries	Non-atty. salaries	Other in-house	Total in-house	Retained counsel	Support of retained cnsl.	Total costs
SAIF	\$ 3,916	\$ 924	\$ 2,324	\$ 7,164	\$ 273	\$ 28	\$ 7,464
Private insurers	289	120	70	479	10,364	1,088	11,931
SAIF + private	4,206	1,043	2,394	7,643	10,636	1,115	19,394
Self-Insured	116	90	54	260	9,392	610	10,262
Total	\$ 4,322	\$ 1,134	\$ 2,447	\$ 7,903	\$ 20,028	\$ 1,726	\$ 29,657
Share of total	14.6%	3.8%	8.3%	26.6%	67.5%	5.8%	100.0%

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

Table 2. Other information about defense legal costs, 2006

Insurer classification	[1] Percentage of total cost	[2] Number claims	[3] Attorney staff (FTE)	[4] In-house costs, % of total	[5] Cost change 2005-2006
SAIF	25.2%	4,968	31.9	96.0%	9.2%
Private insurers	40.2%	4,756	3.0	4.0%	-1.5%
SAIF + private	65.4%	9,724	34.9	39.4%	2.4%
Self-Insured	34.6%	2,458	1.1	2.5%	-1.7%
All classes	100.0%	12,182	36.0	26.7%	0.94%

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

point. The claims count (column 2) is the number of claims that had a change in litigation status during the year; it approximates the number of litigated claims. The total number of such claims fell by 8.2 percent in 2006, after a similar increase the previous year.

The numbers of in-house attorney staff members (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. SAIF's use of in-house staff has always exceeded the other insurer classifications. For 2006, 96.0 percent of SAIF's legal costs were in-house costs, tying 1997 as the highest percentage on record. Finally, column 5 gives 2005-2006 changes: only SAIF had a cost increase.

A total of \$24.4 million – 82.1 percent of all defense costs – was paid to attorneys (attorney salaries plus retained counsel), up from 2005's 79.0 percent. We assume costs reported for retained counsel are all attorney fees, but other costs to the law firm may be included.

Cost data are provided by insurers as required by ORS 656.388(5). Surveys were sent to 223 insurers that had three or more claims in litigation during the year. Due to non-receipt of surveys, we estimated costs for one self-insured employer, three insurance companies, and one insurer group. Also, we estimated costs for insurers with one or two claims – based on average costs per litigated claim for similar insurers – at \$304,000. Total estimated amounts constituted about 1.8 percent of all defense costs.

More information is available from the Department of Consumer & Business Services, Information Management Division, (503) 378-8254.

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