

2011 Medical Malpractice Statistical Summary

Settlement Data Submitted by Attorneys

Lawsuits with final disposition from Jan. 1, 2008 through Dec. 31, 2011

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Mike Kreidler - *State Insurance Commissioner*

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Introduction

In 2006, the Washington State Legislature enacted comprehensive health care liability reform,¹ requiring attorneys to report medical malpractice settlement data to the Office of the Insurance Commissioner (OIC). Each year, the OIC must post summary statistics about medical malpractice lawsuits that are resolved.² State law [RCW 7.70.140](#) does not have tools for the OIC to use to require attorneys to report data. Voluntary compliance has been poor and data in this summary are incomplete. The OIC cannot draw conclusions from incomplete data, so this statistical summary is limited to calendar year statistics.

There are two primary types of data displayed 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.³

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.⁴

¹ [HB 2292 - 2005-06](#)

² [RCW 48.140.040\(2\)](#). On February 2, 2012, Insurance Commissioner Mike Kreidler notified the legislature that the OIC would post statistical summaries by June 15.

³ [WAC 284-24E-150](#)

⁴ [RCW 7.70.140\(2\)\(b\)\(v\)](#).

Key statistics about medical malpractice lawsuits resolved in 2011:

Estimated compliance by attorneys in reporting lawsuits resolved in 2011 dropped to 18.5 percent.

Attorneys reported that 62 lawsuits were resolved with paid indemnity in 2011, compared to 57 in 2010, 118 in 2009 and 134 in 2008.

In cases where indemnity payments were made to the claimant, average compensation to the claimant was \$504,350.

Average attorney fees were \$171,647.

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. It shows that compliance has deteriorated since 2008.

	-----Calendar Year-----			
	2008	2009	2010	2011
Lawsuits Resolved	207	256	244	351
Settlements Reported by Attorneys	158	129	63	65
Estimated Compliance	76.3%	50.4%	25.8%	18.5%

There is no enforcement mechanism in the law, so the OIC expects that attorneys will continue to ignore the law and fail to report settlement data. In 2010, the OIC proposed legislation⁵ that would have added enforcement mechanisms to the existing law. This legislation was not enacted.

⁵ These bills were introduced as [SB 6412](#) and [HB 2963](#).

Calendar year comparison: Attorneys reported these statistics for the four-year period ending December 31, 2011.⁶

	-----Calendar Year-----			
	2008	2009	2010	2011
Settlements Reported by Attorneys	158	129	63	65
Total Legal Expenses	\$33,013,414	\$33,117,457	\$27,711,698	\$13,099,449
Average Legal Expense per Lawsuit	\$208,946	\$256,724	\$439,868	\$201,530
Number of Lawsuits with Paid Indemnity	134	118	57	62
Total Paid Indemnity	\$81,985,707	\$76,602,416	\$67,221,983	\$31,269,695
Average Indemnity Payment	\$611,834	\$649,173	\$1,179,333	\$504,350
Number of Lawsuits with Attorney Fees	132	115	58	65
Total Attorney Fees	\$28,190,420	\$28,635,025	\$25,201,916	\$11,157,023
Average Fee paid to Attorney	\$213,564	\$249,000	\$434,516	\$171,647
Average Attorney Fee ÷ Average Indemnity Payment	34.9%	38.4%	36.8%	34.0%

Number of resolved lawsuits: Attorneys submitted 65 reports with data about medical malpractice lawsuits that were resolved in calendar year 2011, which is five more than the prior year.

Indemnity payments to claimants: In 2011, attorneys reported 62 lawsuits in which a claimant received compensation. Payments totaled \$31.3 million, or an average of \$504,350 per reported settlement.

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 total legal expenses. In 2011, claimants paid \$13.1 million in legal fees to resolve 65 lawsuits, or an average of \$201,530 per reported settlement.

Attorney fees: Claimants pay attorney fees based on the contract with their attorney, and these fees are related to the total indemnity paid to the claimant to resolve the lawsuit. In 2011, attorneys reported 65 settlements in which attorney fees were paid, averaging \$171,647.

⁶ Data submitted by attorneys as of April 19, 2012.