

# Industrial Special Indemnity Fund (ISIF)

## Annual Report Calendar Year 2019

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## INTRODUCTION TO ISIF

The Industrial Special Indemnity Fund (ISIF) was originally adopted in 1927 by the Idaho Legislature as part of the state's comprehensive workers' compensation system. It was initially intended to encourage employers to hire disabled veterans returning from World War I. The ISIF is more commonly referred to as the "Second Injury Fund." Its general purpose is to relieve employers from having to pay the full financial obligation for lifetime benefits to workers who become totally and permanently disabled following a final injury at work.

Claims for benefits from ISIF are started by filing a Notice of Intent to File a Complaint Against the ISIF (NOI). The NOIs are filed by workers, self-insured employers and insurance companies seeking ISIF contribution toward total disability benefits. After receipt of the NOI, the ISIF has 60 days to undertake an in-house review of the claim to evaluate its potential liability and decide whether to resolve the claim or deny liability. If the claim is denied following the initial evaluation, the party filing the NOI may elect to file a formal complaint against the ISIF, delay such a filing to a future time, or discontinue pursuit of the claim. Upon receipt of a complaint, the ISIF will refer the case to outside legal counsel for representation and commencement of formal litigation at the Idaho Industrial Commission.

ISIF is only responsible for disability benefits during the life of the injured worker, and none of those benefits are inheritable unless negotiated as part of a settlement agreement approved by the Industrial Commission. All other benefits to the injured worker are the obligation of the employer/surety. Allocation of liability for total and permanent disability between the employer/surety and the ISIF is apportioned by a complicated formula established through Idaho caselaw.

Benefit rates for total and permanent disability are established as part of a statutory system. In general, the benefits are based on the average weekly wage of the injured worker as compared to the average state wage in brackets of 45%, 60% or 67%. Benefits are paid at these levels and may change from year-to-year as the average state wage may change.

ISIF is funded through an annual assessment to insurance companies and self-insured employers which cover their workers with workers compensation insurance. The way the assessment is calculated will be explained in more detail in the Assessment section of this Report.

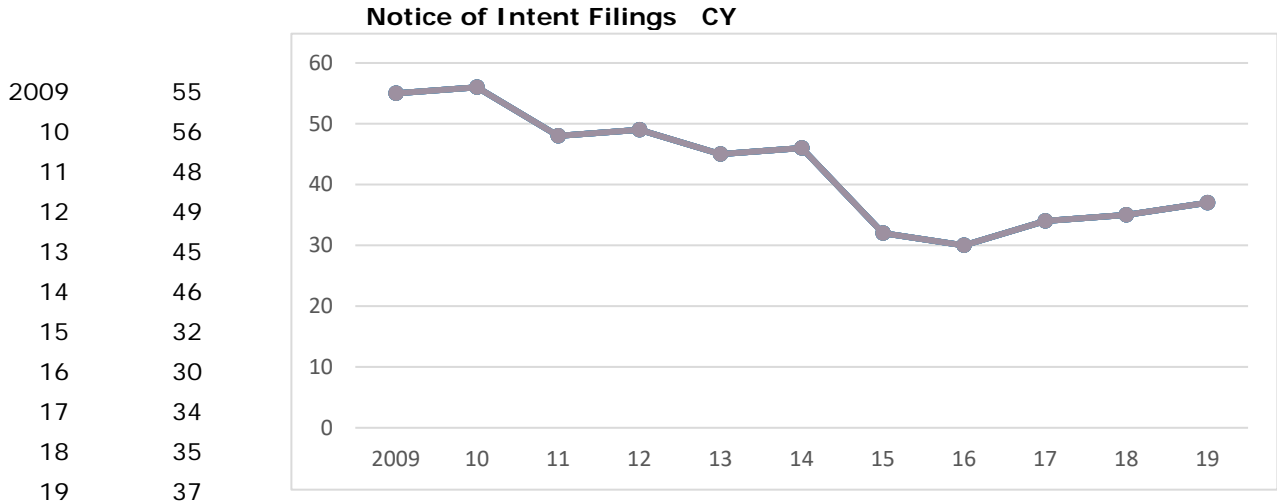
Readers of this Report will see pertinent information starting from 2009 instead of earlier statistics. That year was chosen, because in 2009 a major change occurred in the way cases could be voluntarily resolved by the ISIF. Several court decisions established new fundamental requirements for ISIF to bring settlement proposals to the attention of the Industrial Commission. For that reason, earlier figures do not accurately reflect existing trends of the ISIF or the impact of the changes in 2009 on the administration of ISIF claims.

## OPERATIONS

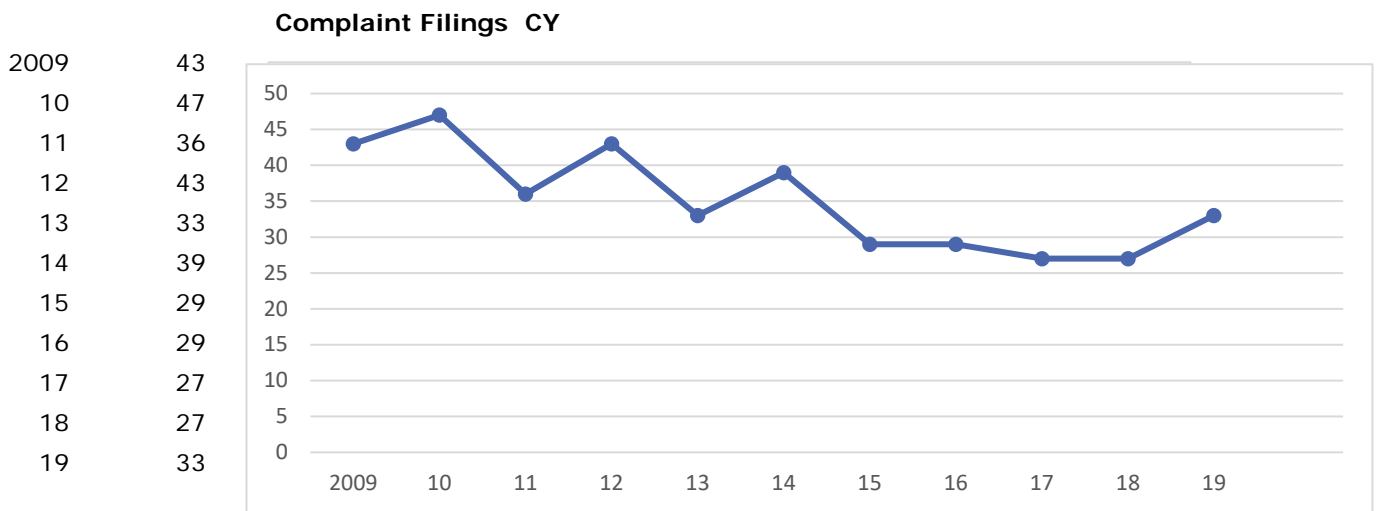
### Claim Administration

Managing claims is a major function of the ISIF and begins with the in-house evaluation of a claim after the NOI is filed. ISIF has 60 days to review the NOI. If the claim is denied and a formal complaint filed with the Industrial Commission, ISIF then takes a more formal approach to processing the claim with the assistance of outside legal counsel. In all claims, ISIF personnel are actively involved in every phase of the process from the initial evaluation through final resolution.

The number of NOIs has generally trended downward as the chart below indicates. Even with fewer claims, however, the recent claims present more complex medical, vocational and legal questions than previous filings.



The initial “teeter-totter” pattern of complaint filings has leveled-off in recent years, as the chart below illustrates. Since a complaint may be filed months or even years after the NOI has been denied, many denied NOIs are still available to create potential complaints in future years. Also, a claim against the ISIF requires additional time and expense because of more complex factual, medical and legal issues regarding ISIF liability. These factors often lead to unpredictable outcomes, which may cause a party to delay bringing ISIF into the legal action. However, in the past few years, there has been a noticeable increase in the number of complaints being filed in the same year that the NOI has been denied, which now is closer to 75% in the same year.



## **Benefit Administration**

### **Claim Evaluation**

As mentioned earlier in this Report, the ISIF is commonly known as “the Second Injury Fund.” However, access to ISIF benefits is not necessarily dependent on the injured worker having a second work injury. The basis for ISIF liability can be established by presenting evidence that four requirements have been met, which are that the injured worker had (1) a pre-existing physical impairment from “any cause or origin.” The pre-existing impairment could, therefore, originate from a degenerative, hereditary, or genetic condition. Of course, a work-related accident causing a physical impairment would also qualify for this requirement. The other three requirements are that the pre-existing impairment must be (2) manifest or clearly apparent, (3) a hindrance or obstacle to work duties, and (4) combine with the disability from a last work-related injury to cause total and permanent disability.

These four requirements usually cause additional time to sort out all prongs before ISIF is required to pay benefits. Such delays have been a long-standing concern to the ISIF. Since judicial review of an injured worker’s potential disability is not evaluated until years after the last work injury, any unnecessary delay will work to the disadvantage of ISIF. Put another way, any unnecessary delay in the judicial process will more-than-likely result in an even greater decline in the injured worker’s poor health condition. As a result, the likelihood of liability is greatly increased.

In 1997, the above factors motivated the ISIF to propose and receive approval of legislation commonly known as the “60-day rule” regarding filing of an NOI. The statute allows ISIF 60 days to review, evaluate and possibly resolve claims without involving extensive use of formal litigation procedures. The legislation sought to bring faster relief and lower legal costs for injured workers, employers, sureties and self-insured employers, as well as, the ISIF. In some claims, the new rule has met its expectations. However, in far too many claims, the material submitted to ISIF for initial review has little bearing on ISIF liability, which leads to a denial of the NOI. Even without resolution of the claim during this time frame, the legislation has enhanced the ability of ISIF to better manage overall litigation expenses after the initial inhouse evaluation of the claim.

### **Cost Containment**

With any claim, ISIF faces an ever-increasing challenge of containing the overall cost of the agency. Although 2019 was another good year for employment prospects, this phenomenon sometimes makes it more difficult for injured workers to return to active employment, because they are competing against younger and more healthy candidates. Another impact has been the attractive environment for injured workers to receive long-term disability benefits at the federal level. Thus, many injured workers have chosen to leave the active workforce following a work injury, forego regular or part-time employment and, instead, receive federal disability benefits. As these benefits run out, a strong tendency is to continue this benefit stream by filing a claim against ISIF for lifetime disability benefits. The ages of the workers seeking benefits from ISIF have expanded greatly over the past few years. In fact, claims now range from the early-20’s into the upper-70s. Such a situation is most alarming for its potential long-term liability and impact on the financial stability of the fund.

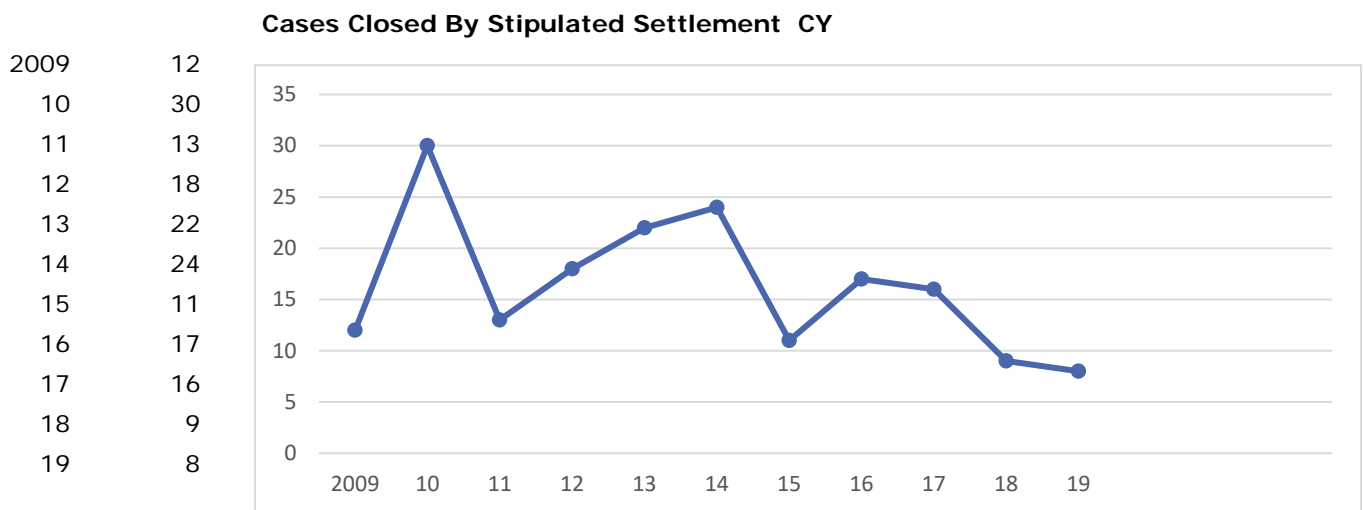
With these challenges, ISIF has attempted to bring claims and cases to final resolution as quickly as possible. By actively managing claims and working closely with outside legal counsel, ISIF staff have held litigation costs and benefit increases to acceptable levels.

### **Settlement Process**

One way to bring cases to quicker resolution is through the settlement process. The ISIF by necessity must be more deliberate and take more time-consuming steps to explore and fully evaluate all aspects of liability before a claim can be negotiated for settlement. After the parties arrive at a stipulated settlement, the “tentative” resolution must then be submitted to the Industrial Commission for its review and ultimate approval.

To enhance the prospect of resolution, ISIF has created more innovative approaches to resolve claims. Options include, not only a one-time lump sum payment, but also periodic monthly payments, deferred periodic payments, guaranteed benefits for a certain time, or any combination of these options. With these approaches, ISIF has been able to resolve more cases by creating a settlement package better structured to the needs of the claimant. Approval by the Industrial Commission to these new forms of resolution has been encouraging.

The chart below shows the number of cases in which the injured worker and ISIF have negotiated a resolution of the claim and received approval by the Commission. Of the eight cases settled this past year, 5 were settled with long-term benefits and 3 were resolved by one-time payments.



Judicial Process

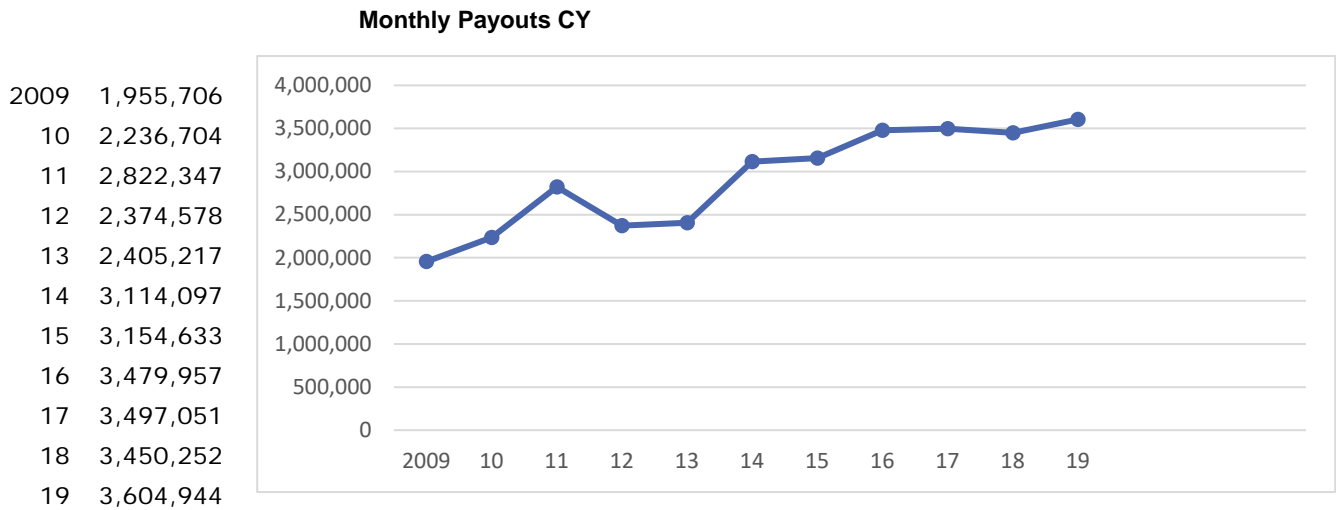
Another avenue to resolve cases is through the judicial hearing process, in which the parties actively litigate the liability of the ISIF before the Industrial Commission. Should the ISIF be held liable, monthly statutory benefits are paid for the lifetime of the disabled worker. This past year, one new claimant was added to the benefit rolls through this process. However, on the bright side, ISIF was able to fully defend and gain dismissals in 11 contested cases.

Benefit Costs

Besides an increasing number of beneficiaries, another factor affecting the total costs of benefits is an inflationary increase based on the average weekly state wage in Idaho. Since 2009, inflationary increases have increased a total of 28% or an annualized average of 2.55%. In 2020, the increase will

be 3.7%, which is the third largest increase in the past decade. Due to the economic conditions in that decade, the yearly increases fluctuated from a low of .47% to a high of 4.6%.

With inflationary increases and new lifetime recipients, the total amount of monthly payments in 2019 increased by \$ 154,692 or 4.5%, as illustrated in the next chart. The total increase from 2009 has been 84.3%, which annualizes to a rate of 7.66%. Even though this annualized rate has not continued in recent years, it still gives the ISIF great concern for future sustainability of the fund.



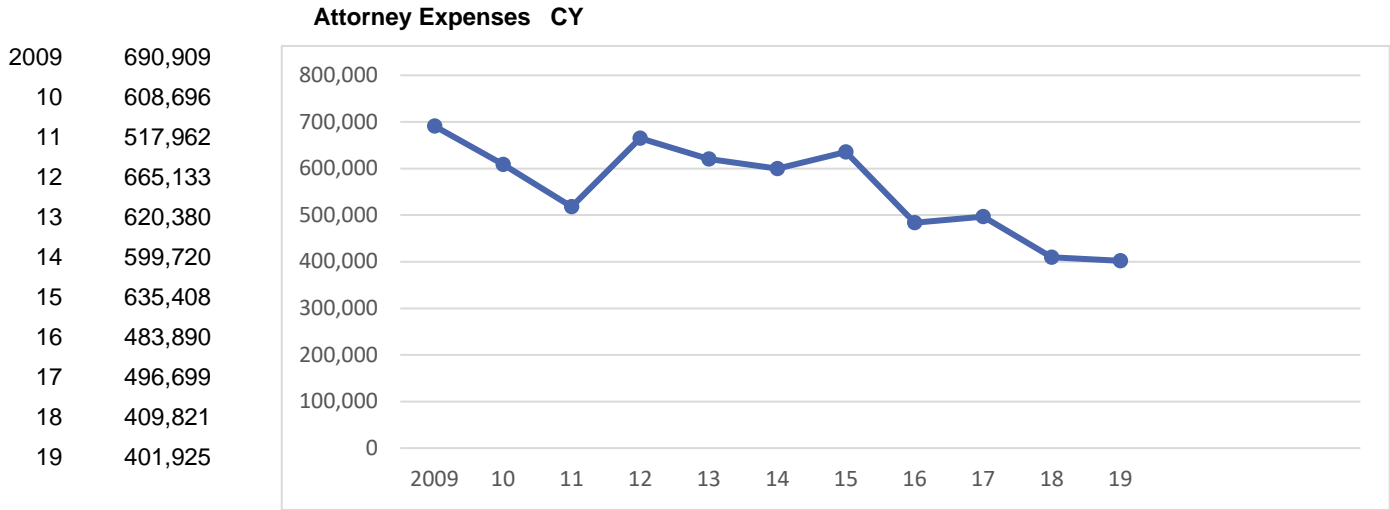
### Litigation Costs

A necessary component of agency costs is the retention and use of attorneys to represent ISIF in its litigated cases. Currently, six attorneys in private practice represent ISIF in all its contested cases, which number about 75 files at various stages of litigation all through the year. These attorneys are located around the state and retained on a case-by-case basis as complaints are filed in each locale. ISIF has been fortunate to have attorneys, not only well-experienced in the workers' compensation field, but equally experienced within the specialty of the Second Injury Fund. This experience has proven invaluable in processing claims and resolving contested cases.

Another factor in managing costs is keeping cases current and on the active calendar of the Industrial Commission. As cases are processed, ISIF now attempts to stipulate with the parties to dismiss a case which does not present ISIF liability. Alternatively, ISIF will initiate an administrative process to dismiss cases that have not been prosecuted in a timely manner. Both avenues have resulted in many cases being taken off the active docket, which translates into lower overall costs for ISIF. Of the 18 cases dismissed by the Industrial Commission in 2019, ISIF actively contested 16 of those cases. Two complaints were voluntarily dropped shortly after filing.

Costs of legal representation include, not only the hourly fee of the attorneys, but also depositions, travel, reports of medical, employment and vocational experts, analysis of all issues, as well as, verbal and written strategy summaries. Additionally, legal costs include contested hearings, witness preparation and briefing to the Industrial Commission, and in a few cases representation in the Idaho Supreme Court.

As the next chart illustrates, costs of legal representation have steadily declined since 2009. This trend is largely due to the active participation by ISIF staff in each case. Such involvement with each claim has led to more efficient use of outside counsel by directing resources to meaningful defense strategies and more successful outcomes with settlements, dismissals, and contested hearings.



The total expense for claims, as depicted in the chart below, is comprised of attorney fees and costs, monthly beneficiary payments, and payments for approved settlement agreements. Administrative or office expenses are not included in these figures. The litigation and benefit costs continue to be within an acceptable range. It tends to bolster the importance of reviewing claims and expenses on a regular basis to gauge the overall impact on the expense-side of ISIF.

### **Office Administration**

The final component to the expense-side of ISIF is the cost of operating the administrative office in Boise. This is rather a small amount compared to the other major expenses in managing the ISIF as detailed in

previous parts of this Report. The expenses include salaries for two full-time employees and general expenses for office rent, computer equipment, technical support services, supplies, travel and storage of records. In 2019, ISIF experienced equipment wearing out or no longer serviceable, which meant significant cost increases for equipment upgrades for telephones, computers, copy machine and a management data system.

## **Financial Report**

A summary of the financial position of ISIF at the end of the 2019 calendar year is set out below.

<b>Beginning Cash Balance</b>		<b>\$ 6,110,556</b>
<b>Income</b>		
Assessment	3,100,832	
Death Benefit	30,000	
Penalty Late Filing	0	
Interest	127,378	
Misc. Revenue	35,178	
Insurance Annuities	536,392	+ 3,829,779
<b>Expenses</b>		
Administrative	323,813	
Legal	401,925	
Lump Sum Settlements	285,100	
Monthly Payments	3,604,944	
Misc. Adj.	- 96	- 4,615,685
<b>Ending Cash Balance</b>		<b>\$ 5,324,650</b>



As mentioned in the Introductory section of this Report, the ISIF is funded through an annual assessment to workers compensation insurance companies, self-insured employers, and the State Insurance Fund (collectively referred to as Sureties). It is calculated by a rather simple method of taking two times (2x) the total expenses of ISIF during the most recent fiscal year minus (-) ending cash from that same fiscal year. This calculation is then pro-rated by the Industrial Commission among all Sureties which have paid disability benefits to injured workers during the year. ISIF contracts with the Commission to invoice the assessment for each Surety in semi-annual billings and collect the funds on behalf of the ISIF.

The revenue-side of the Assessment is composed of the annual Assessment, fees for late payment of Assessment, accrued interest, death benefit receipts, and insurance annuities.

The expenditure-side of the Assessment is broken into three main categories: Benefits, Legal and Administrative. These costs have been detailed in previous portions of this Report. Generally, expenses have been more predictable in recent years due to overall stability of the Fund and increased involvement in all claims by the administrative staff. It is anticipated the Assessment for calendar year 2021 will show another increase from 2020 but not as much as the chart below might project.

The next chart illustrates the recent Assessments.

