



Industrial Special Indemnity Fund (ISIF)

Annual Report Calendar Year 2018

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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 management of the ISIF is set forth in Sections 72-324, 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). The NOIs are filed by workers, self-insured employers and insurance companies seeking ISIF contribution toward 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 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.

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 established by Idaho caselaw.

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 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 assessment is started by first calculating two times (2x) all ISIF expenses during the immediately preceding fiscal year, then subtracting (-) the cash balance at the end of that fiscal year. That figure is then pro-rated by the Industrial Commission among the insurance carriers for their share of total disability (income) benefits paid to injured workers during the preceding year. The pro-rated amount of assessment is then issued by the Industrial Commission to each insurance company in semi-annual billings. 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 2018 calendar year.

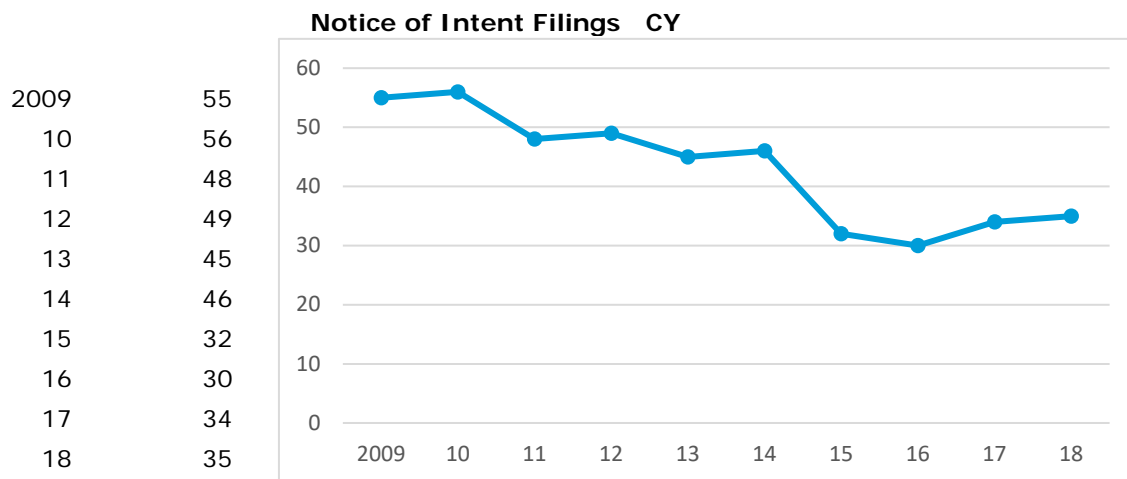
OPERATIONS

Claim Administration

Managing claims is a major function of the ISIF and starts with the in-house evaluation of a claim after the NOI is filed. 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 evaluation through final resolution.

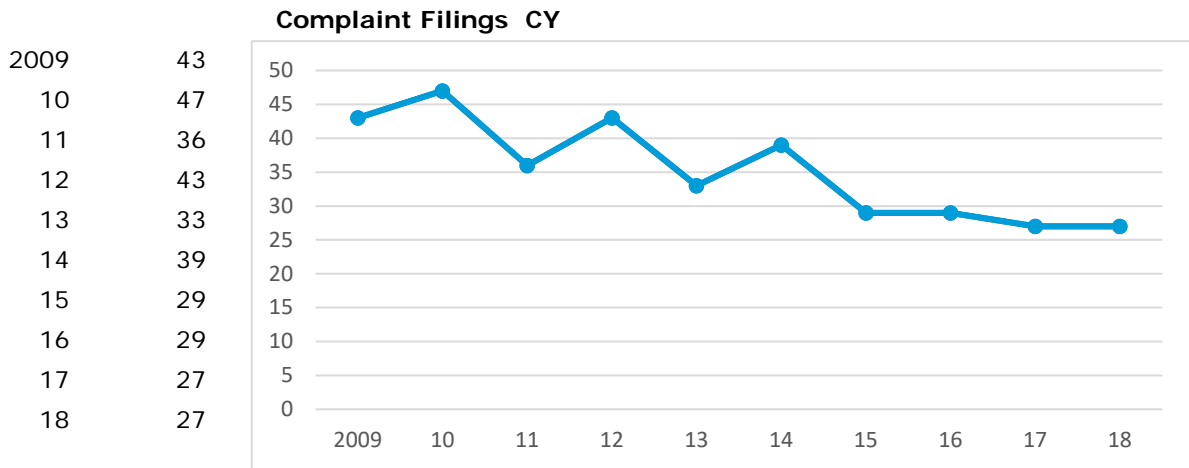
Readers of this Report will see pertinent information starting from 2009 instead of earlier statistics. That year was chosen, because in 2009 a major change occurred in the way cases could be resolved by the ISIF. Several court decisions established new fundamental requirements for ISIF to bring settlement proposals to the attention of the Industrial Commission. The ISIF must now 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, as the chart below indicates. This trend has somewhat leveled-off in the last four years including 2018. Even with fewer claims, however, the recent claims present more complex medical, vocational and legal questions than previous filings.



The number of formal complaints filed against ISIF following a denial of the NOI reflects more of a “teeter-totter” pattern than the NOI filings. One of the reasons for the inconsistent numbers is that a complaint may be filed months or even years after the NOI has been denied. Typically, about three-fourths of the complaints are filed in the same-year the NOI is denied. This past year that figure rose to 80%. As a result, a backlog of denied NOIs and therefore potential complaints could be waiting for filing in future years. Generally, a downward trend of complaints has occurred, with some leveling again in the last four years. Another factor for this

trend may be the aggressive defense ISIF has taken with claims that present marginal exposure for lifetime benefits. An additional reason may be that after a claim is settled between the claimant and employer/surety, the claimant realizes pursuit of ISIF will require additional time, expenses and delays with more complex factual and legal issues regarding ISIF liability. These factors often lead to unpredictable outcomes. The chart below illustrates this trend.



Even though a steady downward trend has occurred in both the number of claims (NOIs) and formal cases (complaints), ISIF still faces an ever-increasing challenge in the past few years of containing the overall cost of benefits. Although 2018 was another good year for employment prospects, this phenomenon nevertheless made it more difficult for injured workers to reenter the job market and return to active employment. Another impact has been the attractive environment for injured workers to receive long-term disability benefits at the federal level 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 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, this range now spans from the early-20’s into the upper-70s. Such a situation is most alarming for its potential long-term liability, which directly affects the financial stability of ISIF.

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.

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 of ISIF liability is complicated with four requirements necessary before liability can be imposed against ISIF. The injured worker must first have (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 (2) be manifest or clearly apparent, (3) impede or hinder employment, and (4) combine with a subsequent disability from the last work-related injury to cause total and permanent disability of the worker.

Due to the strict requirements, the litigation process is complicated with additional time needed to sort out all four 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 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 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 60-90 days to review, evaluate and possibly resolve 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 inhouse 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.

Settlement Process

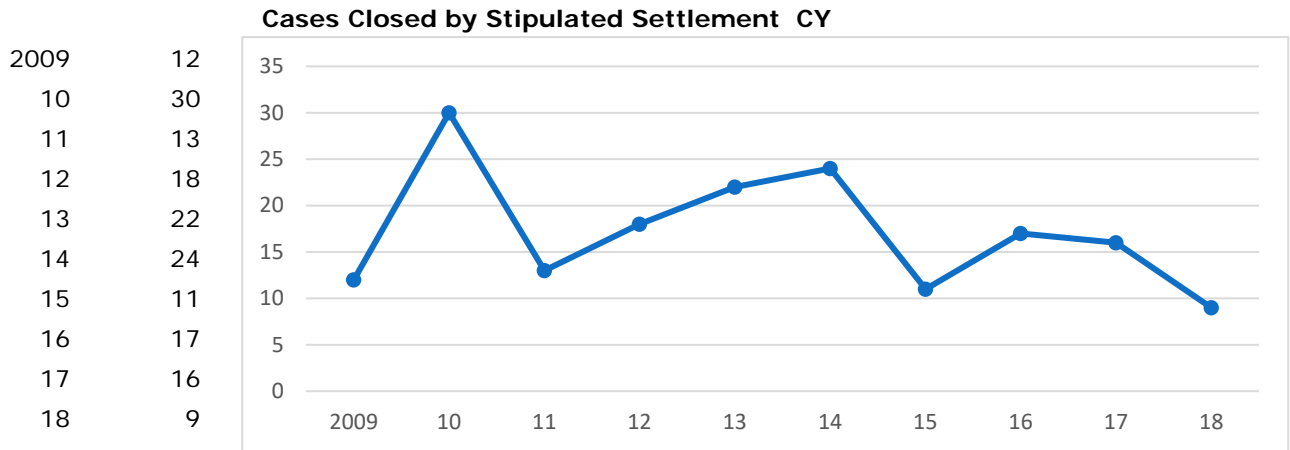
One way to bring cases to final resolution is through the settlement process, which became more difficult after 2009 as explained earlier in this Report. After the parties negotiate and agree to resolve a claim and then sign a stipulated agreement, this “tentative” resolution must then be submitted to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

To enhance the process of resolution, ISIF has created more innovative approaches to resolve claims and cases. Options now include, not only a one-time lump sum payment, but also periodic monthly payments, deferred lump sum or periodic payments, guaranteed benefits for a certain time, 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.

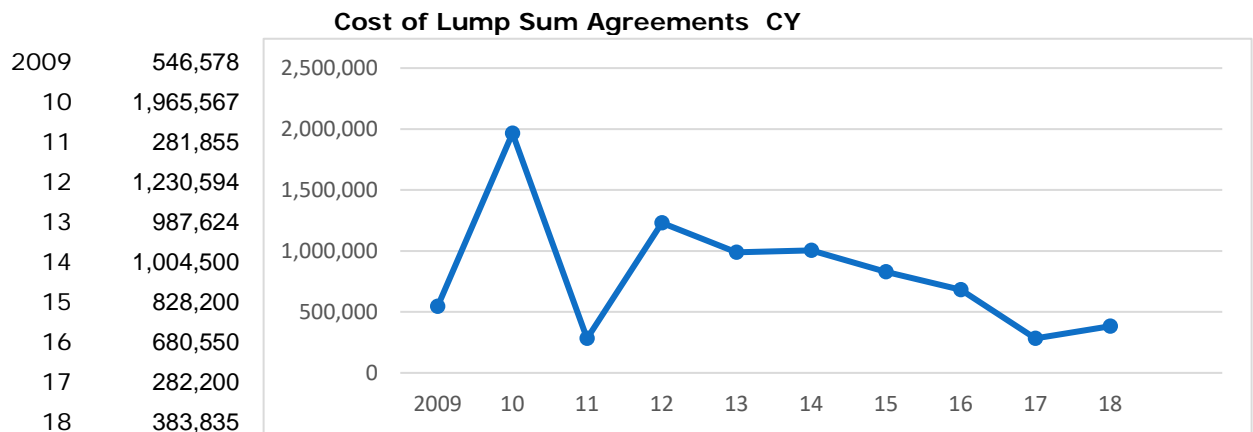
Such a process has led to more complex legal procedures. The ISIF by necessity must be more deliberate and take more time-consuming steps to explore and fully evaluate all aspects of liability before a decision can be made to negotiate a claim for settlement. As stated previously, all aspects of liability must be conceded before ISIF can voluntarily resolve a claim.

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 better protect the long-term financial stability of the Fund.

In recent years, the complexity of ISIF cases has noticeably increased. 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 9 this past year, four (4) were settled with long-term benefits and five (5) were resolved by one-time payments.



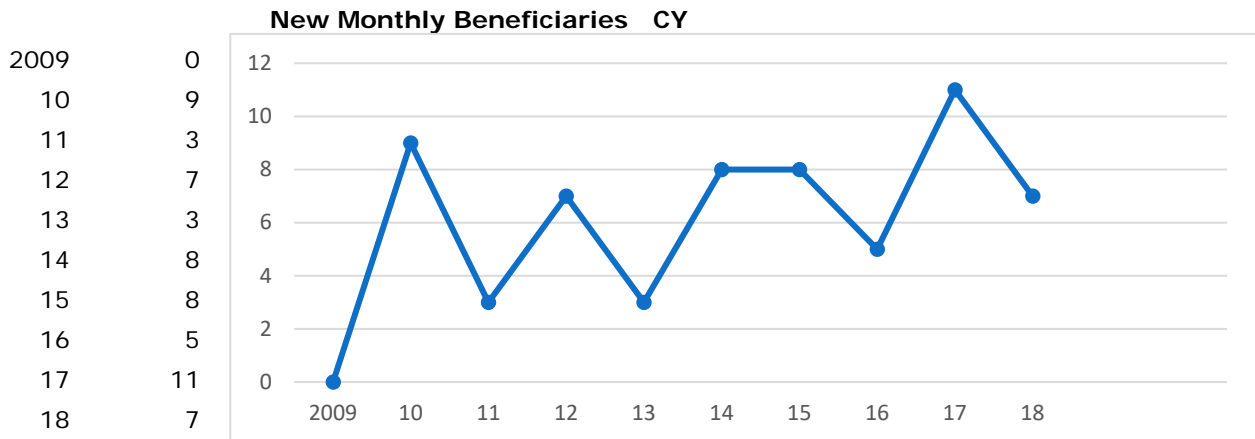
The chart below illustrates the cost of one-time payments as a method to fully resolve a claim. This form of settlement has generally declined in recent years but had a 36% increase in 2018. Even though declining, it has been replaced with other types of resolutions, in which one-time cash payments are combined with monthly benefits over a longer term. Once again, close management of each claim has helped control the overall costs.



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

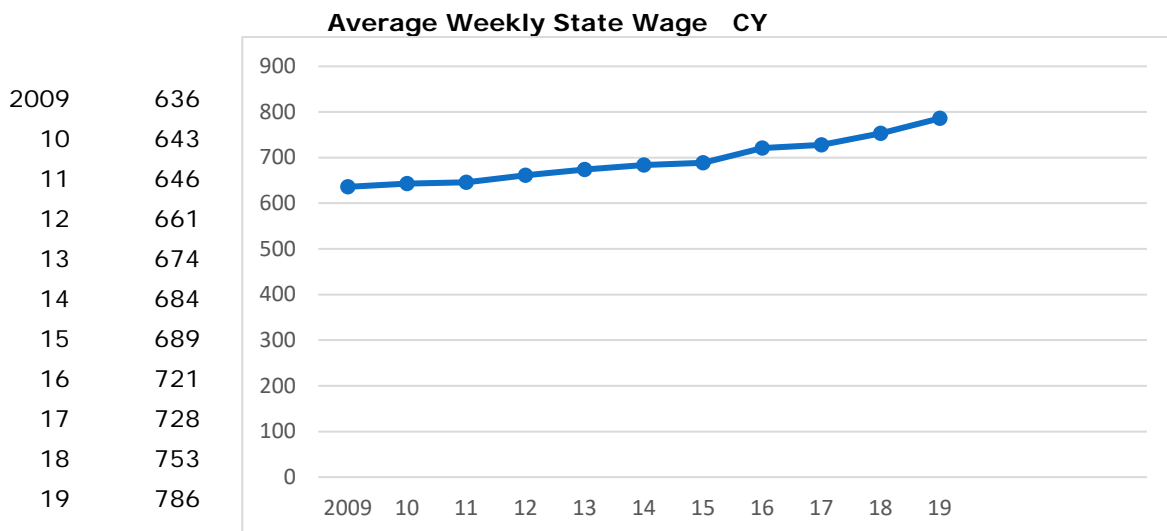
be held liable, monthly statutory benefits are paid for the lifetime of the disabled worker. As the chart on the next page illustrates, a steady increase in the number of totally disabled workers has been added to the ISIF rolls in the past few years. Of the seven (7) new recipients for long-term benefits in 2018, four (4) were negotiated settlements by the ISIF, and three (3) were added by the Industrial Commission following contested proceedings.



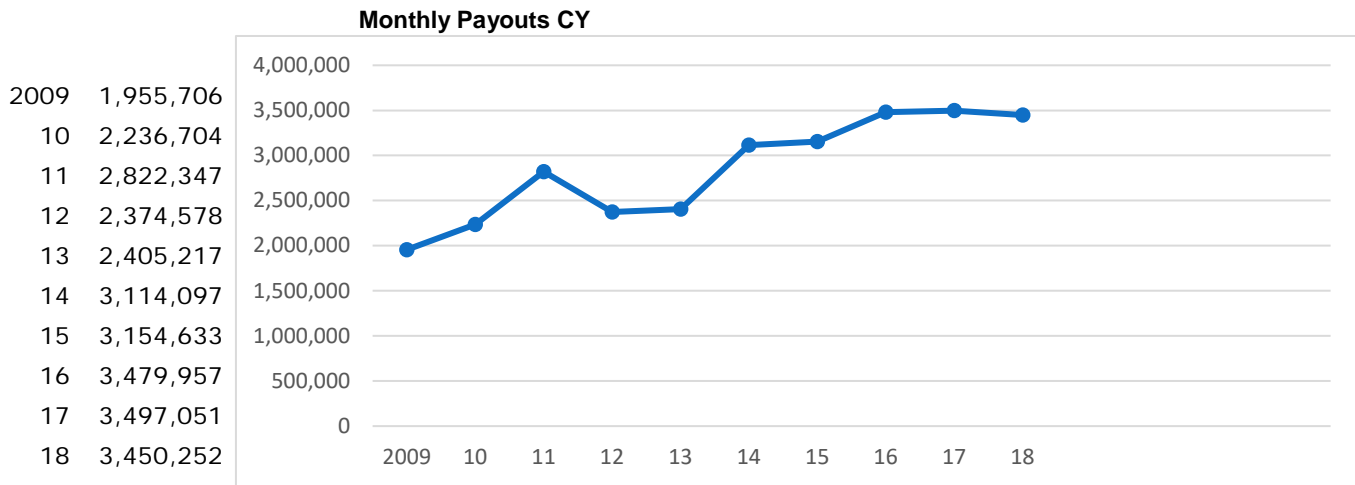
Even though 7 long-term recipients passed away during 2018, the new beneficiaries coming onto the rolls are at a higher wage level than their earlier counterparts. Thus, the overall cost of benefits has increased with the new enrollees.

Benefit Costs

Besides an increasing number of recipients, 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 23.6% or an annualized average of 2.36%. In 2017, the increase was a modest .97%. In 2018, the increase was 3.43%. For CY 2019, the increase will be 4.38%, which is the second largest increase in the past decade topped only by the 4.64% increase in 2016. The chart below shows this trend more graphically.



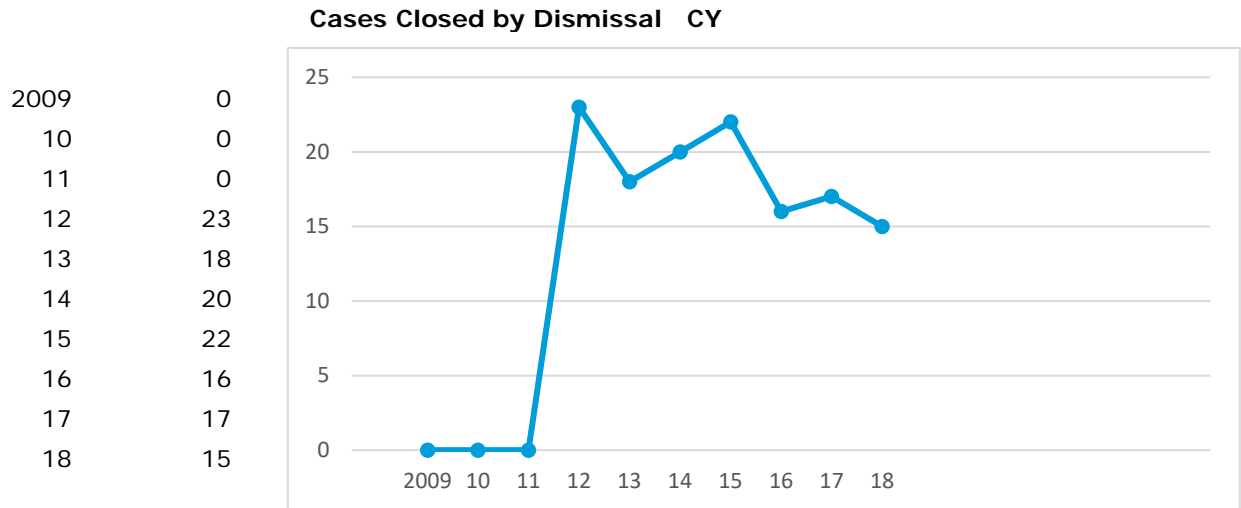
Even with inflationary increases and new lifetime recipients, the total amount of monthly payments in 2018 declined by 1.34%, as illustrated in the chart below. This was a welcome relief from the steady increases. The total increase for the 9 years since 2009 has been 76.4%, which annualizes to a rate of 8.49%. At this rate, the annual payments will double every 8 1/2 years. However, the past three years have experienced some leveling of this trend.



Litigation Costs

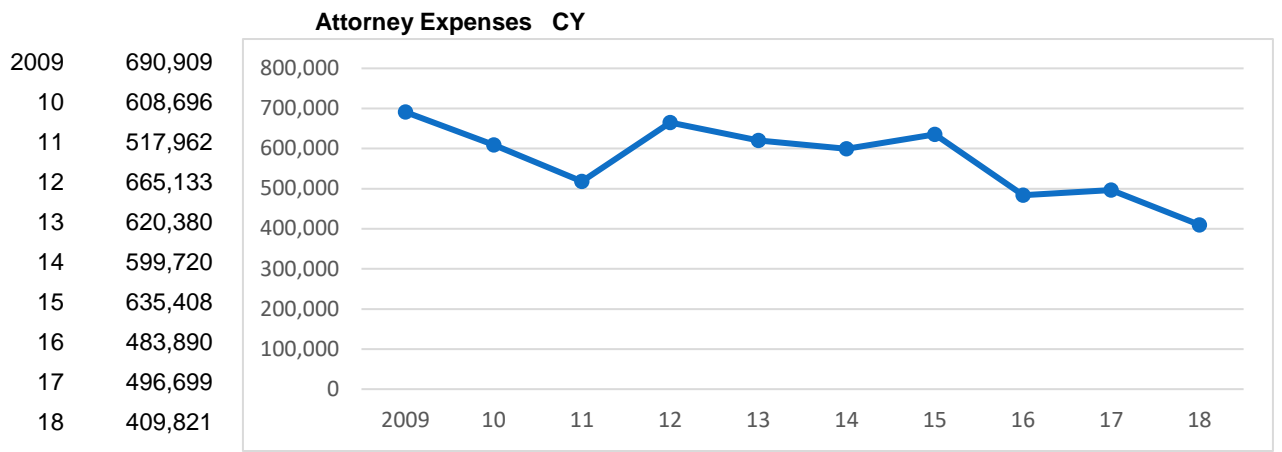
A necessary component of the litigation process is the retention and use of attorneys to represent ISIF. Currently, eight attorneys in private practice represent ISIF in all its contested cases. These attorneys are located throughout the state and retained on a case-by-case basis as complaints are filed 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 legal field of the Second Injury Fund. This experience has proven invaluable in processing claims and contested 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 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 or have lingered on the books for an unreasonable time. Both avenues have resulted in many cases being taken off the active docket, which translates into lower overall costs for ISIF. The chart on the next page shows the number of cases taken off the books by dismissal. Of the 15 cases dismissed in 2018, ISIF actively contested twelve (12) cases in the judicial hearing process.



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.

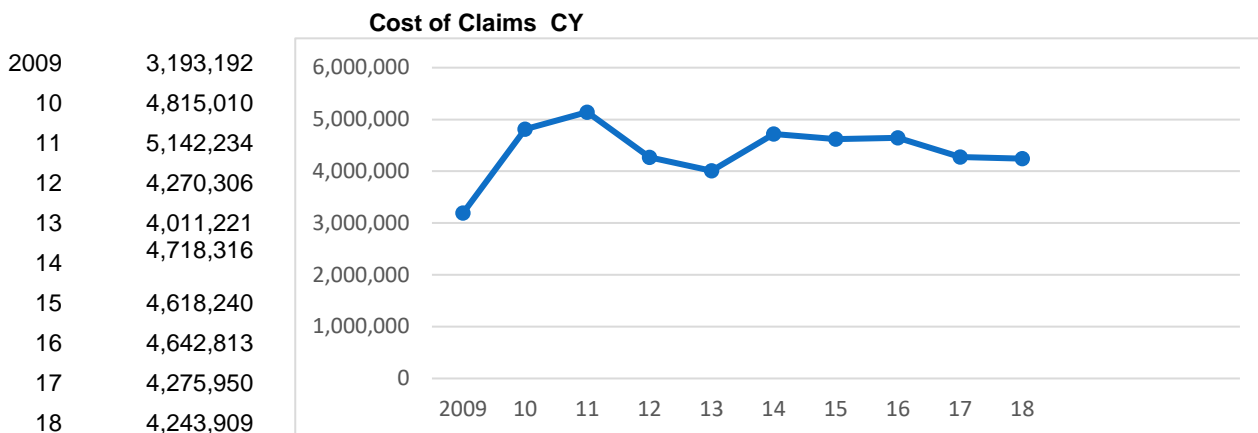
As the chart below illustrates, costs of legal representation have been steadily declining in the past few years. This trend is largely due to the active participation by ISIF staff in each case. Such involvement with each claim has led to more efficient use of outside counsel by directing resources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



As described earlier in this Report, part of the decrease in such expenses is attributable to the decrease in the number of formal complaints being filed in recent years. However, with the added requirements of ISIF eligibility and the increase in legal hurdles to resolve claims, there is still much to do to defend ISIF. With fewer opportunities for negotiated settlements,

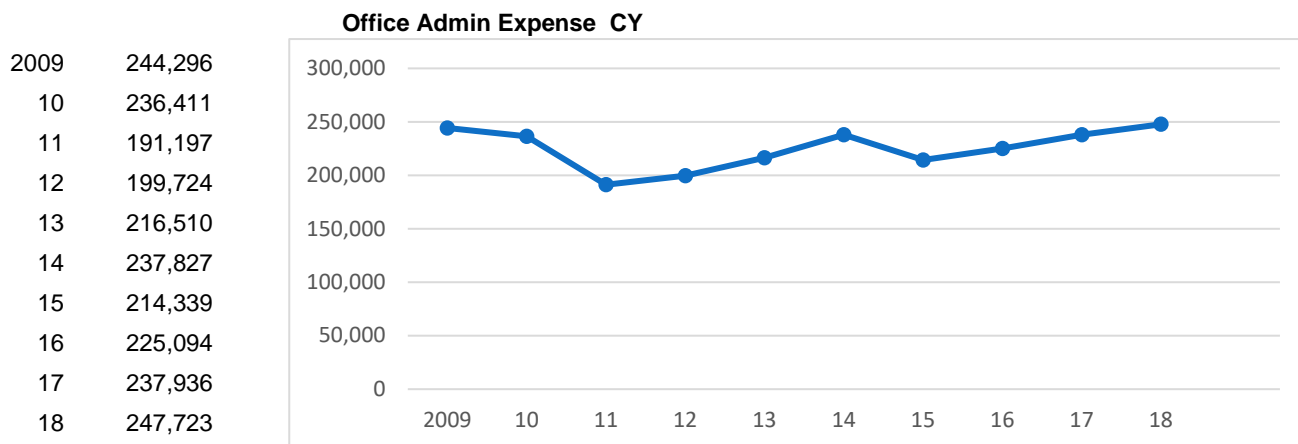
more cases have been taken through the contested hearing process. Fortunately, with varied settlement proposals, all participants and the Industrial Commission have accepted these options to resolve complicated cases. This process also helps to reduce the overall litigation delays and costs.

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. These costs have generally been within a narrower range, which has been encouraging, and declined slightly. It tends to bolster the importance of reviewing 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 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. As the chart below illustrates, these costs have remained fairly level in recent years, even with occasional salary and operational increases, together with equipment upgrades.



ASSESSMENT

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 income (disability) 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, 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 2020 may increase like the pattern in the last few years.

The chart below illustrates the recent Assessments.

