



Industrial Special Indemnity Fund **(ISIF)**

Annual Report Calendar Year 2015

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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," which is a bit of a misnomer as explained later in this Report. 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.

The purpose and management of the ISIF were created in Sections 72-323, 324, 331, 332 and 334, Idaho Code.

Claims for benefits from ISIF are started by filing a Notice of Intent to File a Complaint Against the ISIF (NOI). Such notices are filed by workers, self-insured employers and insurance companies in the workers compensation system seeking ISIF contribution for total disability benefits. The notices are filed under what is commonly called the "60 day rule." Section 72-334, Idaho Code. 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 unresolved at the conclusion of this initial evaluation, the party filing the NOI can elect to file a formal Complaint against the ISIF, or discontinue pursuit of the claim. Upon receipt of a Complaint, the ISIF will refer the claim to outside legal counsel for representation and commencement of formal litigation of the issues.

Resolution of claims can be accomplished in several ways, which may take the form of a one-time lump sum payment, periodic monthly payments, deferred lump sum or periodic payments, or any combination of these options with the approval of the Industrial Commission. Of course, another method of resolution is through a contested hearing process.

ISIF is only responsible for lifetime total and permanent disability benefits. All other benefits within the Idaho workers compensation system for the last accident/injury are the obligation of the employer/surety; i.e. lost wages, medical services, functional (anatomical) loss, vocational rehabilitation, temporary and permanent partial disability (income), etc. Allocation of liability for total and permanent disability between the employer/surety and the ISIF is apportioned under what is called the "Carey formula," which is described in the case of *Carey v. Clearwater*.

Benefit rates for total and permanent disability are part of a statutory system too complicated to explain in this Introduction. In general, the benefits are based on the average weekly wage of the injured worker and fall into categories of 45%, 60% or 67% of that wage structure. Benefits are paid at these levels and may change from year-to-year as the average weekly state wage may change.

Funding for the ISIF is provided through an annual assessment to insurance carriers and self-insured employers. The assessment is calculated by ISIF, which is an amount that is two times (2x) all its expenses during the immediately preceding fiscal year less (-) the cash balance at the end of that fiscal year. That figure is then pro-rated among the State Insurance Fund, self-insured employers, and other sureties based on each entity's proportionate share of total indemnity

(income) benefits paid on workers' compensation claims during the reporting period. The pro-rated amount is calculated by the Idaho Industrial Commission, which prepares semi-annual billings of the assessment for each responsible entity. ISIF has contracted with the Industrial Commission to invoice the assessment for each entity and collect the funds on behalf of the ISIF.

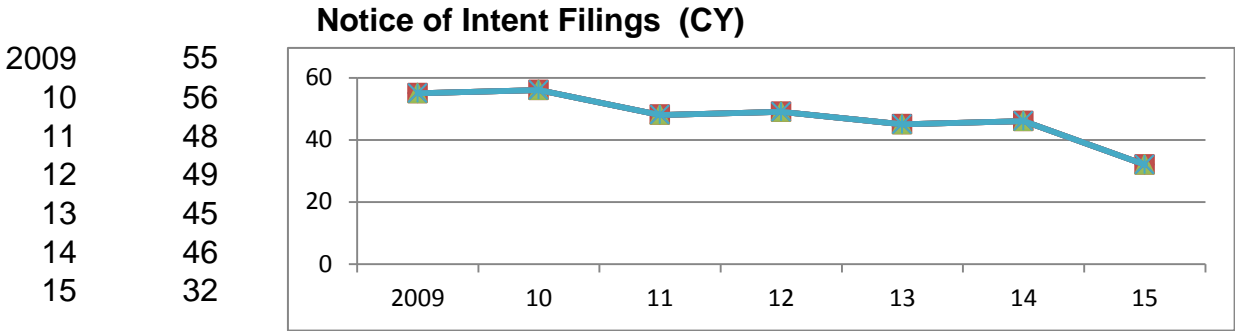
OPERATIONS

Claim Administration

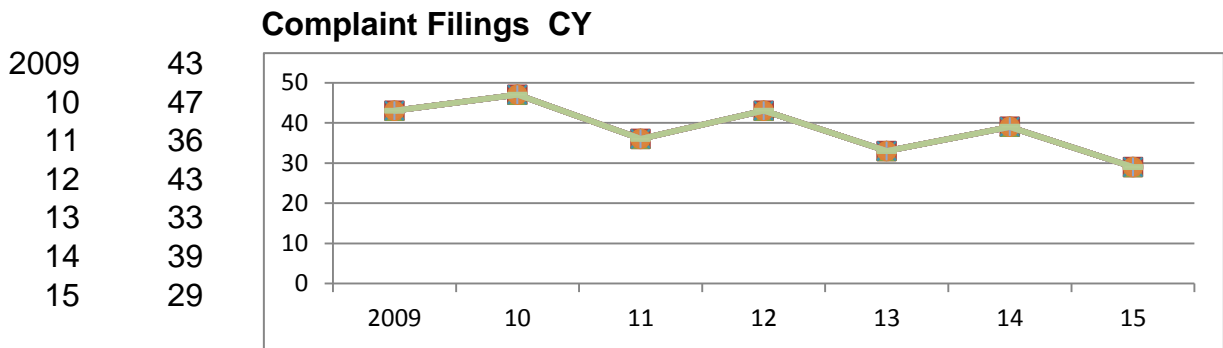
Managing claims is a major function of the ISIF and starts with the initial in-house evaluation of a Notice of Intent (NOI) within the statutory time period of 60-90 days. If the claim is denied and a formal Complaint filed with the Industrial Commission, ISIF then takes a more formal approach to processing the claim with the assistance of outside legal counsel. In either situation of claim review or formal processing, ISIF staff personnel are actively involved in all phases of the claim from start to finish.

Readers of this Report will see the relevant information described from 2009 instead of earlier statistics. This start date was chosen because in that year a major change occurred in the way cases could be resolved by the ISIF as will be explained later in this Report. For that reason, earlier figures do not accurately portray existing trends of the ISIF or the impact on the workers compensation program in Idaho.

The number of NOIs has clearly trended downward over the past few years. This trend was more significant this past year due to a more intense defense posture by ISIF.



The number of formal Complaints filed with the Industrial Commission does not have such an easily recognizable pattern as the NOIs as illustrated in the chart below. One of the reasons for the inconsistent numbers and “roller coaster” activity is that a complaint may be filed months or even years after a NOI has been denied. Nevertheless, a downward trend has also occurred over this same time period. Other reasons for this trend are noted in later parts of this Report.



Even though the numbers show a downward trend in both the number of claims (NOIs) and formal cases filed, the ISIF has been facing an ever increasing challenge in the last few years in containing the overall cost of litigation. Due to economic changes in the workplace, a drop in available jobs has caused a decrease in available opportunities for injured workers to reenter the job market and return to active employment again. Additional changes at the federal level have created an attractive environment for injured workers to receive long-term disability benefits that were not previously available with such ease. Thus, many injured workers have chosen to leave the active workforce, forego regular employment and, instead, receive federal disability benefits. As these benefits run out, there is now a strong tendency to continue this benefit structure by applying to ISIF for lifetime disability benefits. The ages of former workers seeking benefits from ISIF has expanded greatly over the past few years and now range from the mid-30's to the upper-70s. This age spread is growing further apart each year and is most alarming to ISIF for its potential long-term liability, which directly affects its financial stability.

ISIF has been very proactive in bringing claims to final resolution. By actively managing its claims and working closely with outside legal counsel, litigation costs, liability exposure, and operational costs are held to acceptable levels. Needless to say, however, the workers compensation system involving ISIF is now filled with more complicated claims and cases, which result in a more complex litigation process. As a result, associated costs have increased despite efforts to maintain a level balance.

Benefit Administration

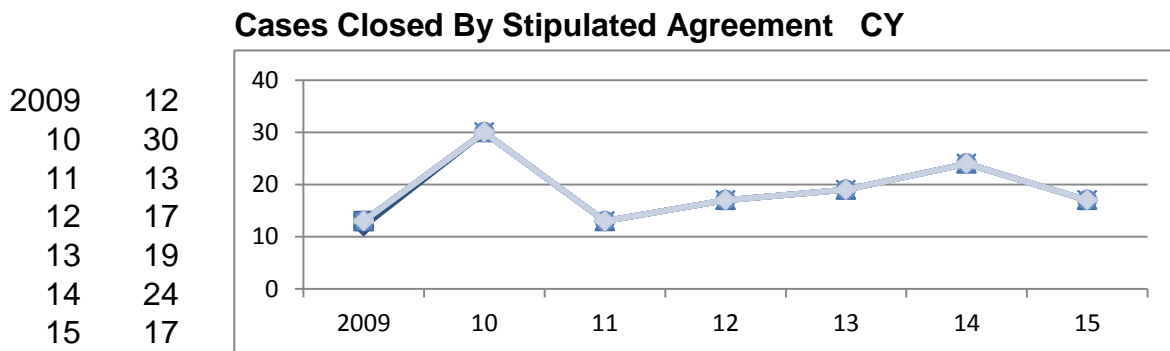
One way to bring cases to final resolution is through the settlement process. As mentioned previously, claim resolution can be accomplished in one of several ways through a one-time lump sum payment, periodic monthly payments, deferred lump sum or periodic payments, or any combination of these options with the approval of the Industrial Commission.

Over the past few years, Idaho case law has made the settlement process with ISIF much more difficult. Several cases have set fundamental requirements for ISIF in

bringing settlement proposals to the attention of the Industrial Commission. In essence, the ISIF must now concede all issues of liability before the process of negotiation can even be started. Once initiated, the parties must then fully negotiate the contested issues for resolution. After the parties agree to certain settlement terms and prepare a signed written document, this “tentative” resolution must then be delivered to the Industrial Commission for its review and ultimate approval.

Such a process has resulted in more complex procedures. 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 decision can be made to mediate or privately negotiate any settlement option. With more hurdles to the resolution process, ISIF has been more innovative in its approach to settlement. ISIF has been able to resolve and close cases by one-time lump sum settlements, as well as, settlements using a standard or modified statutory benefit structure for the life of the claimant. The Industrial Commission has accepted these new approaches in appropriate cases for resolving claims within its jurisdiction.

After the new rules were established in 2009 and the counter-reaction in 2010, ISIF has generally been able to gradually increase the number of cases it settles by stipulated agreement of the parties. The chart below reflects these new opportunities.

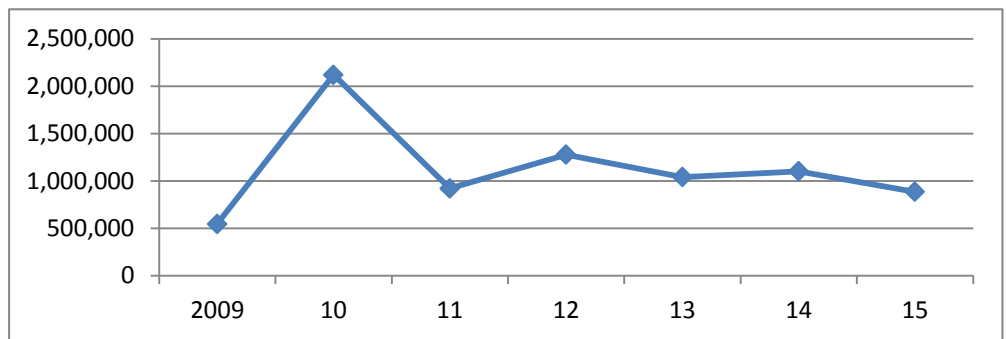


At the present time, two cases are pending final approval by the Commission. Also, two additional cases have been drafted and need only the parties’ signatures before being submitted to the Commission for approval.

Set out below are the total annual one-time payments to settle cases on a lump sum basis during the past six years. The years 2009 and 2010 should be considered “readjusting” years due to the impact of court cases changing the way ISIF could negotiate and settle its cases. After this initial readjustment, the settlement process has mostly leveled off. Once again, close management of the process has helped control these costs. The use of different resolution options other than only one-time cash payments has also allowed ISIF to retain more current cash resources which is designed to protect the future viability of ISIF.

2009	546,578
10	2,119,131
11	920,298
12	1,277,076
13	1,039,817
14	1,101,413
15	885,045

Lump Sum Costs CY

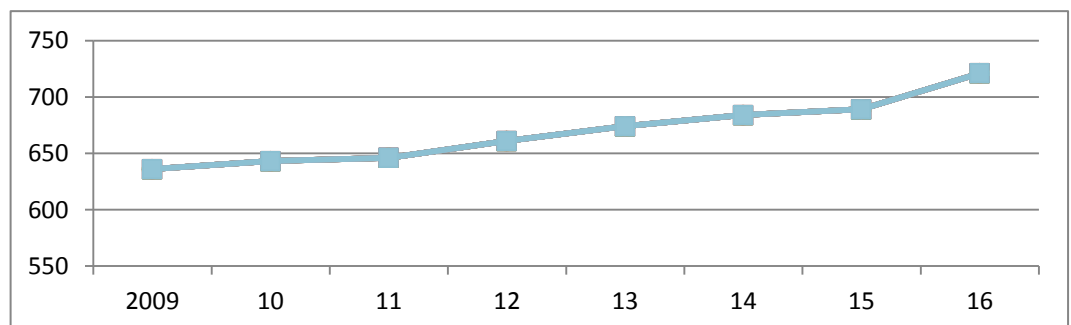


Another avenue in resolving cases is through the judicial hearing process, in which the parties actively litigate contested issues and liability of the ISIF before the Industrial Commission. Should the ISIF be held responsible, then monthly statutory benefits are paid during the lifetime of the disabled worker. Since 2009, 29 beneficiaries have passed away. However, 38 beneficiaries have been added to the rolls. Since the new beneficiaries are coming in at a higher wage rate than their earlier counterparts, the additional costs for these benefits on an annual basis have steadily compounded over the years.

Regular inflationary increases have also added to the cost of this benefit. Over the past seven years, the increase has been 13.4% or an annualized average of a very modest 1.9%. However, the increase from just last year was 4.6%. The overall increase from 2000 has been a significantly higher total of 53% or an average of 3.5% per year. Clearly, the recent downturn in the economy has had an impact on the increase in state wages. However, such a trend may more-than-likely be reversed and increase sharply once again when the economy turns around.

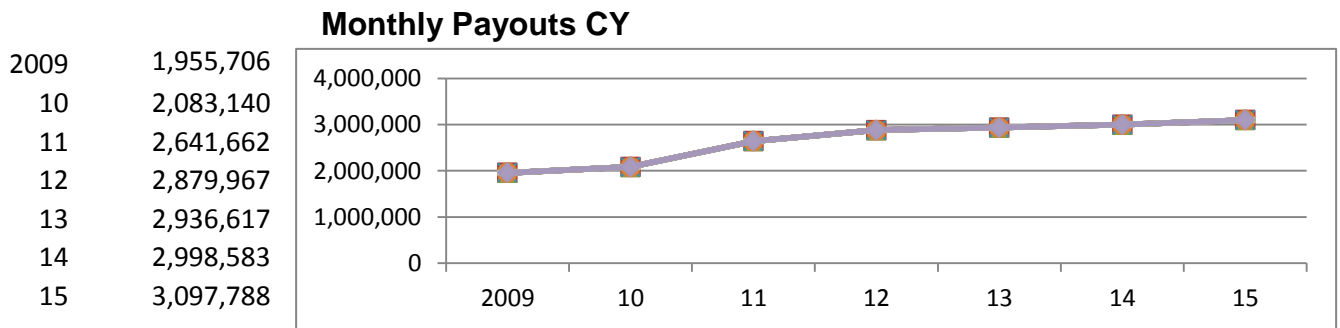
2009	636
10	643
11	646
12	661
13	674
14	684
15	689
16	721

Average Weekly State Wage



As a result of the above factors, the annual monthly payments have increased a whopping total of 58.4% over the past six years, as illustrated in the chart below. The annualized average for this period would be 9.7%. Such a trend is clearly alarming and

of great concern to the ISIF. Should this trend continue the total payments for monthly beneficiaries would double approximately every 7.4 years.



Litigation Process

As mentioned earlier in this Report, the ISIF is commonly known as “the second injury fund.” However, this is a misnomer. Access to ISIF liability is not necessarily predicated on a second industrial injury. The basis of ISIF liability is the combination of a pre-existing impairment from “any cause of origin” with a subsequent industrial injury resulting in total and permanent disability. Thus, a pre-existing impairment from a degenerative, hereditary, or genetic condition, as well as, any work related or non-industrial accident could qualify for compensation under the statutory framework.

Due to the statutory requirements for ISIF liability, the formal litigation process is necessarily complex and results in time delays as a natural consequence. 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 the hearing stage of a contested proceeding, 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 disabled worker’s already poor health condition. As a result, the likelihood of liability is greatly increased. In 1997, such factors precipitated the ISIF to propose and achieve passage of legislation commonly known as the “60 day rule” regarding filing of NOIs. The statute allows ISIF 60-90 days to review, evaluate and possibly settle claims without involving extensive use of outside legal counsel and the time consuming judicial process.

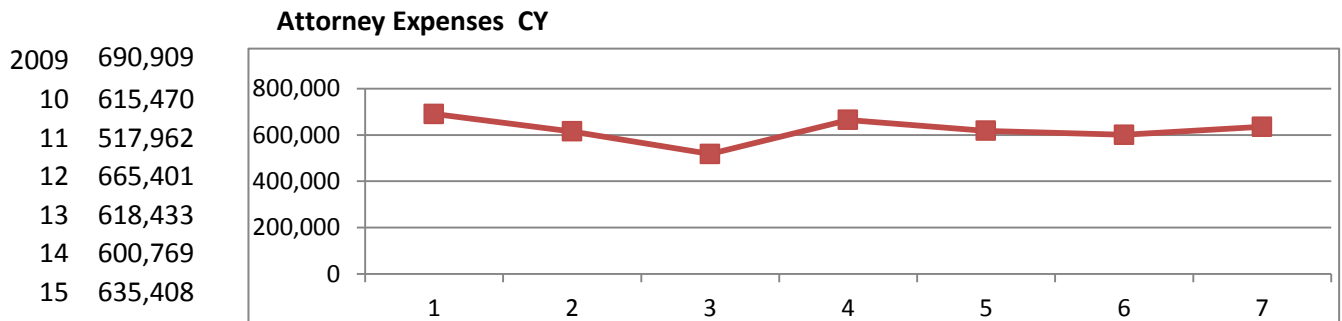
Even without resolution of the claim during the 60-day period, the legislation has enhanced the ability of ISIF to better manage overall litigation expenses after an initial in-house evaluation of the claim. In addition, the legislation sought to bring faster relief and lower legal costs for injured 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 as part of the NOI is not entirely relevant and contains many extraneous documents having no bearing on ISIF liability. This creates a frustrating process leading to denial of a claim, which then leads to formal litigation necessitating more time delays and added expense to all parties.

A necessary component of the litigation process is the retention and use of attorneys to represent ISIF. Over the past five and one-half years, the ISIF added two attorneys to its team of outside legal counsel making the total now eight. These attorneys are located throughout the state and retained as cases are filed in each locale. The ISIF has been fortunate to have attorneys, not only well-experienced in the workers compensation field, but equally experienced with the second injury fund. This experience has proven invaluable in processing claims and cases. An added benefit has been the enhanced reputation of ISIF with other attorneys throughout Idaho, the Industrial Commission, and the Idaho Supreme Court. This past year the team was also fortunate to fill the position of its in-house claims specialist with a well-experienced administrator. The team is now fully staffed.

The costs of legal representation include depositions, travel, discovery of medical, employment and vocational information, analysis of all issues, verbal and written strategy summaries, as well as, formal hearings and preparation of legal briefing to the Industrial Commission, and in some cases representation in the Idaho Supreme Court. Although the overall costs were significant, the cost on a per-case basis was extremely economical.

Over the last six years, litigation costs have been generally reduced even though the caseloads for each attorney have increased. As described earlier in this Report, ISIF is faced with more legal requirements to complete before cases can be resolved. With fewer opportunities for negotiated settlements, more cases have had to be taken through the hearing process. However, on the other hand, more innovative methods have been implemented to resolve cases at the pre-hearing stage as noted earlier in this Report. Fortunately, these varied settlements have gained approval from the Industrial Commission and have increased the overall number of cases resolved between the parties. This process also helps to reduce the overall litigation delays and costs.

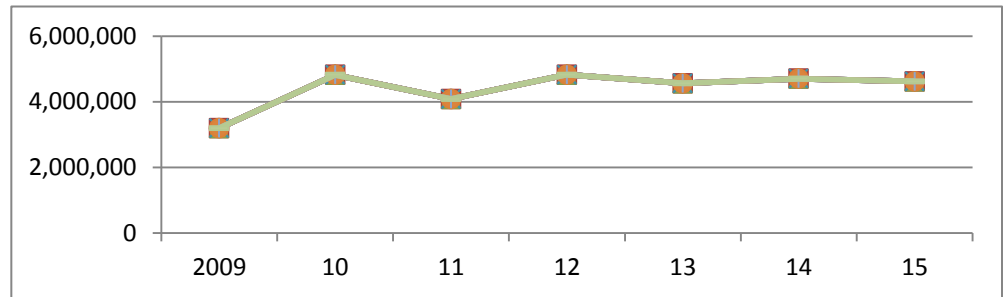
Even with the increased complexity of claims and cases during the past few years, the overall trend for the chart below is a minus 8%. However, if the “readjustment” years of 2009-2010 are taken out of the comparisons, costs are still only trending slightly upward. The total increase for the last four years is 22.7% or 5.7% annualized. This modest trend is largely due to the active participation by ISIF staff in each case. Such an active involvement with the claims has led to more efficient use of outside counsel by directing resources to meaningful defense strategies and more successful outcomes in litigation and/or settlements.



Thus, total litigation expenses are composed of attorney fees and costs, monthly annuitant payments, and costs of approved settlement agreements. These costs have generally been trending upward in recent years. Not surprisingly, the total rate of increase has been a robust 44.6% for the past six years, which averages to an annualized rate of almost 7.4%. However, by taking out the “readjustment” years of 2009-2010, the overall cost of litigation has only increased a modest 13.2% over this four-year time period. This is equivalent to an annualized rate of 3.3%, which is entirely manageable. An illustration of these costs is set out below.

2009	3,193,192
10	4,817,491
11	4,079,922
12	4,822,444
13	4,557,941
14	4,700,766
15	4,618,241

Litigation Costs CY

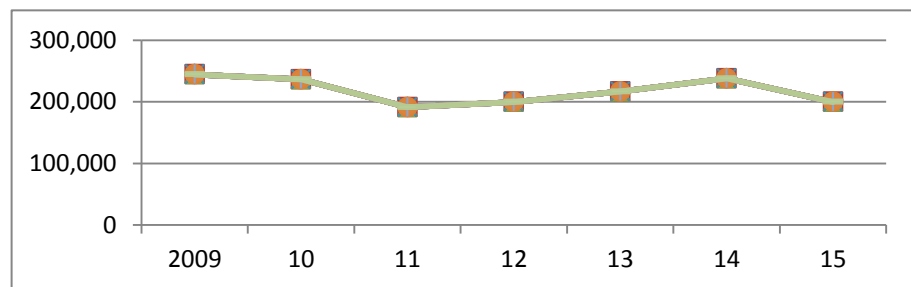


Office Administration

The final component to the expense-side of ISIF is the cost of operating an administrative office. This is rather a small amount compared to the other major expenses in managing the ISIF. The expenses include two full time employees and general expenses for office rent, equipment, technical support services, supplies, travel and storage of records, for example. These costs have actually decreased a total of 18.3% over the past 6 years, even with modest salary and operational increases.

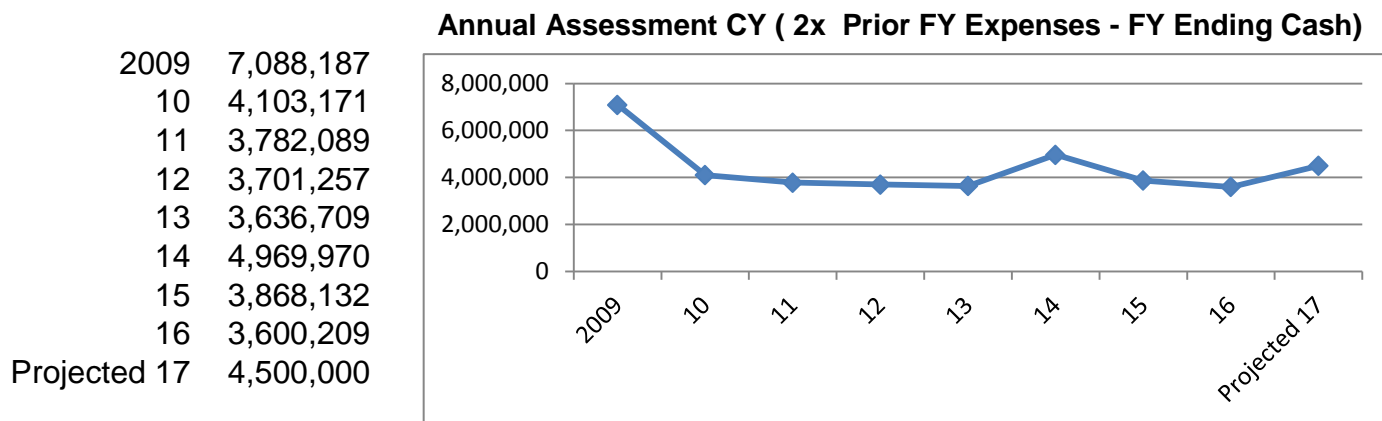
2009	244,296
10	236,411
11	191,197
12	199,724
13	216,510
14	237,827
15	199,699

Office Admin Expenses CY



ASSESSMENT

The ISIF is funded through an annual assessment to insurance companies, self-insured employers, and the State Insurance Fund. It is calculated by a rather simple method of taking two times (2x) the total expenses of operating the 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 for the entity's share of total indemnity (income) benefits paid on workers' compensation claims during the reporting period. The pro-rated amount is billed and paid semi-annually. Once again, if the 2009 and 2010 years are "thrown out" as readjusting years for new rules ISIF had to implement in handling its cases, the chart below shows an overall decrease of minus (-) 4.8% from 2011 through 2016.



The expenditure-side of the Assessment is broken into three main categories: Administrative, Benefits and Litigation. These costs have been detailed in previous portions of this Report. Generally, expenses have been more predictable in recent years due to overall stability and increased involvement in all claims by the administrative staff.

The revenue-side is composed of the annual assessment, accrued interest, special death payments and insurance annuities. As cash reserves are used to a greater extent to pay claims, the Assessment will increase. Such a situation took place in FY 2013 forming the basis for the significant increase in the Assessment for calendar year 2014, as shown above. However, by retaining more cash reserves in FY 2014, a decrease in Assessment of 22% occurred in CY 2015, as noted in the above chart. Another decrease of 7% will take place in CY 2016. However, if expenses continue at the same pace as the first-half of fiscal year 2016, the Assessment for calendar year 2017 is projected to increase.