

2012 Medical Malpractice Statistical Summary

Settlement Data Submitted by Attorneys

Lawsuits with final disposition from Jan. 1, 2008 through Dec. 31, 2012

Rates and Forms Division

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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 [RCW 7.70.140](#) does not have tools for the OIC to use to make attorneys 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 6, 2013, Insurance Commissioner Mike Kreidler notified the legislature that the OIC would post statistical summaries by June 1.

³ [WAC 284-24E-150](#)

⁴ [RCW 7.70.140\(2\)\(b\)\(v\)](#).

Key statistics about medical malpractice lawsuits resolved in 2012:

Estimated compliance by attorneys in reporting lawsuits resolved in 2012 dropped to 14.6 percent.

Attorneys reported that 47 lawsuits were resolved with paid indemnity in 2011, compared to an average of 106 for the prior four years.

In cases where indemnity payments were made to the claimant, average compensation to the claimant was \$469,129.

Average attorney fees were \$172,917.

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	2012
Lawsuits Resolved	207	256	244	351	328
Settlements Reported by Attorneys	158	131	90	86	48
Estimated Compliance	76.3%	51.2%	36.9%	24.5%	14.6%

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.

Late reporting continues to be an issue, with 44% of reports submitted late (settlement reports are due on March 1 of the year following the resolution of the lawsuit). Since last year’s statistical summary was created, attorneys submitted late reports for 50 additional lawsuits settled from 2008 through 2011. Statistics shown in this summary should not be considered final values, particularly for 2011 and 2012.

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

Calendar year comparison: Attorneys reported these data for the five-year period ending December 31, 2012.⁶

	-----Calendar Year-----				
	2008	2009	2010	2011	2012
Settlements Reported by Attorneys	158	131	90	86	48
Total Legal Expenses	\$33,013,414	\$33,588,058	\$34,598,555	\$18,367,556	\$9,529,753
Average Legal Expense per Lawsuit	\$208,946	\$256,397	\$384,428	\$213,576	\$198,537
Number of Lawsuits with Paid Indemnity	134	120	85	83	47
Total Paid Indemnity	\$81,985,707	\$77,952,416	\$85,073,584	\$44,792,345	\$22,049,058
Average Indemnity Payment	\$611,834	\$649,603	\$1,000,866	\$539,667	\$469,129
Number of Lawsuits with Attorney Fees	132	117	85	81	47
Total Attorney Fees	\$28,190,420	\$29,085,025	\$31,188,630	\$15,446,463	\$8,127,087
Average Fee paid to Attorney	\$213,564	\$248,590	\$366,925	\$190,697	\$172,917
Average Attorney Fee ÷ Average Indemnity Payment	34.9%	38.3%	36.7%	35.3%	36.9%

Number of resolved lawsuits: Attorneys submitted 48 reports about medical malpractice lawsuits that were resolved in calendar year 2012, a significant drop-off from prior years.

Indemnity payments to claimants: In 2012, attorneys reported 47 lawsuits in which a claimant received compensation. Payments totaled \$22 million, or an average of \$469,129 per reported settlement.

Total legal expenses: Claimants must pay fees and costs to file a lawsuit regardless of whether they receive a settlement. In 2012, claimants paid \$9.5 million in legal fees to resolve 48 lawsuits, or an average of \$198,537 per reported settlement.

⁶ Data submitted by attorneys as of April 10, 2013.

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. For 2012, attorneys reported 47 settlements in which attorney fees were paid, averaging \$172,917.