

Medical Malpractice
Calendar Year 2008 Statistical Summaries
Lawsuit Settlement and Expense Data Submitted by Attorneys
Lawsuits Resolved from Jan. 1 - Dec. 31, 2008

Rates and Forms Division
Lisa Smego, CPCU, ARM, AIAF, AIE, ARC, ACP
Data Reporting Manager

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Mike Kreidler - *State Insurance Commissioner*

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Introduction

In 2006, the Washington State Legislature enacted comprehensive healthcare liability reform,¹ requiring attorneys² to report medical malpractice claim data to the Office of the Insurance Commissioner (OIC). The OIC must make available statistical summaries of aggregate medical malpractice claim data by April 30 of each year³. On March 12, Insurance Commissioner Mike Kreidler notified the Legislature that data reporting for calendar year 2008 was incomplete, and was given an extension to June 15 to post the summaries. The OIC believes that data displayed in this summary are still incomplete, and the annual report the agency will issue in June 2010 will include additional, late-reported data for calendar year 2008. Two specific examples:

1. Based on data obtained from the Administrator for the Courts, the OIC is aware of some lawsuits that were resolved in calendar year 2008⁴ that have not been reported by the plaintiff attorney or attorneys involved in the case. The OIC is working with the Washington State Association for Justice, formerly the Washington State Trial Lawyers Association, to improve compliance. In spite of these efforts, the OIC may find it necessary to propose legislation in 2010 to improve compliance.
2. A related problem is failure of attorneys to report their fees. For example, there are six records where a claimant received an indemnity payment and the attorney did not report attorney fees.

These statistical summaries display data on medical malpractice lawsuits that were resolved in calendar year 2008 and reported to the OIC by June 1, 2009. There are two primary types of data displayed:

1. *Paid Indemnity*: The total compensation paid by all defendants to the claimant as the result of a lawsuit. Indemnity payments may come from several defendants if a lawsuit named more than one party⁵. These data cannot be compared to data submitted by insuring entities and self-insurers for two primary reasons:
 - Insuring entities and self-insurers report data separately for each defendant; and
 - Insuring entities and self-insurers report all closed claims, not just those for which a lawsuit was filed.
2. *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 expenses⁶.

¹ [HB 2292 - 2005-06](#)

² [RCW 7.70.140\(2\)\(a\)](#).

³ [RCW 48.140.040\(2\)](#).

⁴ [WAC 284-24E-063](#)

⁵ [WAC 284-24E-150](#)

⁶ [RCW 7.70.140\(2\)\(b\)\(v\)](#).

Calendar Year 2008 Summary

Total Number of Resolved Lawsuits	155
Total Paid Indemnity	\$ 77,955,207
Number of Lawsuits with Paid Indemnity	131
Average Indemnity Payment	\$ 595,078
Total Legal Expenses	\$ 31,783,285
Number of Lawsuits with Legal Expenses	154
Average Legal Expenses	\$ 206,385
Total Paid Attorney Fees	\$ 27,210,104
Number of Lawsuits with Attorney Fee	129
Average Attorney Fee	\$ 210,931

Number of resolved lawsuits: As of June 1, 2009, attorneys submitted 155 reports with data about medical malpractice lawsuits that were resolved in calendar year 2008.

Indemnity payments to claimants: Claimants received \$78.0 million on 131 claims, or an average of \$595,078 per settlement.

1. 84.5 percent of claimants who filed a lawsuit received indemnity payments.
2. Of those lawsuits settled with indemnity payments:
 - 12 lawsuits were resolved with paid indemnity over \$1 million. These closed claims resulted in total payments of \$42.9 million, or an average indemnity payment of \$3.6 million.
 - 119 lawsuits were resolved with paid indemnity of \$1 million or less. These closed claims resulted in total payments of \$35.1 million, or an average indemnity payment of \$294,735.

Total legal expenses: Claimants have to pay fees and costs to file a lawsuit and retain legal counsel to prosecute their claim. Claimants paid \$31.8 million for 154 lawsuits, or an average of \$206,385 per lawsuit with legal expenses.

Attorney fees: Claimants must pay attorney fees based on the contract with the attorney. There were 129 reports where the attorney provided data on their fees. The average attorney fee was \$210,931. Reporting of attorney fees was inconsistent. There were 154 reports that included legal expenses. 129 of those had attorney fees. Of the 129, five had no indemnity payments made to the claimant. There were six reports with indemnity payments entered, and \$0 entered for attorney fees. The OIC believes there have been data errors or omissions in some cases.

Total Paid Attorney Fees	\$ 27,210,104
Number of Lawsuits with Attorney Fee	129
Average Attorney Fee	\$ 210,931

Data displayed by type of settlement: Most lawsuits were resolved by alternative dispute resolution, which includes dispute resolution processes and techniques that fall outside of the government judicial process. Mediation is the most common form of alternative dispute resolution, accounting for 61 settlements and total paid indemnity of \$38.3 million.

Method of Claim Disposition	Total Reported Claims	Number of Claims with Legal Expenses	Total Legal Expenses	Average Legal Expenses Costs	Number of Claims with an Indemnity Payment	Total Paid Indemnity	Average Indemnity Payment
Court disposed Claim	17	17	\$ 507,523	\$ 29,854	2	\$ 801,857	\$ 400,929
Alternative Dispute Resolution	75	74	18,362,380	\$ 248,140	68	41,356,893	608,190
Settled by Parties	61	61	12,896,750	\$ 211,422	61	35,796,457	586,827
Other	2	2	16,632	\$ 8,316	-	-	-
<i>Total</i>	155	154	\$ 31,783,285	\$ 206,385	131	\$ 77,955,207	\$ 595,078