



# Industrial Special Indemnity Fund (ISIF)

## Fiscal Year 2018 Annual Report

Department of Administration  
Robert L. Geddes, Director

Industrial Special Indemnity Fund  
James F. Kile, Manager

304 N. 8<sup>th</sup> Street, Room 130  
Boise, ID 83702  
(208) 332-1836

Website: <https://adm.idaho.gov/indemnity/>

## INTRODUCTION TO ISIF

The Industrial Special Indemnity Fund (ISIF) was adopted in 1927 by the Idaho State Legislature as part of the state's comprehensive workers' compensation system. The ISIF is more commonly referred to as the "Second Injury Fund." Its general purpose when enacted was to encourage employers to hire previously injured workers by offering the employer relief from full liability for lifetime income benefits, if the injured worker became totally and permanently disabled following a second or subsequent injury at work.

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

Funding for the ISIF is provided by an annual assessment. The assessment is calculated by ISIF to be an amount which 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 for each responsible entity. Additionally, the Commission invoices each entity for the assessment and collects the funds on behalf of the ISIF. Those services by the Commission are performed through a separate inter-agency contract with the ISIF.

ISIF is liable for lifetime total and permanent disability benefits only. All other benefits within the workers' compensation program are the responsibility of the last injury employer and surety. Examples of these types of benefits would include retraining, medical care, vocational placement, physical loss of functional, partial disability, etc. Allocation of liability for total and permanent disability is apportioned between the employer/surety and ISIF based on the relative disability of each party.

Claims for benefits from ISIF are started by filing a Notice of Intent to File a Complaint Against the ISIF (NOI). Such notices are usually filed by attorneys representing claimants, self-insured employers and insurance entities seeking ISIF contribution for total disability benefits. The notices are filed with ISIF under what is commonly called the "60-day rule." Section 72-334, Idaho Code. During the 60 days, the ISIF will undertake an in-house review of the claim for liability and will either resolve or deny the claim. Following the conclusion of 60 days if the claim is not resolved, the party filing the NOI can elect to file a formal Complaint against the ISIF or forego further proceedings against ISIF. Upon receipt of a Complaint, the ISIF will retain outside legal counsel and commence formal litigation of the claim for lifetime benefits.

Resolution of claims can be accomplished through a contested hearing process, one-time lump sum payment, periodic monthly payments, deferred lump sum or periodic payment, or any combination of these options with the approval of the Industrial Commission.

Benefit rates for total and permanent disability, and hence ISIF liability, 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 compared to the average weekly state wage (ASW) of all workers in Idaho. The comparison falls into categories of 45%, 60% or 67% of the ASW. Benefits are then paid depending on the category of wage. Benefits may change from year-to-year as the average state weekly wage may change with inflationary factors.

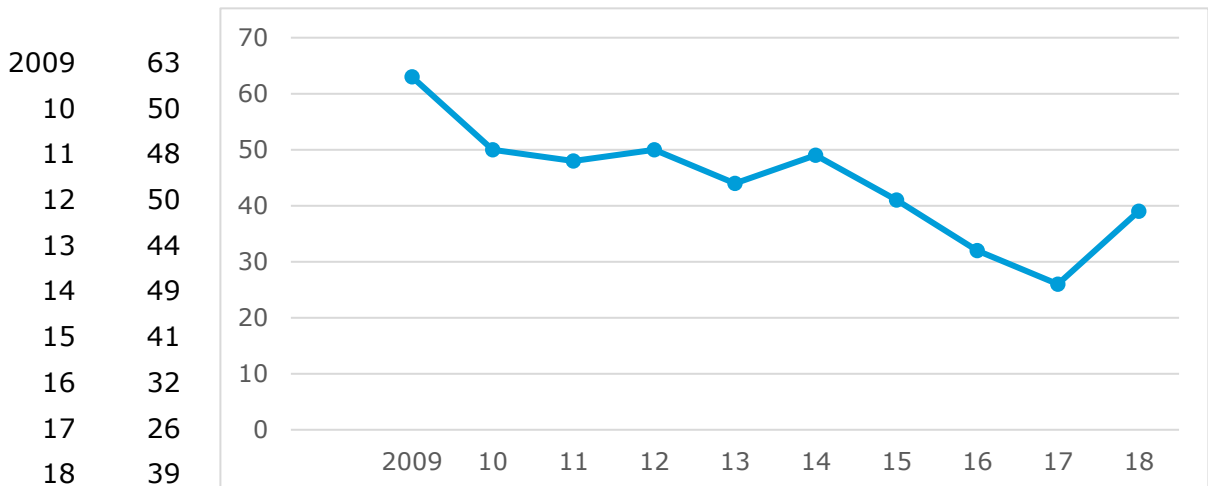
## OPERATIONS

### Claims Management

Managing claims is a major function of this agency. Initially, NOIs are fully evaluated by the administrative personnel within ISIF. A letter explaining the decision to either accept or deny the claim is issued within the statutory time period of 60 days. If the claim is denied and a formal Complaint is filed with the Industrial Commission, then ISIF takes a more formal approach to managing and adjudicating the claim with the assistance of outside legal counsel. In either situation, ISIF personnel are actively involved in all phases of the claim from initial filing of the NOI to final resolution.

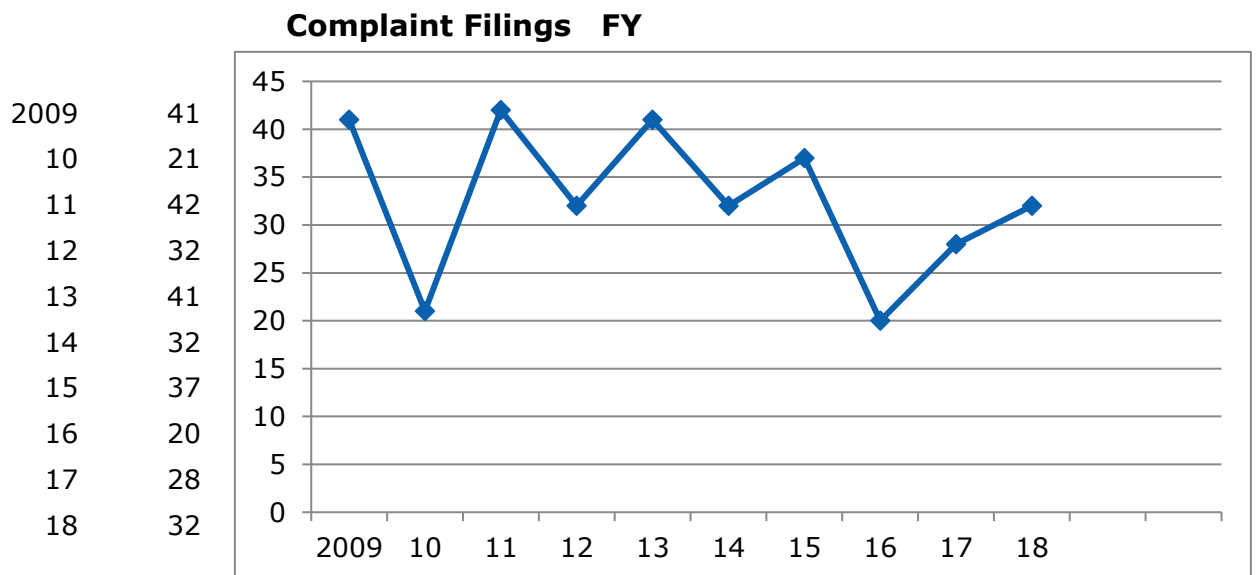
The information throughout this report is based on fiscal year (FY) statistics, which end on June 30 of each year.

**Notice of Intent Filings FY**



As the previous chart shows, ISIF experienced a significant 50% increase in filings of NOIs in the last fiscal year. The reason for such an increase is not clear, but the impact may not be realized in complaint filings for several more years.

The number of formal complaints filed against ISIF is not as predictable as the NOIs, because a complaint does not have to be filed within any certain time period following a denial of the NOI. Thus, during the past few years, the ISIF has experienced a “teeter-totter” affect in the year-to-year number of complaints filed against it. However, another modest increase of 14.3% in filings took place last fiscal year as the chart below indicates. While this may not amount to a trend, it certainly gives ISIF concern that more individuals are seeking lifetime benefits from the ISIF.



Even though the preceding numbers are not consistent, ISIF has been facing an ever-increasing challenge in the last few years in controlling the rising cost of benefits awarded to injured workers. With the drastically low unemployment figures now occurring in Idaho, this turn-of-events has not for the most part translated into injured workers reentering the job market for available and suitable job opportunities. Thus, it is still more difficult for the ISIF to find an actual job, which is open and available, that fits the physical restrictions of the injured worker. If such employment cannot be specifically located within the worker’s geographic area, ISIF is faced with paying lifetime income benefits to that worker.

Additional changes at the federal level have created an attractive atmosphere, in lieu of continued employment, for injured workers to receive long-term disability benefits with relative ease that were not previously so easily available. Thus, injured workers have in many instances determined to forego regular employment or part-time employment. Instead, many injured workers leave the work force and obtain federal benefits, usually Social Security

Disability, even if those benefits are less than working an actual job. When these benefits are running out, workers then apply to ISIF for lifetime benefits. If awarded, ISIF benefits amount to a lifetime pension since the “working life” of the claimant has ended.

The ages of injured workers seeking benefits from ISIF have expanded greatly over the past few years and now range from typically the mid-30’s to the mid-70’s. This spread is growing further apart each year. This past year, ISIF received a claim from an individual that was 19 years old at the time of the industrial accident. It is especially alarming to see the number of “retired” people who go back to work part-time or seasonal jobs in their 70’s, get injured, and then seek lifetime benefits from ISIF.

ISIF is proactive in bringing claims to final resolution without unnecessary delay. The fact that the claims are closely monitored and vigorously defended may be one reason for the general downward trend in filings. By actively managing the claims and working closely with outside legal counsel, benefit payments, litigation costs, liability exposure, and operational costs are held to acceptable levels. Nevertheless, ISIF cases have become more complex and more difficult to easily resolve. Thus, costs have increased even with the best efforts to keep total expenditures from rising too rapidly.

## **Benefits Administration**

### **Claim Evaluation**

The relative costs and time delays associated with the litigation process are now a natural occurrence with complex work injury litigation and have been a long-standing concern to the ISIF. Since judicial review of an injured worker’s potential disability is not conducted until the hearing stage of a claim, as many as 5-10 years may lapse from the time of the last work injury to the hearing date. With injured workers having a deteriorating physical condition, any prolonged delay will be detrimental to ISIF in challenging a claim for total and permanent disability. Put another way, any long-term delay in the judicial process will more-than-likely diminish the already poor physical and general health condition of the injured worker. As a result, the likelihood of establishing ISIF liability is increased. Such factors motivated the ISIF in proposing and receiving adoption of critical legislation in 1997 commonly known as the “60-day rule” in filing NOIs. This procedure allows the ISIF 60 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 permitted ISIF to better manage overall litigation expenses with an initial in-house evaluation of the claim. In addition, the legislation sought to bring faster relief and a less complicated litigation process to claimants, sureties and self-insured employers. In some claims, the legislation has met its expectations. However, in far too many claims, the material submitted to ISIF for review 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

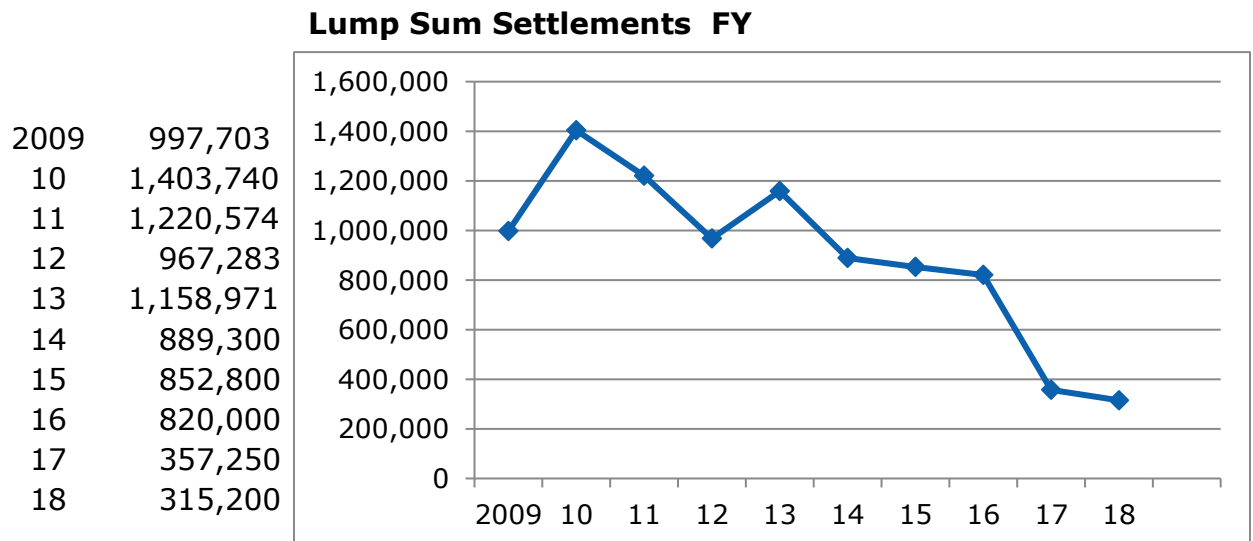
then leads to formal litigation necessitating a more complex process. This situation results in more costs and expense for all litigants. When this occurs, the intent of the 60-day rule is not achieved.

### Settlement Process

As previously mentioned, a more favorable way to bring cases to final resolution is through the settlement process. A final agreement between the claimant and ISIF to resolve the claim can be accomplished through private negotiation or a mediation process conducted by a mediator provided by the Industrial Commission. A settlement can be structured in different ways, including 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.

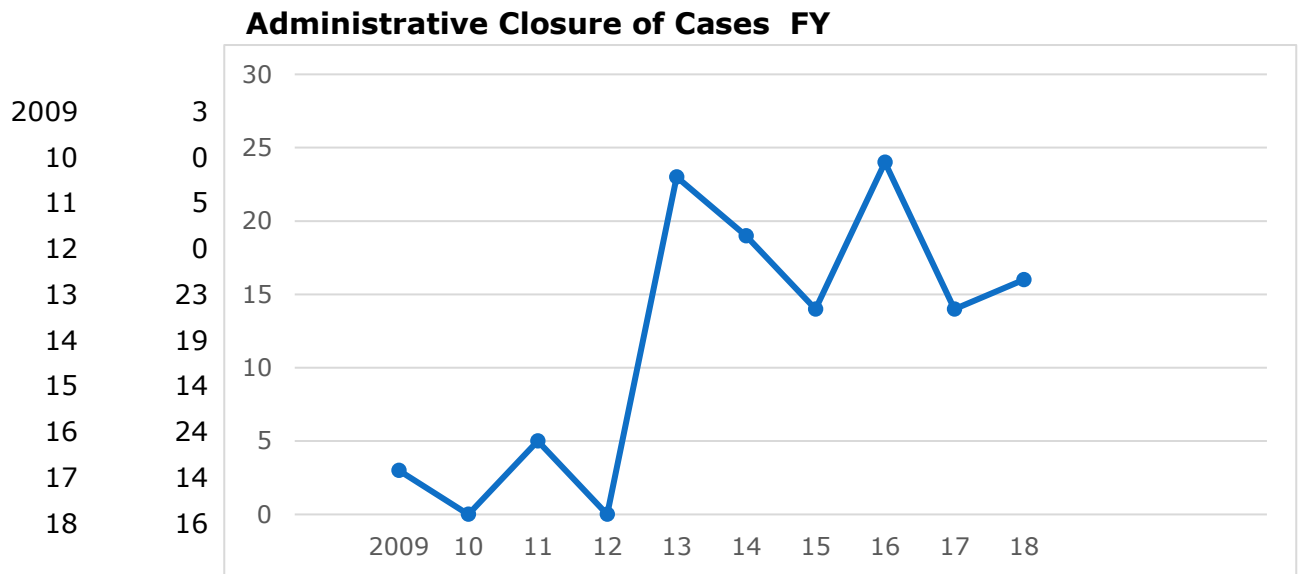
In 2009, Idaho case law significantly changed the settlement process and made it more complicated for ISIF. Several case decisions set fundamental standards for ISIF in bringing settlement proposals to the attention of the Industrial Commission. As a result, the ISIF must now concede all issues of liability before a settlement can be negotiated, prepared and delivered to the Commission for review and ultimate approval. This process has necessarily resulted in more complex procedures. These procedures include a longer pre-hearing investigation process, which is then followed by a full evaluation of all issues and aspects of liability on the part of ISIF. If liability is clearly established, then settlement negotiation can go forward. Following a successful private negotiation or Commission mediation, the settlement document is prepared and presented to the Commissioners for final approval.

The annual amount of one-time payments for lump sum settlements since 2009 is shown in the chart below.



At first blush, the total amount for last year seems significantly smaller than in prior years. However, the latest figure reflects simply the re-configuration of recent settlements away from a traditional one-time cash payment to resolve a claim. Recent settlements follow more closely an annuity approach, including options for cash plus monthly benefits; or cash plus another deferred payment of cash; or cash plus monthly benefits with a future one-time payment of cash. Whichever option is ultimately chosen for settlement, it is tailored more closely to the desires of the claimant to resolve the claim. One of the biggest factors impacting the alternative option to a one-time cash payment is the effect of an off-set from Social Security Disability (SSD) benefits that may be created by the type or amount of the final settlement structure. Typically, an injured worker will have SSD benefits reduced due to receipt of other disability benefits. In most cases, if the parties are not careful to recognize this impact, a large portion or even the entire amount of SSD benefit will be taken back.

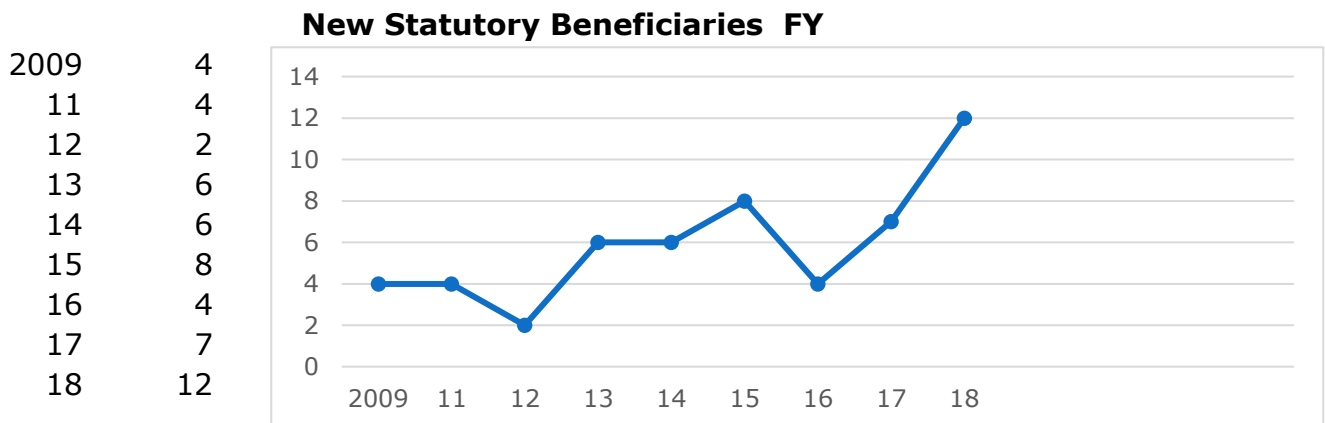
With such restrictions in resolving claims and contested cases, more innovative ways to resolve complex cases have been proposed and utilized by ISIF, which fortunately have gained approval from the Industrial Commission. Such efforts have increased the potential closure of cases from simply one-time payments of cash. The chart below represents cases closed by way of an approved settlement agreement by the Industrial Commission without the need for an adversary hearing to determine the final resolution. The modest increase over last year is encouraging.



Another method of reducing costs for ISIF is to request closure of cases through an administrative process. This method is designed to notify the Industrial Commission of old or stale claims that have not been prosecuted in a timely fashion. As the prior chart indicates, a significant increase in closures has taken place in the past few years. Such closures have come about from cases not actively prosecuted, cases settled by the other parties and the remaining party does not desire to continue the litigation against ISIF, and cases close to hearing that a party voluntarily dismisses ISIF. Of the 16 cases last year in which ISIF was dismissed prior to hearing, 11 were fully contested by ISIF.

### 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 during the lifetime of the disabled worker. As the chart below illustrates, a larger-than-normal increase of totally disabled workers have been added to the ISIF rolls over the past 2 years. Of the 12 new beneficiaries in FY18, 8 were negotiated settlements.

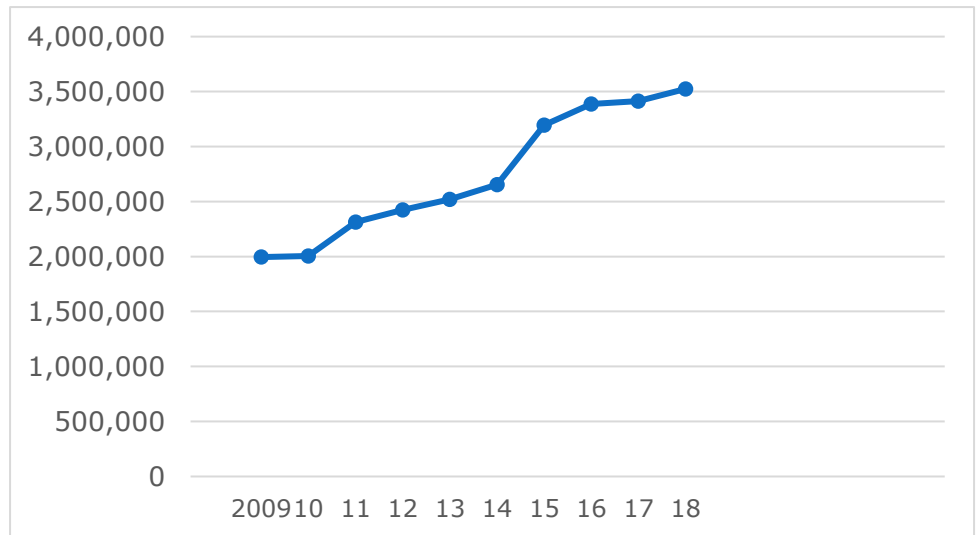


During this past year, 7 recipients have passed away. However, since the new beneficiaries are coming in at a higher wage rate than their earlier counterparts, the overall cost for this administration has increasing dramatically. Further, regular inflationary increases based on the average state wage (ASW) have added to the overall cost of this benefit. For calendar year 2018, the ASW had a substantial increase of 3.43%, which was one of the largest single increases in the past 10 years. Such increases, along with the added number of beneficiaries, have resulted in increased benefits being paid. Since 2009, monthly benefits have increased a total of 77%, or an average annual increase of 8.6%. This trend is clearly of great concern to the ISIF. Should this trend continue, the payments for monthly beneficiaries would double about every 8 1/2 years. The following chart illustrates this trend.



### Total Monthly Payments FY

2009	1,995,050
10	2,003,744
11	2,312,394
12	2,425,341
13	2,518,765
14	2,653,546
15	3,195,761
16	3,386,007
17	3,413,318
18	3,523,625



### Litigation Costs

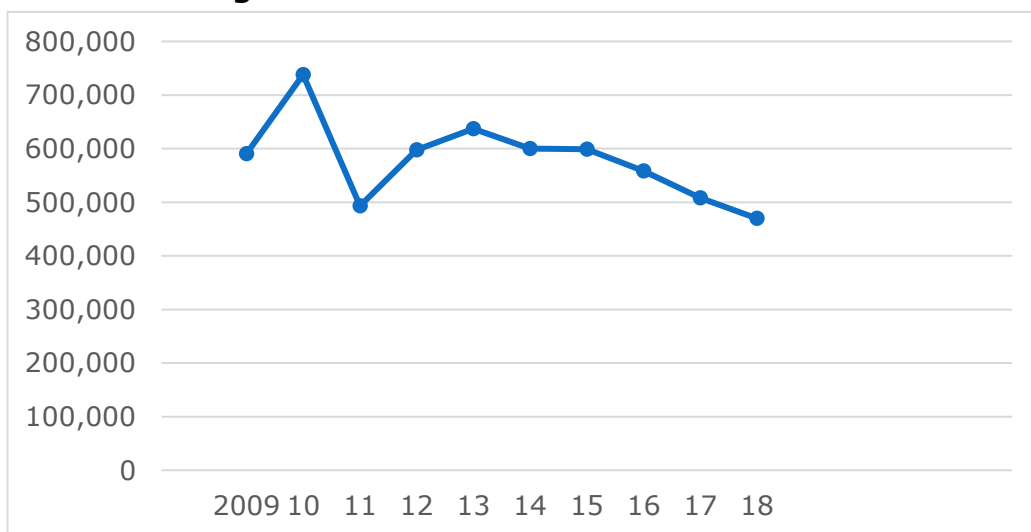
Another cost for ISIF is the retention of outside legal counsel to represent ISIF in contested cases once a complaint has been filed with the Industrial Commission. The annual cost of these well-experienced attorneys is set out below. Such costs include initial evaluation of the claim, receipt and review of extensive medical records, pre-hearing depositions, travel, review pertinent employment and vocational information, analyze potential issues and defense strategies, furnish written summaries of the analysis, preparation and attendance at evidentiary hearings, post-hearing depositions, and formal legal briefing to the Industrial Commission and, in selected cases, the Idaho Supreme Court.

ISIF now has 8 attorneys located across the state to handle claims and cases in their respective areas. All of the attorneys are well-experienced in the workers' compensation industry with levels of significant competence ranging from 10 to over 30 years specifically with the second injury fund. Such experience adds to the increased professional stature and ability to resolve complex claims of this agency.

Over the past several years, professional fees and costs have somewhat stabilized even though the caseloads for each attorney have become increasingly more complex. The next chart illustrates the steady level of annual costs for legal representation of the ISIF.

### Legal Costs FY

2009	590,741
10	737,962
11	493,173
12	597,368
13	636,929
14	599,901
15	598,694
16	558,405
17	508,234
18	469,728

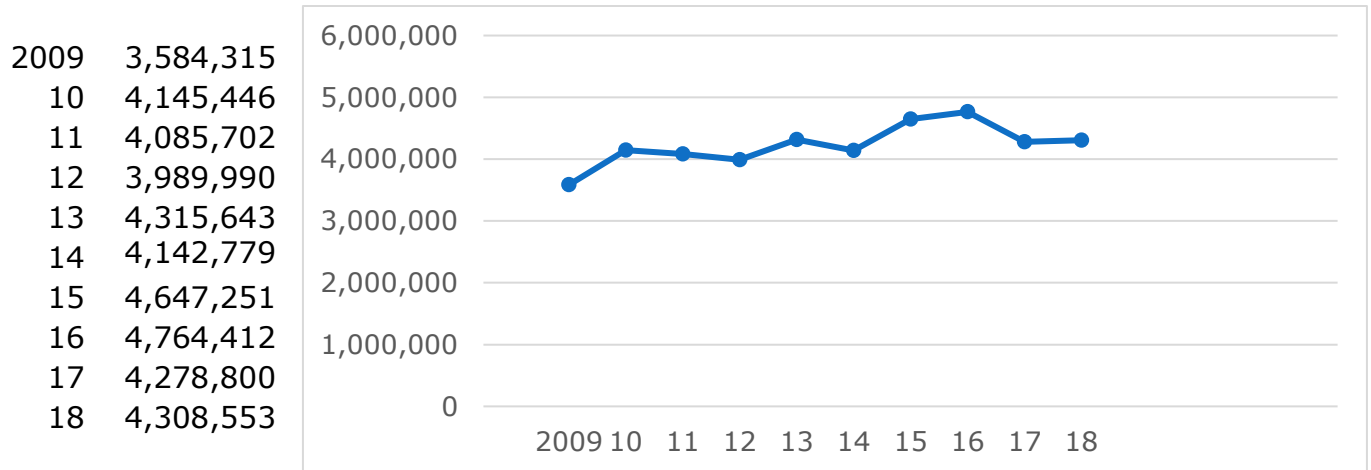


The above trend is largely due to the active participation by ISIF administrative staff in all phases of each case with the attorney assigned to represent the ISIF. This active involvement has led to more efficient representation by outside counsel directing resources to meaningful defense strategies and more successful outcomes with settlements prior to hearing and contested cases.

So, what does it cost to defend cases for the ISIF? Last fiscal year, it cost an average of \$23,764 to fully defend a case in which ISIF was later dismissed after a full hearing. If we can catch the case early, it only costs an average of \$2,292 to get a case dismissed administratively. Settlement of a case prior to hearing saved about one-half the cost of a full hearing with an average cost was \$12,283. If ISIF went all the way through the hearing process and lost, the average cost was somewhat higher at \$31,230.

Thus, total litigation costs comprising of professional fees and costs, monthly beneficiary payments, and final settlement payments have experienced a modest upward trend in the past few years. With all factors being considered, an overall increase of 20.2% during this 9 year span is quite acceptable with an annualized average of 2.24% each year. An illustration of these costs is set out below:

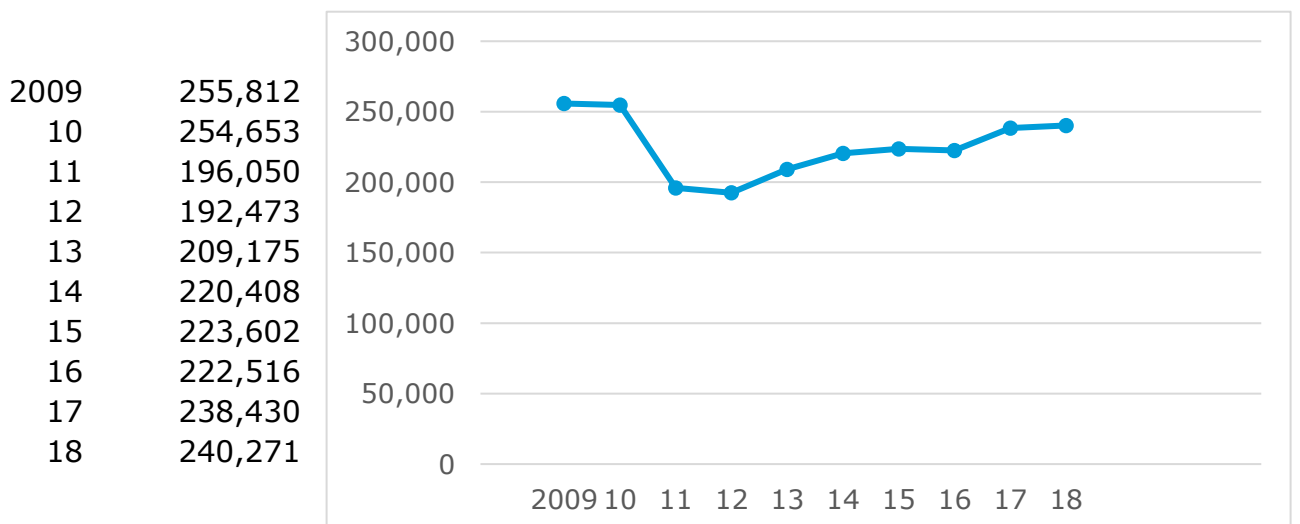
### Total Litigation Costs FY



### Office Administration

The final piece to the expense-side of ISIF operation is the cost of maintaining an administrative office. This is rather a small percentage compared to the other major expenses in managing the ISIF. Current expenses include 2 full-time employees and general office expenses such as office rent, copy/fax/email machine purchase, supplies, travel, file storage, modest salary increases, as well as, general support services from the main office of the Department of Administration. Overall, however, the administrative costs have decreased a total of 6.1% over this time as the following chart illustrates.

### Office/Administrative Costs FY

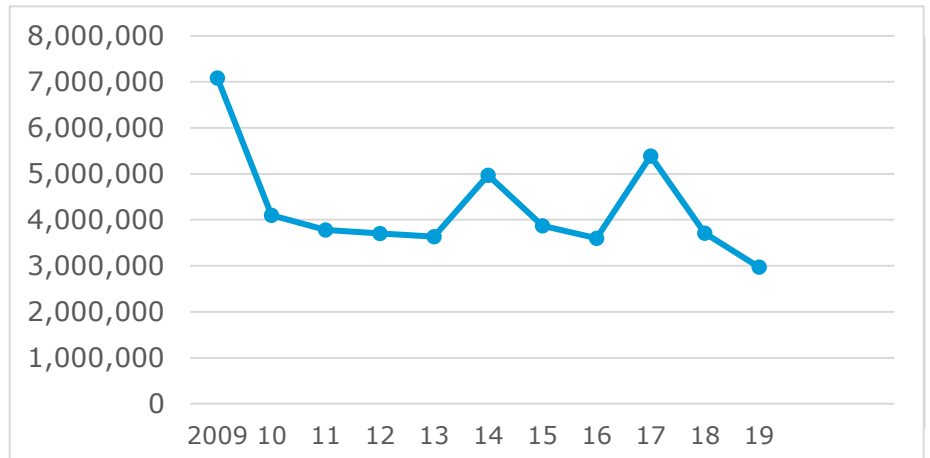


## ASSESSMENT

The ISIF is funded through an annual assessment to sureties, 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 ISIF for 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 insurance companies and self-insured employers which paid any indemnity (income) benefits to injured workers during the past year. The assessment is then billed semi-annually. Individual employers may not see this specific assessment, because it is part of their overall insurance premium for workers' compensation coverage. An illustration of the Assessments from 2009 is set out below.

2009	7,088,187
10	4,103,171
11	3,782,089
12	3,701,257
13	3,636,709
14	4,969,970
15	3,868,132
16	3,600,209
17	5,390,438
18	3,707,562
19	2,970,515

**Annual Assessment CY**



The expense-side of the Assessment is broken into four main categories: settlement payments, monthly disability payments, attorney fees and costs, and office expenses. These costs have been detailed in previous parts of this Annual Report. Generally, expenses have been more predictable in recent years due to their relative stability. The cash-side of the Assessment, however, is more variable each year. For example, when less cash is used to pay all the bills, a reduction in the Assessment will take place. As the above chart illustrates, another significant reduction of 20% will take place for the Assessment in calendar year 2019.