

ANNUAL REPORT

of the

OFFICE OF THE INDEPENDENT ADMINISTRATOR

of the

**KAISER FOUNDATION HEALTH PLAN, INC.
MANDATORY ARBITRATION SYSTEM**

for

DISPUTES WITH HEALTH PLAN MEMBERS

January 1, 2015 - December 31, 2015

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REPORT SUMMARY

This is the annual report for the Office of the Independent Administrator (OIA) for 2015. It discusses the arbitration system between Kaiser Foundation Health Plan and its affiliated groups of physicians and hospitals (collectively Kaiser) and its members.¹ Since 1999, the OIA has administered such arbitrations, and its current Independent Administrator is Marcella A. Bell. From the data and analyses in this report, readers may gauge how well the OIA system meets its goals of providing arbitration that is fair, timely, lower in cost than litigation, and protects the privacy of the parties.

Status of Arbitration Demands

The total number of demands for arbitration decreased from the previous year. Most of the claims were for medical malpractice. Lien cases more than doubled from last year.

- 1. Number of Demands for Arbitration.** In 2015, the OIA received 610 demands, 20 less than the OIA received in 2014. The number of demands increased in San Diego, but decreased in Southern California which excludes San Diego. Twenty-five lien cases were received, 16 more than last year. See pages 10 – 11, 35 and 48.
- 2. Types of Claims.** Ninety percent of the OIA administered cases in 2015 involved allegations of medical malpractice. One percent presented benefit and coverage allegations. Lien cases made up just over four percent. The remaining cases were based on allegations of premises liability and other torts. The percentage of cases involving medical malpractice allegations has been consistent since the OIA began operations. See pages 10 and 49. Because lien cases differ significantly from cases brought by members, they are reported separately in Section IX.
- 3. Proportion of Claimants Without Attorneys.** In 2015, claimants in 151 cases (26%) were not represented by counsel, slightly higher than in 2014. See pages 12 and 49.

How Cases Closed

The parties themselves resolved the majority of their claims. Neutral arbitrators decided the remaining cases, almost always with a single neutral arbitrator.

¹Kaiser has arbitrated disputes with its California members since 1971. In the 1997 *Engalla* case, the California courts criticized Kaiser's arbitration system, saying that it fostered too much delay in the handling of members' demands and should not be self-administered.

4. **Three-Quarters of Cases Closed by the Parties' Action.** During 2015, the parties settled 44% of the cases. Forty-eight cases settled at the Mandatory Settlement Meeting, 18 more than last year. Claimants withdrew 26% and abandoned another 6% by failing to pay the filing fee or get the fee waived. See pages 27 – 28.
5. **One-Quarter Closed by Decision of Neutral Arbitrator.** Ten percent of cases closed after an arbitration hearing, ten percent were closed through summary judgment, and three percent were dismissed by neutral arbitrators. In the cases that went to an arbitration hearing, claimants prevailed in 39%. See pages 28 – 29.
6. **Almost Half of Claimants Received Some Compensation.** Claimants receive compensation either when their cases settle (44%) or when they are successful after a hearing (4%). The average award was \$1,282,547, the median was \$279,918, and the range was from \$48,000 to \$11,640,000. See page 29 and Exhibit F.
7. **Nearly All Cases Heard by a Single Neutral Arbitrator Instead of a Panel.** Most of the hearings in 2015 involved a single neutral arbitrator rather than a panel composed of one neutral and two party arbitrators. A panel of three arbitrators decided only 2 of the 62 cases that went to hearing. See page 22.

Meeting Deadlines

The timely selection of the neutral arbitrator is crucial to the timely resolution of the case. Nevertheless, the desire for efficiency must be balanced by the needs of the parties. The OIA *Rules* allow the parties to delay the selection process and extend the completion date. Even with such delays, the process is expeditious.

8. **Almost Half of Neutral Arbitrator Selections Proceeded Without any Delay; the Other Neutral Selections had Delays Requested by Claimants.** Almost half (44%) of the neutral arbitrators were selected without the parties exercising options that delay the process. In the other cases, the selection deadline was postponed (47%), a neutral arbitrator was disqualified (4%), or both (5%). Claimants requested all but two of the postponements. They also made 47 of the 67 disqualifications. See pages 16, 17, and 19 – 20.
9. **Average Length of Time to Select Neutral Arbitrator is 73 Days.** The time to select a neutral arbitrator stayed the same in cases with no delay (25 days). The time to select a neutral with a 90 day postponement increased by one day (109 days). It decreased by four days in cases with only a disqualification (62 days), and by five days with both a postponement and disqualification (173 days). In comparison, the 73 days to select a neutral arbitrator is more than nine times faster

than the *Engalla* case which precipitated the creation of the OIA. See pages 19 – 21.

10. **On Average, Cases Closed in Just Over Eleven Months.** In 2015, cases closed, on average, in 342 days, 19 days longer than last year. No case closed beyond the deadline required by the *Rules*. Eighty-seven percent of the cases closed within 18 months (the deadline for “Regular” cases) and 61% closed in a year or less. See pages 25 – 26 and Table 8.
11. **On Average, Hearings Completed in Just Over Nineteen Months.** Cases that were decided by a neutral arbitrator making an award after a hearing closed on average in 584 days. This average includes cases that were designated “complex” or “extraordinary” or that received a Rule 28 extension because they needed extra time. “Regular cases” closed in 428 days (14 months). See page 29 and Table 8.

OIA’s Pool of Neutral Arbitrators

A large pool of neutral arbitrators, among whom work is distributed, is a crucial ingredient to a fair system. The two methods of selecting a neutral arbitrator – strike and rank or joint selection – allow parties to select anyone they collectively want. The majority of neutral arbitrators the parties jointly selected were from the OIA pool.

12. **Size of the Neutral Arbitrator Pool.** The OIA has 262 neutral arbitrators in its pool, 19 fewer than last year. Forty percent of them, or 106, are retired judges. See page 5.
13. **Neutral Arbitrator Backgrounds.** The applications filled out by the members of the OIA pool show that 149 arbitrators, or 57%, spend all of their time acting as neutral arbitrators. The remaining members divide their time by representing plaintiffs and defendants, though not necessarily in medical malpractice litigation. More than 90% of the neutral arbitrators report having medical malpractice experience. See page 6.
14. **Fifty-Seven Percent of Arbitrators Served on a Case.** Fifty-seven percent of the neutral arbitrators in the OIA pool served on a case in 2015. Arbitrators averaged two assignments each in 2015. Fifty-two different neutrals, including arbitrators not in the OIA pool, decided the 66 awards made in 2015. See pages 7 – 8.
15. **Sixty-Five Percent of Neutral Arbitrators Selected by Strike and Rank.** Sixty-five percent of neutral arbitrators were selected through the strike and rank process, and 35% were jointly selected by the parties. Seventy-six percent of the arbitrators jointly selected were members of the OIA pool. In the other cases, the

parties chose a neutral arbitrator who was not a member of the OIA pool. See pages 14 – 15.

Neutral Arbitrator Fees

While the OIA arbitration fee is less than the comparable court filing fee, claimants in arbitration can be faced with neutral arbitrator fees, which do not exist in court. These fees, however, can be shifted to Kaiser.

- 16. Kaiser Paid the Neutral Arbitrators' Fees in 89% of Cases Closed in 2015.** Claimants can choose to have Kaiser pay the entire cost of the neutral arbitrator. For the cases that closed in 2015, Kaiser paid the entire fee for the neutral arbitrators in 89% of those cases that had fees. See page 34.
- 17. Cost of Arbitrators.** Hourly rates charged by neutral arbitrators range from \$150/hour to \$900/hour, with an average of \$459. For the 502 cases that closed in 2015 and for which the OIA has information, the average fee charged by neutral arbitrators was \$6,318.94. In some cases, neutral arbitrators reported that they charged no fees. Excluding cases where no fees were charged, the average was \$6,650.12. The average fee in cases decided after a hearing was \$29,157.30. See pages 34 – 35.

Evaluations

When cases are concluded, the OIA sends questionnaires to the parties or their attorneys asking them about the OIA system, and if the cases closed by neutral arbitrator action, an evaluation of the neutral arbitrators. Of those responding, the parties gave their neutral arbitrators and the OIA system positive evaluations. When cases close by neutral arbitrator action, the OIA also sends the neutral arbitrators a questionnaire about the OIA system. Almost all of the neutral arbitrators returned their evaluations, while the parties returned 24% of the OIA evaluations and 41% of the neutral arbitrator evaluations.

- 18. Positive Evaluations of Neutral Arbitrators by Parties.** Parties who responded to the OIA evaluation expressed satisfaction with the neutral arbitrators and would recommend them to others, with an average of 4.3 on a 5 point scale. See page 41.
- 19. Positive Evaluations of the OIA by Neutral Arbitrators.** Sixty percent of the responding parties and attorneys reported that the OIA experience was better than a court system, 34% said it was about the same, and 5% said it was worse. See pages 41 – 43.
- 20. Positive Evaluations of the OIA by Parties.** Fifty-four percent of the responding parties and attorneys reported that the OIA system was better than the court system, 38% said it was the same, and 8% said it was worse. See pages 44 – 45.

Developments in 2015

The OIA and the Arbitration Oversight Board (AOB) continuously strive to improve the arbitration system.

21. **Change in Membership of the AOB.** Dr. David Werdegar retired as the chair of the AOB. Dr. Cornelius Hopper is now the chair and Richard Spinello is the vice-chair. Dr. Patrick Dowling, a UCLA physician, joined the AOB. See Section XI and Exhibit C for the resume of Dr. Dowling.
22. **Marcella A. Bell became the Independent Administrator.** Ms. Bell became the Independent Administrator on March 29, 2015, when Sharon Oxborough, the former Independent Administrator, did not renew her contract. See page 4.
23. **Published Law Review Article about the Kaiser Arbitration System.** Alan Morrison, a prior member of the National Academy of Science's Committee on Science, Technology, and Law and professor at GW Law published an article largely based on the OIA annual reports. See page 4.
24. **AOB Amends Arbitration Rules.** The AOB slightly amended Rule 26 which concerns mandatory settlement meetings. See Exhibit B, Rule 26.

CONCLUSION

The goal of the OIA is to provide an arbitration system that is fair, timely, lower in cost than litigation, and protects the privacy of the parties. To summarize:

- Neutral arbitrators are selected expeditiously, and the cases close faster than in court.
- Parties can and do disqualify neutral arbitrators they do not like.
- The filing fee is lower than in court, and parties can and do shift the cost of the neutral arbitrator to Kaiser.
- OIA arbitrations are confidential, and neither the OIA nor neutral arbitrators publish the names of individual claimants or respondents involved in them.
- Neutral arbitrators on the OIA panel have plaintiff, defendant, and judicial backgrounds. The cases are spread among them.
- Neutral arbitrators and the OIA system receive positive evaluations.
- The OIA publishes the annual reports and information about its cases in compliance with California law. This information is available on the website for the parties and the public.

A Note About Numbers

We often give average, median, mode, and range. Here are definitions of those terms:

Average: The mean. The sum of the score of all items being totaled divided by the number of items included.

Median: The midpoint. The middle value among items listed in ascending order.

Mode: The single most commonly occurring number in a given group.

Range: The smallest and largest number in a given group.

Please note: In some cases, there is more than one mode. As percentages are rounded, the total is not always exactly 100%.

I. INTRODUCTION & OVERVIEW

The Office of the Independent Administrator (OIA) issues this report for 2015.¹ It describes the arbitration system that handles claims brought by Kaiser members against Kaiser Foundation Health Plan, Inc. (Kaiser) or its affiliates.² Marcella A. Bell, an attorney, is the Independent Administrator. Under her contract with the Arbitration Oversight Board, the OIA maintains a pool of neutral arbitrators to hear Kaiser cases and independently administers arbitration cases between Kaiser and its members. The contract requires that Ms. Bell write an annual report describing the arbitration system. The report describes the goals of the system, the actions being taken to achieve them, and the degree to which they are being met. While this report mainly focuses on what happened in the arbitration system during 2015, the final section compares 2015 with earlier years.

The Arbitration Oversight Board (AOB), an unincorporated association registered with the California Secretary of State, provides ongoing oversight of the OIA and the independently administered system. Its activities are discussed in Section XI.

The arbitrations are controlled by the *Rules for Kaiser Permanente Member Arbitrations Administered by the Office of the Independent Administrator Amended as of January 1, 2016 (Rules)*. The *Rules* consist of 54 rules in a 21 page booklet and are available in English, Spanish, and Chinese.³ Some important features include:

Procedures for selecting a neutral arbitrator expeditiously;⁴

Deadlines requiring that the majority of cases be resolved within 18 months;⁵

Procedures to adjust these deadlines when required;⁶ and

¹The OIA has a website, www.oia-kaiserarb.com, where this report can be downloaded, along with the prior annual reports, the *Rules*, various forms, and much other information, including organizational disclosures. The OIA can be reached by calling 213-637-9847, faxing 213-637-8658, or e-mailing oia@oia-kaiserarb.com. A description of the OIA's staff is attached as Exhibit A.

²Kaiser is a California nonprofit health benefit corporation and a federally qualified HMO. Since 1971, it has required that its members use binding arbitration. Kaiser arranges for medical benefits by contracting with the The Permanente Medical Group, Inc. (Northern California) and the Southern California Permanente Medical Group. Hospital services are provided by contract with Kaiser Foundation Hospitals. Almost all of the demands are based on allegations against these affiliates.

³The *Rules* are attached as Exhibit B. They are redlined so the reader can view the change in Rule 26.

⁴Exhibit B, Rules 16 and 18.

⁵Exhibit B, Rule 24.

⁶Exhibit B, Rules 24, 28 and 33.

Procedures under which claimants may choose to have Kaiser pay all the fees and expenses of the neutral arbitrator.⁷

The 18 month timeline that the *Rules* establish for most cases is displayed on the next page. Details about each step in the process are discussed in the body of this report.

A. Goals of the Arbitration System Between Members and Kaiser

The system administered by the OIA is expected to provide a fair, timely, and low cost arbitration process that respects the privacy of the parties. These goals are set out in Rule 1. The data in this report are collected and published to allow the AOB and the public to determine how well the arbitration system meets these goals.

B. Format of This Report⁸

Section II discusses developments in 2015. Sections III and IV look at the OIA's pool of neutral arbitrators, and the number and types of cases the OIA received. The parties' selection of neutral arbitrators is discussed in Section V. That is followed by Section VI on the monitoring of open cases and Section VII which analyzes how cases are closed and the length of time to close. Section VIII discusses the cost of arbitration in the system. Sections IV.B. through VIII exclude lien cases.⁹ Section IX then presents all the analyses for lien cases. The parties' evaluations of their neutral arbitrators and the parties' and neutral arbitrators' evaluations of the OIA system are summarized in Section X.¹⁰ Section XI describes the AOB's membership and activities during 2015. Finally, Section XII then compares the operation of the system over time.

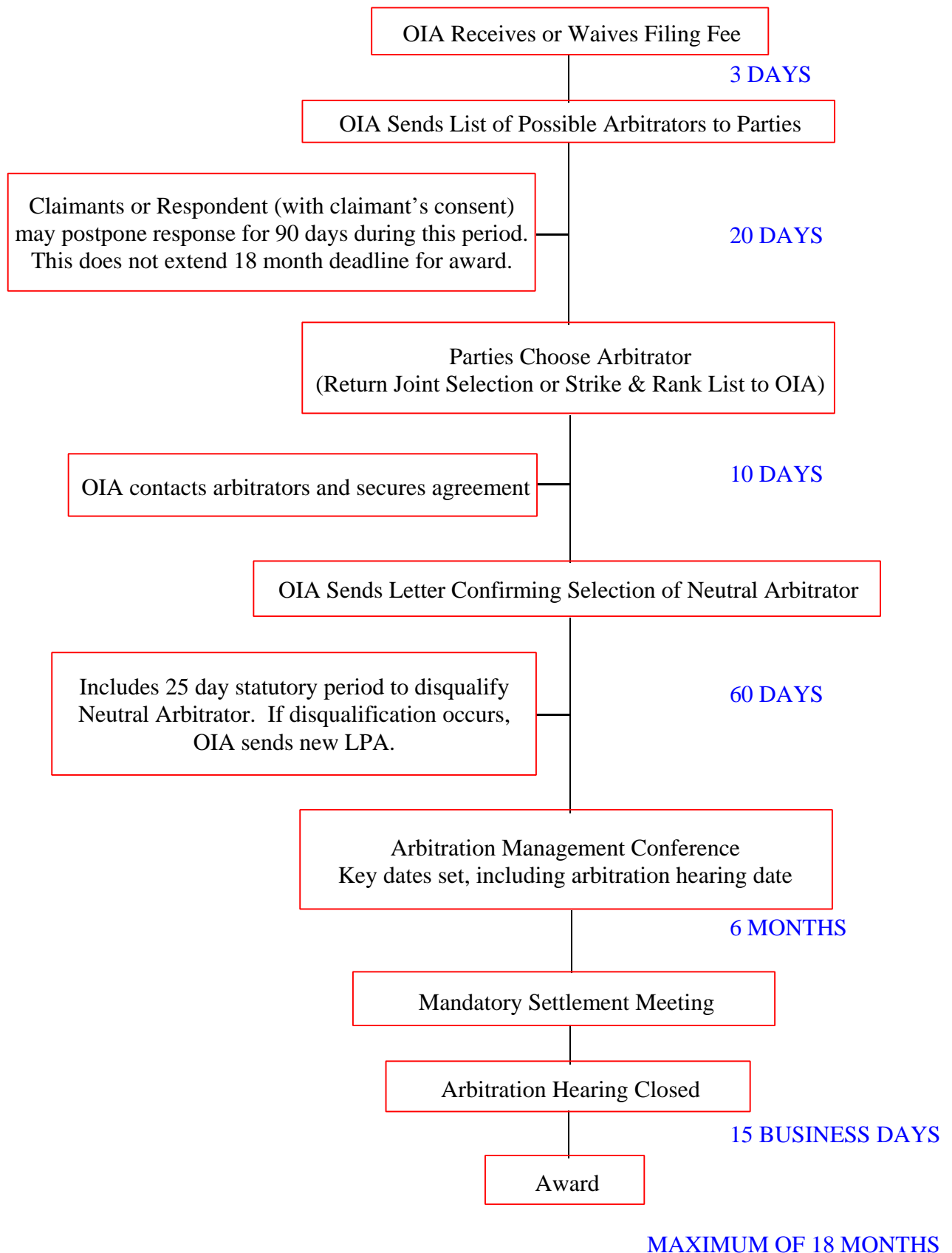
⁷Exhibit B, Rules 14 and 15; *see also* Section VIII.

⁸For a discussion of the history and development of the OIA and its arbitration system, please see prior reports. The OIA was created in response to the recommendation of a Blue Ribbon Panel (BRP) and began operating March 28, 1999. Ms. Bell has served as the Independent Administrator since March 29, 2015. The OIA met all of the recommendations that pertain to it since its first operating year. A full copy of the BRP report is available on the OIA website. In addition, a separate document that sets out the status of each recommendation is available on the website.

⁹Lien cases are brought by Kaiser against its members. The vast bulk of the system's cases are brought by members against Kaiser and allege medical malpractice.

¹⁰Because these are anonymous, all of the evaluations are considered together, regardless of the type of cases.

Timeline for Arbitrations Using Regular Procedures



II. DEVELOPMENT AND CHANGES IN THE SYSTEM IN 2015

A. Change in Membership of the AOB

Dr. David Werdegar, who established and then chaired the AOB, retired as the chair at the end of 2015. Dr. Cornelius Hopper, the former vice-chair, is now the chair, and Richard Spinello, who oversaw the 2014 OIA audit, is the vice-chair. Dr. Patrick Dowling, a UCLA physician, became a new member. See Section XI and Exhibit C for the resume of Dr. Dowling.

B. Marcella A. Bell became the Independent Administrator March 29, 2015, at the end of Sharon Oxborough's tenure

Ms. Bell, selected by the AOB to be the next Independent Administrator when Ms. Oxborough's contract expired, took over as Independent Administrator March 29, 2015. She was the Director of the OIA for 15 years. The substantive duties, as well as the staff and physical office of the OIA remained the same.

C. Published Law Review Article about the Kaiser Arbitration System Showed Positive Findings

Several years ago, Ms. Oxborough spoke at a meeting of the Committee of Science, Technology and the Law (CSTL), a part of the National Academy of Sciences, that discussed medical malpractice arbitration. Alan Morrison, a member of the CSTL and professor at GW Law, was sufficiently intrigued by the system that he subsequently spoke with various members of Kaiser and Ms. Oxborough, and drafted an article based on those conversations and information provided in the 2013 Annual Report. In December 2014, the National Academy of Sciences held a meeting with individuals interested in medical malpractice arbitration to discuss the article. His article, "Can Mandatory Arbitration of Medical Malpractice Claims be Fair? The Kaiser Permanente System," was published in the November, 2015 *Dispute Resolution Journal*, Vol. 70, No. 3.¹¹

D. AOB Amends Arbitration Rules

The AOB amended Rule 26 which concerns mandatory settlement meetings. The AOB decided that Rule 26 could be stated more clearly, with a slight modification. See Exhibit B, Rule 26.

¹¹The Dispute Resolution Journal is published by the American Arbitration Association.

III. POOL OF NEUTRAL ARBITRATORS

A. Turnover in 2015 and the Size of the Pool at Year-End

On December 31, 2015, there were 262 people in the OIA’s pool neutral arbitrators. Of those, 106 were former judges, or 40%.

Members of the OIA pool are distributed into three geographic panels: Northern California, Southern California, and San Diego. See Table 1. Members who agree to travel without charge may be listed on more than one panel. Exhibit D contains the names of the members of each panel.

Table 1 - Number of Neutral Arbitrators by Region

Total Number of Arbitrators in the OIA Pool:	262
Southern California Total:	132
Northern California Total:	131
San Diego Total:	67
The three regions total 330 because 52 arbitrators are in more than one panel; 32 in So. Cal & San Diego, 3 in No. Cal & So. Cal, 1 in No. Cal. and San Diego, and 16 in all three panels	

On January 1, 2015, the OIA pool of possible arbitrators contained 281 names. During the year – in which neutral arbitrators were required to update their applications – 42 people left the pool. Eighteen arbitrators, however, joined the pool in 2015.¹² The OIA rejected one applicant because that person did not meet the qualifications.¹³

B. Practice Background of Neutral Arbitrators

The neutral arbitrator application requires applicants to estimate the amount of their practice spent in various professional endeavors. On average, neutral arbitrators in the OIA pool spend their time as follows: 77% of his or her time acting as a neutral arbitrator, 13% as a

¹²The application can be obtained by calling the OIA or by downloading it from the OIA website.

¹³The qualifications for neutral arbitrators are attached as Exhibit E. If the OIA rejects an application, we inform the applicant of the qualification(s) which he or she failed to meet.

claimant (or plaintiff) attorney, 9% as a respondent (or defense) attorney, 16% in other forms of employment, including non-litigation legal work, teaching, mediating, etc., and 2% acting as a respondent's party arbitrator, a claimant's party arbitrator, or an expert.

A very substantial percentage of the pool spends 100% of their practice acting as neutral arbitrators. More than half of the pool, 149 members, report that they spend all of their time that way. The full distribution is shown in Table 2.

Table 2 - Percentage of Practice Spent As a Neutral Arbitrator

Percent of Time	0%	1 – 25%	26 – 50%	51 – 75%	76 – 99%	100%
Number of NAs	4	69	18	4	16	149

The members of the OIA pool who are not full time arbitrators primarily work as litigators. See Table 3.

Table 3 - Percentage of Practice Spent As an Advocate

Percent of Practice	Number of NAs Reporting Plaintiff Counsel Practice	Number of NAs Reporting Defendant Counsel Practice
0%	205	205
1 – 25%	21	22
26 – 50%	20	21
51 – 75%	3	4
76 – 100%	12	10

Finally, while the qualifications do not require that members of the OIA pool have medical malpractice experience, 93% of them do. At the time they filled out or updated their applications, 243 reported that they had such experience, while 19 did not. Members of the pool who have served on a Kaiser case since they joined the pool may have acquired medical malpractice experience since their initial report to us.¹⁴

¹⁴Of the 19 who reported no medical malpractice experience in their applications, 13 of them have served as a neutral arbitrator in an OIA case.

C. Number in the Pool of Arbitrators Who Served in 2015¹⁵

One of the recurring concerns expressed about mandatory consumer arbitration is the possibility of a “captive,” defense-oriented, pool of arbitrators. The theory is that Kaiser is a “repeat player” but claimants are not; Kaiser therefore has the capacity to bring more work to arbitrators than claimants. Moreover, if the pool from which neutral arbitrators are drawn is small, some arbitrators could become dependent on Kaiser for their livelihood.

A large pool of people available to serve as neutral arbitrators, and actively serving as such, is therefore an important tool to avoid this problem. If the cases are spread out among many neutrals, no one depends on Kaiser for his or her income and impartiality is better served. Three factors that can minimize possible bias are: 1) the large size of the OIA pool from which the OIA randomly compiles Lists of Possible Arbitrators, 2) the ability of parties to jointly select arbitrators from both within and outside the pool,¹⁶ and 3) the ability of a party to disqualify any neutral arbitrator after selection.¹⁷

1. The Number of Neutral Arbitrators Named on a List of Possible Arbitrators in 2015

All but one of the neutral arbitrators in the OIA pool were named on at least one List of Possible Arbitrators (LPA) sent to the parties by the OIA in 2015. The average number of times Northern California arbitrators appear on a LPA is 24, the median number is 25, and the mode is 22. The range of appearances is from 0 to 37 times.¹⁸ In Southern California, the average number of appearances is 24, the median is 25, and the mode is 28. The range is from 1 to 39. In San Diego, the average is 9, the median is 8, and the mode is 7. The range of appearances on the LPA is from 1 to 21.

2. The Number Who Served in 2015

In 2015, 167 different neutral arbitrators were selected to serve in 564 OIA cases. The great majority (149) were members of the OIA pool. Thus, in 2015, 57% of the OIA pool were selected to serve in a case. The number of times a neutral in the OIA pool was selected ranges

¹⁵The procedure for selecting neutral arbitrators for individual cases is described below in Section V.A.

¹⁶See Section V.B.

¹⁷See Section V.D.

¹⁸In addition to chance, the number of times a neutral arbitrator is listed is affected by how long a given arbitrator has been in the pool, the number of members in each panel, and the number of demands for arbitration submitted in the geographical area for that panel. Some neutral arbitrators have been in the OIA pool since it started; two joined in December 2015 and one was not listed on a LPA. The number of times an arbitrator is selected also depends on whether the individual will hear cases when the claimant has no attorney (*pro per* cases). Twenty-six percent of the pool will not hear *pro per* cases.

from 0 to 26. The neutral arbitrator at the highest end was jointly selected 22 times. The average number of appointments for members of the pool in 2015 is 2, the median is 1, and the mode is 0.

3. The Number Who Wrote Awards in 2015

The group of neutral arbitrators deciding awards after hearing is similarly large. Fifty-two different neutral arbitrators wrote awards. Forty arbitrators wrote a single award, while 11 decided 2. One neutral arbitrator wrote four awards. The neutral arbitrator who decided four cases wrote them all in favor of Kaiser. In one of them, the claimant was unrepresented.

4. The Number Who Have Served After Making a Large Award

Concerns have been raised whether Kaiser will allow neutral arbitrators who have made large awards to serve in subsequent arbitrations, since its attorneys could strike them from LPAs or disqualify them if selected. Therefore, annual reports describe what has happened to neutral arbitrators after making an award of \$500,000 or more.

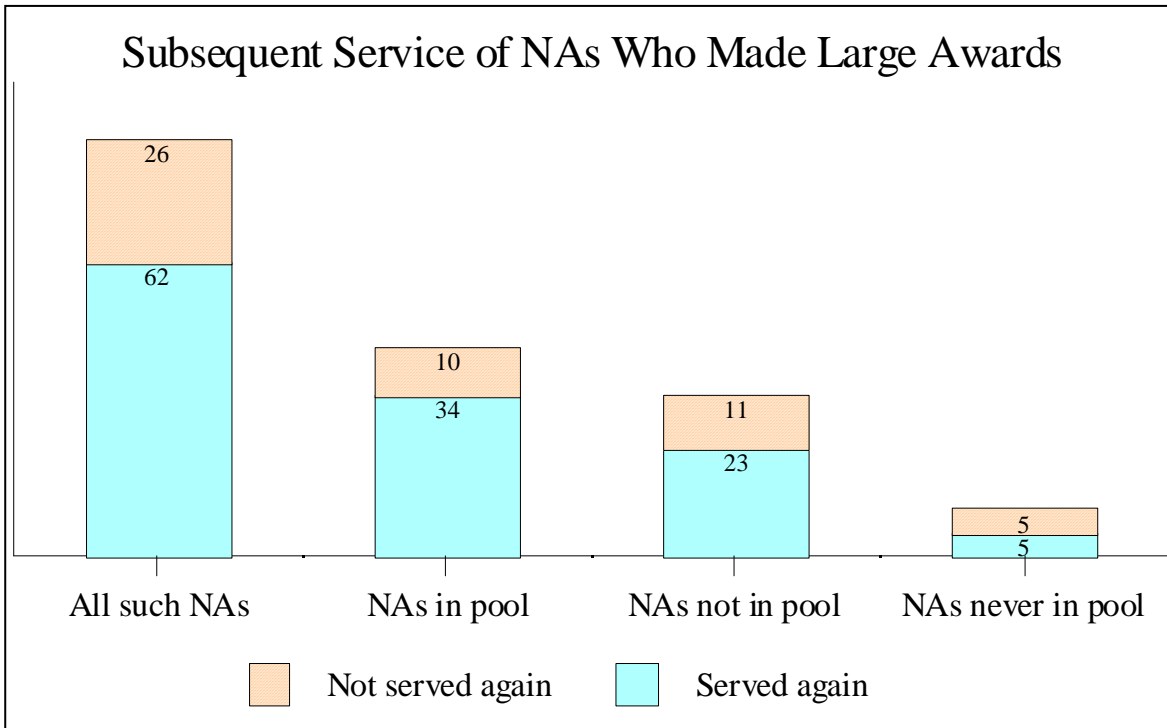
Since 1999, 88 different neutral arbitrators have made 116 awards of \$500,000 or more in favor of claimants. Most of the neutral arbitrators who made the awards were members of the OIA pool, but ten were not. The awards have ranged from \$500,000 to \$11,640,000. Neutral arbitrators made eight awards for more than \$500,000 in 2015.

As Chart 1 illustrates, most neutral arbitrators who have made awards of \$500,000 or more served again. Specifically, 62 neutral arbitrators served 1,515 times after making their awards for \$500,000 or more. In almost half of these cases (713), the parties jointly selected the neutral arbitrator.¹⁹

Of the 26 neutral arbitrators who were not selected after making their awards for \$500,000 or more, some were never in the OIA pool and some left the pool. Ten of the neutral arbitrators who made such awards and were still in the pool in 2015 have not served again. Six of these neutral arbitrators made their first award in 2015.

¹⁹In 2015, 30 neutral arbitrators who made such awards were selected in 126 cases. In 60 of the cases, they were jointly selected.

Chart 1



5. Comparison of Cases Closed by Neutral Arbitrators Selected Ten or More Times in 2015 with Cases Closed by Other Neutral Arbitrators

The AOB has been interested in whether there are differences between neutral arbitrators who serve the most often and other neutral arbitrators. Since 2007, the OIA has compared how the two groups close cases. There were eleven neutral arbitrators who were selected ten or more times in 2015. The OIA compared the cases these arbitrators closed in 2014 and 2015 with the other cases that closed in those years with neutral arbitrators in place. Table 4 shows the results.

Table 4 - Comparison of Cases Closed with Neutral Arbitrators Selected Ten or More Times in 2015 vs. Cases Closed with Other Neutral Arbitrators

Cases Closed 2014 – 2015	Cases with Neutral Arbitrators Selected 10 or More Times in 2015		Cases with Other Neutral Arbitrators	
Settled	101	50%	409	48%
Withdrawn	64	32%	181	21%
Summary Judgment	16	8%	121	14%
Awarded to Respondent	11	5%	69	8%
Awarded to Claimant	8	4%	34	4%
Dismissed	1	0%	31	4%
Other	2	1%	3	0%
Total	203		848	

IV. DEMANDS FOR ARBITRATION SUBMITTED BY KAISER TO THE OIA

Kaiser submitted 610 demands for arbitration in 2015. Geographically, 278 demands for arbitration came from Northern California, 273 came from Southern California, and 59 came from San Diego.²⁰

A. Types of Claims

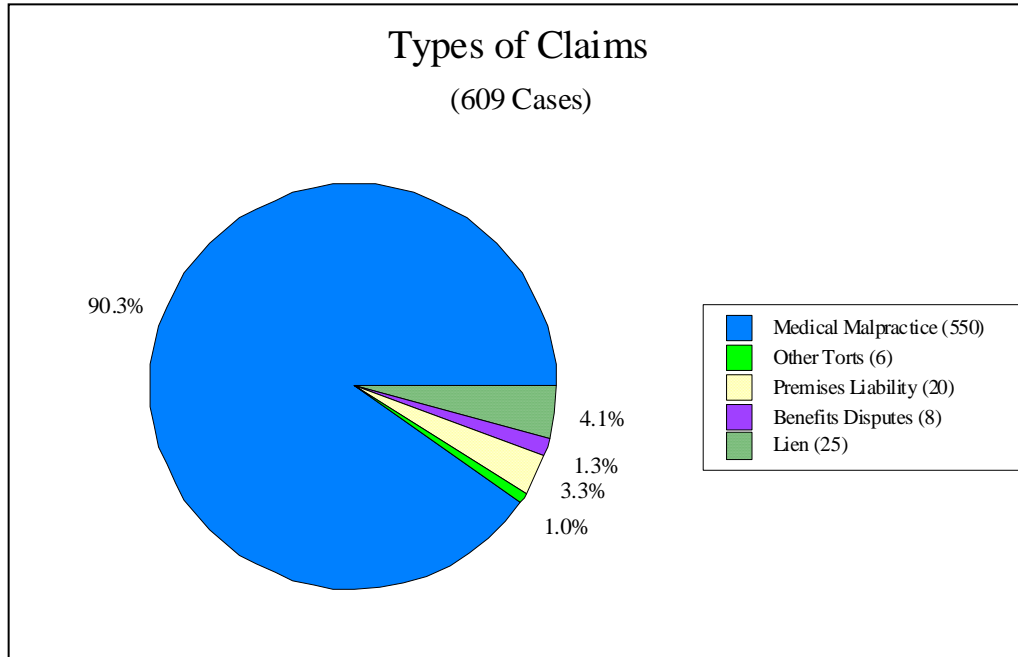
In 2015, the OIA administered 609 new cases.²¹ The OIA categorizes cases by the subject of their claim: medical malpractice, premises liability, other tort, lien, or benefits and coverage. Medical malpractice cases make up 90% (550 cases) in the OIA system. Benefits and coverage cases represent one percent of the system (eight cases).

²⁰The allocation between Northern and Southern California is based upon Kaiser’s corporate division. Roughly, demands based upon care given in Fresno or north are in Northern California, while demands based upon care given in Bakersfield or south are in Southern California or San Diego. Rule 8 specifies different places of service of demands for Northern and Southern California, including San Diego.

²¹A few of these demands submitted by Kaiser do not proceed further in the system because they are “opt in” – based on a contract that required arbitration but not the use of the OIA. There were three “opt ins” in 2015. Two of the claimants chose to have the OIA administer their claims; the third was returned to Kaiser when the claimant did not respond.

Chart 2 shows the types of new claims the OIA administered during 2015.

Chart 2



As discussed in Section I.B., the rest of this report, with the exception of Sections IX and X, excludes lien cases from its analysis and concentrates on what happened in 2015. Lien cases are discussed in Section IX.

B. Length of Time Kaiser Takes to Submit Demands to the OIA

The *Rules* require Kaiser to submit a demand for arbitration to the OIA within ten days of receiving it.²² In 2015, the average length of time that Kaiser took to submit demands to the OIA is four days. The mode is one. This means that usually Kaiser sent the OIA a demand on the day after Kaiser received it. The median is four days. The range is 0 – 115 days.

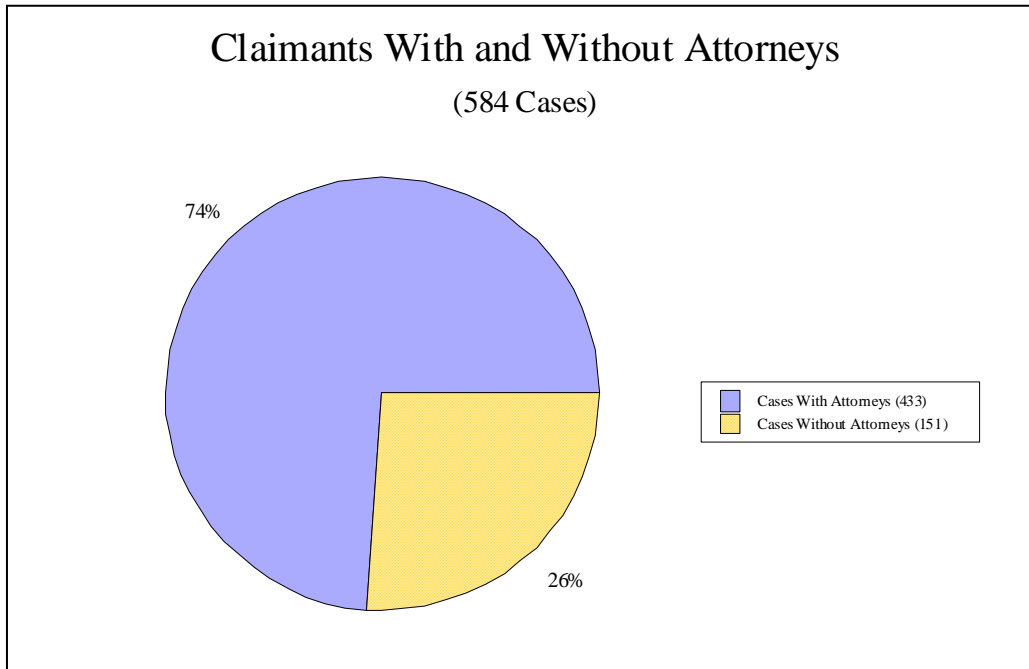
There were 16 cases in 2015 in which Kaiser took more than 10 days to submit the demand to the OIA. If only these “late” cases are considered, the average is 21 days, the median is 14.5, and the mode is 11. The range is 11 to 115 days. The cases are evenly divided between Northern and Southern California.

²²Exhibit B, Rule 11.

C. Claimants With and Without Attorneys

Claimants were represented by counsel in 74% of the new cases the OIA administered in 2015 (433 of 584). In 26% of cases, the claimants represented themselves (or acted in *pro per*).

Chart 3



V. SELECTION OF THE NEUTRAL ARBITRATORS

One of the most important steps of the arbitration process occurs at the beginning: the selection of the neutral arbitrator. Subsection A first describes the selection process in general. The next four sub-sections discuss different aspects of the selection process in detail: 1) whether the parties selected the neutral arbitrator by jointly agreeing to someone or by striking and ranking the names on their List of Possible Arbitrators (LPA) (subsection B); 2) the cases in which the parties – almost always the claimant – decided to delay the selection of the neutral (subsection C); 3) the cases in which the parties – again, usually the claimant – disqualified a neutral arbitrator (subsection D); and 4) the amount of time it took the parties to select the neutral arbitrator (subsection E). Finally, the report examines cases in which parties have selected party arbitrators (subsection F).

A. How Neutral Arbitrators are Selected

The process for selecting the neutral arbitrator begins when the OIA starts to administer a case²³ and a claimant has either paid the \$150 arbitration filing fee or received a waiver of that fee. The OIA sends both parties in the case a LPA. This LPA contains the names of 12 members from the appropriate panel of the OIA pool of neutral arbitrators. The names are generated randomly by a computer program.

Along with the LPA, the OIA sends the parties information about the people named on the LPA. At a minimum, the parties receive a copy of each neutral arbitrator's application and fee schedule, and subsequent updates to the application, which are required every two years.

If a neutral arbitrator has served in any earlier, closed OIA case, the parties may also receive copies of any evaluations previous parties have submitted about the neutral, and redacted copies of any awards or decisions closing cases the neutral arbitrator has prepared.

The parties have 20 days to respond to the LPA.²⁴ Parties can respond in one of two ways. First, both sides can jointly decide on the person they wish to be the neutral arbitrator. This person does not have to be one of the names included in the LPA, be in the OIA pool, or meet the OIA qualifications.²⁵ Provided the person agrees to follow the OIA *Rules*, the parties can jointly select anyone they want to serve as neutral arbitrator.

On the other hand, if the parties do not jointly select a neutral arbitrator, each side returns the LPA, striking up to four names and ranking the rest, with "1" as the top choice. When the OIA receives the LPAs, the OIA eliminates any names that have been stricken by either side and then totals the scores of the names that remain. The person with the best score²⁶ is asked to serve. This is called the "strike and rank" procedure.

²³For the OIA to administer a case, it must be mandatory or the claimant must have opted-in. The OIA can take no action in a non-mandatory case before a claimant has opted in except to return it to Kaiser to administer. See footnote 21.

²⁴A member of the OIA staff contacts the parties before their responses to the LPA are due to remind them of the deadline.

²⁵Neutral arbitrators who do not meet our qualifications – for example, they might have served as a party arbitrator in the past three years for either side in a Kaiser arbitration – may serve as jointly selected neutral arbitrators. There is, however, one exception: If, pursuant to California's Ethics Standards, a neutral arbitrator has promised not to take another case with the parties while the first remains open and the OIA knows the case is still open, the OIA would not allow the person to serve as a neutral arbitrator in a subsequent case.

²⁶For example, a person who was ranked "1" by both sides – for a combined score of "2" – would have the best score.

A significant number of OIA administered cases close before a neutral arbitrator is selected. In 2015, 50 cases either settled (19) or were withdrawn (31) without a neutral arbitrator in place.²⁷ Before a neutral has been selected, the parties can request a postponement of the LPA deadline under Rule 21 of up to 90 days. In addition, after the neutral arbitrator is selected, but before he or she begins to serve, California law allows either party to disqualify the neutral arbitrator.

B. Joint Selections vs. Strike and Rank Selections

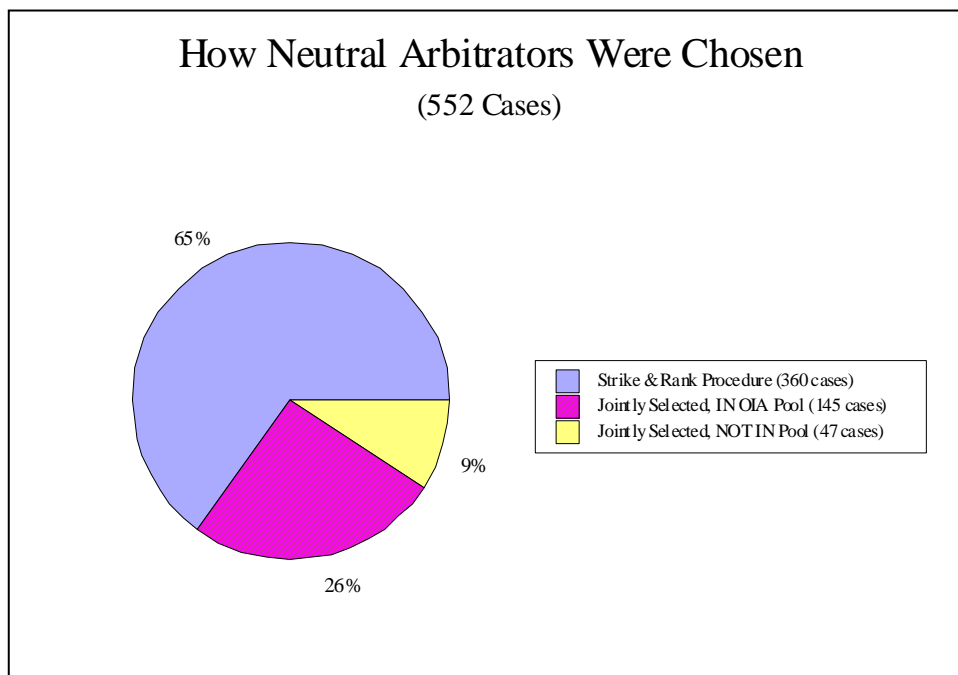
Of the 552 neutral arbitrators selected in 2015, 192 were jointly selected by the parties (35%) and 360 (65%) were selected by the strike and rank procedure. No neutral arbitrator was selected by court order.²⁸ Of the neutral arbitrators jointly selected by the parties, 145 (76%), were members of the OIA pool, though not necessarily on the LPA sent to the parties. In 47 cases (24%), the parties selected a neutral arbitrator who was not a member of the pool. See Chart 4. Three neutral arbitrators who are not part of the OIA pool account for 21 of the joint selections.²⁹

²⁷These cases included both cases with attorneys and cases where the claimant was in *pro per*. The disposition varied however. For *pro per* cases, 3 settled and 16 were withdrawn. For represented cases, 16 settled and 15 were withdrawn.

²⁸In rare cases when the parties cannot select a neutral arbitrator, generally because of disqualifications of neutral arbitrators, either party can petition the state court to do so. See footnote 33.

²⁹While they have been invited, they prefer not to be in the OIA pool.

Chart 4



C. Cases with Postponements of Time to Select Neutral Arbitrators

Under Rule 21, a claimant has a unilateral right to a 90 day postponement of the deadline to respond to the LPA. If a claimant has not requested one, the respondent may request such a postponement, but only if the claimant agrees in writing. The parties can request only one postponement in a case – they cannot, for example, get a 40 day postponement at one point and a 50 day postponement later. Many parties request a postponement of less than 90 days. In addition to Rule 21, Rule 28 allows the OIA, in cases where the neutral arbitrator has not been selected, to extend deadlines. The OIA has used this authority occasionally to extend the deadline to respond to the LPA. Generally, parties must use a 90 day postponement under Rule 21 before the OIA will extend the deadline under Rule 28. A Rule 28 extension is generally short – two weeks if the parties say the case is settled or withdrawn³⁰ – though it may be longer if, for example, it is based on the claimant’s medical condition, or a party has gone to court for some reason.

Under Rule 21, claimants do not have to give a reason to obtain a 90 day postponement. For a Rule 28 extension, however, they must provide a reason. The reasons for a Rule 28 extension are often the same as claimants identify as the reasons they use Rule 21. In some cases, the parties are seeking to settle the case or to jointly select a neutral arbitrator. Some claimants or attorneys want a little more time to evaluate the case before incurring the expense of a neutral arbitrator. As noted above, parties in 50 cases either settled or withdrew them before a neutral

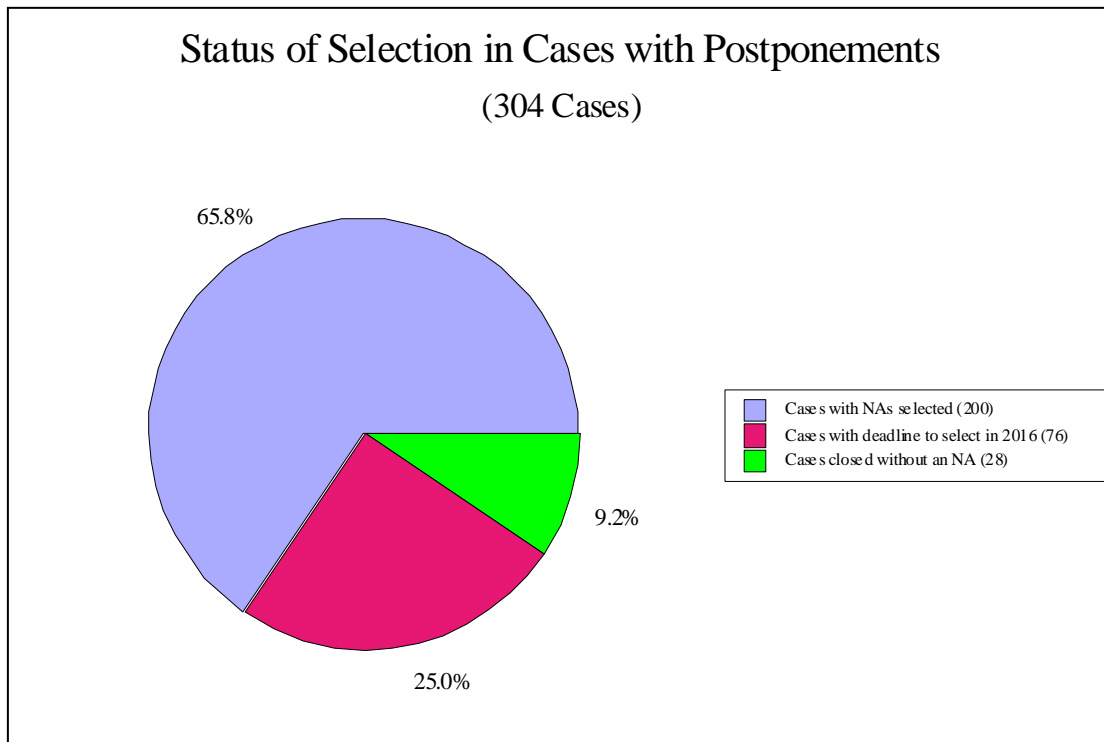
³⁰The extension allows the claimant to send in a written notice of settlement or withdrawal without a neutral arbitrator being selected and sending out disclosure forms, reducing expenses generally.

arbitrator was put in place. Some claimants who do not have an attorney want time to find one. Occasionally the OIA has discovered at the deadline that an attorney no longer represents a claimant. There are also some unrepresented claimants who request more time for health reasons. One reason for Rule 21 postponement that does not justify a Rule 28 extension is that the claimants or their attorneys simply want more time to submit their LPA responses.

In 2015, there were 304 cases where the parties obtained either a Rule 21 postponement, a Rule 28 extension of the time to return their responses to the LPA, or both. The claimants made all but two of the requests for Rule 21 postponements. Requests for a Rule 28 extension were made in 28 cases. In some, the Rule 21 request was made in prior years. There were two cases where a Rule 28 extension was given without a prior Rule 21 postponement.

Chart 5 shows what happened in those 304 cases. Sixty-six percent (200) now have a neutral arbitrator in place. Twenty-eight closed before a neutral arbitrator was selected. For the remaining 76 cases, the deadline to select a neutral arbitrator is after December 31, 2015.

Chart 5



D. Cases with Disqualifications

California law gives the parties in an arbitration the opportunity to disqualify neutral arbitrators at the start of a case.³¹ Neutral arbitrators are required to make various disclosures within ten days of the date they are selected.³² After they make these disclosures, the parties have 15 days to serve a disqualification of the neutral arbitrator. Additionally, if the neutral arbitrator fails to serve the disclosures, the parties have 15 days after the deadline to serve disclosures to disqualify the neutral arbitrator. Absent court action, there is no limit as to the number of times a party can disqualify neutral arbitrators in a given case. However, under Rule 18.f, after two neutral arbitrators have been disqualified, the OIA randomly selects subsequent neutral arbitrators, rather than continuing to send out new LPAs.

Multiple disqualifications occur infrequently. In 2015, neutral arbitrators were disqualified in 51 cases. Forty-seven cases had a single disqualification. One case had two disqualifications, one case had three, one case had five, and one case had six or more disqualifications.³³ Chart 6 shows what happened in those 51 cases. In 49 of the cases with a disqualification, a neutral arbitrator had been selected at the end of 2015. In two of the cases with a disqualification, the time for the neutral arbitrator selection had not expired by the end of the year.

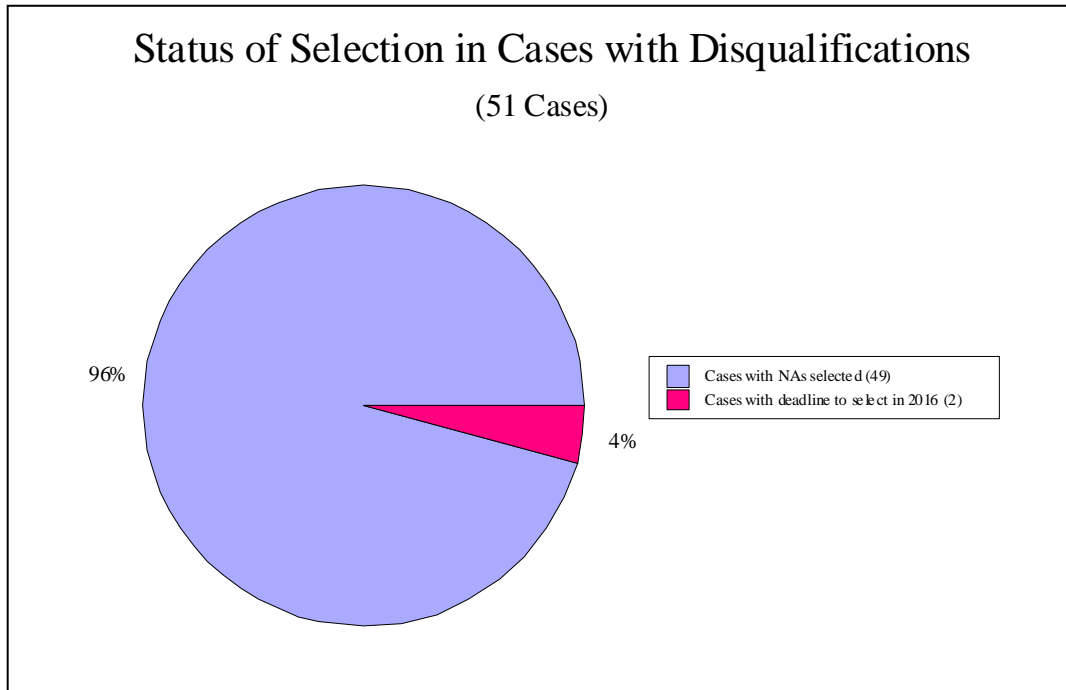
Because of multiple disqualifications in some cases, these 51 cases represent 67 neutral arbitrators who were disqualified in 2015. The claimants' side disqualified 47 neutral arbitrators and Kaiser disqualified 20.

³¹California Code of Civil Procedure § 1281.91; see also Exhibit B, Rule 20.

³²California Code of Civil Procedure § 1281.9, especially California Code of Civil Procedure § 1281.9(b). In the OIA system, the ten days are counted from the date of the letter confirming service which the OIA sends to the neutral arbitrator, with copies to the parties, after the neutral arbitrator agrees to serve.

³³In cases with multiple disqualifications, one of the parties may petition the California Superior Court to select a neutral arbitrator. If the court grants the petition, a party is only permitted to disqualify one neutral arbitrator without cause; subsequent disqualifications must be based on cause. California Code of Civil Procedure §1281.91(2).

Chart 6

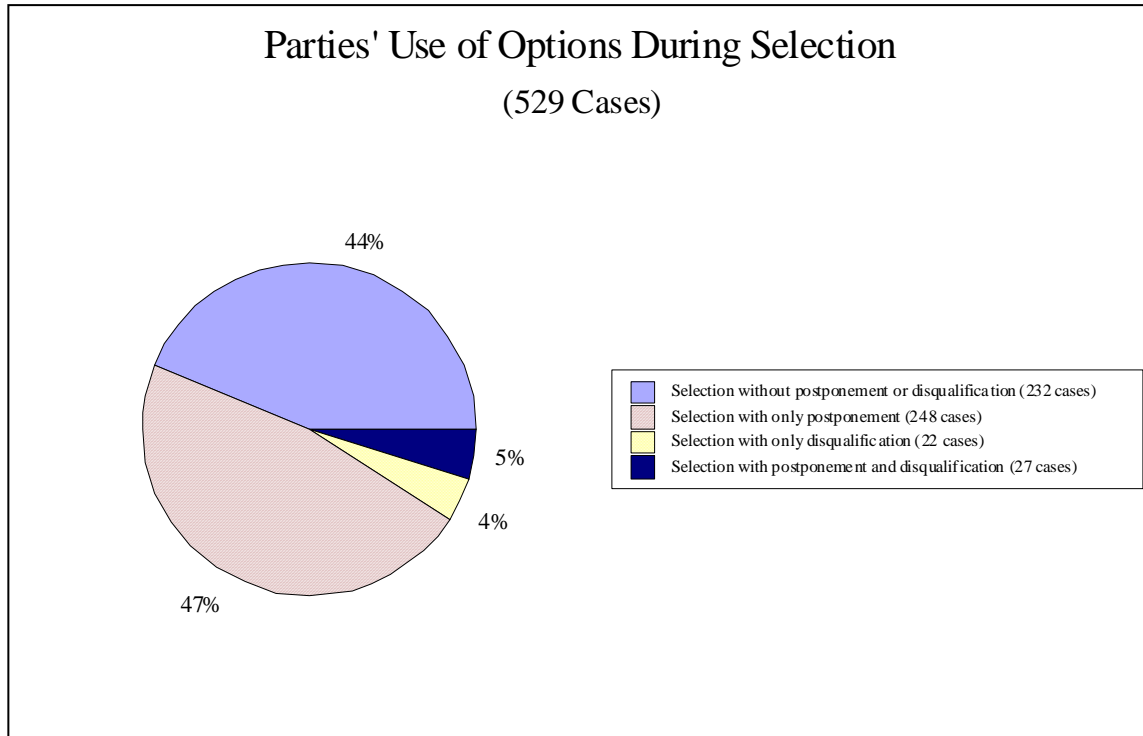


E. Length of Time to Select a Neutral Arbitrator

This section considers 529 cases in which a neutral arbitrator was selected in 2015.³⁴ Because parties can postpone the deadline to select a neutral arbitrator and parties have a statutory right to disqualify a neutral arbitrator, the report divides the selections into four categories when discussing the length of time to select a neutral arbitrator. The first is those cases in which there was no delay in selecting the neutral arbitrator. The second category is those cases in which the deadline for responding to the LPA was extended, generally because the claimant requested a 90 day postponement before selecting a neutral arbitrator. The third category is those cases in which a neutral arbitrator was disqualified by a party and another neutral arbitrator was selected. The fourth category is those cases in which there was both a postponement of the LPA deadline and a disqualification of a neutral arbitrator. Finally, we give the overall average for the 529 cases. Chart 7 displays the four categories. The average length of time by category, overall, and before the OIA are shown on Chart 8.

³⁴Twenty-three cases in which a neutral arbitrator was selected in 2015 are not included in this section. In these cases, a neutral arbitrator had previously been appointed, had begun acting as the neutral arbitrator, but had subsequently been removed as the neutral arbitrator. These include cases where a neutral arbitrator died, became seriously ill, was made a judge, or made disclosures in the middle of a case – because of some event occurring after the initial disclosure – and was disqualified. Because we count time from the first day that the case was administered, those cases are not included in these computations of length of time to select a neutral arbitrator.

Chart 7



1. Cases with No Delays

There were 232 cases where a neutral arbitrator was selected in 2015 in which there was no delay. Under the *Rules*, the maximum number of days to select a neutral arbitrator when there is no delay is 33 days. The average number of days to select a neutral arbitrator in those cases is 25 days, the mode is 27 days, the median is 26 days, and the range is 0 – 37 days.³⁵ This category represents 44% of all neutral arbitrators selected in 2015.

2. Cases with Postponements

There were 248 cases where a neutral arbitrator was selected in 2015 and the only delay was a 90 day postponement and/or an OIA extension of the deadline under Rule 28. This includes cases where the request for the postponement was made in prior years, but the neutral arbitrator was actually selected in 2015. Under the *Rules*, the maximum number of days to select a neutral arbitrator when there is a 90 day postponement is 123 days. The average number of days to select a neutral arbitrator in those cases is 109 days, the mode is 113 days, the median is 115 days, and

³⁵The parties in an expedited case came to the OIA with a jointly selected neutral arbitrator, so the arbitrator was selected in zero days.

115 days, and the range is 25 – 315 days.³⁶ This category represents 47% of all cases which selected a neutral arbitrator in 2015.

3. Cases with Disqualifications

There were 22 cases where a neutral arbitrator was selected in 2015 and the only delay was that one or more neutral arbitrators were disqualified by a party. Again, this includes cases where a disqualification was made in prior years. Under the *Rules*, the maximum number of days to select a neutral arbitrator is 96, if there is only one disqualification.³⁷ The average number of days to select a neutral arbitrator in the 22 cases is 62 days, the median is 58 days, the mode is 64, and the range is 27 – 150 days.³⁸ Disqualification only cases represent 4% of all cases which selected a neutral arbitrator in 2015.

4. Cases with Postponements and Disqualifications

There were 27 cases where a neutral arbitrator was selected in 2015 after a postponement and a disqualification of a neutral arbitrator. Again, this includes cases where a postponement or disqualification was made in prior years. Under the *Rules*, the maximum number of days to select a neutral arbitrator if there is both a 90 day postponement and a single disqualification is 186 days. The average number of days to select a neutral arbitrator in these cases is 173 days, the mode is 147, the median is 151 days, and the range is 109 – 341 days.³⁹ These cases represent 5% of all cases which selected a neutral arbitrator in 2015.

5. Average Time for All Cases

The average number of days to select a neutral arbitrator in all of these cases is 73 days. For purposes of comparison, the California Supreme Court stated in *Engalla vs. Permanente*

³⁶In the case that took 315 days to select a neutral arbitrator with just a postponement, the claimant's attorney obtained a 90 day postponement and then withdrew the day after the deadline to respond to the LPA. The *pro per* claimant then obtained two additional postponements under Rule 28 because he was receiving medical treatment and, pursuant to his treating physician, was unable to participate in the selection process for 6 months.

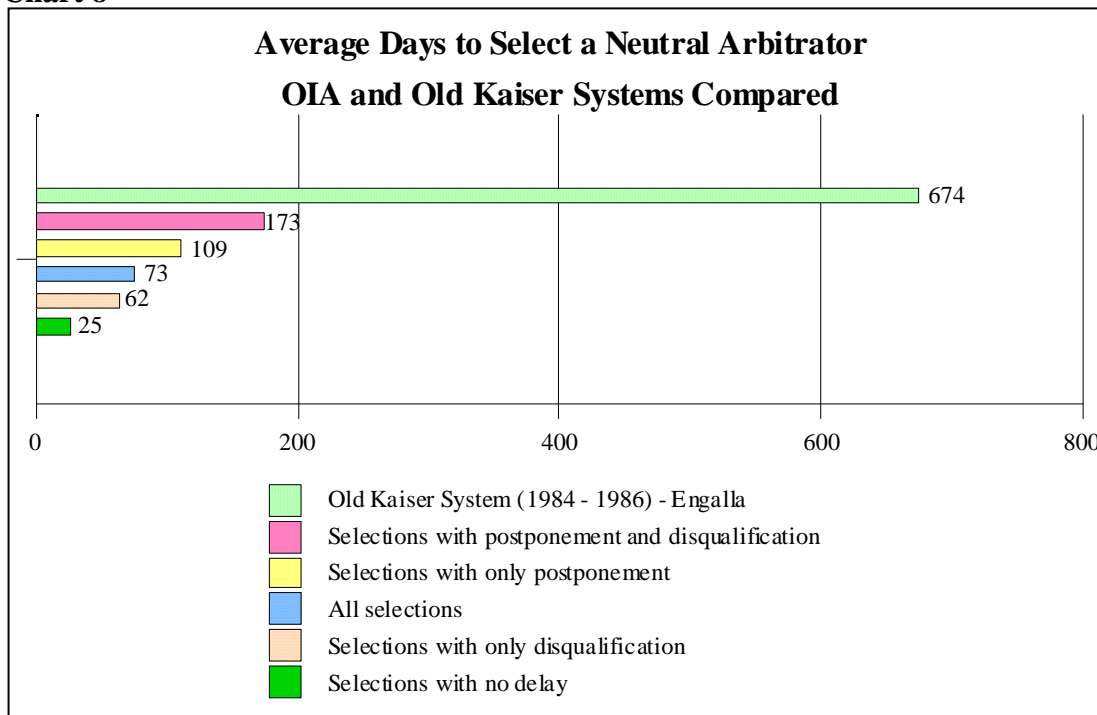
³⁷The 96 days is comprised of the 33 days to select the first neutral arbitrator; the 30 days for the statutory periods for disclosure, disqualification, and service under the California Code of Civil Procedure; and then 33 days to select the second neutral arbitrator. The amount of time increases if there is more than one disqualification.

³⁸In the case that took 150 days to select a neutral arbitrator, the attorneys disqualified 7 neutral arbitrators (5 by claimant's attorney and 2 by Kaiser's attorney) before jointly agreeing to a neutral arbitrator.

³⁹In the case that took 341 days to select a neutral arbitrator, the claimant's attorney obtained a 90 day postponement. He subsequently filed a motion in state court to be relieved as counsel of record which was set to be heard five months later, receiving a Rule 28 delay until the court decided the motion. The claimant's attorney remained on the case and disqualified the first neutral arbitrator.

*Medical Group*⁴⁰ that the old Kaiser system averaged 674 days to select a neutral arbitrator over a period of 2 years in the 1980's. Thus, as shown on Chart 8, in 2015, the OIA system is nine times faster.

Chart 8



F. Cases With Party Arbitrators

In medical malpractice cases in which the claimed damages exceed \$200,000, a California statute gives parties a right to proceed with three arbitrators: one neutral arbitrator and two party arbitrators.⁴¹ The parties may waive this right. The Blue Ribbon Panel (BRP) that gave rise to the OIA questioned whether the value added by party arbitrators justified their expense and the delay associated with two more participants in the arbitration process. The BRP therefore suggested that the system create incentives for cases to proceed with one neutral arbitrator.

Rules 14 and 15 provide such an incentive. Kaiser pays the full cost of the neutral arbitrator if the claimant waives the statutory right to a party arbitrator, as well as any court challenge to the arbitrator on the basis that Kaiser paid him/her. If both Kaiser and the claimant waive party arbitrators, the case proceeds with a single neutral arbitrator.

⁴⁰15 Cal. 4th 951, 64 Cal. Rptr. 2d 843, 938 P.2d 903. The California Supreme Court's criticism of the then self-administered Kaiser arbitration system led to the creation of the Blue Ribbon Panel.

⁴¹California Health & Safety Code §1373.19.

Few party arbitrators are used in the OIA system. In 2015, 2 of the 62 cases that went to hearing were decided with party arbitrators.⁴²

Of the cases that remained open at the end of 2015, party arbitrators had been designated in four of them. In three of them, the OIA had designations from both parties. In the other one, only one side had designated a party arbitrator.

VI. MAINTAINING THE CASE TIMETABLE

This section summarizes the methods for monitoring compliance with deadlines and then looks at actual compliance with deadlines at various points during the arbitration process. The OIA monitors its cases in two different ways. As explained below, neutral arbitrators who fail to comply with deadlines may be suspended – i.e., the OIA removes the neutral arbitrators’ names from the OIA pool – until they take the necessary action. Thus, neutrals are not listed on any LPA when they are suspended and cannot be jointly selected by the parties.

First, through its software, the OIA tracks whether the key events set out in the *Rules* – service of the arbitrator’s disclosure statement, the arbitration management conference, the mandatory settlement meeting, and the hearing – occur on time. If arbitrators fail to notify the OIA that a key event has taken place by its deadline, the OIA contacts them by phone, letter, or e-mail and asks for confirmation that it has occurred. In most cases, the events have occurred and arbitrators confirm in writing. When it has not, it is rapidly scheduled. In some cases, the OIA contacts neutral arbitrators a second time, asking for confirmation. The second notice warns arbitrators that, if they do not provide confirmation that the event took place, the OIA will remove their names from the OIA pool until confirmation is received.

Second, the OIA looks at cases overall and their progress toward closing on time. When a case enters the system, the OIA computer system calendars a reminder for 12 months. As discussed in Section VII, most cases close before then. For those that remain, the OIA attorneys call the neutral arbitrators to ensure that the hearing is still on calendar and the case is on track to be closed in compliance with the *Rules*. In addition, the Independent Administrator holds monthly meetings to discuss the status of all cases open more than 15 months. OIA attorneys also review a neutral arbitrator’s open cases when they offer him or her new cases.

As detailed in the following sections, five different neutral arbitrators were suspended in 2015. Two of the neutral arbitrators were suspended twice in their respective cases. One neutral arbitrator, who was suspended December 22, 2015, was not reinstated until early 2016.

⁴²These two cases closed in 584 and 1,404 days respectively. In one case, the claimant received an award of \$838,788 and is discussed in footnote 56. In the other, the award was for Kaiser.

A. Neutral Arbitrator's Disclosure Statement

Once neutral arbitrators have been selected, California law requires that they make written disclosures to the parties within ten days. The *Rules* require neutral arbitrators to serve the OIA with a copy of these disclosures. The OIA monitors all cases to ensure that disclosures are timely served, and they include reports provided by the OIA that are required by California law. One neutral arbitrator was suspended for not serving a timely disclosure and was reinstated as a one-case neutral arbitrator.⁴³

B. Arbitration Management Conference

The *Rules* require the neutral arbitrator to hold an Arbitration Management Conference (AMC) within 60 days of his or her selection.⁴⁴ Neutral arbitrators rated this feature of the OIA system second highest of any in their questionnaire responses. (See Section X.B.)

Neutrals are also required to return an AMC form to the OIA within five days of the conference. The schedule set forth on the form establishes the deadlines for the rest of the case. It also allows the OIA to see that the case has been scheduled to finish within the time allowed by the *Rules*, usually 18 months. Receipt of the form is therefore important. No neutral was suspended for failing to return an AMC form.

C. Mandatory Settlement Meeting

Rule 26 instructs the parties to hold a mandatory settlement meeting (MSM) within six months of the AMC. It states that the neutral arbitrator should not be present at this meeting. The OIA provides the parties with an MSM form to fill out and return, stating that the meeting took place and its result. In 2015, the OIA received notice from the parties in 293 cases that they held a MSM. Forty-eight of them reported that the case had settled at the MSM. None of these cases involved a *pro per* claimant. In 36 cases, neither party returned the MSM form to the OIA by the end of 2015.⁴⁵

D. Hearing and Award

The neutral arbitrator is responsible for ensuring that the hearing occurs and an award is served within the time limits set out in the *Rules*. In 2015, one neutral arbitrator was suspended for failing to timely serve the decision. The neutral arbitrator served the decision in 2016.

⁴³Since the neutral arbitrator did not timely serve the required disclosure regarding whether he would accept further cases involving Kaiser, he cannot until his present case is closed.

⁴⁴Exhibit B, Rule 25.

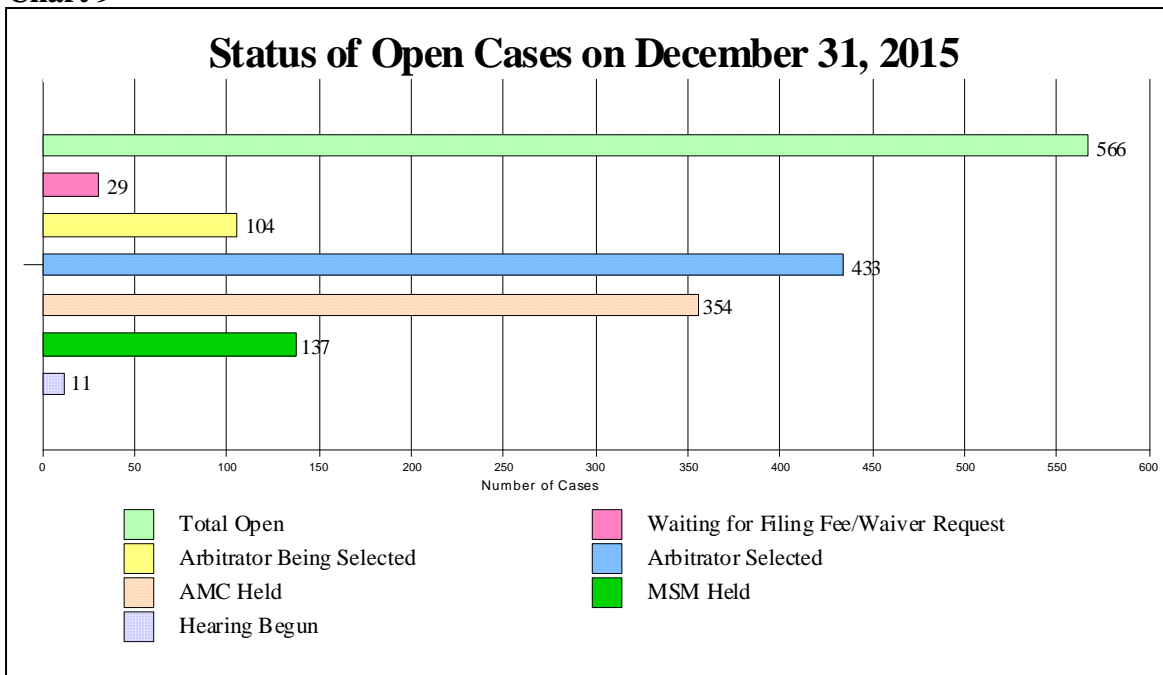
⁴⁵While the OIA sends letters to the parties, it has no power to compel them to report or to meet. A neutral arbitrator, on the other hand, can order the parties to meet if a party complains that the other side refuses to do so.

Three neutral arbitrators were suspended for failing to provide the amount of the fee and the fee allocation required by California Code of Civil Procedure §1281.96. Two of them were also suspended for failing to return the questionnaire as required by Rule 48. The neutral arbitrators complied by the end of 2015.

E. Status of Open Cases Administered by the OIA on December 31, 2015

On December 31, 2015, there were 566 open cases in the OIA system. In 29 of these cases, the LPA had not been sent because the filing fee had not yet been paid or waived. In 104 cases, the parties were in the process of selecting a neutral arbitrator. In 433 cases, a neutral arbitrator had been selected. Of these, the AMC had been held in 354. In 137 cases, the parties had held the MSM. In eleven cases, the hearing had begun, but either there were additional hearing days or the OIA had not yet been served with the award. Chart 9 illustrates the status of open cases.

Chart 9

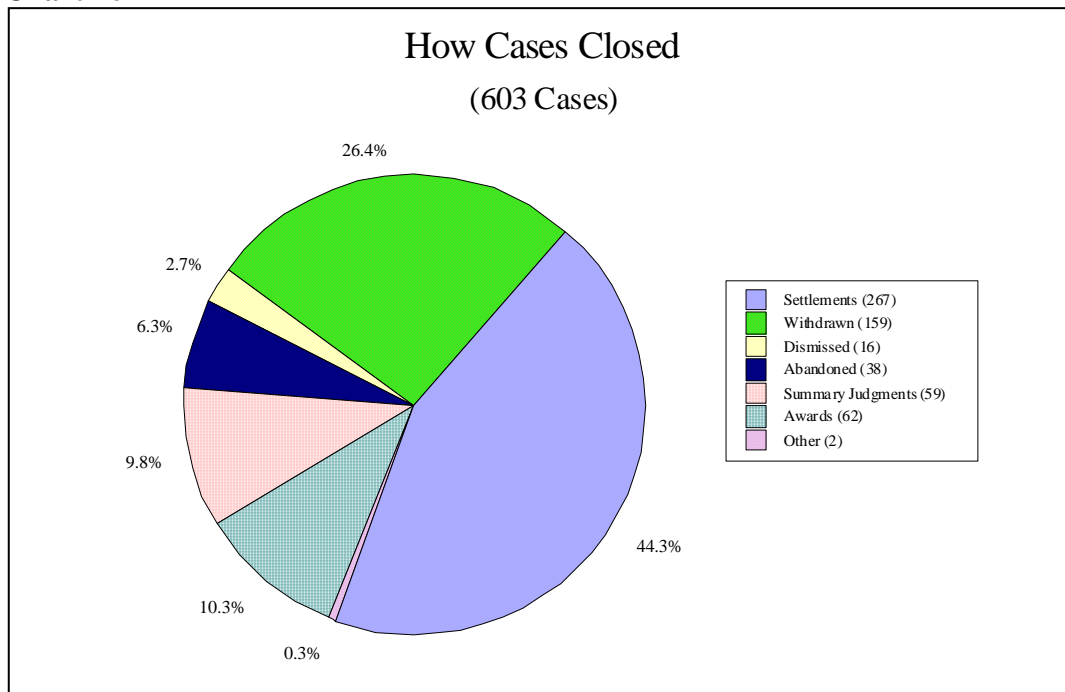


VII. THE CASES THAT CLOSED

In 2015, 603 cases closed. Cases close either because of (1) action by the parties (cases that are settled, withdrawn, or abandoned for non-payment of fees), or (2) action of the neutral arbitrator (cases are dismissed, summary judgment is granted, or cases are decided after a hearing). This discussion looks at each of these methods, how many closed, and how long it took. The

discussion of cases that closed after a hearing also includes the results: who won and who lost. Chart 10 displays how cases closed.⁴⁶

Chart 10

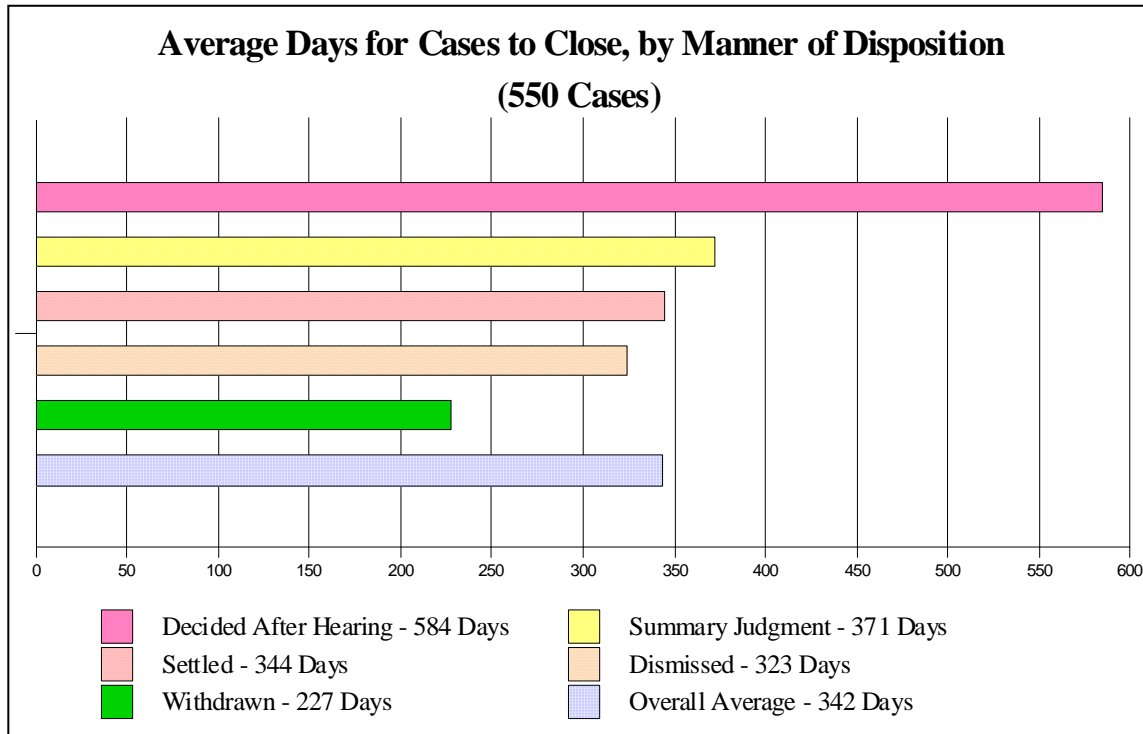


As shown on Chart 11, cases closed on average in 342 days, just over 11 months.⁴⁷ The median is 326 days. The mode is 111 days. The range is 3 – 1,483 days. No case closed after its deadline, i.e., none was “late”.

⁴⁶There were two cases that closed because the case was consolidated with another, had a split outcome, or judgment on the pleadings. (A split outcome means that there was more than one claimant and they had different outcomes.) As they represent less than one percent of the total of all closed cases, they are not further discussed in this section.

⁴⁷As mentioned before, the OIA does not begin measuring the time until the fee is either paid or waived. Therefore, Chart 11 refers to 550 closed cases, not 603. It excludes 38 abandoned cases, and 15 cases that were withdrawn or settled before the fee was paid.

Chart 11

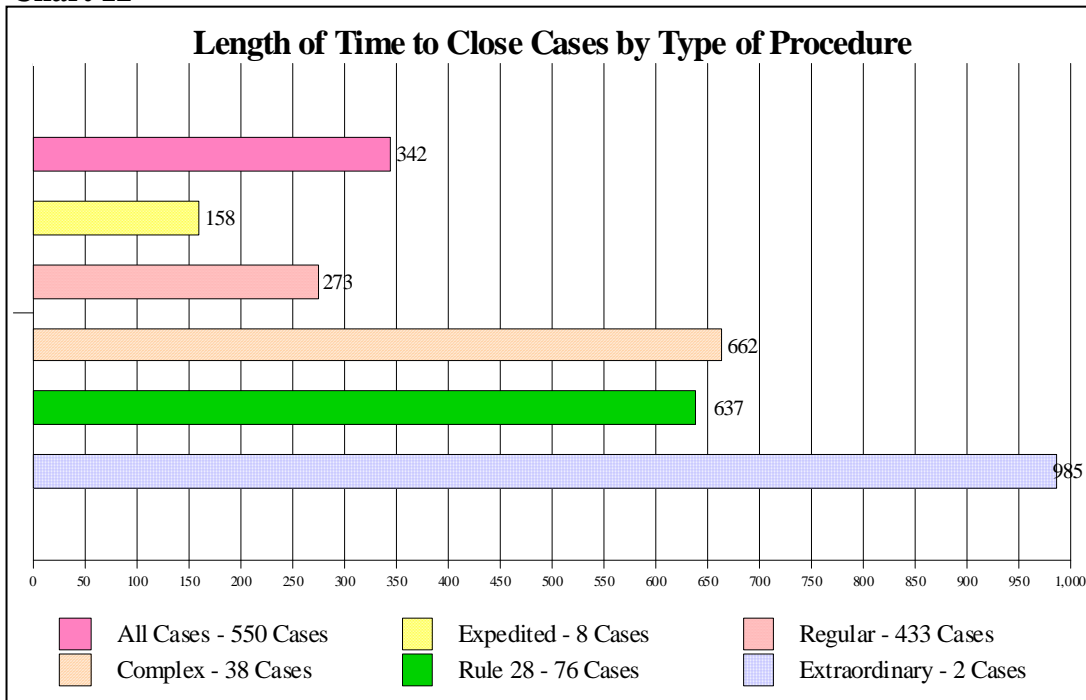


The second half of this section discusses cases that employed special *Rules* to either have the cases decided faster or slower than most. This begins on page 29. Under the *Rules*, cases must ordinarily be completed within 18 months. Eighty-seven percent of the cases are closed within this period, and 61 percent close in a year or less. If a claimant needs a case decided in less time, the case can be expedited. If the case needs more than 18 months, the parties can classify the case as complex or extraordinary, or the neutral arbitrator can order the deadline to be extended for good cause under Rule 28.⁴⁸

Chart 12 shows the average time to close by type of procedure.

⁴⁸A complex case can also be the subject of a Rule 28 extension if it turns out the case requires more than 30 months to close. Seven cases that closed in 2015 were both complex and the subject of a Rule 28 extension. They are included in both Sections VII.B.2 and VII.B.4 and in Chart 12.

Chart 12



A. How Cases Closed

1. Settlements – 44% of Closures

During 2015, 267 of the 603 cases settled. This represents 44% of the cases closed during the year. The average time to settle is 344 days, just over 11 months. The median is 331, the mode is 202, and the range is 3 – 1,072 days.⁴⁹ In 13 settled cases (5%), the claimant was in *pro per*. Forty-eight cases closed at the mandatory settlement meeting.

⁴⁹In the case that took 1,072 days to settle, the claimant’s attorney obtained a 90 day postponement. The parties jointly selected the neutral arbitrator. The hearing was continued 5 times and a motion for summary judgment was denied before the case settled.

2. Withdrawn Cases – 26% of Closures

In 2015, the OIA received notice that 159 claimants had withdrawn their claims. In 57 (36%) of these cases, the claimant was in *pro per*. Withdrawals take place for many reasons. We categorize a case as withdrawn when a claimant writes us a letter withdrawing the claim, or when we receive a dismissal without prejudice from the parties. When we receive a “dismissal with prejudice,” we call the parties to ask whether the case was “withdrawn,” meaning voluntarily dismissed, or “settled” and enter the closure accordingly. Twenty-six percent of closed cases were withdrawn.

The average time for a party to withdraw a claim in 2015 is 227 days. The median is 195 days. The mode is 111 days and the range is 13– 699 days.⁵⁰

3. Abandoned Cases – 6% of Closures

Claimants failed to either pay the filing fee or obtain a waiver in 38 cases.⁵¹ These cases were deemed abandoned for non-payment. In 29 of the 38 cases, the claimants were in *pro per*. Before claimants are excluded from this system for not paying the filing fee, they receive four notices from the OIA and are offered the opportunity to apply for fee waivers.

4. Dismissed Cases – 3% of Closures

In 2015, neutral arbitrators dismissed 16 cases. Neutral arbitrators dismiss cases if the claimant fails to respond to hearing notices or otherwise to conform to the *Rules* or applicable statutes. Ten of these closed cases involved *pro pers*.

5. Summary Judgment – 10% of Closures

In 2015, 59 cases were decided by summary judgment granted to the respondent. In 51 of these cases (86%), the claimant was in *pro per*. Failing to have an expert witness (19 cases), failing to file an opposition (23 cases), exceeding the statute of limitations (5 cases), and no triable issue of fact (11 cases) were the most common reasons given by the neutrals in their written decisions for granting summary judgment. The reasons parallel summary judgments granted in the courts.

⁵⁰The case that was withdrawn after 699 days was designated complex due to the mental status of the claimant, and her inability to testify. The arbitration hearing was continued for one year but the claimant’s attorney withdrew the case before Kaiser’s motion for summary judgment was set to be heard.

⁵¹The arbitration filing fee is \$150 regardless of the number of claimants or claims. This is significantly lower than court filing fees except for small claims court. If a Kaiser member’s claim is within the small claims court’s jurisdiction of \$10,000, the claim is not subject to arbitration. Both the OIA and Kaiser inform these claimants of their right to go to small claims court. See generally, Sections VIII.B.1, 2.

The average number of days to closure of a case by summary judgment in 2015 is 371 days. The median is 345 days. The mode is 237. The range is 128 – 676 days.⁵²

6. Cases Decided After Hearing – 10% of Closures

a. Who Won

Ten percent of all cases closed in 2015 (62 of 603) proceeded through a full arbitration hearing to an award. Judgment was for Kaiser in 38 of these cases, or 61%. In six cases, the claimant was in *pro per*. The claimant prevailed in 24 of them, or 39%. None was a *pro per* claimant.

b. How Much Claimants Won

Twenty-four cases resulted in awards to claimants. The range of relief is \$48,000 – \$11,640,000. The average amount of an award is \$1,282,547. The median is \$279,918. There is no mode. A list of the awards made in 2015 is attached as Exhibit F.

c. How Long It Took

The 62 cases that proceeded to a hearing in 2015, on average, closed in 584 days. The median is 499 days. The mode is 353 days. The range is 66 – 1,483 days.⁵³ Cases that go to a hearing are the most likely to employ the special procedures discussed in Section VII.B to give the parties extra time. If only regular cases are considered, the average to close is 428 days, 14 months.

B. Cases Using Special Procedures

1. Expedited Procedures

The *Rules* include provisions for cases which need to be expedited, that is, resolved in less time than 18 months. Grounds for expediting a case include a claimant's illness or condition

⁵²In the case that closed in 676 days after a motion for summary judgment, the claimant's attorney obtained a 90 day postponement. The parties jointly selected a neutral arbitrator who extended the deadline to close the case under Rule 28 because of his schedule. After 16 months, a motion for summary judgment was heard and granted.

⁵³In the case that took 1,483 days to close after a hearing, the claimant's attorney was granted a continuance of the arbitration hearing for good cause under Rule 28. The hearing was continued twice and rescheduled for one year later. On the eve of the arbitration hearing, the neutral arbitrator recused himself because he knew a witness. The parties jointly selected another arbitrator who scheduled and continued the arbitration hearing twice. The hearing eventually went forward and resulted in an award for Kaiser.

raising substantial medical doubt of survival, a claimant's need for a drug or medical procedure, or other good cause.⁵⁴

In 2015, claimants in nine cases requested that their cases be resolved in less than the standard 18 months. Four of the requests were made to the OIA, which granted all of them. In four other cases, requests were made to neutral arbitrators which were granted. Kaiser objected to one of the requests, which the neutral arbitrator granted. In addition, the court granted one expedited request.

The OIA had three open expedited cases on January 1, 2015. Eight expedited cases closed in 2015, including one of the cases that was open at the beginning of the year. Four settled, two went to hearing with the claimant winning one and Kaiser the other, one was closed by summary judgment, and the last was withdrawn. The average for these cases to close is 158 days (about five months), the median is 156, and the range is from 47 to 290 days, or 10 months. Two expedited cases remained open at the end of 2015.

Although originally designed to decide benefit claims quickly, none of the expedited cases in 2015 involved benefit or coverage issues.

2. Complex Procedures

The *Rules* also include provisions for cases that need more time. In complex cases, the parties believe that they need 24 – 30 months.⁵⁵ The designation does not have to occur at the beginning of a case. It may be made as the case proceeds and the parties develop a better sense of what evidence they need. In 2015, 48 cases were designated as complex. There were additional complex cases open that had been previously designated. Thirty-eight complex cases closed in 2015. The average length of time for complex matters to close in 2015 is 662 days, about 22 months. The median is 616 days. The mode is 584. The range is from 294 to 1,404 days (about 47 months).⁵⁶

⁵⁴Exhibit B, Rules 33 – 36.

⁵⁵Exhibit B, Rule 24(b).

⁵⁶The complex case that took 1,404 days to close was designated complex because the parties were proceeding with party arbitrators. This is the only case since the OIA began in which Kaiser insisted upon party arbitrators. The deadline to close the case was further extended under Rule 28. The arbitration hearing was continued 4 times and then bifurcated. The hearing stretched over 9 months. The award was ultimately in favor of the claimant.

3. Extraordinary Procedures

Extraordinary cases need more than 30 months for resolution.⁵⁷ Six cases were designated extraordinary in 2015 and there were additional cases open that had been previously designated. Two cases closed this year. One closed after a hearing for respondent in 1,236 days (41 months)⁵⁸ and the other settled after 734 days.

4. Rule 28 Extensions of Time to Close Cases

Rule 28 allows neutral arbitrators to extend the deadline for a case to close past the eighteen month deadline if there are “extraordinary circumstances” that warrant it. In 2015, neutral arbitrators made Rule 28 determinations of “extraordinary circumstances” in 83 cases. In addition, there were open cases at the beginning of 2015 that had previously received Rule 28 extensions. Seventy-six cases closed during the year. The average time in 2015 to close cases with a Rule 28 extension is 637 days, about 21 months. The median is 592 days. The mode is 602 days. The range is 145 – 1,483 days.⁵⁹

According to the neutral arbitrator orders granting the extensions, the claimant’s side requested eight, respondent’s side requested one, and the parties stipulated four times. An extension was ordered twice over the respondents’ objections and once over the claimants’ objections. Twelve orders noted that there was no objection. Sixty-nine orders recited there was good cause or extraordinary circumstances. Where neutral arbitrators gave specific reasons, the most common reasons were problems with medical experts and unexpected trial schedules (seven and four times, respectively).

VIII. THE COST OF ARBITRATIONS IN THE OIA SYSTEM

A. What Fees Exist in OIA Arbitrations

Whether in court or in private arbitration, people face certain fees. In an OIA arbitration, in addition to attorney’s fees and fees for expert witnesses, a claimant must pay a \$150 arbitration filing fee and half of the neutral arbitrator’s fees. State law provides that neutral arbitrator’s fees

⁵⁷Exhibit B, Rule 24(c).

⁵⁸The extraordinary case that took 1,236 days to close was originally designated complex by stipulation of the parties. The case was later designated extraordinary because the claimant was too young to be evaluated. The hearing was bifurcated and took 9 months to complete. The award was in favor of Kaiser.

⁵⁹The case with a Rule 28 extension that took 1,483 days to close is discussed in footnote 53 concerning the longest case to close after a hearing.

be divided equally between the claimant and the respondent.⁶⁰ In addition, state law provides that if the claim is for more than \$200,000, the matter will be heard by an arbitration panel, which consists of three arbitrators – a single neutral arbitrator and two party arbitrators, one selected by each side. Parties may waive their right to party arbitrators.

The OIA system provides mechanisms for a claimant to obtain a waiver of either the \$150 arbitration filing fee and/or the claimant’s portion of the neutral arbitrator’s fees and expenses. These provisions are discussed below. When claimants ask for waiver information, they receive information about the types of waiver and the waiver forms. The claimants can thus choose which waiver(s) they want to submit.

B. Mechanisms Claimants Have to Avoid These Fees

There are three mechanisms for waiving some or all of these fees. The first two are based on financial need and required by statute. The third is open to everyone and is voluntary on Kaiser’s part.

1. How to Waive Only the \$150 Arbitration Filing Fee

This waiver is available to individuals whose gross monthly income is less than three times the national poverty guidelines. If claimants’ income meets the guidelines, the OIA’s \$150 arbitration fee is waived. The OIA informs claimants of the existence of this waiver in the first letter we send to them. They have 75 days to submit the form, from the date the OIA receives their demands for arbitration.⁶¹ According to statute and Rule 12, this completed form is confidential and only the claimant and claimant’s attorney know if a request for the waiver was made or granted.

2. How to Waive Both the Arbitration Filing Fee and the Neutral Arbitrators’ Fees and Expenses

This type of fee waiver, which is required by state law, depends upon the claimants’ ability to afford the cost of the arbitration filing fee and the neutral arbitrators’ fees. Claimants must disclose certain information about their income and expenses. If this waiver is granted, a claimant does not have to pay either the neutral arbitrator’s fees or the OIA’s \$150 arbitration filing fee. This waiver form is based on the fee waiver application used by the state court for waiver of the filing fee to allow a plaintiff to proceed *in forma pauperis*. According to the *Rules*, the form is served on both the OIA and Kaiser. Kaiser has the opportunity to object before the OIA decides

⁶⁰California Code of Civil Procedure § 1284.2.

⁶¹California Code of Civil Procedure §1284.3; Exhibit B, Rule 12.

whether to grant this waiver.⁶² A claimant who obtains this waiver is allowed to have a party arbitrator, but must pay for the party arbitrator.

3. How to Waive Only the Neutral Arbitrators' Fees and Expenses

The *Rules* also contain provisions to shift to Kaiser the claimants' portion of the neutral arbitrators' fees and expenses.⁶³ For claims under \$200,000, the claimant must agree in writing not to object later that the arbitration was unfair because Kaiser paid the fees and expenses of the neutral arbitrator. For claims over \$200,000, the claimant must also agree not to use a party arbitrator.⁶⁴ No financial information is required. The waiver forms are served on Kaiser, the neutral arbitrator, and the OIA.

C. Number of Cases in Which Claimants Have Shifted Their Fees

1. The \$150 Arbitration Filing Fee

In 2015, the OIA received 48 forms to waive the \$150 filing fee. The OIA granted 44 and denied 4.⁶⁵ Twenty-three of these claimants received both a waiver of the filing fee and the waiver of the neutral arbitrators' fees and expenses. By obtaining the waiver of the filing fee, the neutral arbitrator selection process can begin immediately, without waiting for the second waiver to be granted.

2. The \$150 Arbitration Filing Fee and the Neutral Arbitrators' Fees and Expenses

In 2015, the OIA received 61 completed fee waiver applications and 3 remained from the prior year. The OIA granted 63 waivers of the arbitration filing fee and neutral arbitrators' fees, denied 1 because it was incomplete,⁶⁶ and none remain to be decided. Kaiser did not object to any request.

⁶²See Exhibit B, Rule 13.

⁶³See Exhibit B, Rules 14 and 15.

⁶⁴If the claimant waives his/her right to a party arbitrator but Kaiser wants to proceed with party arbitrators, Kaiser will still pay all of the neutral arbitrator's fees and expenses.

⁶⁵One had the other fee waiver granted while the other three paid the fee.

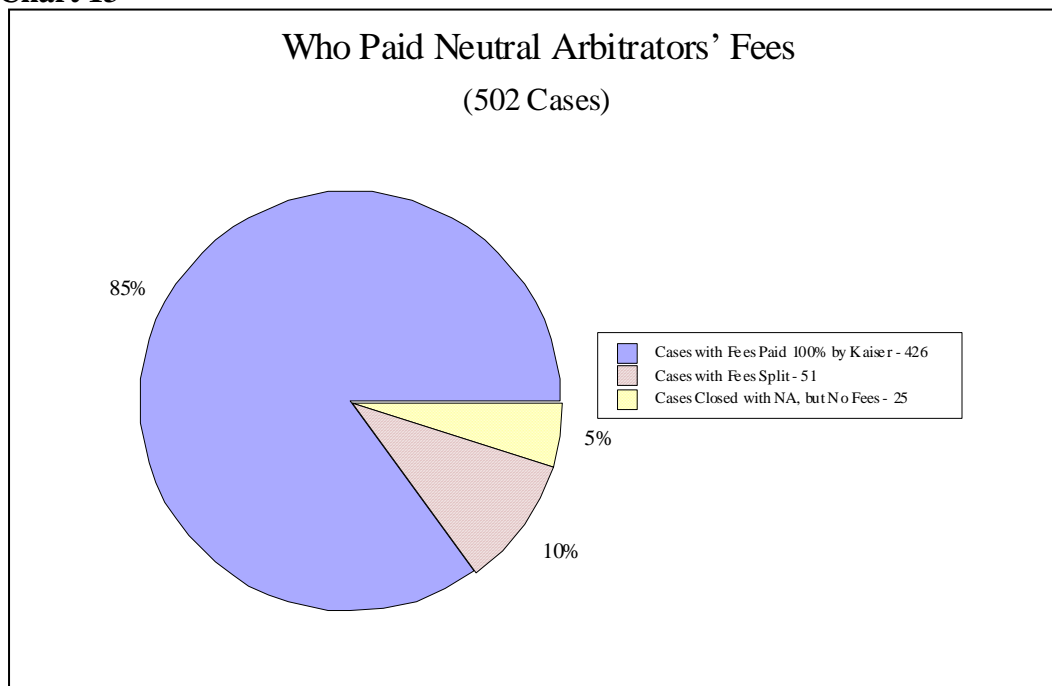
⁶⁶The claimant submitted a second, completed a fee waiver application and it was granted.

3. The Neutral Arbitrators' Fees and Expenses

State law requires arbitration providers such as the OIA to disclose neutral arbitrators' fees and fee allocations for closed cases.⁶⁷ We received fee information from neutral arbitrators for 502 cases that closed in 2015.

In these 502 cases, fees were allocated 100% to Kaiser in 426 (85%) cases. In 25 (5%) cases, no fees were charged. Fees were split 50/50 in 48 (10%) cases. There were also three cases in which fees were allocated in some other arrangement. See Chart 13. In 477 cases where the neutral arbitrators charged fees, Kaiser paid all of the neutral arbitrators' fees in 89% of the cases.

Chart 13



D. The Fees Charged by Neutral Arbitrators

Members of the OIA pool set their own fees. They are allowed to raise their fees once a year, but the increases do not affect cases on which they have begun to serve. The fees range from \$150/hour to \$900/hour. The average hourly fee is \$459, the median is \$450, and the mode is \$400. Some neutral arbitrators also offer a daily fee. This ranges from \$900/day to \$9,000/day. The average daily fee is \$3,887, the median is \$3,200, and the mode is \$3,000.

⁶⁷California Code of Civil Procedure §1281.96.

Looking at the 477 cases in which neutral arbitrators charged fees, the average neutral arbitrator fee is \$6,650.12. The median is \$1,980.17 and the mode is \$750. This excludes the 25 cases in which there are no fees. The average for all cases, including those with no fees, is \$6,318.94.

The arbitrators' fees described in the prior paragraph include many cases where the neutral arbitrator performed relatively little work. If only the cases where the neutral arbitrator wrote an award are considered, the average neutral arbitrator fee is \$29,157.30, the median is \$23,075 and there is no mode. The range is \$8,160 – \$98,550.84.

IX. ANALYSIS OF LIEN CASES

This section applies only to the lien cases that are in the OIA system. In lien cases, unlike the other demands for arbitration, Kaiser makes the demand against a member to recoup the costs of medical care it provided where Kaiser asserts the member has recovered something from a third party, as in a car accident. Kaiser submitted 25 demands for arbitration based on liens in 2015. Geographically, 14 of them came from Northern California, 8 from Southern California, and 3 from San Diego. Eight cases were open at the beginning of the year.

A. Demands for Arbitration Submitted by Kaiser to the OIA

1. Length of Time Kaiser Takes to Submit Demands to the OIA

Under the *Rules*, Kaiser must submit a demand for arbitration to the OIA within 10 days of serving the demand on the member. In 2015, the average length of time that Kaiser took to submit demands to the OIA is 58 days. The mode is 10. The median is 22 days. The range is 2 – 280 days. Nineteen of the 25 cases were late. The average for “late” cases is 74 days, the median is 50, the mode is 16, and the range 13 - 280. It takes Kaiser much longer to submit these demands than the demands it receives from members.

2. Members With and Without Attorneys

Members were represented by counsel in 64% of the new lien cases the OIA administered in 2015 (16 out of 25). In 36% of cases, the members represented themselves.

B. Selection of the Neutral Arbitrators

Neutral arbitrators were selected in 12 cases. For an explanation of the selection process, please see Section V.

1. Joint Selections vs. Strike and Rank Selections

No neutral arbitrator was selected by the parties jointly. All neutral arbitrators were selected by strike and rank.

2. Cases with Postponements of Time to Select Neutral Arbitrators

There were ten cases in 2015 where the member obtained a Rule 21 postponement of the time to respond to the LPA. In three of them, the parties also obtained a Rule 28 extension. There were also two cases in which Kaiser obtained a Rule 28 without the member requesting a Rule 21 postponement. Kaiser withdrew these cases.

In these 12 cases, a neutral arbitrator was selected in three cases, six cases were closed without a neutral arbitrator, and the time to select a neutral arbitrator had not expired in three cases by the end of 2015.

3. Cases with Disqualifications

In 2015, there were two cases in which three neutral arbitrators were disqualified, two in one case and one in the other. Members disqualified two neutral arbitrators while Kaiser disqualified one. Both cases were still open at the end of 2015, and a neutral arbitrator had not been selected in either.

4. Length of Time to Select a Neutral Arbitrator

This section sets out the length of time to select a neutral arbitrator in 12 cases based upon how the neutral arbitrators were selected. The first category reports cases with no delay in selecting the neutral arbitrator. The second reports cases with postponements. Finally, we give the overall average for the 12 cases.

a. Cases with No Delays

There were eight cases where a neutral arbitrator was selected in 2015 that had no delay. Under the *Rules*, the maximum number of days to select a neutral arbitrator when there is no delay is 33 days. The average number of days to select a neutral arbitrator is 30, the median is 29, and the range is 26 – 35. This category represents 67% of all selections.

b. Cases with Postponements

In four cases where a neutral arbitrator was selected with Rule 21 or Rule 28 postponements, it took an average of 133 days. The median is 118 and there is no mode. The range is 113 – 184 days.⁶⁸

c. Average Time for All Cases

The average number of days to select a neutral arbitrator in all of these cases is 64 days.

5. Cases With Party Arbitrators

No lien case has ever had party arbitrators.

C. Maintaining the Case Timetable

1. Suspensions

No neutral arbitrator was suspended in a lien case in 2015.

2. Mandatory Settlement Meeting

The OIA received five notices from the parties that they held an MSM. None reported settlements.

3. Status of Open Lien Cases Administered by the OIA on December 31, 2015

On December 31, 2015, there were 13 open lien cases in the OIA system. Seven are still in the process of selecting a neutral arbitrator. Six have selected a neutral arbitrator. An Arbitration Management Conference has been held in four.

⁶⁸In the lien case that took 184 days to select a neutral arbitrator, the member's attorney requested a stay of the neutral arbitrator selection pending documentation from Kaiser's attorney that the member was bound to the mandatory arbitration provision. It took Kaiser two months to produce the documents. Once produced, the member's attorney obtained a ninety day postponement in order to file a petition in court to determine the arbitrability of the case. He never filed the petition and a neutral arbitrator was selected. The case eventually settled two months later.

D. The Cases That Closed

In 2015, 20 lien cases closed. Cases close either because of (1) action by the parties (cases that are settled, withdrawn, or abandoned), or (2) action of the neutral arbitrator (cases are decided after a hearing). This discussion looks at each of these methods, how many closed, and how long it took.

Cases closed on average in 162 days (over 5 months). The median is 148 days. The range is 34 – 418 days. No case closed late.

1. How Cases Closed

a. Settlements – 65% of Closures

During 2015, 13 of the 20 cases settled. The members were represented in ten cases. The cases closed in an average of 175 days. The median is 147, the mode is 248, and the range is 36 – 418 days.

b. Withdrawn Cases – 15% of Closures

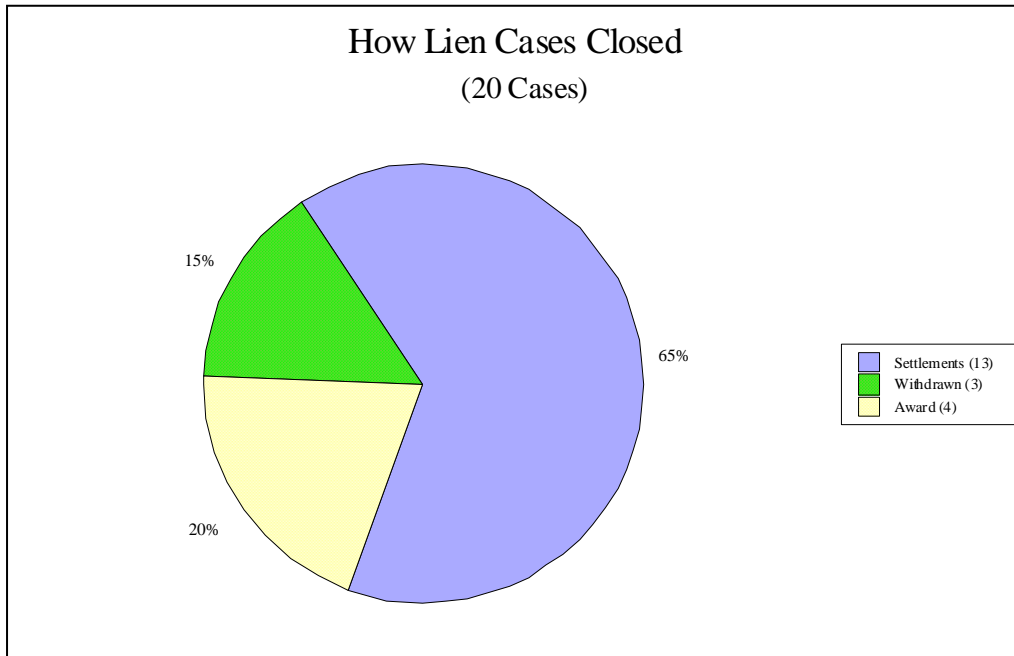
In 2015, the OIA received notice that Kaiser withdrew three claims. The member was not represented in one of them. Kaiser withdrew the cases in 34, 62, and 158 days, respectively. The last is over 5 months.

c. Cases that Closed after Hearing – 20% of Closures

Four cases proceeded through a full arbitration to an award. All the awards were in favor of Kaiser. The awards average \$39,531.58 with a range of \$20,020.40 to \$54,772.57.⁶⁹ The member was represented in two of the cases. The cases closed in an average of 178 days with a range of 114 – 223 days.

⁶⁹A list of the awards made in 2015 is attached as Exhibit F.

Chart 14



2. Cases Using Special Procedures

For a discussion of expedited, complex, and extraordinary procedures or Rule 28 extensions, see Section VII.B. No lien case has ever been designated expedited or extraordinary. In 2015, no case was designated complex and no neutral arbitrator used Rule 28 to extend the time for a case to close.

E. The Cost of Lien Arbitrations in the OIA System

1. Number of Lien Cases in Which Members Have Shifted Their Neutral Fees

We have fee information in 12 cases. The fees were allocated 100% to Kaiser in ten cases and split 50/50 in the other two.⁷⁰

2. The Fees Charged by Neutral Arbitrators

In the 12 cases for which we have information, the neutral arbitrators charged an average of \$2,405. The median is \$2,002, there is no mode, and the range is \$800 – \$7,000.

⁷⁰These two cases settled. In one case, the member was represented.

X. EVALUATIONS OF NEUTRAL ARBITRATORS AND THE OIA SYSTEM

When cases close, the OIA sends forms to the attorneys, *pro per* claimants and neutral arbitrators asking them questions about the neutral arbitrator, the arbitration process, the OIA, or all of the above. This section discusses the highlights of the responses we received in 2015 from the parties and the arbitrators. The complete statistics and copies of the forms are set out in Exhibits G, H, and I, respectively. This section considers all evaluations returned in all cases, including lien claims.

A. The Parties Evaluate the Neutral Arbitrators

Some people told the OIA that it sent out neutral arbitrator evaluations in too many cases in which the neutral arbitrator had little contact other than the AMC. The argument was that information in such cases was not useful to appraise the neutral arbitrator. Therefore, in 2013, the OIA began sending neutral arbitrator evaluations to the attorneys or *pro per* claimants only in cases in which the neutral arbitrator made a decision that ended the case.

The form asks them to evaluate their experience with the neutral arbitrator in 11 different categories including fairness, impartiality, respect shown for all parties, timely response to communications, understanding of the law and facts of the case, and fees charged. Most important, they are asked whether they would recommend this neutral to another person with a similar case. The inquiries appear in the form of statements, and all responses appear on a scale of agreement to disagreement with 5 being agreement and 1 disagreement. The evaluations are anonymous, though the people filling it out are asked to identify themselves by category and how the case closed.

During 2015, the OIA sent 292 evaluations and received 119 responses in return, or 41%.⁷¹ Thirty-two identified themselves as claimants (12) or claimants' counsel (20), and 84 identified themselves as respondent's counsel. Three did not specify a side.⁷²

Here are the responses to some of the inquiries.

Item 2: "The neutral arbitrator treated all parties with respect." – 4.6 Average

The average of all responses is 4.6 out of a possible maximum of 5. Claimants counsel average 4.6. *Pro pers* average 2.6. Respondents counsel average 4.9. The attorneys for both sides have a mode and median of 5. The *pro per* mode is 1 and the median is 2.

⁷¹The response rate has climbed from 28% in 2005. The OIA had hoped that the response rate would increase if the evaluations were sent out more selectively.

⁷²These responses are included only in the overall averages.

Item 5: “The neutral arbitrator explained procedures and decisions clearly.” – 4.5 Average

The average of all responses is 4.5. Claimants counsel average 4.1. *Pro pers* average 2.8. Respondents counsel average 4.9. The mode and median for all attorneys is 5. The *pro per* mode is 1 and the median is 3.

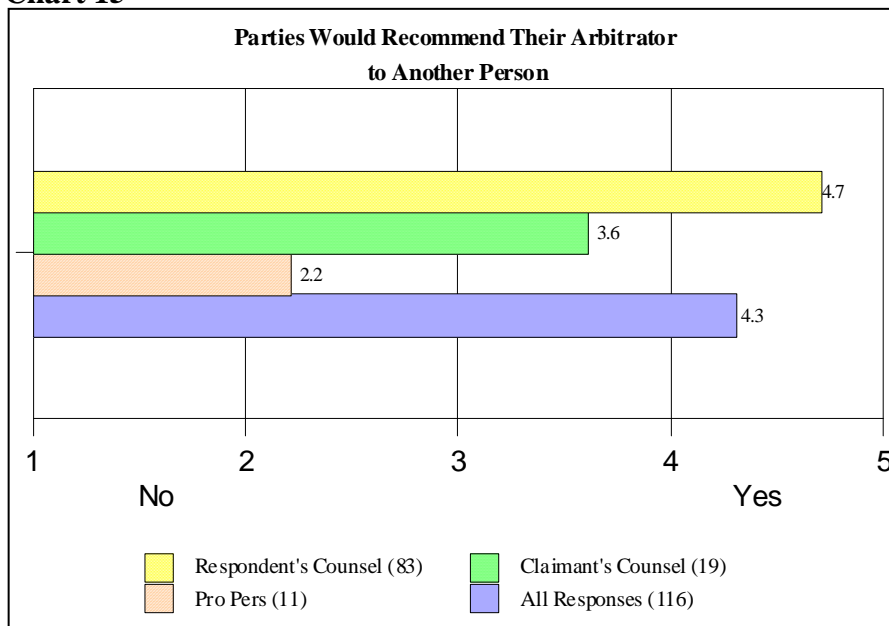
Item 7: “The neutral arbitrator understood the facts of my case.” – 4.4 Average

The average of all responses is 4.4. Claimants counsel average 4.1. *Pro pers* average 2.0. Respondents counsel average 4.9. The mode and median for all attorneys is 5. The mode and median for *pro pers* is 1.

Item 11: “I would recommend this arbitrator to another person or another lawyer with a case like mine.” – 4.3 Average

The average on all responses to this question is 4.3. Claimants counsel average 3.6. *Pro pers* average 2.2. Respondents counsel average 4.7. The mode and median for *pro pers* is 1. Chart 15 displays the responses.

Chart 15



B. The Neutral Arbitrators Evaluate the OIA System

Under Rule 48, when cases close, the neutral arbitrators complete questionnaires about their experiences with the *Rules* and with the overall system. The information is solicited to evaluate and

and improve the system. As with the evaluations sent to the parties to evaluate the neutral arbitrators, in 2013 the OIA began sending these forms to neutral arbitrators only in cases where the neutral arbitrator closed the case. The reasoning is similar: if the neutral arbitrator has not done much other than hold an AMC, the neutral arbitrator may not have much experience upon which to judge the system. During 2015, the OIA sent questionnaires in 146 closed cases and received 153 responses.⁷³ The results continue to show a high degree of approval of, and satisfaction with, the *Rules* and the OIA.

The neutrals average 4.8 in saying that the procedures set out in the *Rules* had worked well in the specific case. The responses average 4.9 in saying that based on this experience they would participate in another arbitration in the OIA system. They average 4.9 in saying that the OIA had accommodated their questions and concerns in the specific case. The median and the mode for all questions are 5.

The questionnaires also includes two questions that ask arbitrators to check off features of the system which worked well or poorly in the specific case. The vast majority of those who responded were positive.

Table 5 - Neutral Arbitrators’ Opinions Regarding OIA System

Feature of OIA System	Works Well	Needs Improvement
Manner of neutral arbitrator’s appointment	117	1
Early management conference	109	1
Availability of expedited proceedings	57	1
Award within 15 business days of hearing closure	64	5
Claimants’ ability to have Kaiser pay neutral arbitrator	100	4
System’s rules overall	98	1
Hearing within 18 months	61	1
Availability of complex/extraordinary proceedings	34	1

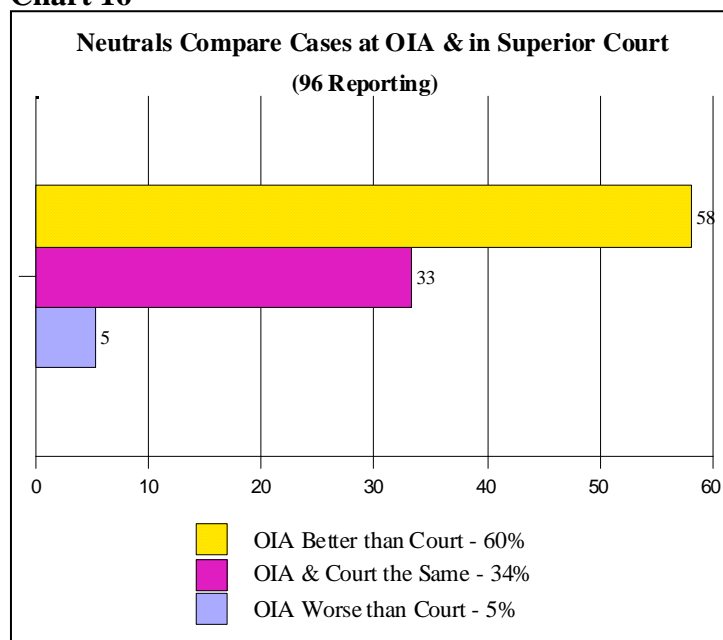
⁷³Some neutral arbitrators who received their questionnaires in 2014 returned them in 2015.

Finally, the questionnaires ask the neutrals whether they would rank the OIA experience as better or worse than or about the same as a similar case tried in court. For the eighth year in a row, a majority of the neutral arbitrators judged the system to be better than a court trial. Ninety-six neutral arbitrators made the comparison. Fifty-eight, or 60%, said the OIA experience was better. Thirty-three, or 34%, said it was about the same. Only five (five percent) said the OIA experience was worse.

Those who believe it was better said it was more efficient and expeditious, and praised its flexibility to accommodate the needs of individual cases and parties. The neutral arbitrators who rated it worse complained about claimants who failed to participate in the arbitrations and wanted more specific rules to handle them. One complained it was harder to coordinate expert witnesses. One liked being able to quickly schedule hearings on matters.

Most of the comments overall praised the system, OIA, or *Rules*. Seven mentioned difficulties with *pro pers*, once in context of billing. Five specifically asked for more time for awards. While neutral arbitrators generally praised the flexibility of the *Rules*, two asked for rules that covered specific circumstances.

Chart 16



C. The Parties Evaluate the OIA System and Ease of Obtaining Medical Records

The OIA sends the parties an additional one page evaluation of the OIA system and the ease of obtaining medical records. The form is similar to, but shorter than, the form sent to the neutral arbitrators.

As with the other forms, this asks the recipients, on a scale from 1 to 5, whether they agree or disagree. A “5” is the highest level of agreement.

The OIA sent 1,072 evaluations and received 257 responses (24%).⁷⁴ Ninety-three identified themselves as either claimants (23) or claimant attorneys (70), and 145 identified themselves as respondent’s counsel. Nineteen did not specify a side.

The responses for whether the procedures in general worked well and whether the OIA was responsive were quite positive for the attorneys. The mode and median is 5 for most. *Pro pers* gave much lower scores to all questions.

Item 1: “The procedures worked well in this particular case.” – 4.5 Average

The overall average is 4.5 out of 5. The average for claimant attorneys is 4.3, for *pro pers* 2.3, and for respondent attorneys 4.9. For *pro pers*, the mode and the median are 1. The mode and median are 5 for all attorneys.

Item 2: “The procedure for obtaining medical records worked well.” – 4.3 Average

The average is 4.3 for all responses. The average for claimant attorneys is 3.9, for *pro pers*, 2.3, and respondent attorneys, 4.8. The mode is 1 and median is 2 for *pro pers*. The median is 4 for claimant attorneys.

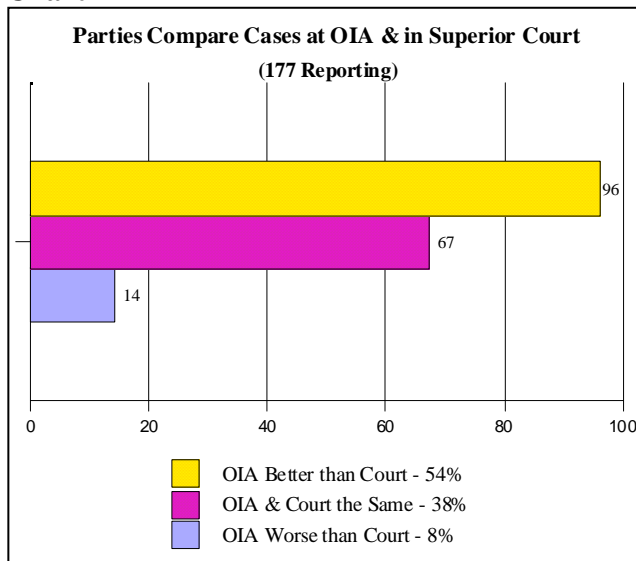
Item 3: “The OIA was responsive to my questions and concerns.” – 4.7 Average

The overall average is 4.7. The average is 4.6 for claimant attorneys, 3.1 for *pro pers*, and 4.9 for respondent attorneys. The mode for *pro pers* is 5 and the median is 3.5.

The form also asked the parties if they have had a similar experience in Superior Court and, if so, to compare the two. Of the 177 people who made the comparison, 96 said it was better. Sixty-seven said it was the same. Fourteen said it was worse.

⁷⁴Four people returned blank forms.

Chart 17



For those who said the OIA system was better and gave reasons, they were similar to the neutral arbitrators: that it was faster, less expensive, more responsive to the parties' needs. Scheduling was highly praised. One person commented that the neutral arbitrator was better than most judges. Those who said it was worse said that their arbitrator or the pool was biased in favor of Kaiser and that juries were better.

In general, the most common comment concerned obtaining medical records. Those who responded called getting records from Kaiser expensive, time consuming, and/or confusing. The next most common subject was the neutral arbitrator pool, with opinions that it should be more diverse, objections to the lack of a jury, or that it was inherently biased. There were several requests to eliminate the optional 90 day postponement to select the neutral arbitrator. Two called for an appellate process. Finally, the *pro per* claimants once again expressed their frustration in navigating a legal system without a lawyer.

XI. THE ROLE OF THE ARBITRATION OVERSIGHT BOARD

A. Membership

The Arbitration Oversight Board (AOB) was chaired by David Werdegar, M.D. M.P.H. Dr. Werdegar was the former director of California's Office of Statewide Health Planning and Development and is Professor of Family and Community Medicine, *Emeritus*, at the University of California, San Francisco, School of Medicine. The Vice-Chair of the AOB was Cornelius Hopper, M.D., Vice President for Health Affairs, *Emeritus*, of the University of California System. Dr.

Werdegar retired from both the AOB and as chair at the end of 2015. Dr. Hopper is now the chair, Richard Spinello is the vice-chair, and Dr. Patrick Dowling⁷⁵ joined the AOB.

The membership of the AOB is a distinguished one. There are eleven board members, besides the two officers.

The members represent various stakeholders in the system, such as Kaiser Health Plan members, employers, labor, plaintiff bar, defense bar, physicians, and hospital staff. There are also outstanding public members. Six of the thirteen are attorneys. No more than four may be Kaiser affiliated. Changing the *Rules* requires the agreement of two-thirds of all the members of the AOB, as well as a majority of the non-Kaiser related board members.

The members in 2015, in alphabetical order, are:

Doris Cheng, medical malpractice attorney representing plaintiffs, San Francisco.

Sylvia Drew Ivie, Mental Health Deputy for Los Angeles County Supervisor Sheila Kuehl, Los Angeles.

Beong-Soo Kim, Vice President and Assistant General Counsel, Kaiser Foundation Health Plan, Pasadena.

Rosemary Manchester, MBA, a member of Kaiser for many years, Sebastopol.

Bruce R. Merl, M.D., Director of The Permanente Medical-Legal/Risk Management/Patient Safety Group, Oakland.

Kenneth Pivo, medical malpractice attorney representing respondents, Costa Mesa.

Honorable Cruz Reynoso, Professor of Law Emeritus, King Hall School of Law, University of California, Davis, and former California Supreme Court Justice, Davis.

Richard J. Spinello, Executive Director of Financial Risk and Insurance, CHOC Children's Hospital, Orange.

Al Ybarra, a former Secretary-Treasurer, Orange County Central Labor Council, AFL-CIO, Orange.

⁷⁵His resume is attached as Exhibit C.

Donna L. Yee, MSW, Ph.D., Chief Executive Officer of the Asian Community Center of Sacramento Valley, Sacramento.

Steven R. Zarkin, retired Senior Vice President and General Counsel, Kaiser Foundation Health Plan, Inc. and Kaiser Foundation Hospitals.

B. Activities

The AOB takes an active role. It meets quarterly to review operation of the OIA and receive reports from OIA staff. This includes quarterly reports of statistics similar to those included in the annual reports.

It amended Rule 26 regarding Mandatory Settlement Meeting. The AOB also discussed amendments by the Judicial Council to the Ethics Standards and their effect on the OIA. It continued to examine how the Affordable Care Act affects Kaiser and medical dispute resolution. The AOB requested a mid-year report on the neutral arbitrators that served more than ten times and examined the results.⁷⁶

The AOB also reviews the draft annual report and comments upon it. Exhibit J is the AOB Comments on the Annual Report for 2015.

XII. TRENDS AND DATA OVER THE YEARS OF OPERATION OF THE OIA

This report describes a mature arbitration system which is continuously improving. The OIA publishes this report on its website and sends copies to those who request it. The annual reports provide more information about the OIA's arbitrations than any other arbitration provider. The wealth of this information was recognized by the National Academy of Science's Committee on Science, Technology, and Law when a member of the CSTL drafted and published an article largely based on annual reports. The OIA website also provides a searchable database of all its cases since January 1, 2003 – in addition to the sortable database about cases received in the past five years as required by state law.⁷⁷ The OIA posts this information for the parties and the public.

Using the data that the OIA has published in prior reports, this section considers the operation of the OIA over time. Most elements have remained stable – the percentage of neutral arbitrators who are retired judges; how neutral arbitrators are selected; the percentage of claimants represented by counsel; and how cases close. As in the preceding sections, lien cases are only considered in the first three Sections (A, B, and C) and the last (K).

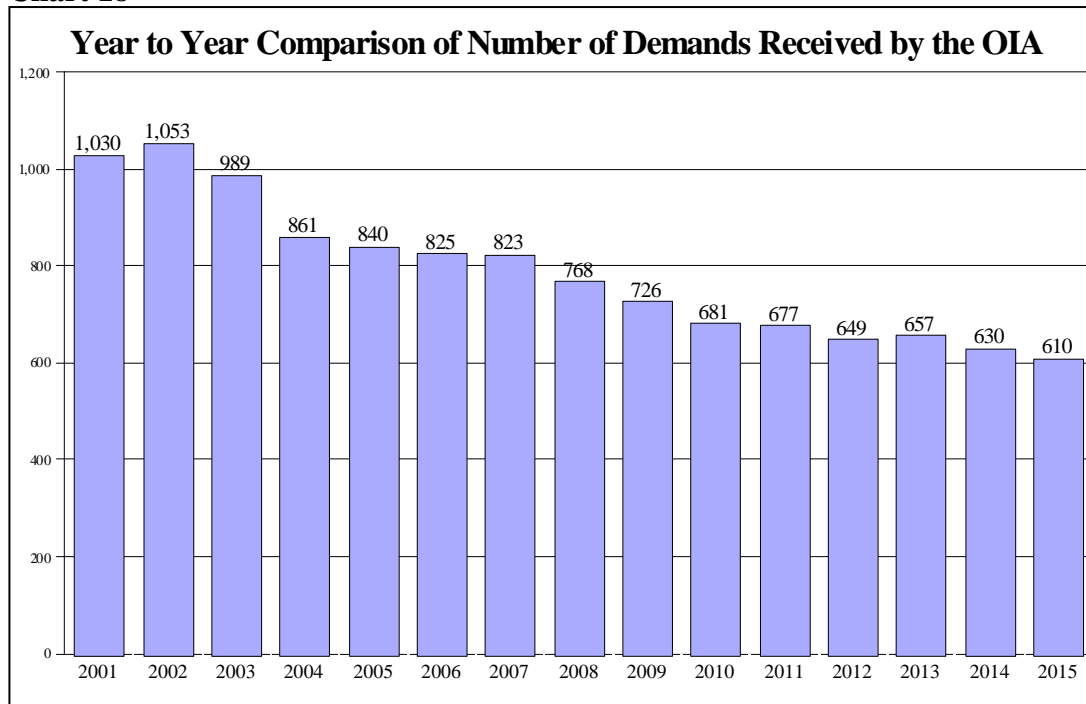
⁷⁶See Section III.C.5.

⁷⁷No names of individual claimants or respondents are included, only corporate entities.

A. The Number of Demands for Arbitration Resumed Pattern of Slight Decline

The number of demands for arbitrations has declined since 2002, with a slight increase in 2013. The number reached a high of 1,053 in 2002. As Chart 18 shows, the sharpest decline occurred between 2003 and 2004 (a decrease of 128), with significant further decreases from 2007 to 2010. In 2015, the OIA received 610 demands, 20 less than in 2014. The number of demands increased in San Diego, but decreased in Southern California. The number of lien cases increased from 9 to 25. Since 2010, the number of demands received has varied by no more than 28.

Chart 18



B. The Number of Neutral Arbitrators Has Remained Relatively Stable

Even though the number of demands for arbitration has declined 40% since 2002, the number of neutral arbitrators has remained relatively stable, normally declining in odd numbered years when neutral arbitrators are required to submit updates and increasing the next year. This year was an update year where the pool contained 262 neutral arbitrators in 2015 – 19 fewer than 2014 – with 40% retired judges. The pool has ranged from 349 at the end of 2000 to 251 in 2011. For the most part, the pool has contained between 270 to 310 people and 30 to 40% have been retired judges. The composition of the pool of neutral arbitrators includes those who have plaintiff’s side experience and those who have defendant’s side experience. Ninety-three percent report medical malpractice experience.

The percentage of neutral arbitrators who have served in any given year has dropped with the number of demands, since there are fewer opportunities to serve. It reached a high of 70% in 2003, when the OIA received 989 demands for arbitration and had 287 neutral arbitrators in its pool.⁷⁸ For the most part, the percentage of neutral arbitrators who have served in any given year has been between 53 and 63%. The number of neutral arbitrators who have written awards also remained high, ranging from 44 (in 2014) to 93 (in 2004). During the OIA's existence, 403 different neutral arbitrators have written awards. Equally important, the vast majority of those neutral arbitrators, 68 to 81%, only wrote a single award in any year. Spreading the work helps reduce the possibility of neutral arbitrators being dependent upon Kaiser for work.

C. Claims Primarily Allege Medical Malpractice

The large majority of demands for arbitration are, and have always been, claims that allege medical malpractice. This has ranged from 86 to 97%.⁷⁹ Benefit claims are generally less than two percent.

D. Twenty-Six Percent of Claimants Do Not Have an Attorney

The percentage of cases with claimants who are not represented by an attorney has generally remained between 20 and 26%, reaching 29% the first year and dropping to 17% in 2004. Dealing with the concerns raised by *pro per* claimants has been a continuing issue for the OIA, the AOB, and neutral arbitrators. Both the AOB and the OIA have revised forms and the "*pro per* handout" to make them easier for *pro pers* to understand. See Exhibit B, Rule 54.

E. The Parties Select the Neutral Arbitrators by Strike and Rank in Sixty-Five Percent of the Cases

The *Rules* give both parties the power to determine who their neutral arbitrator will be – or at least, who their neutral arbitrator will not be. The parties can jointly select anyone who agrees to follow the *Rules* and either party can timely disqualify neutral arbitrators after the selection. The OIA gives both parties identical information about the neutral arbitrators. This includes evaluations of the neutral arbitrators by the parties in earlier cases and redacted awards.

The percentage of neutral arbitrators chosen by strike and rank versus those jointly selected has ranged from 65% (2000 and 2015) to 74% (2003 and 2013). Similarly, the percentage of neutral

⁷⁸In 2015, by contrast, there were 379 fewer demands for arbitration but only 25 fewer neutral arbitrators in the pool.

⁷⁹The range may actually be smaller because during the early years, the OIA categorized a larger percentage of demands as "unknown" when they gave no specifics. Now, Kaiser provides information as to the type of claim being made.

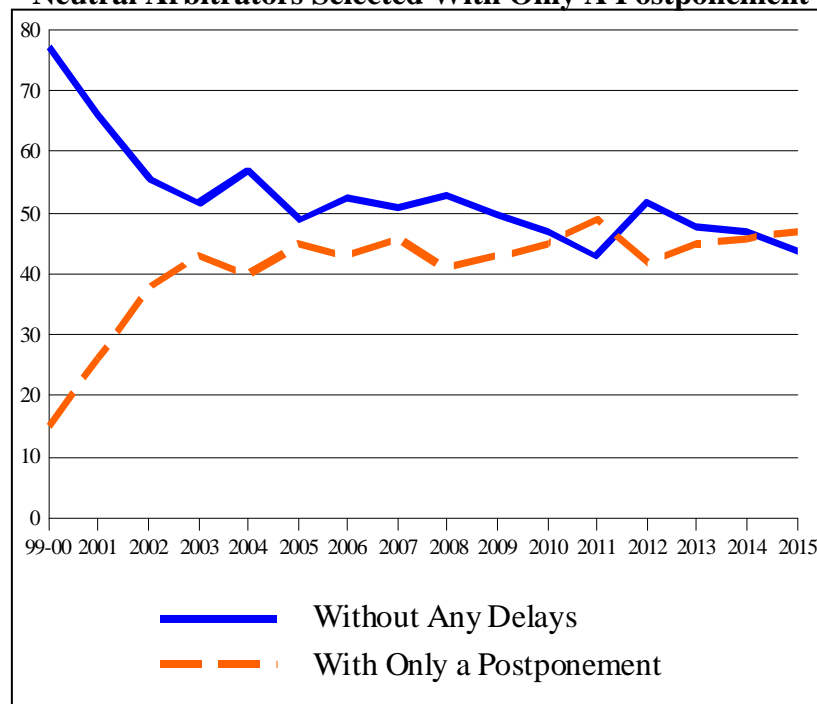
arbitrators jointly selected who are members of the OIA pool has ranged from 55% (2011) to 84% (2014).⁸⁰

F. Half of the Claimants Use Procedures Contained in OIA Rules and State Law to Delay Selecting the Neutral Arbitrator, While Time to Select Remains Timely

The use of the tools (postponement and disqualification) allowing more time to select a neutral arbitrator has increased.⁸¹ In 2000, only 21% of cases employed one or both. Since 2003, 43 to 57% of the cases did. Claimants made almost all of the postponements (99%, 5,497 out of 5,527) and the vast majority of disqualifications (80%, 888 out of 1,110). Chart 19 displays the use of the 90 day postponement versus no delays over time.

Chart 19

Year to Year Comparison of Percentage of Neutral Arbitrators Selected Without Delay vs. Neutral Arbitrators Selected With Only A Postponement



⁸⁰There have only been 14 cases in which the parties had to go to court to have a neutral arbitrator selected.

⁸¹We call the parties to remind them of the deadline to return the List of Possible Arbitrators. During this call, we remind claimants or their attorneys that they may seek a postponement if they are not able to return their responses by the deadline.

The length of time to select a neutral arbitrator, however, has remained consistent since 2003: 24 to 26 days for cases with no postponements and 108 to 114 days for cases where the claimants seek a postponement. Table 6 compares the differing forms of selecting a neutral arbitrator since 2007.

**Table 6 - Year to Year Comparison of No Delay vs. Delays:
Percentage and Average Number of Days to Select Neutral Arbitrators**

	2007	2008	2009	2010	2011	2012	2013	2014	2015
No delay	25 days 51%	26 days 53%	26 days 50%	25 days 47.7%	25 days 43%	24 days 52%	24 days 48%	25 days 47%	25 days 44%
Only Postponement	113 days 46%	114 days 41%	113 days 43%	110 days 44.9%	111 days 49%	108 days 42%	108 days 45%	108 days 46%	109 days 47%
Only Disqual.	72 days 1%	58 days 3%	71 days 3%	80 days 3.5%	72 days 2%	63 days 2%	59 days 2%	66 days 3%	62 days 4%
Postponement & Disqual.	155 days 2%	157 days 3%	165 days 4%	174 days 3.9%	160 days 6%	175 days 4%	162 days 5%	178 days 4%	173 days 5%
Total Selections	68 days	67 days	70 days	71 days	75 days	66 days	69 days	71 days	73 days

While half of the claimants use procedures to delay selecting a neutral arbitrator, the time to select a neutral arbitrator is many times faster than the pre-OIA system.

G. The Parties Consistently Close Most Cases Themselves

The most common way cases close has always been settlement (40 to 49%). This is followed by cases withdrawn by the claimant (20 to 28%); cases decided after a hearing (9 to 16%); and summary judgment (7 to 14%). The remaining cases were abandoned by the claimant or claimant’s attorney or dismissed by the neutral arbitrator. Table 7 displays the statistics since 2007.

Table 7 - Year to Year Comparison of How Cases Closed

	2007	2008	2009	2010	2011	2012	2013	2014	2015
Settlements	42%	44%	46.5%	44%	44%	44%	44%	46%	44%
Withdrawn	26%	27%	25.6%	25%	26%	26%	27%	27%	26%
Abandoned	5%	5%	4.3%	4%	3%	3%	5%	4%	6%
Dismissed	3%	3%	2.4%	3%	4%	3%	3%	3%	3%
Summary Judgment	10.5%	8%	7%	11%	11%	11%	9%	13%	10%
Awards	13.5%	13%	13%	12%	11%	13%	11%	9%	10%

H. The Results After a Hearing

In those cases in which the claimant won after a hearing, the awards have ranged from a single dollar to \$11,640,000. The average is \$447,364. Because the number of cases in any given year is small, the yearly averages can fluctuate greatly from year to year. The lowest average, \$156,001 was in 2001, when the largest award was just over \$1,000,000. The largest average, \$1,282,547, was in 2015, which had an award of \$11,640,000.

After 2000, the percentage of cases in which members prevailed after a hearing ranges from 29% (2009)⁸² to 43% (2002 and 2005). In 2015, 39% of members prevailed in non-lien cases.

I. Cases Close in Less Than A Year

For the most part, the length of time for cases to close has been stable. This can be seen by looking at the averages for all cases, regardless of the type of closure. The average for all cases (which can be influenced by a single “old case” closing in a year) was 319 days in 2003 and reached 357 days in 2009. See Table 8.

⁸²In 2009, lien cases were included and all of those cases were decided in Kaiser’s favor. If the 15 lien cases were excluded, members prevailed after a hearing 34% of the time in cases they brought.

Table 8 - Year to Year Comparison of Average Number of Days to Close, by Disposition

	2007	2008	2009	2010	2011	2012	2013	2014	2015
Settlements	337 days	340 days	375 days	341 days	326 days	330 days	318 days	334 days	344 days
Withdrawn	242 days	227 days	234 days	242 days	268 days	240 days	241 days	226 days	227 days
Summary Judgment	333 days	324 days	366 days	351 days	346 days	343 days	336 days	344 days	371 days
Awards	520 days	455 days	503 days	483 days	555 days	558 days	538 days	510 days	584 days
All Cases	336 days	325 days	357 days	336 days	339 days	340 days	325 days	323 days	342 days

The OIA closely follows each case that is still open after 15 months to make sure that the case remains in compliance with the *Rules*. Because of this type of diligence by the neutral arbitrators and the OIA, only 40 cases – less than half of one percent – of all closed OIA cases have closed beyond the deadline set by the *Rules*.

J. Claimants Shift Cost of Arbitration to Kaiser in Vast Majority of Cases

California law provides that, absent any other arrangement by the parties, the fees of the neutral arbitrator will be split evenly between the parties. The OIA *Rules*, however, provide several ways to shift those fees to Kaiser and most claimants use them. In 86% of the cases with neutral arbitrator fees that began after January 1, 2003 and ended in 2015, the fees were paid by Kaiser. This is most easily and most commonly done by the claimants signing a form and agreeing not to use party arbitrators. Each year, however, in 5 to 10% of the cases, the claimants have requested a waiver based on financial hardship, which also exempts them from paying the \$150 filing fee or giving up the right to party arbitrators. In addition, a waiver created in 2003 by the California Legislature allows claimants who meet certain tests to avoid the \$150 filing fee.⁸³ While some claimants file for both waivers, others request only that the \$150 fee be waived, relying on the waiver forms to shift the neutral arbitrators' fees to Kaiser.

K. Neutral Arbitrators and the OIA System Receive Positive Evaluations

Since 2000, the OIA has been sending out evaluations to the parties of the neutral arbitrators and the OIA. The evaluations ask, among other things, whether the neutral arbitrator treated the parties with respect and whether the parties would recommend the arbitrator to others. The responses to the evaluations have generally been quite positive,

⁸³Unlike California Superior Courts, the filing fee has not increased during the OIA's operation and is lower than court filing fees (other than small claims).

especially from the attorneys. For Kaiser attorneys, the averages range between 4.6 and 4.8, nearly 5 (on a 1 – 5 scale). For claimants’ attorneys, the averages range from 4.0 to 4.7 on all but 2 questions, where the averages were 3.8 and 3.6. The modes and medians are 5 for all attorneys for all questions. This means that the most common response is the most positive. Fewer *pro per* claimants return the evaluations, and thus the average responses are more susceptible to lower-rated evaluations. The numbers are lower than responses from attorneys.

The OIA began asking neutral arbitrators to evaluate the OIA system in 2000. The questions ask them to identify whether particular features are useful or not, whether the OIA is helpful or responsive, and to compare the OIA system with the court system. The neutral arbitrators’ evaluations have always been positive. The percent response rate averages in the 80’s. Ninety-six percent of the neutral arbitrators and 90% of the parties who answer the question rated the OIA system as good as or better than the state court system in 2015.