

2009 Medical Malpractice Statistical Summary
Settlement Data Submitted by Attorneys
Lawsuits with final disposition from Jan. 1, 2008 through Dec. 31, 2009

Rates and Forms Division



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Introduction

In 2006, the Washington State Legislature enacted comprehensive healthcare liability reform,¹ requiring attorneys² to report medical malpractice settlement data to the Office of the Insurance Commissioner (OIC). Each year the OIC is required to post summary statistics of medical malpractice closed claim data on the OIC website by April 30. On February 4, 2010, Insurance Commissioner Mike Kreidler notified³ the legislature that data reporting for calendar year 2009 was incomplete and that the OIC would post the statistical summaries by June 15. With the time extension, the data set is more complete, but a number of lawsuits resolved in the two-year period ending December 31, 2009 have not been reported to the OIC.

There are two primary types of data included in this statistical summary:

- **Total Paid Indemnity:** Total compensation paid by all defendants to the claimant stemming from a lawsuit. Indemnity payments may come from several defendants if a lawsuit named more than one party.⁴
- **Legal Expenses:** All sums paid by the claimant to the attorney to prosecute the claim, including attorney fees, expert witness fees, court costs, and all other legal expenses.⁵

Data in this statistical summary cannot be compared to data submitted by insuring entities and self-insurers because they:

- **Report all closed claims for which payments are made.** Attorneys submit reports only if they filed a lawsuit against one or more defendants.
- **Report data separately for each defendant.** Attorneys submit one settlement report that includes payments made by all defendants who were sued.
- **Report data promptly after each claim is settled.** Attorneys must wait until all claims are resolved, so the timing of the reports will be different from insurers and self-insurers. For example, if several medical providers are sued for their actions related to an incident with a poor medical outcome, some providers may be released early in the litigation, while others may be involved in the dispute resolution process for several years. Insurers and self-insurers will report claims as defendants are released from the litigation, while the attorney will wait until claims are resolved against all defendants.

1 [HB 2292 - 2005-06](#)

2 [RCW 7.70.140\(2\)\(a\)](#).

3 [RCW 48.140.040\(2\)](#).

4 [WAC 284-24E-150](#)

5 [RCW 7.70.140\(2\)\(b\)\(v\)](#).

Key Statistics for 2009

- Estimated compliance by attorneys in 2009 dropped significantly when compared to 2008.
- The number of lawsuits reported in 2009 with paid indemnity dropped to 118, as compared to 134 in the prior year.
- In cases where indemnity payments were made to the claimant:
 - Average compensation to the claimant rose 6.1 percent to \$649,173.
 - The average attorney fee rose 15.4 percent to \$242,670.

Estimated Compliance by Attorneys

This table, created with data from the [Administrative Office of the Courts](#), provides an estimate of the level of compliance with the law:

	-----Calendar Year-----		Change from Prior Year
	2008	2009	
Lawsuits Resolved	207	256	23.7%
Settlements Reported by Attorneys	158	129	-18.4%
Estimated Compliance	76.3%	50.4%	

For the past two years, the OIC has worked with the Washington State Association for Justice (formerly known as the Washington State Trial Lawyers Association) and The Washington State Bar Association to improve compliance. Despite these efforts, there is evidence that a number of attorneys have not complied with [RCW 7.70.140](#):

1. Data from the Administrative Office of the Courts is evidence of under-reporting.
2. Not all lawsuits result in an indemnity payment to the claimant. In 2009, attorneys reported 129 settlements arising out of a lawsuit. Only 11 reports were filed for lawsuits where the plaintiff did not receive an indemnity payment. As reported on page 8 of the OIC companion report titled [2009 Medical Malpractice Statistical Summary, Closed Claim Data Submitted by Insurers and Self-Insurers](#), the defendant prevails in 89.5 percent of claims resolved by the courts. This is evidence that attorneys are not submitting reports for lawsuits where the defendant prevails or the plaintiff abandons the claim.

To improve compliance, the OIC likely will propose legislation in 2011 to add enforcement mechanisms to the existing law.

Calendar Year Comparison

Attorneys reported this data to the OIC for the two-year period ending December 31, 2009:

	-----Calendar Year-----		Change from Prior Year
	2008	2009	
Total Number of Reported Lawsuit Settlements	158	129	
Total Legal Expenses	\$33,013,414	\$33,117,457	
Average Legal Expense per Lawsuit	\$208,946	\$256,724	
Number of Lawsuits with Paid Indemnity	134	118	
Total Paid Indemnity	\$81,985,707	\$76,602,416	
Total Paid Attorney Fees	\$28,190,420	\$28,635,025	
Average Compensation to Claimant	\$611,834	\$649,173	6.1 %
Average Fee paid to Attorney	\$210,376	\$242,670	15.4%

Number of resolved lawsuits: As of May 20, 2010, attorneys submitted 129 reports with data about medical malpractice lawsuits that were resolved in calendar year 2009, and 3 new reports for lawsuits settled in 2008.

Total legal expenses: Claimants must pay fees and costs to file a lawsuit regardless of whether they receive a settlement. Average legal expenses are the number of reported settlements divided by the total legal expenses. In 2009, claimants paid \$33.1 million for 129 lawsuits, or an average of \$256,724 per lawsuit.

When attorneys fail to report lawsuits that are resolved in favor of the defendant, it likely has the most effect on data for total legal

expenses. Attorneys work on a contingency basis and attorney fees are not paid when the defendant prevails. As reported on page 6, the average legal expense for litigation resolved in favor of the defendant was \$13,491, which is much lower than the average legal expense per lawsuit calculated above. Because data are incomplete, accurate comparisons for average legal expenses between years cannot be made.

Indemnity payments to claimants: In 2009, claimants received indemnity payments for 118 lawsuits. Payments totaled \$76.6 million, or an average of \$649,173 per lawsuit.

Attorney fees: Claimants pay attorney fees based on the contract with their attorney. Attorney fees are based upon the indemnity payments obtained to resolve a lawsuit. In 2009, 118 lawsuits were resolved with indemnity payments to the claimant, resulting in an average attorney fee of \$242,670. In 2009, claimants paid 37.4 percent of the settlement as attorney fees, which was an increase of three percentile points over the prior year.

Million dollar settlements: These data are provided for the two-year period ending December 31, 2009. Of those lawsuits settled from January 1, 2008 through December 31, 2009 with indemnity payments:

- 36 lawsuits were resolved with paid indemnity of \$1 million or more. These settlements resulted in total payments of \$99.2 million, or an average indemnity payment of \$2.8 million. Average total legal expenses in these cases were \$1.1 million dollars.
- 216 lawsuits were resolved with paid indemnity of less than \$1 million. These settlements resulted in total payments of \$59.4 million, or an average indemnity payment of \$275,164. Average legal expenses in these cases were \$103,097.

Method of Settlement

These data are provided for the two-year period ending December, 31, 2009. During this period, most lawsuits were resolved by alternative dispute resolution, meaning the lawsuit was resolved in a dispute resolution process outside of the governmental judicial process.

-----Data Reported by Attorneys for the two-year period ending December 31, 2009-----						
Lawsuit Settlement Methods	Number of Lawsuits with Legal Expenses	Total Legal Expenses	Average Legal Expense paid by Claimant	Number of Lawsuits with Paid Indemnity	Total Paid Indemnity	Average Paid Indemnity to Claimant
Verdicts	29	\$6,011,810	\$207,304	11	\$12,785,456	\$1,162,314
Alternative Dispute Resolution	143	32,798,227	229,358	135	76,525,877	566,858
Settled by Parties	106	27,268,532	257,250	106	69,276,790	653,555
All Other	9	52,302	5,811	0	0	N/A
Total	287	66,130,871	230,421	252	158,588,123	629,318

There were 29 verdicts, which led to 11 indemnity payments and 18 defense verdicts. This is a breakdown of legal expenses for these different outcomes:

- For the 11 lawsuits where the verdict was favorable to the plaintiff:
 - Total paid indemnity was \$12,785,456, and average paid indemnity was \$1,162,314.
 - Average legal expenses were \$524,452, or 45.1 percent of the total indemnity payment.
- For the 18 reported defense verdicts, average legal expenses were \$13,491.

The most common method to resolve a lawsuit was alternative dispute resolution. Mediation is the most common form of alternative dispute resolution.⁶ Mediation resulted in 125 settlements with paid indemnity. Total paid indemnity for mediated settlements was \$70.6 million, with an average settlement of \$564,746. Average legal expenses for mediated settlements were \$236,168.

⁶ Under [RCW 7.70.100](#), mediation is mandatory step before filing a medical malpractice lawsuits, unless the action is subject to mandatory arbitration under chapter [7.06](#) RCW or the parties have agreed to submit the claim to arbitration under chapter [7.04A](#) or [7.70A](#) RCW.