



Industrial Special Indemnity Fund **(ISIF)**

Annual Report Calendar Year 2016

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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.

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 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 voluntarily 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 disability benefits during the life of the injured worker, and none are inheritable. All other benefits to the injured worker are the obligation of the employer/surety; which are, for example, lost wages, medical services, functional (anatomical) loss, vocational rehabilitation, temporary and partial disability (income). 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 state 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 companies providing workers comp coverage and self-insured employers. The assessment is calculated by ISIF, which is an amount that is two times (2x) all 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 a proportionate share of total disability

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

The data presented in this Report was taken from information covering the 2016 calendar year.

OPERATIONS

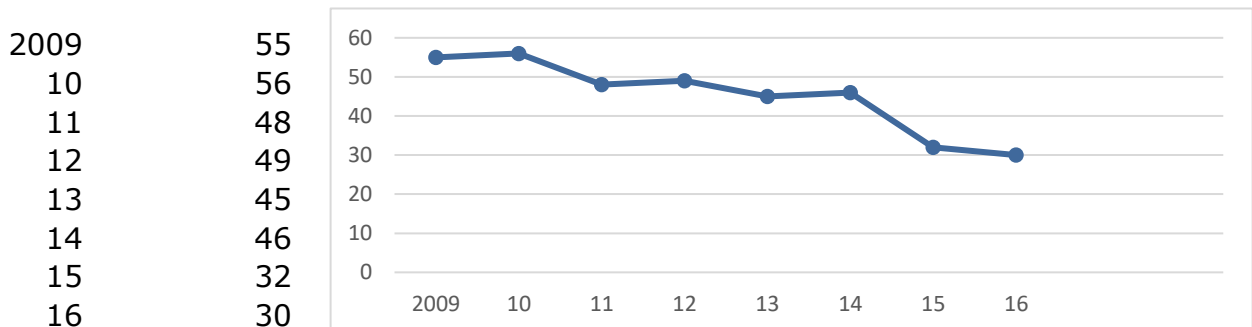
Claim Administration

Managing claims is a major function of the ISIF and starts with the initial in-house evaluation of a claim from the filing of a Notice of Intent (NOI). ISIF has 60 days to review the NOI, but it may be extended to 90 days under certain circumstances. 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 review through final resolution.

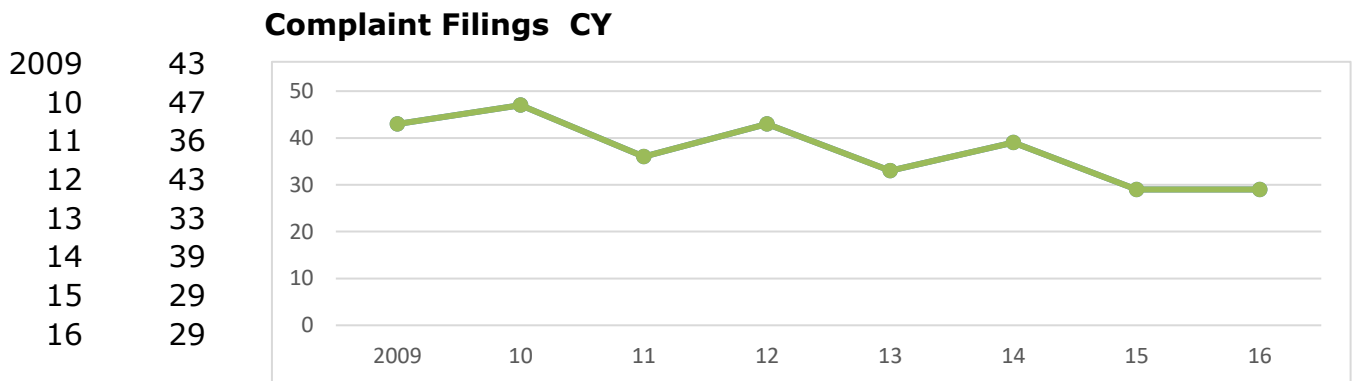
Readers of this Report will see pertinent information starting from 2009 instead of earlier statistics. That particular year was chosen, because in 2009 a major change occurred in the way cases could be resolved by the ISIF. Several court decisions established new fundamental requirements for ISIF to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

The number of NOIs has clearly trended downward over the past few years. This trend continued in 2016. Even with fewer claims, however, ISIF has recognized that recent claims present more complex medical, vocational and legal questions than previous filings.

Notice of Intent Filings (CY)



As illustrated in the chart below, the number of actual cases filed against ISIF for lifetime benefits reflects more of a “roller coaster” pattern than the NOIs. One of the reasons for the inconsistent numbers is that a complaint may be filed months or even years after a NOI has been denied. Typically, only about two-thirds of the complaints are filed in the same-year as NOIs. So there is always a backlog of potential complaints ready to be filed in future years. Nevertheless, a downward trend has still occurred over the past few years. One factor for this trend may be the aggressive defense ISIF has taken with claims that present marginal exposure for lifetime benefits. Another reason may be that a settlement between the claimant and employer/surety will make the case against ISIF less economically feasible.



Even though the numbers show a steady downward trend in both the number of claims (NOIs) and formal cases (complaints) filed against ISIF, it has still faced an ever increasing challenge in the past few years of containing the overall cost of benefits. 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. 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. This income source is commonly known as “Social Security Disability” benefits. Thus, many injured workers have chosen to leave the active workforce, forego regular or part-time 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 the workers seeking benefits from ISIF have expanded greatly over the past few years. In fact, this range now extends from the mid-30’s into the upper-70s. The age spread is growing further apart each year. Such a situation is most alarming for its potential long-term liability, which directly affects the financial stability of ISIF.

Consequently, ISIF has attempted to bring claims 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 potential long-term liability to acceptable levels.

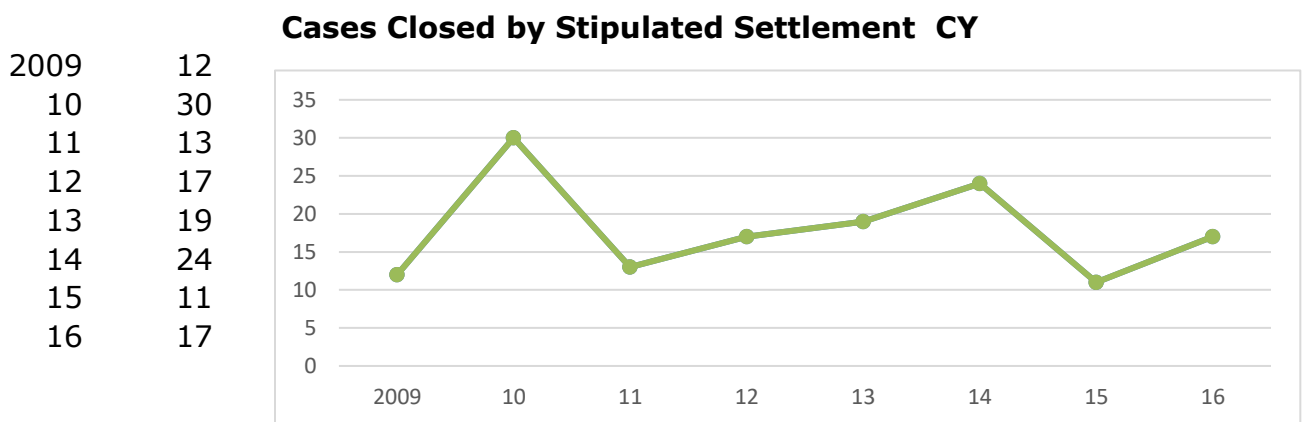
Benefit Administration

One way to bring cases to final resolution is through the settlement process, which has become more difficult after 2009 as explained earlier in this Report. After the parties agree to resolve a claim and sign a stipulated agreement, this “tentative” resolution must then be submitted to the Industrial Commission for its review and ultimate approval.

To enhance the process of resolution, ISIF has become more innovative in its approach to settlement of claims. Options now include, not only a one-time lump sum payment, but also periodic monthly payments, deferred lump sum or periodic payments, or any combination of these options. With any negotiated settlement, the terms are not final until the agreement has been approved by the Industrial Commission.

Such a process has naturally lead to more complex legal 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 negotiate a claim for settlement. With more innovative approaches to settlement, ISIF has been able to resolve and close cases by creating a settlement package better tailored to the needs of the claimant. The Industrial Commission has accepted these new approaches in many cases to resolve claims. Such approaches have also enabled ISIF to protect the long-term financial stability of the Fund.

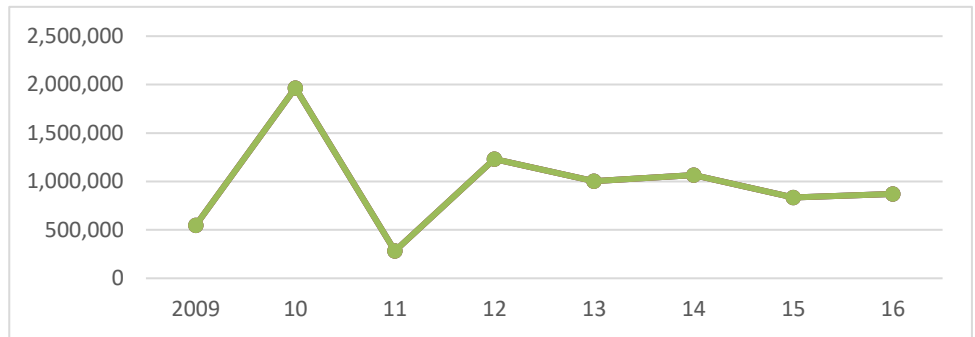
In recent years, ISIF has gradually increased the number of cases it settles by stipulated agreements with injured workers. The chart below reflects this trend.



The chart below illustrates one of the ways ISIF can resolve claims through one-time payments as a full resolution of benefits provided to the totally disabled worker. Recently, this form of settlement has leveled off to a great extent. However, it has been replaced with other forms of benefits that combine one-time cash with monthly benefits. Once again, close management of each claim has helped control the overall costs.

2009	546,578
10	1,965,567
11	281,855
12	1,230,594
13	1,002,891
14	1,066,287
15	833,635
16	869,343

Lump Sum Settlement Payments CY

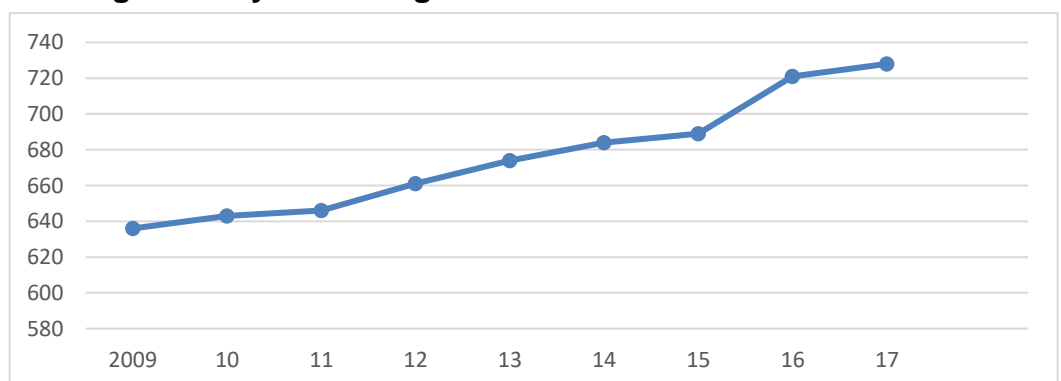


Another avenue in resolving cases is through the judicial hearing process, in which the parties actively litigate contested issues and liability of the ISIF. Should ISIF be held responsible, monthly payments are made to the disabled worker as a lifetime benefit.

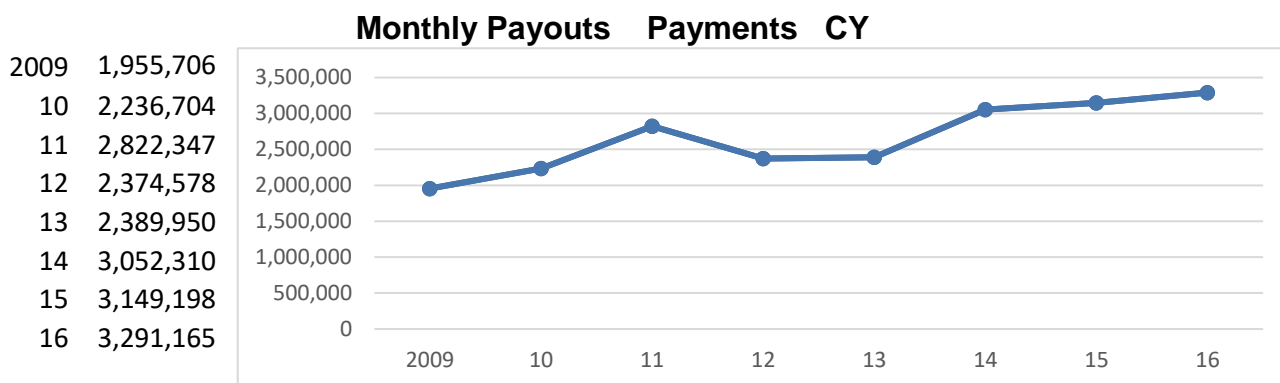
Besides the number of recipients, a factor affecting the total amount of lifetime benefits paid is any inflationary increase based on the average weekly wage in Idaho. Such an increase naturally adds to the cost of this benefit. Since 2009, the inflationary increases have totaled 14.5% or an annualized average of 1.8%. In 2016, the increase was 4.6%, but in 2017 the increase will be a modest .97%.

2009	636
10	643
11	646
12	661
13	674
14	684
15	689
16	721
17	728

Average Weekly State Wage



Since 2009, with inflationary increases and additional number of recipients, the amount of monthly payments for ISIF beneficiaries has increased a total of 68.3%, as illustrated in the chart below, which includes five (5) new beneficiaries added this past year by stipulated agreement or Commission decision. The total increase averages to an annualized rate of 9.76%. The increase for this past calendar year 2016 was 4.5%, which is encouraging for a somewhat slower pace in the future. Even with a slower pace, the overall trend of almost 10% is most alarming and of critical concern to the ISIF. Should such a trend continue, the total payments for monthly beneficiaries would double again every 7.2 years.



Litigation Management

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 of ISIF liability is complicated. For benefits to be imposed against ISIF, the injured worker must initially have experienced 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 particular requirement. Such an impairment must also be manifest or clearly apparent, impede or hinder employment, and combine with a subsequent disability from a work-related accident to cause total and permanent disability of the worker.

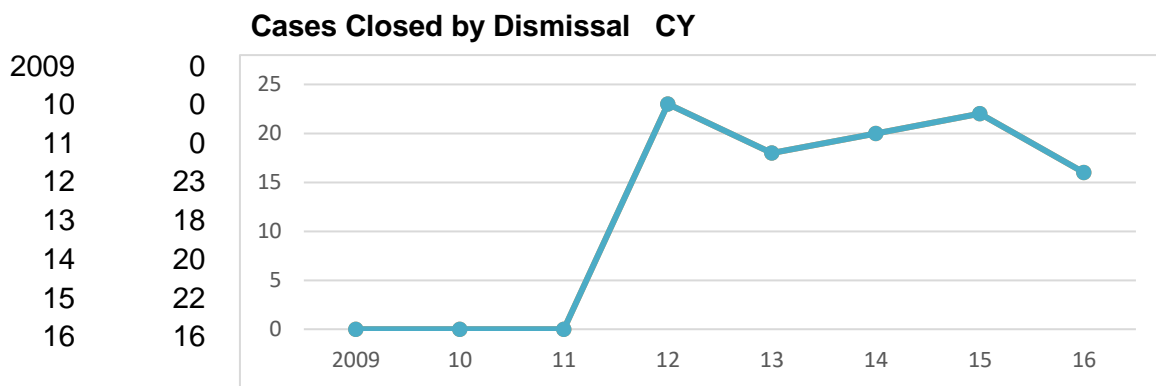
Due to the strict requirements for ISIF liability, the litigation process is more complicated with additional time needed to sort out all the prongs of potential liability. Such delays have been a long standing concern to the ISIF. Since judicial review of an injured worker’s potential disability is 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 motivated the ISIF to propose and receive approval 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 formal litigation procedures. 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-house evaluation of the claim.

The legislation also 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.

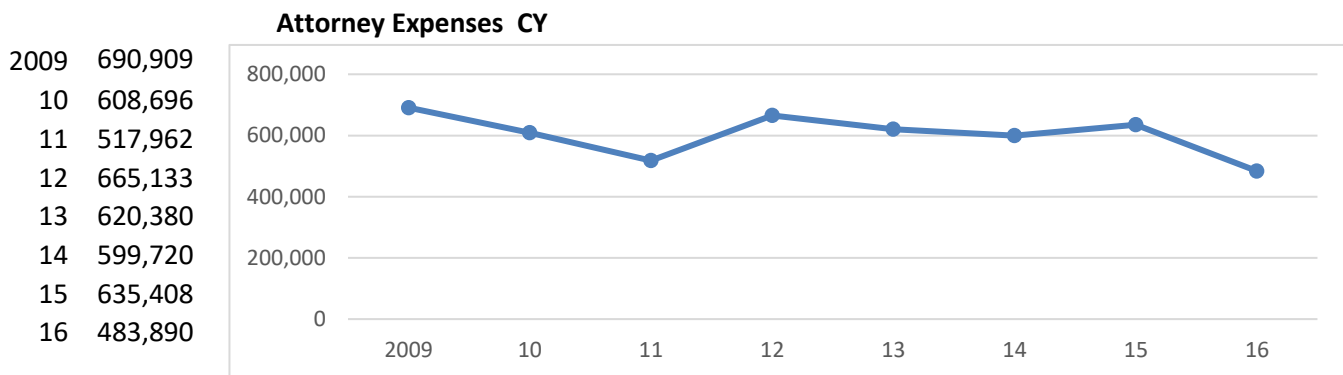
A necessary component of the litigation process is the retention and use of attorneys to represent ISIF. Currently, eight attorneys in private practice represent ISIF in all its contested cases. These attorneys are located throughout the state and retained as cases are filed in each locale. ISIF has been fortunate to have attorneys, not only well-experienced in the workers’ compensation field, but equally experienced within the specialty field of 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.

Another factor not to be overlooked is the increased activity by ISIF in trying to keep cases current and on the active calendar of the Industrial Commission. As cases are processed and the parties realize ISIF has little or no liability, ISIF will attempt to stipulate with the parties to dismiss the case. Alternatively, ISIF will initiate an administrative process for dismissal of cases that have lingered through inactivity for more than six months. Either avenue has resulted in many cases being taken off the docket, which translates into lower overall costs for ISIF. The chart below shows the number of cases taken off the books by dismissal. Additionally, ISIF closed the benefit files for 9 monthly beneficiaries who passed away during the calendar year.



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, such costs include contested hearings and legal briefing to the Industrial Commission, and in a few cases representation in the Idaho Supreme Court.

As the chart below illustrates, the trend for costs of legal representation has declined slightly over the past few years. This modest 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 in litigation, settlements or dismissals. Also with cases being dismissed prior to hearing, overall legal costs have been reduced.

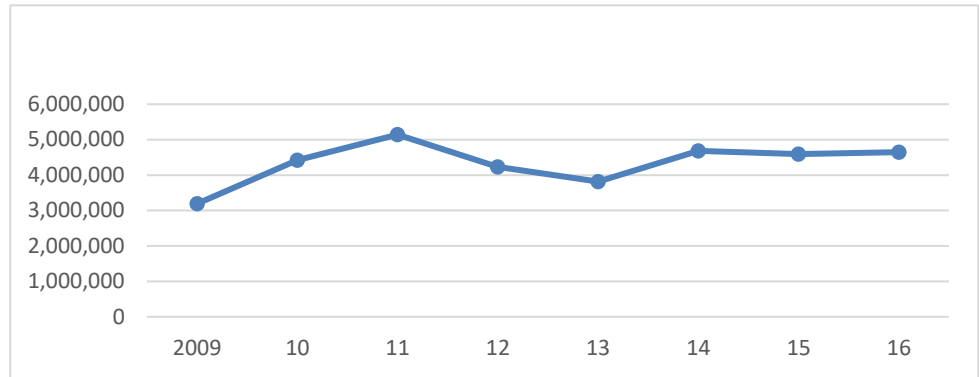


Since 2009, litigation costs have generally been lower even though the caseloads for each attorney have increased. As described earlier in this Report, ISIF is faced with more legal hurdles to overcome before cases can be resolved. With fewer opportunities for negotiated settlements, more cases have had to be taken through the full litigation and hearing process. However, on the other hand, more innovative methods have been implemented to resolve cases at the pre-hearing stage as noted earlier. 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.

Total litigation expenses, as illustrated in the chart below, are comprised of attorney fees and costs, monthly beneficiary payments, and costs for approved settlement agreements. After 2009, these costs have generally leveled off, which has been encouraging.

2009	3,193,192
10	4,425,210
11	5,142,234
12	4,231,836
13	3,816,569
14	4,685,254
15	4,589,314
16	4,644,397

Litigation Costs CY



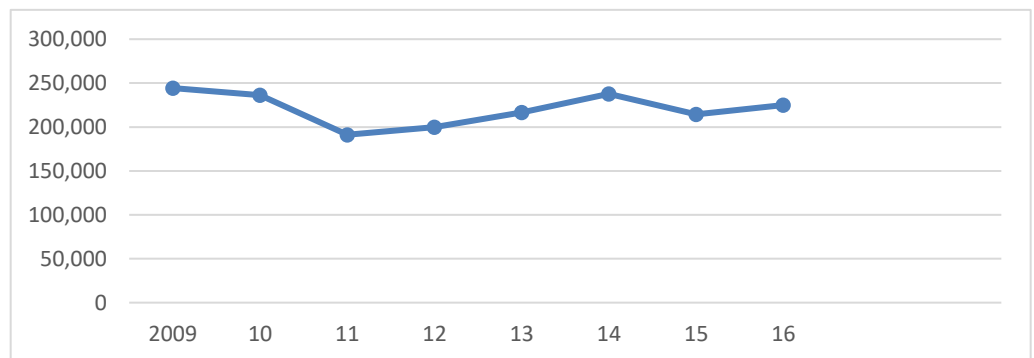
This modest increase is also encouraging, especially with the rising cost of monthly benefits for long-term injured workers. It tends to bolster the importance of reviewing these expenses on a regular basis to gauge the impact on the overall management of the financial-side of ISIF.

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. As the chart below illustrates, these costs have actually decreased in recent few years, even with occasional salary and operational increases.

2009	244,296
10	236,411
11	191,197
12	199,724
13	216,510
14	237,827
15	214,339
16	225,094

Office Admin Expenses CY



ASSESSMENT

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

The annual Assessment is received from 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 income benefits to injured workers during the year. The pro-rated amount is then split into two semi-annual payments.

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 of the Fund and increased involvement in all claims by the administrative staff. With increased costs in settlement of cases and in monthly benefits during fiscal year 2016, a substantial increase of 49.7% is taking place in calendar year 2017. However, the Assessment for calendar year 2018 is currently projected to decline.

The chart below indicates the Assessment trends over the past few years.

