



Industrial Special Indemnity Fund **(ISIF)**

Annual Report Calendar Year 2017

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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 denied following the 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 facts and 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 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; which may include, for example, wage loss, medical services, impairment (functional or anatomical loss), vocational rehabilitation, and temporary and partial disability (income) payments. 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 was mandated and 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 state wage of the injured worker and fall into categories of 45%, 60% or 67% as compared to the average state wage. Benefits are paid at these levels and may change from year-to-year as the average state wage may change.

Funding for the ISIF is provided through an annual assessment to insurance companies and self-insured employers providing workers comp coverage. The assessment is calculated by ISIF, which is an amount that is two times (2x) all expenses during the immediately preceding fiscal year minus (-) the cash balance at the end of that fiscal year. That figure is then pro-rated among the policyholders of 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 2017 calendar year.

OPERATIONS

Claim Administration

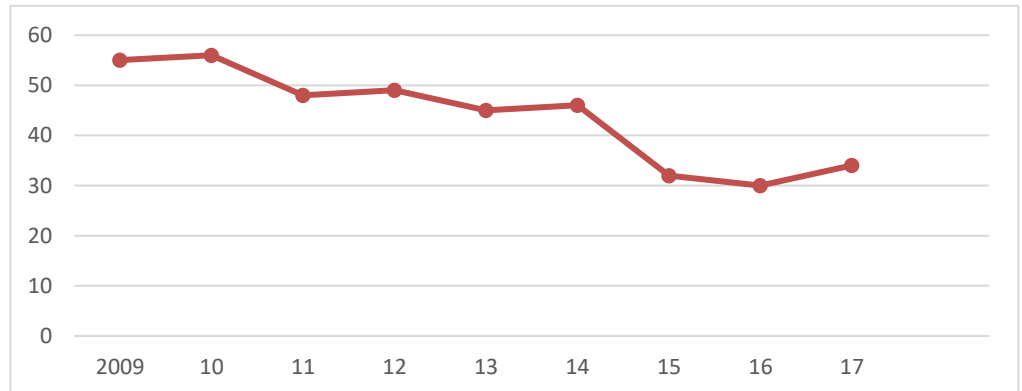
Managing claims is a major function of the ISIF and starts with the initial in-house evaluation of a claim from the filing of a Notice of Intent (NOI). ISIF has 60 days to review the NOI, but it may be extended for an additional 30 days under certain circumstances. If the claim is denied and a formal 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 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. The ISIF must now virtually concede all issues of liability before the process of negotiation can begin. 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.

The number of NOIs has trended downward over the past few years. This trend has leveled-off the last couple of years, with a slight uptick of 13% in 2017. Even with fewer claims, however, the recent claims present more complex medical, vocational and legal questions than previous filings.

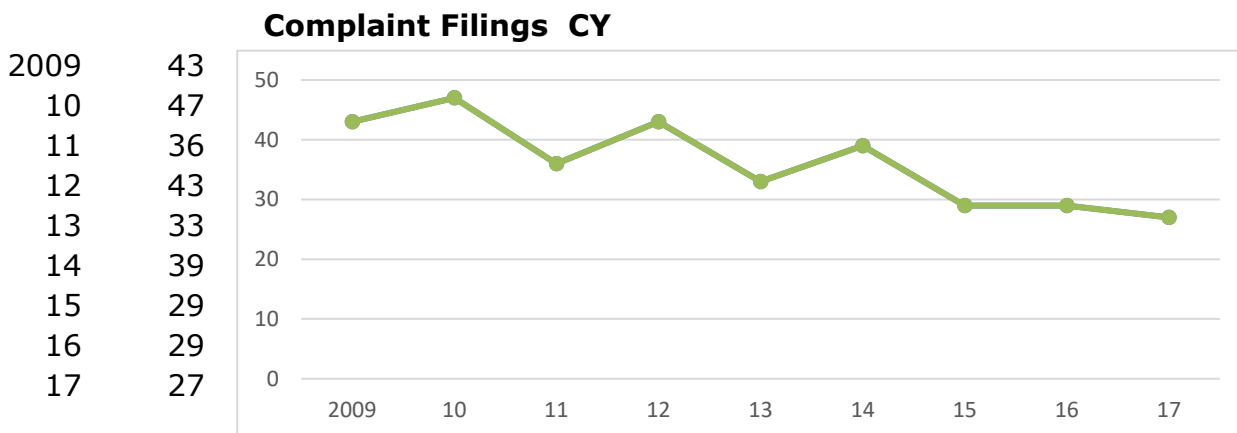
Notice of Intent Filings (CY)

2009	55
10	56
11	48
12	49
13	45
14	46
15	32
16	30
17	34



As illustrated in the chart below, the number of formal cases filed against ISIF for lifetime benefits reflects more of a “teeter-totter” 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, about two-thirds of the complaints are filed in the same-year that are denied. As a result, a backlog of NOIs and potential complaints are always available for filing in future years. Generally, a downward trend has occurred, with some leveling in the last three 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 require additional time, resources and delays with more complex factual and legal issues regarding ISIF liability, as well as, an uncertain outcome.



Even though the numbers show a steady downward trend in both the number of claims (NOIs) and formal cases (complaints) filed, ISIF has still faced an ever-increasing challenge in the past few years of containing the overall cost of benefits. Although 2017 looked brighter for employment prospects, the long-standing 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, 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, 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

Settlement Process

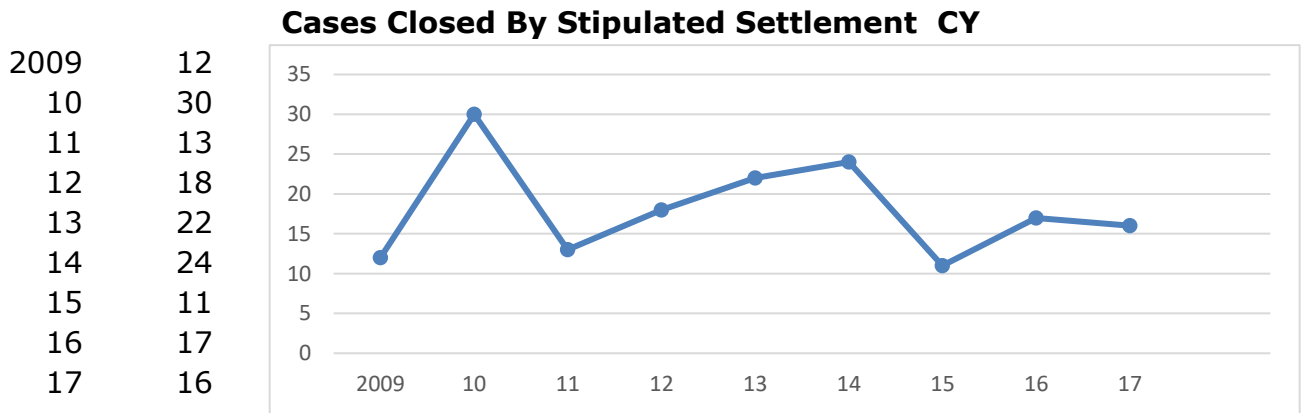
One way to bring cases to final resolution is through the settlement process, which became more difficult after 2009 as explained earlier in this Report. After the parties agree to resolve a claim and sign a stipulated agreement, this “tentative” resolution must then be submitted to the Industrial Commission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

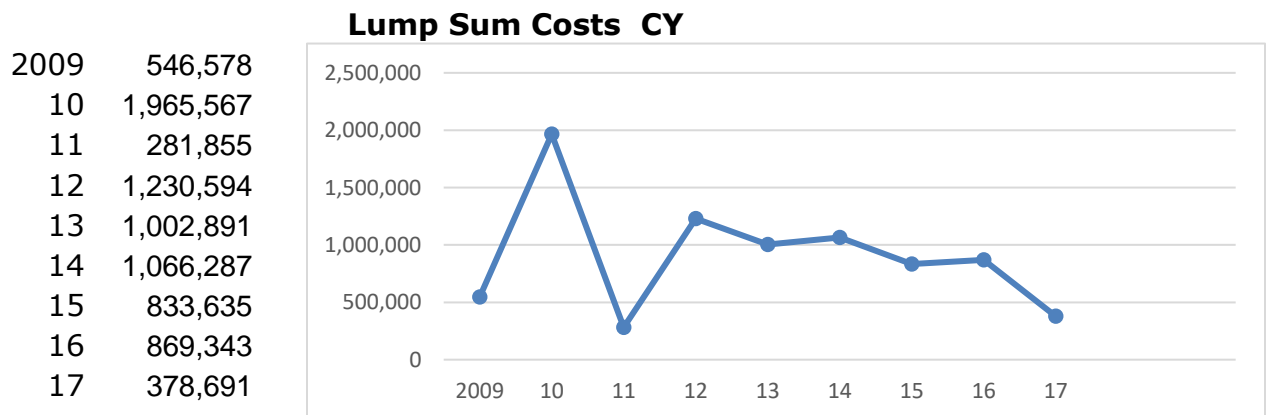
options. With any negotiated settlement, the terms are not final until the agreement has been approved by the Industrial Commission.

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 structured to the needs of the claimant. The Industrial Commission has accepted these new approaches to resolve claims. Such opportunities have also enabled ISIF to protect the long-term financial stability of the Fund.

In recent years, the complexity of ISIF cases has noticeably increased. As a result, the settlement documents must reflect this complexity, as well as, the special circumstances of each injured worker. 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 16 this past year, nine (9) were settled by long-term benefits and seven (7) were resolved by one-time payments.

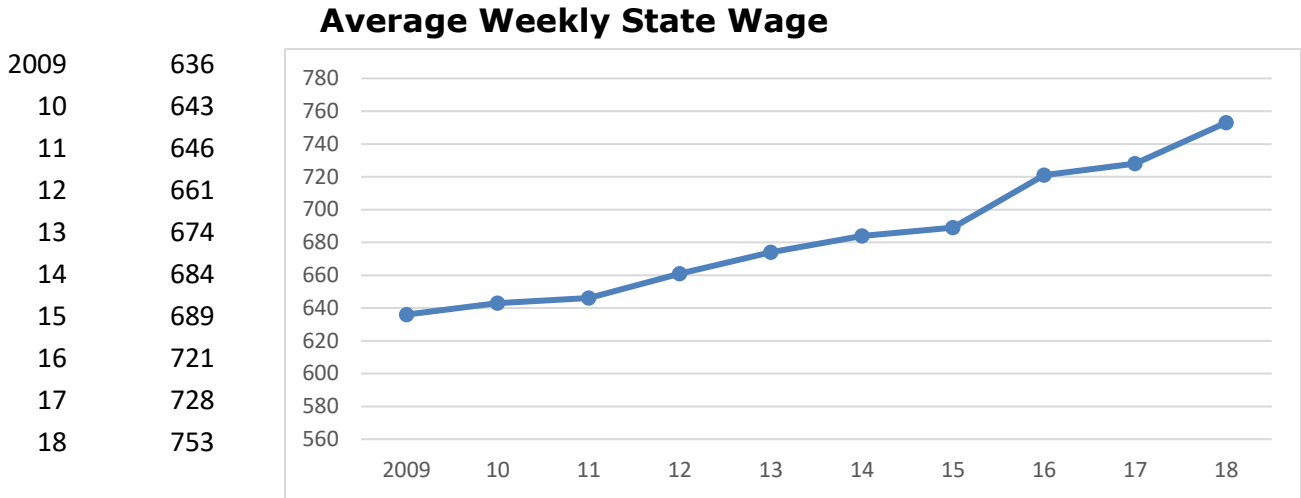


The chart below illustrates the cost of one-time payments as a full resolution of a claim. This form of settlement has declined in recent years. However, it has been replaced with other types of resolutions, in which one-time cash payments are combined with monthly benefits over a longer term. Once again, close management of each claim has helped control the overall costs.

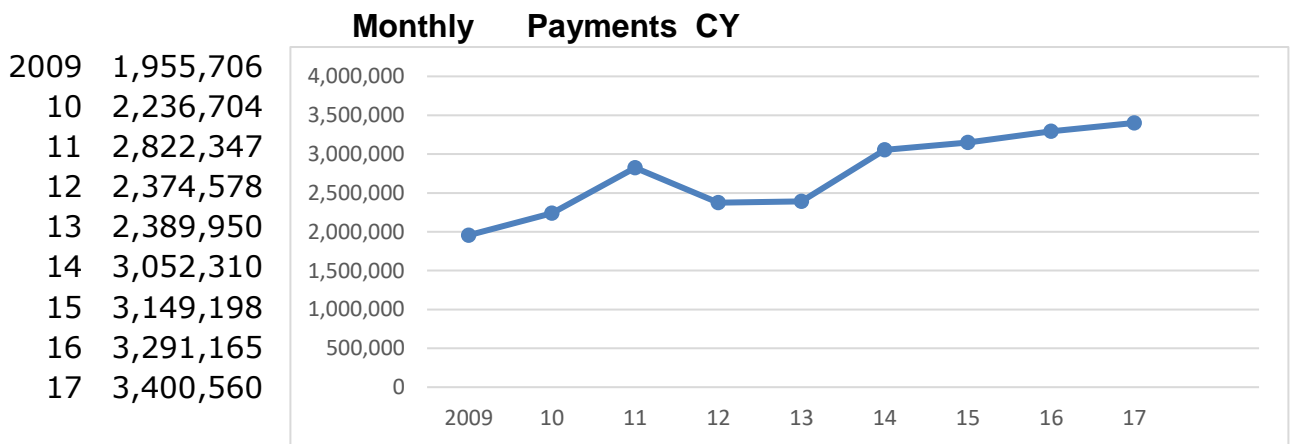


Besides an increasing number of recipients, another factor affecting the total amount of benefits is an inflationary increase based on the average weekly state wage in Idaho. Such an increase naturally adds to the cost of this benefit. Since 2009, the inflationary increases have

totaled 18.4% or an annualized average of 2.04%. In 2017, the increase was held to a modest .97%. However, in 2018, the increase will be 3.43%, which will be the second largest increase in the last 10 years. The chart below shows this more graphically.



Since 2009, with inflationary increases and additional recipients, the amount of monthly payments for ISIF beneficiaries has increased 74%, as illustrated in the chart below. This figure includes twelve (12) new lifetime beneficiaries added this past calendar year by stipulated agreement or Commission decision, which was somewhat balanced out by the 7 deaths of prior beneficiaries. The total increase averages to an annualized rate of 9.25%. The good news is that the double-digit increases in the past have been reduced in the last three years to 3 - 4.5%, which is more manageable.



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 of ISIF liability is complicated. For an obligation 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 requirement. Such an impairment must also be manifest or clearly apparent, impede or hinder employment, and combine with a subsequent disability from the last 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.

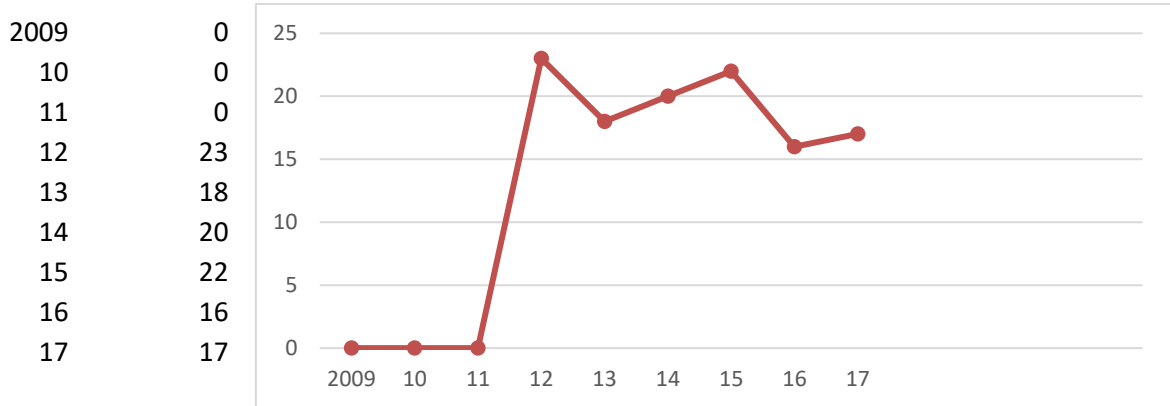
The legislation also sought to bring faster relief and lower legal costs for injured workers, employers, sureties and self-insured employers, as well as, the ISIF. In some claims, the new rule has met its expectations. However, in far too many claims, the material submitted to ISIF for initial review 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.

Litigation Costs

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 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 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 in managing the caseload 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, ISIF will attempt to stipulate with the parties to dismiss a case which shows no liability for ISIF. Alternatively, ISIF will initiate an administrative process for dismissal of cases that have not been prosecuted in a timely manner. Either avenue has resulted in many cases being taken off the active docket, which translates into lower overall costs for ISIF. The chart below shows the number of cases taken off the books by dismissal. Of the 17 cases dismissed in 2017, ISIF fully contested ten (10) well into the hearing process.

Cases Closed By Dismissal CY

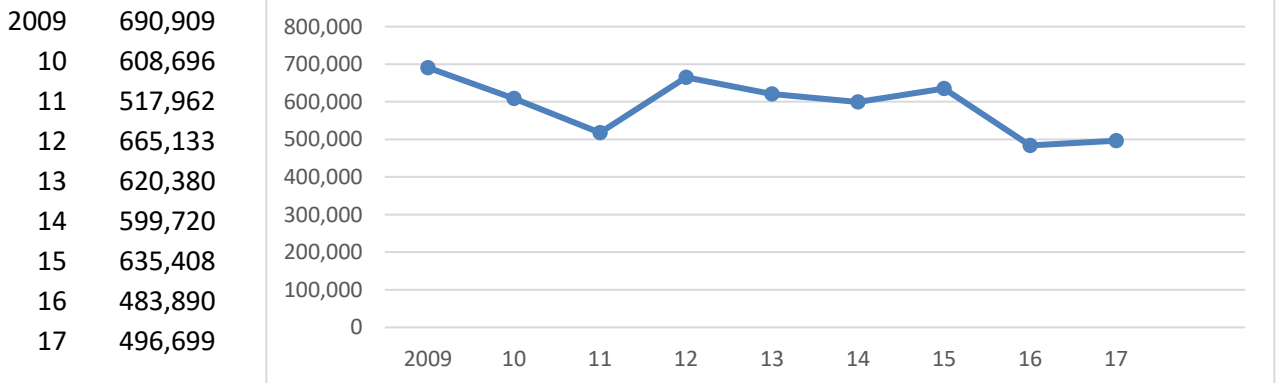


Of course, going through the judicial process to resolve claims has its downside with the prospect of having additional workers added to the benefit roll and, thereby, receiving benefits for many years in the future. Should ISIF be held responsible for benefits, monthly payments are paid to the disabled worker for the remainder of the worker’s life.

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, costs of legal representation have declined in 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 with settlements, dismissals, and even full-blown litigation.

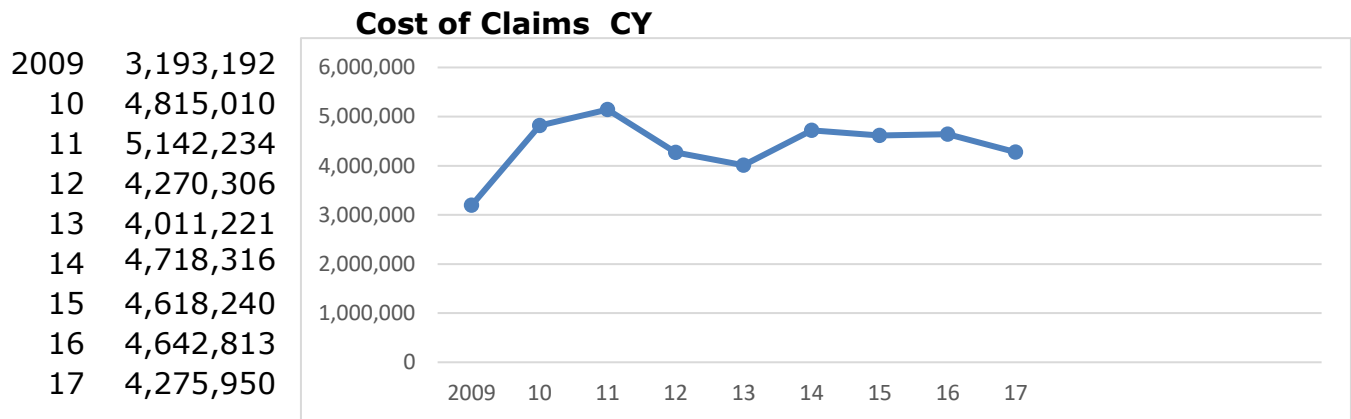
Attorney Expenses CY



Since 2009, the overall cost of legal representation has generally been lower even though the caseloads for each attorney have increased. As described earlier in this Report, ISIF is faced

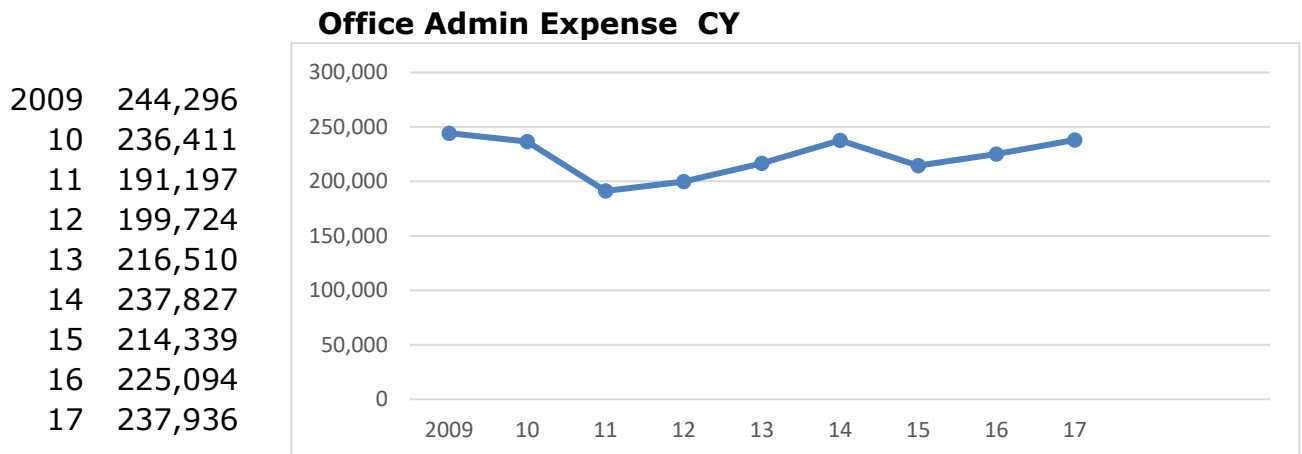
with more legal hurdles to overcome before cases can be resolved. With fewer opportunities for negotiated settlements, more cases have had to be taken through the full litigation and hearing process. However, on the other hand, more innovative methods have been implemented to resolve cases at the pre-hearing 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.

The total cost of claims, as illustrated in the chart below, is comprised of attorney fees and costs, monthly beneficiary payments, and payments for approved settlement agreements. After 2011, these costs have generally declined, which has been encouraging. It tends to bolster the importance of reviewing these expenses on a regular basis to gauge the impact on the overall management of the expense-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 remained fairly level in recent years, even with occasional salary and operational increases.



ASSESSMENT

The annual Assessment is received from insurance companies, self-insured employers, and the State Insurance Fund (collectively referred herein 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 revenue-side of the Assessment is composed of the annual Assessment, fees for late payment of Assessment, accrued interest, special death receipts, and insurance annuities.

The expenditure-side of the Assessment is broken into three main categories: Administrative, Benefits and Legal. 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. The substantial increase in calendar year 2017 will be almost eliminated by the large decrease in 2018. A slight increase is anticipated for calendar year 2019.

The chart below reflects the Assessments since 2009.

