



STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES

1500 Jefferson Street SE, Olympia, WA 98501

November 1, 2020

TO: David Schumacher, Director, Office of Financial Management
Senator Rolfes, Senate Ways and Means Committee Chair
Representative Ormsby, House Appropriations Committee Chair

FROM: Jason Siems, Washington State Risk Manager

RE: Study of Washington State Department of Children, Youth and Families' Tort Claims

Background

On July 1, 2018, the Children's Administration within the Department of Social and Health Services (DSHS) merged with the Department of Early Learning (DEL) to become an independent agency focused solely on the well-being of Washington's children and families, the Washington State Department of Children, Youth & Families (DCYF).¹ The policy rationale underlying that change was:

[T]o improve service delivery and outcomes, existing services must be restructured into a comprehensive agency dedicated to the safety, development, and well-being of children that emphasizes prevention, early childhood development, and early intervention, and support.

Second Engrossed Second Substitute House Bill 1661, Section 1, Paragraph 1 (2017).

On July 1, 2019, the Juvenile Rehabilitation Administration (JRA) moved from DSHS into the year-old Department of Children, Youth & Families, completing the transition process.

¹ Many of the claims, lawsuits and decisions cited in this report were made prior to the creation of DCYF. However, given that DCYF will be the responsible agency going forward, all references in this memo will be to DCYF unless otherwise specified.

In recent years, there has been an increase in the number of tort claims filed which name the administrations now combined within DCYF as the responsible agency and in the amount of indemnity and legal defense costs arising from DCYF cases. DCYF claims now account for over half of the spending from the State's Self-Insurance Liability Account (SILA). Simultaneously, an increasing deficit began to develop in the SILA.

In September 2019, the Department of Enterprise Services submitted a supplemental budget request for \$120 Million to relieve the deficit growing in the SILA.

In reviewing the request for increased funding, the Legislature requested, via budget proviso language, that the Department of Enterprise Services prepare this study of DCYF tort claims to better understand the reasons underlying the increase in spending and the increase in the number of tort claims filed. That proviso read:

Within existing resources, the department [of Enterprise Services] must study the increase in tort claims filed generally and with a specific focus on the increase in tort claims filed and payouts made against the department of children, youth, and families. The study must include an assessment of the source of the payouts, such as jury awards, court judgments, mediation, and arbitration awards. The department should determine the root cause for these increases and develop recommendations on how to reduce the number of tort claims filed and payouts made. The department must coordinate its work with the department of children, youth, and families and the office of the attorney general. A report must be provided to the office of financial management and the appropriate committees of the legislature by November 1, 2020.

Operating Budget—Supplemental, Chapter 357, Laws of 2020, Section 147, Paragraph 11.

Study Scope and Acknowledgments

This study could not have been prepared without the insights and labor of many individual stakeholders who were generous with their time and expertise. This study focuses on claims against DCYF alleging child abuse and neglect. While there are many other types of claims filed against the agency, such as auto liability and employment claims, the vast majority of high-dollar indemnity payouts and defense costs stem from child abuse and neglect claims. Within this category, the highest value subgroup of claims are for childhood sexual abuse, perpetrated by parents, foster parents, or others. This study gives an overview of the tort claims process, the State insurance program, and trends in DCYF claims and payouts, and examines root causes of the increase in payouts. Finally, the study provides

conclusions and recommendations for potential steps that could reduce the DCYF tort spend. Rather than recommend a broad overhaul of the entire tort structure in Washington, the recommendations attempt to focus on pragmatic options that could have a near immediate impact on the spend rate and which address an identified root cause of the recent uptick.²

Additionally, this study attempts to refine an immense amount of data into a format that can be quickly absorbed by the reader and that may spur additional ideas among policy makers and staff. Each of the graphs and charts in this report represent many hundreds of pages of underlying data and hours of compilation and analysis. Much gratitude is owed for the contributions of the following:

- Ronda Haun and Tammy Cordova; Washington State Department of Children, Youth and Families
- Jennifer Meyer, Sue Brown, Lisa Erwin, Allyson Zipp and Allison Croft; Attorney General's Office
- Roselyn Marcus and Cheri Keller; Office of Financial Management
- Tuan Hoang, Thanh Ly, Grady Williamson, Jean Jelinek, Melynda Campbell and Dominga Soliz; Department of Enterprise Services, Office of Risk Management
- Lynne McGuire, Ashley Howard, Mike Diaz and Keith Thunstedt; Department of Enterprise Services, Financial Services Division
- Alliant Insurance Services, Inc.
- Aon Global Risk Consulting.

Overview of the Tort Claim Process and the Self-Insurance Liability Program

The state of Washington is self-insured for the tortious conduct of its agencies, officers, employees and volunteers under the provisions of Revised Code of Washington 4.92.130. The Office of Risk Management, within the Department of Enterprise Services (DES/ORM), is responsible for managing the liability account to pay for legal liabilities and associated defense costs; promoting risk control through a cost allocation system which recognizes agency loss experience, levels of self-retention, and levels of risk exposure, and establishing an actuarially sound system to pay incurred losses, within defined limits.

All tort claims filed against the state are received, processed and managed by the Office of Risk Management. DES/ORM staff review each claim, collaborate with the affected state agency and determine the appropriate entity to assign the claim for investigation and resolution. The options are: (1) assign the claim to a DES/ORM

² For a thorough analysis of the history of Washington Tort law, including past attempts to reform the tort system and recommendations for doing so, *See, Washington State's 45-Year Experiment in Governmental Liability*, Seattle University Law Review, Vol. 29:1.

investigator for investigation and resolution or (2) transfer the claim to the Torts Division of the Office of the Attorney General (AGO) for investigation and resolution.

Claims and defense costs are paid from the Self-Insurance Liability Account (SILA) (Fund 547), which is funded by the actuarially-based premiums assessed on state agencies. “Actuarially based” relates to the fact that an independent actuary develops and certifies the estimated amount of funds to be set aside to meet future obligations. These obligations are based on past losses, current reserves (which are estimated values of pending claims) and predicted trends. An independent actuarial study is performed every two years providing estimates of the state’s total outstanding liabilities at the end of the fiscal year and projecting liabilities over the next several years. The study also estimates the amount needed to make claim payments over the next biennium, estimates total funding needs and allocates premiums to state agencies. The estimates are provided to the Office of Financial Management as part of a decision package, submitted prior to each biennial legislative session. The Office of Financial Management (OFM) makes a recommendation on funding for inclusion in the Governor’s proposed budget. The final budget is determined by the Legislature and appropriated in the omnibus operating budget.

The individual state agencies’ premium payments are calculated based upon each agency’s proportion of the overall total risk (as determined by the actuarial study). Costs are in three areas: general tort liability, automobile tort liability and defense costs. Costs in each of these categories are allocated based upon each agency’s share of the losses over the most recent six year period, which consists of claims arising during the previous six years, together with any change in the value of previously known claims. This is calculated as the difference between the values of agency total claims reported as of December 31 of the year prior to the biennium for which the premium determination is made and December 31 for the six years prior. Claims are counted in the year they are filed, rather than the year in which the loss occurred. For example, if a loss occurred in 1990, but the claim was filed in fiscal year (FY) 2019, the claim would be counted in FY2019.

A minimum premium is assigned to agencies with no losses. The minimum premium is \$2,000 per biennium.

The Self-Insurance Liability program is structured to pay up to \$10 million for each occurrence (as opposed to the number of injured parties in any occurrence) resulting in a claim or set of claims.

In addition to the Self-Insurance Liability program, the State also purchases excess insurance coverage, which becomes available when a claim exceeds an agency’s self-insurance retention level. The self-insurance retention is similar to the deductible one would

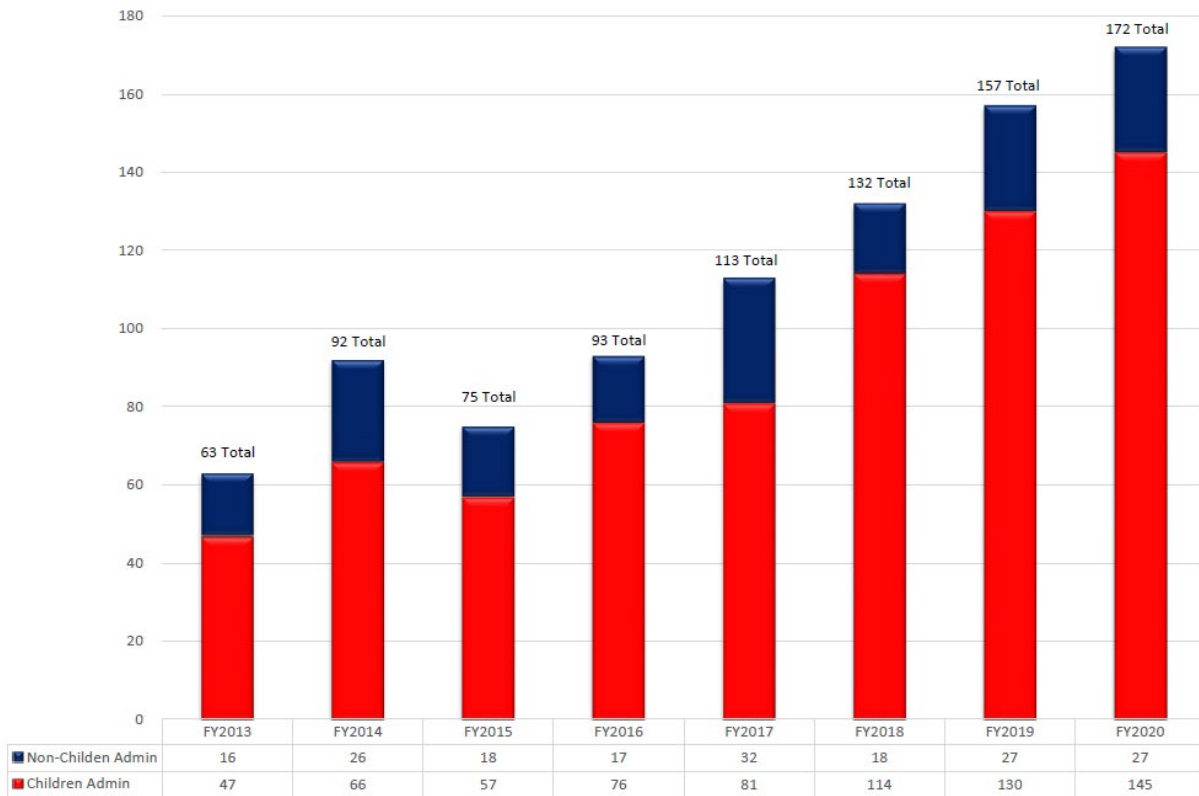
pay on a private commercial insurance policy. It is the amount that the insured consumer must pay before the insurance policy begins payout. Due to their higher risk level, DCYF, DSHS, the Department of Correction (DOC) and Washington State Department of Transportation (WSDOT) have a higher self-insurance retention level. For the current fiscal year (FY2021), DCYF's self-insured retention is \$20 Million; DSHS' is \$17.5 Million; DOC's is \$16.5 Million and WSDOT's is \$18.5 Million. Because the Self-Insurance Liability program pays \$10 Million, but the self-insured retention for the four agencies is higher, the individual four agencies must cover the gap between the self-insurance liability account and the point at which the excess insurance policies are triggered with dollars appropriated for program operations. For example, if a \$25 Million verdict were entered against DCYF, SILA would pay the first \$10 Million, DCYF would pay the next \$10 Million from its legislative appropriation for program funds and then excess insurers would pay the final \$5 Million.

After the self-insurance retention is met, the State currently has excess insurance coverage up to \$50 Million per year. The excess insurance coverage has several exclusions from any coverage under the policy including, but not limited to, employment claims, chronic traumatic encephalopathy (CTE) and claims arising from some children's group homes. Additionally, the excess insurance policies are limited to the amount of the policy for the given year. This means that if a claim or group of claims uses the excess coverage in a given year, subsequent claims arising from that claim year will not have excess coverage available. In other words, the \$50 Million excess insurance coverage applies to the State as a whole and can only be spent once. Once the excess insurance is drained, subsequent claims against any agency which would have been covered were the excess insurance not spent, must be funded by the agency against which the claims are filed, using the same formula of SILA dollars first, then program dollars to cover the total costs. *See*, RCW 4.92.090. So, for example, a claim filed in FY2013—a year for which the excess insurance has already been used up—has no excess coverage.

Trends in DCYF Cases

The number of tort claims filed against DCYF has increased steadily over the past several years. The number of claims attributed to DCYF was 63 claims in FY2013, more than doubling to 145 claims in FY2020—a 130 percent increase. The following chart shows the number of tort claims filed from FY2013-FY2020 against what is now DCYF, differentiated by claims against Children's Administration and all non-Children's Administration component entities.

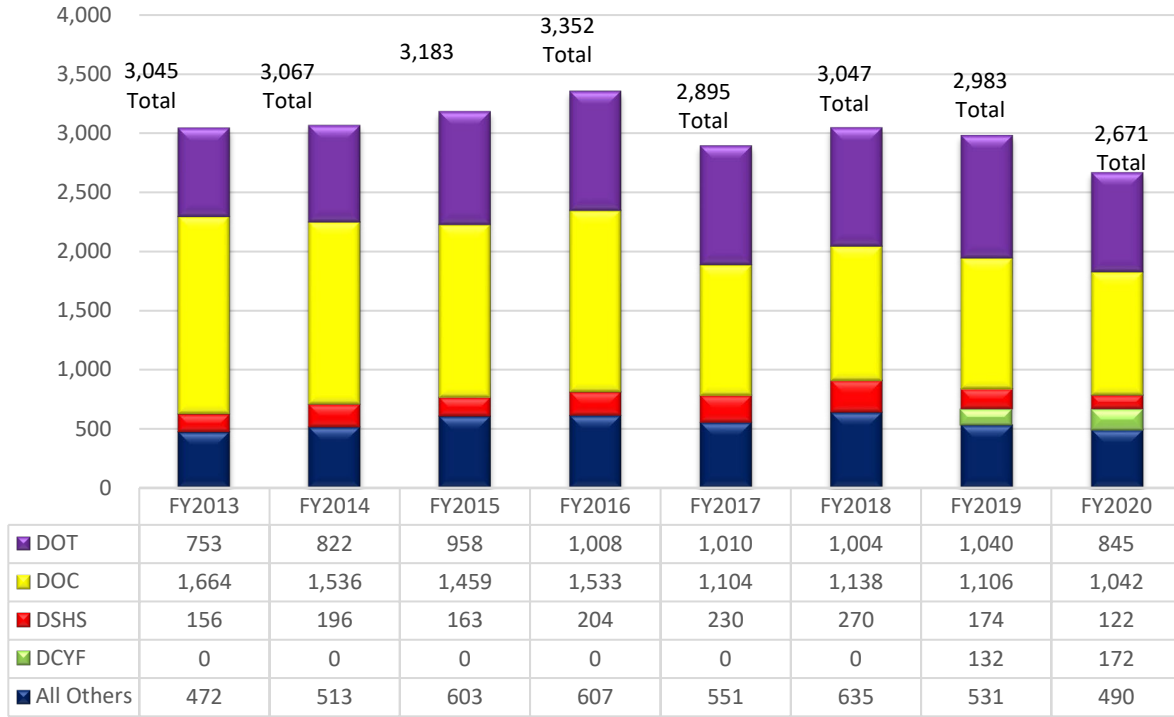
Distribution of DCYF Claims Filed FY 13 - 20



There has not been an increase in tort claims filed against the State as a whole. The number of tort claims filed has remained relatively steady at around 3,000 claims per year, indicating that DCYF accounts for an increasing proportion of the claims filed against the State each year. The total number of tort claims filed against the state annually is displayed in the following chart. The significant drop in filings in FY2020 resulted from the decline in economic activity from the COVID-19 pandemic and is most apparent in the lower number of vehicle accident claims filed.

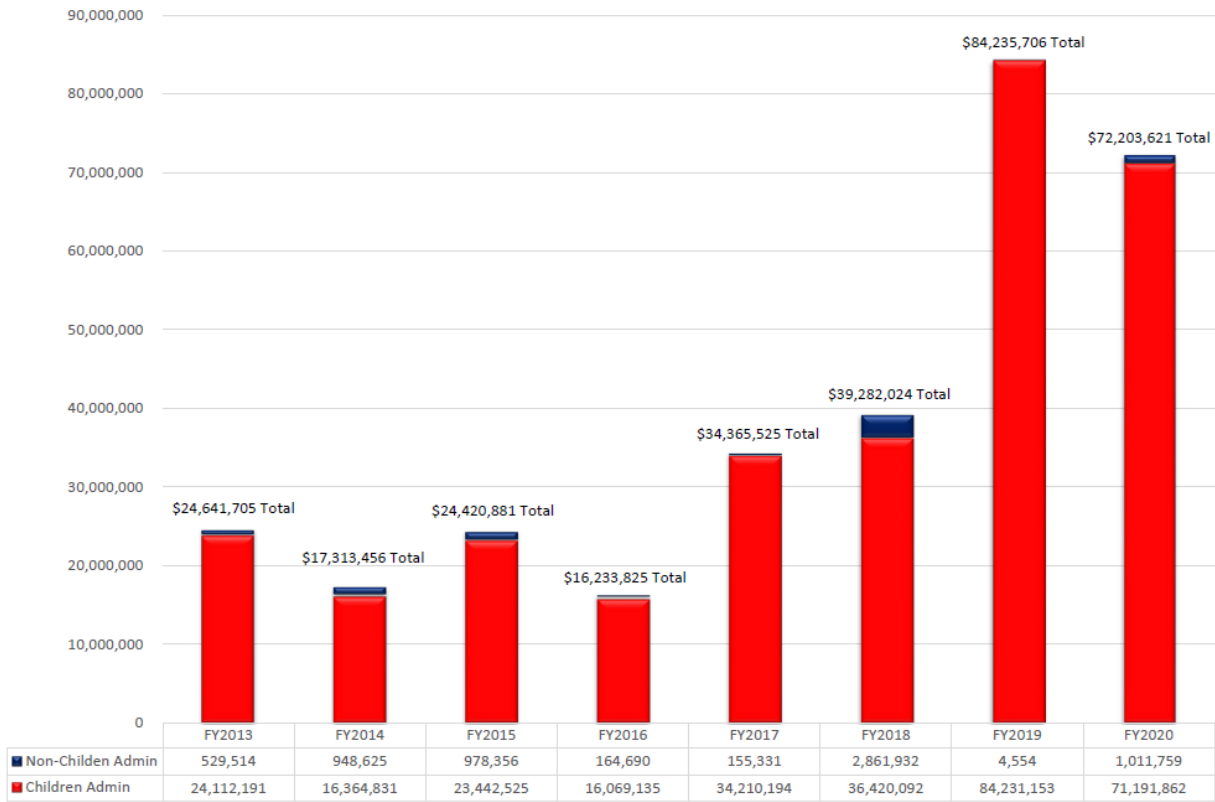
Statewide Tort Claim Filing for FY 13-20

(Excludes UW, Counties, Cities, Public School Districts, and Non State Entities)



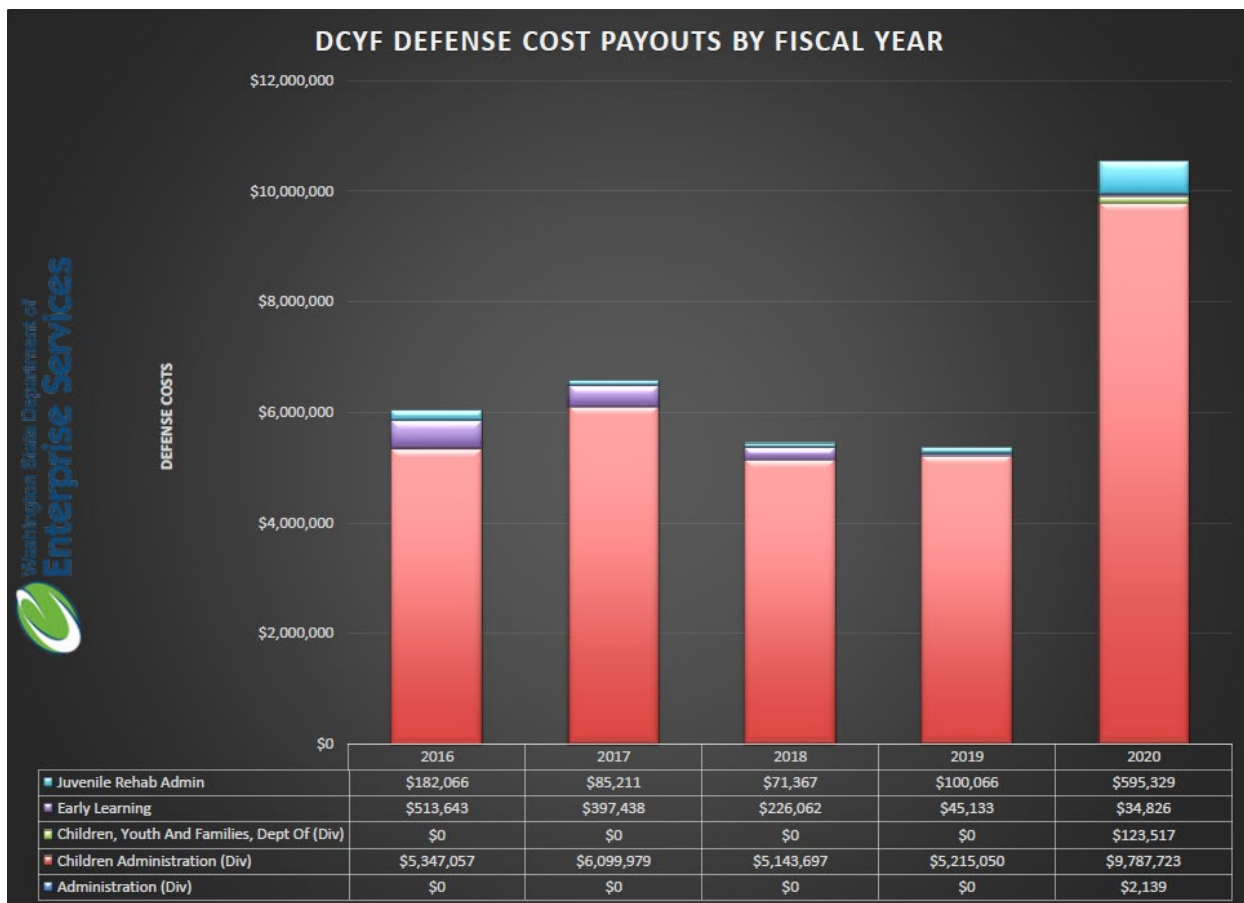
Similarly, the DCYF spend rate (combined payouts to claimants, excluding defense costs) has increased along with the volume of claims filed against it; increasing from approximately \$16 Million per year in FY2016 to \$71 Million in FY2020 (344% increase). A peak in FY2019 of \$84 Million resulted in a 425 percent increase.

DCYF Indemnity Payouts FY 13-20



The average indemnity cost (pay out) per individual DCYF claim has also increased during this period. The average indemnity payout per claim in FY2016 was \$211,436 per claim. In FY2020, it was \$490,978 (122% increase). At its peak in FY2019, the average payout per claim was \$647,932 per claim (193% increase).

Correspondingly, the cost of legal defense attributed solely to defending DCYF claims is also increasing from \$5.3 Million in FY2016 to \$9.8 Million in FY2020 (85% increase).



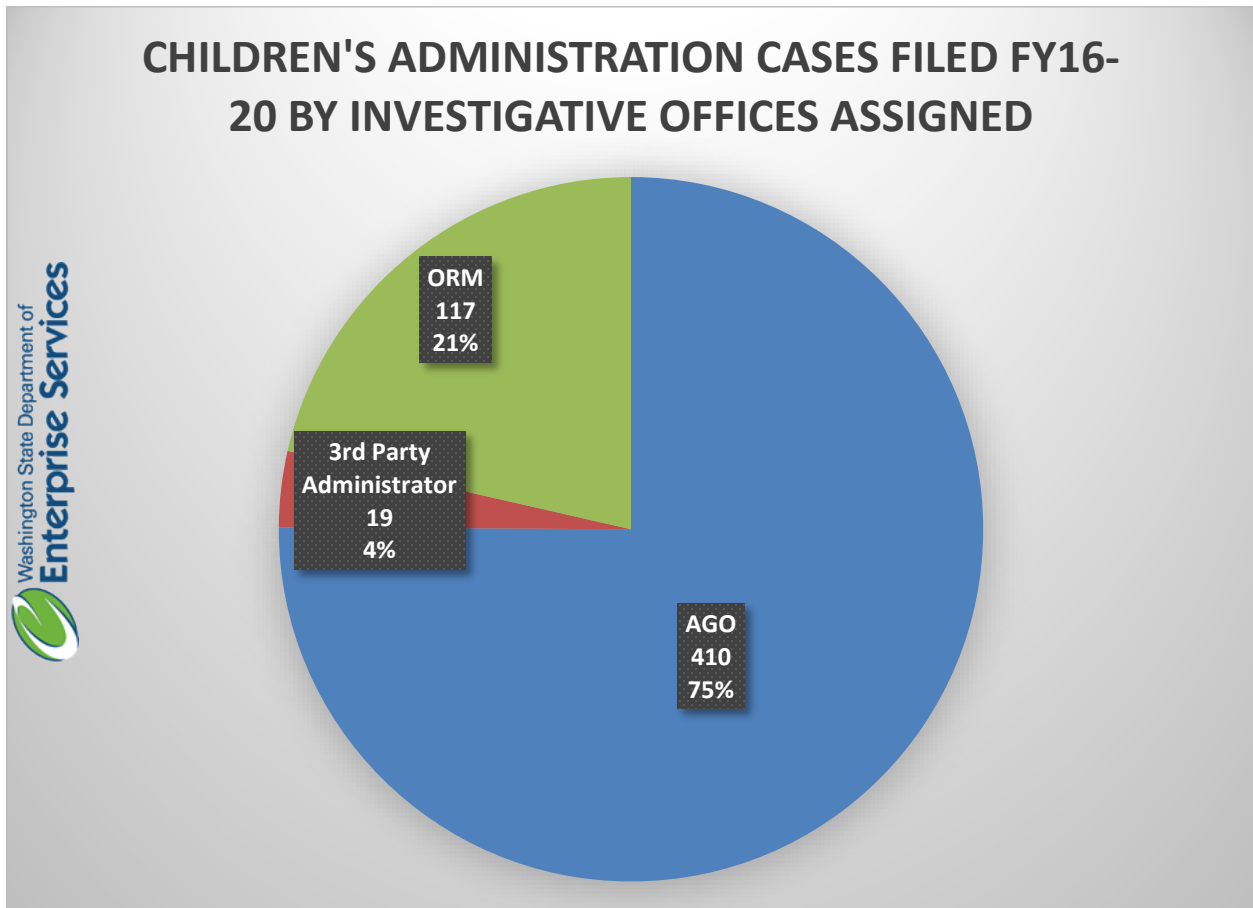
Claims reach a resolution in a variety of ways. When a tort claim is filed with the Office of Risk Management, tort claims specialists, investigators and case managers consult with the agency named in the claim as well as with the Attorney General’s Office to make a determination of whether to send the claim to the Attorney General’s Office for investigation or to maintain the case at ORM. Vehicle accident claims against WSDOT are primarily delegated to WSDOT for investigation.

Higher risk claims, those likely to result in litigation and complex cases are assigned to the Attorney General’s Office. Less impactful cases, such as property damage or vehicle accident claims can usually be investigated and resolved by ORM. Because of their complexity, risk and high likelihood of litigation, most claims filed against DCYF are assigned to the Attorney General’s Office.

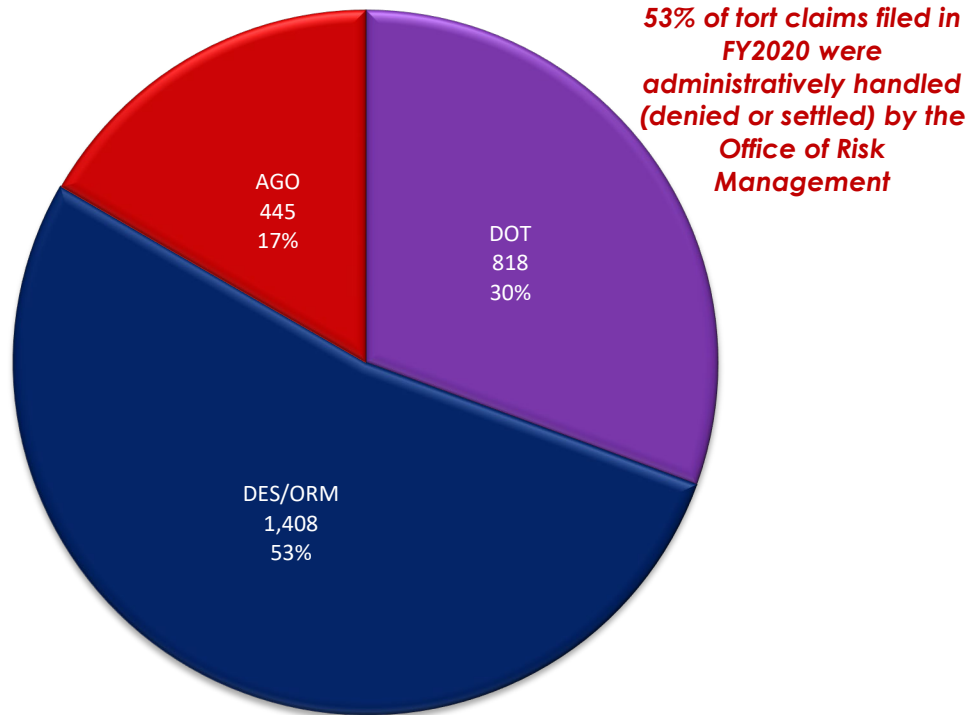
Around 75% of DCYF cases over the past five years were assigned to the Attorney General. In contrast, around 15% of all tort claims filed against the state (all agencies) in a given year are assigned to the Attorney General. This reflects a substantial difference in the mix of claims filed against DCYF when compared to those filed against other state

agencies—a much greater proportion are high dollar claims and a much greater proportion advance from claim to litigation.

The first chart below displays the average proportion of DCYF claims that are assigned to the Attorney General’s Office versus the percentage handled by ORM or another party. The second chart, by contrast, displays the proportion of claims filed against all state agencies which are assigned to the Attorney General’s Office.

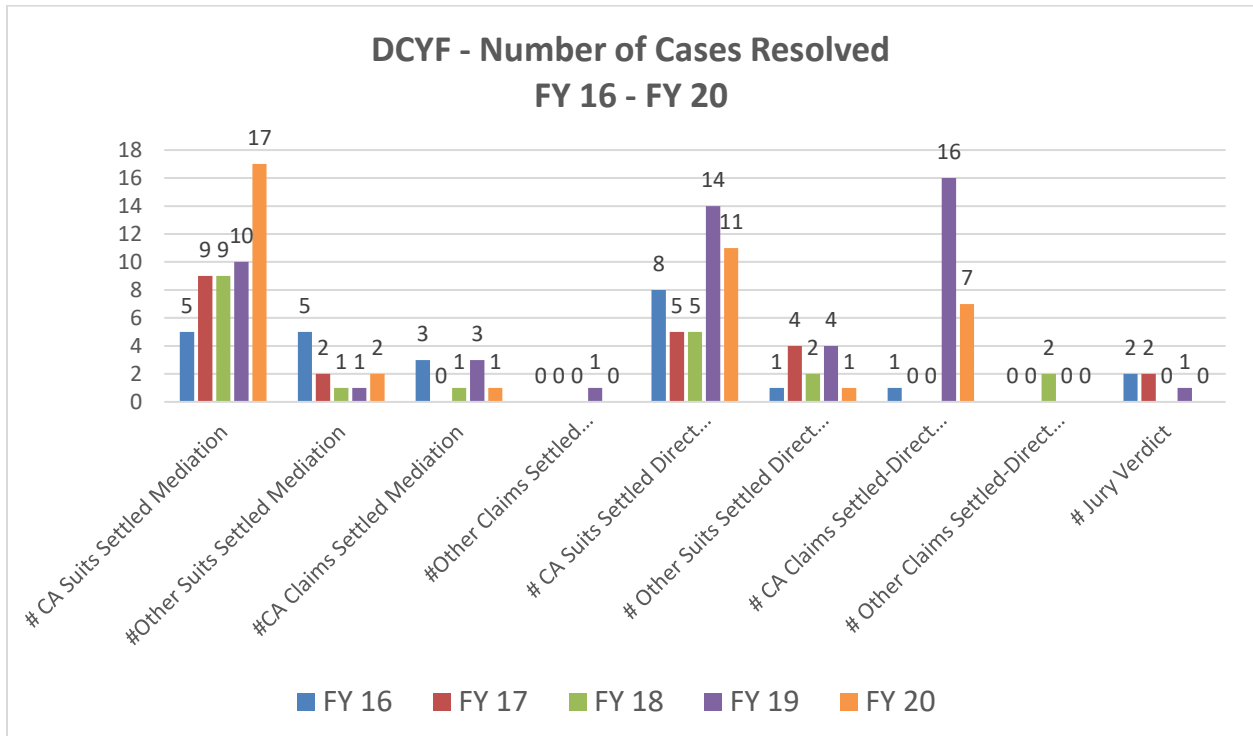


FY 20 Tort Claim Filing by Investigative Office Assigned

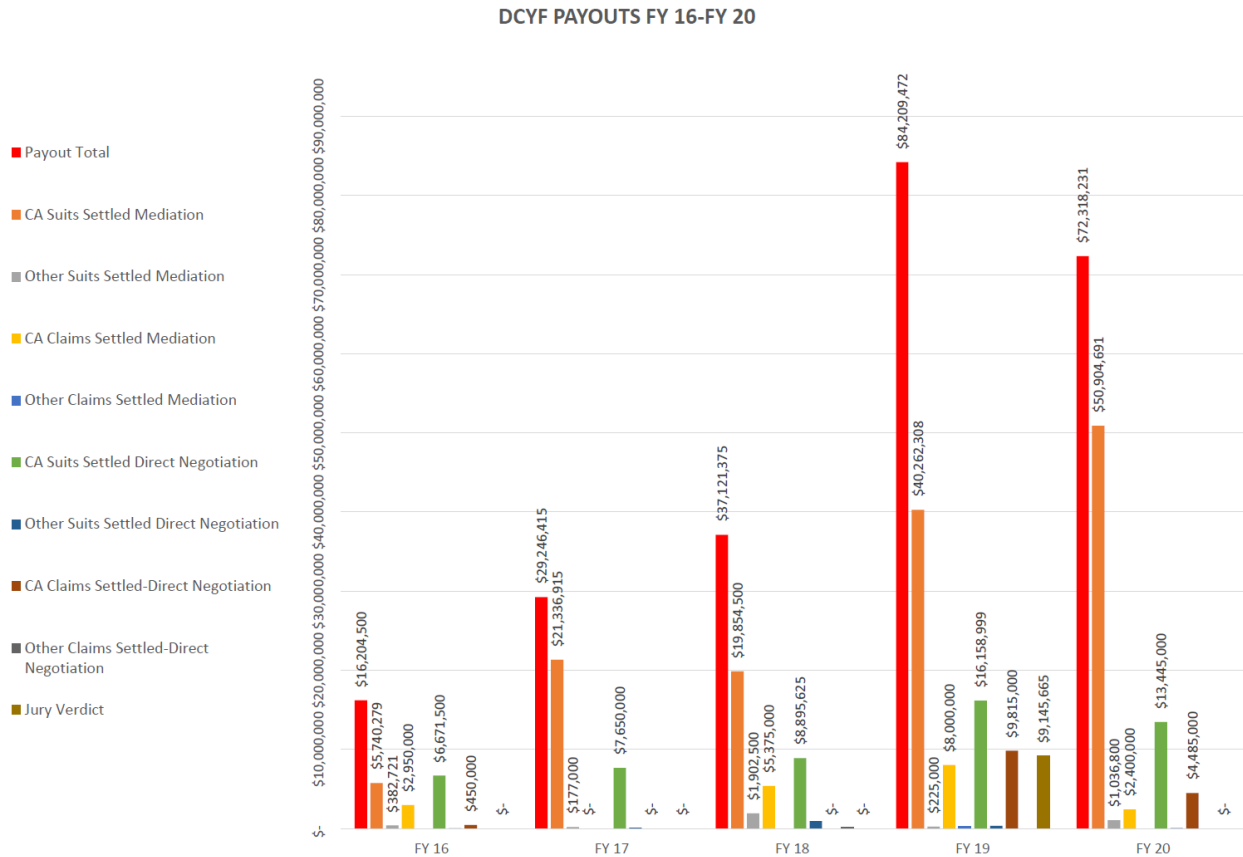


Once at the Attorney General’s Office, a claim may be resolved through direct negotiation or mediation. When a claim moves to litigation, it may be dismissed on a summary judgment or other dispositive motion. It may also be resolved by settlement or withdrawn by the claimant. If resolution is not accomplished, the case will proceed to trial. The client agency, Attorney General’s Office and Office of Risk Management collaborate to decide how to proceed on a case. Settlement of a case must be approved by both the affected agency and the Office of Risk Management. RCW 4.92.210.

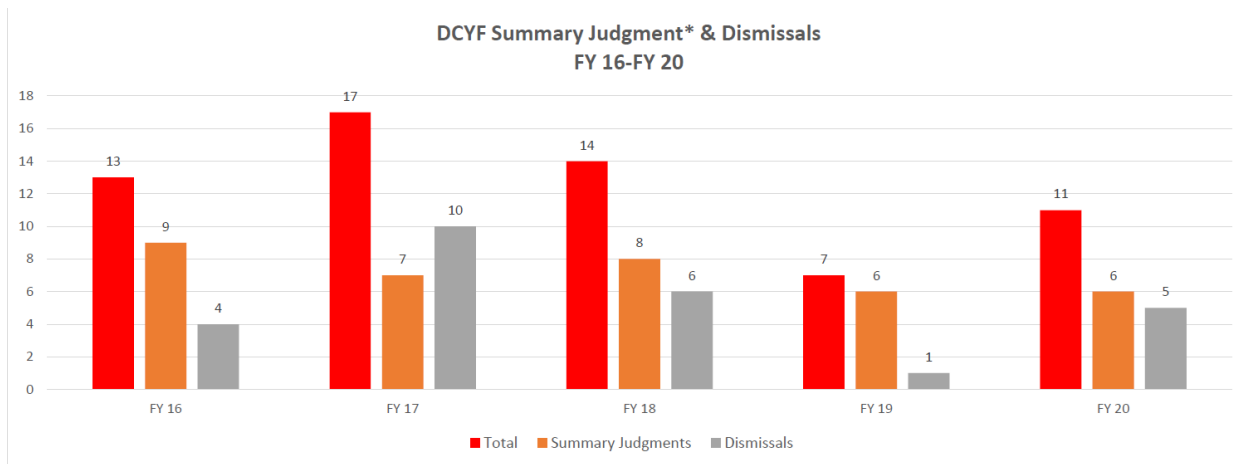
The following chart shows the number of claims and cases that were resolved with a payout in each of the past five years after being assigned to the Attorney General’s Office by type of resolution.



The following charts display the indemnity spend associated with claims and cases that were resolved with a payout via each method of resolution.

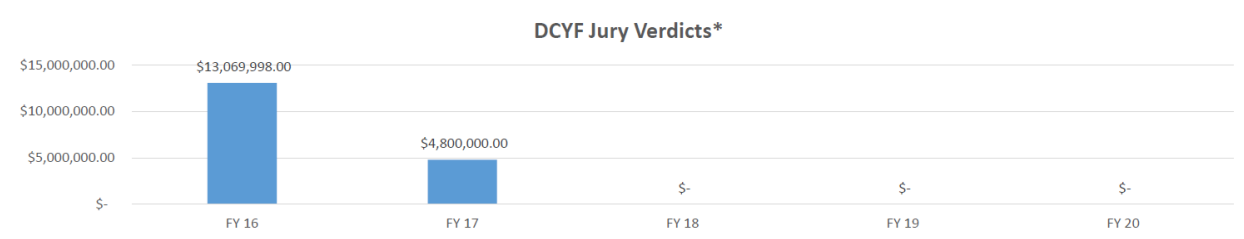


A substantial number of the cases sent to the Attorney General’s Office result in a non-payment resolution. This is accomplished via either a dispositive motion such as a motion to dismiss or a summary judgment motion, or a withdrawal of the claim. The following chart displays the number of non-payment cases and includes the breakout of summary judgement dismissals versus other types of dismissals. Appeals of dismissals can affect the ultimate resolution of the case as referenced in the following graph:



* FY 16 – Five Appeals filed (Three of which were Affirmed and Two were Reversed & Remanded).
 FY 17 – One Appeal filed which was Affirmed.
 FY 18 – Two Appeals filed (One Affirmed and One Voluntarily Dismissed).
 FY 19 – Four Appeals filed (One has been Dismissed; Three remain on appeal); One Summary Judgment awaiting appeal period to run.
 FY 20 – Five Appeals filed (all Five remain on appeal).

Few DCYF cases are resolved via jury trials. In FY18 through FY20, there were no jury verdicts assessed against DCYF. Verdicts in FY16 and FY17 were imposed, but were later adjusted via appeals or negotiated settlements as referenced in the following graph. The 5-year history of jury verdicts against DCYF and their cost is as follows:



*FY 16 - Plaintiff Verdict for \$8,000,000; State appeal was unsuccessful. Paid \$9,145,665 in FY 19
 FY 16 - Plaintiff Verdict for \$5,068,998; after State appealed, settled by direct negotiation for \$4,625,000
 FY 17 – Mistrial; Settled Direct Negotiation for \$1,500,000.
 FY 17 – Plaintiff Verdict \$4,800,000; after State appealed, settled by direct negotiation \$4,750,000.

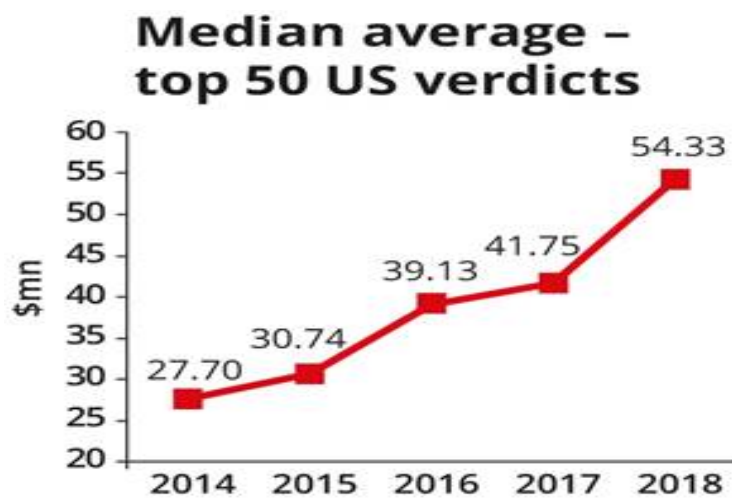
The majority of high-cost DCYF claims proceeding to litigation involve alleged injury to a child.³ Assigning a dollar figure to compensate an injured party is difficult in these types of cases, especially when the damages claims include emotional damages, mental health issues and loss of potential earning capacity arising from an injury that occurred to a child, often many decades ago. The fact patterns of cases involving injuries to children also lend themselves to an emotional impact on a jury which makes predicting the result of a jury verdict far more difficult than predicting the result in other types of cases, such as property damage claims or lost wage claims, where damage calculations are more objective.

The risks and costs associated with taking a case to a jury tend to encourage resolution by other means. Resolution via mediation or direct negotiation allows the parties to resolve a case for a sum certain, whereas, there are few limits on the amount a jury can award. A negotiated resolution to a case is an effective means of mitigating risk. For example, a July 2020 jury trial against DCYF resulted in a damage award of \$98 Million.⁴ Because the tort claim in this matter arose from an event that occurred in a year for which all of the excess insurance coverage has been spent (FY2013), there is no excess coverage for this lawsuit. Available SILA dollars are limited to \$10 million, resulting in any additional payout to come from appropriated program dollars.

³ A summary of each DCYF case with a payout of over \$1 Million from the past five years is provided in Appendix A.

⁴ *Washington state ordered to pay parents of Susan Powell \$98 million in case of her murdered sons*, King 5 News, July 31, 2020. <https://www.king5.com/article/news/crime/washington-state-susan-cox-powell-grandparents-trial-murdered-sons-josh-powell/281-b1b0c8b7-440a-4b6a-bf7c-281562910618>

Nationwide trends of increasing jury verdict amounts also encourage risk mitigation by means of settling cases pre-trial:



Source: *Shaub, Ahmuty, Citrin & Spratt*

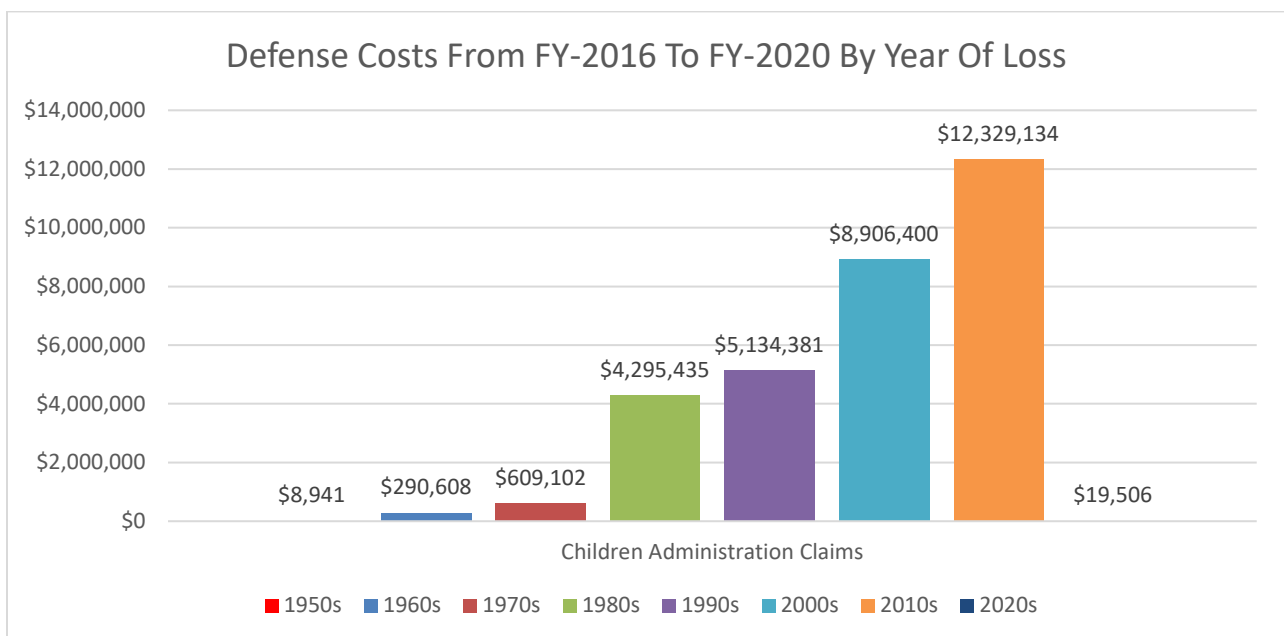
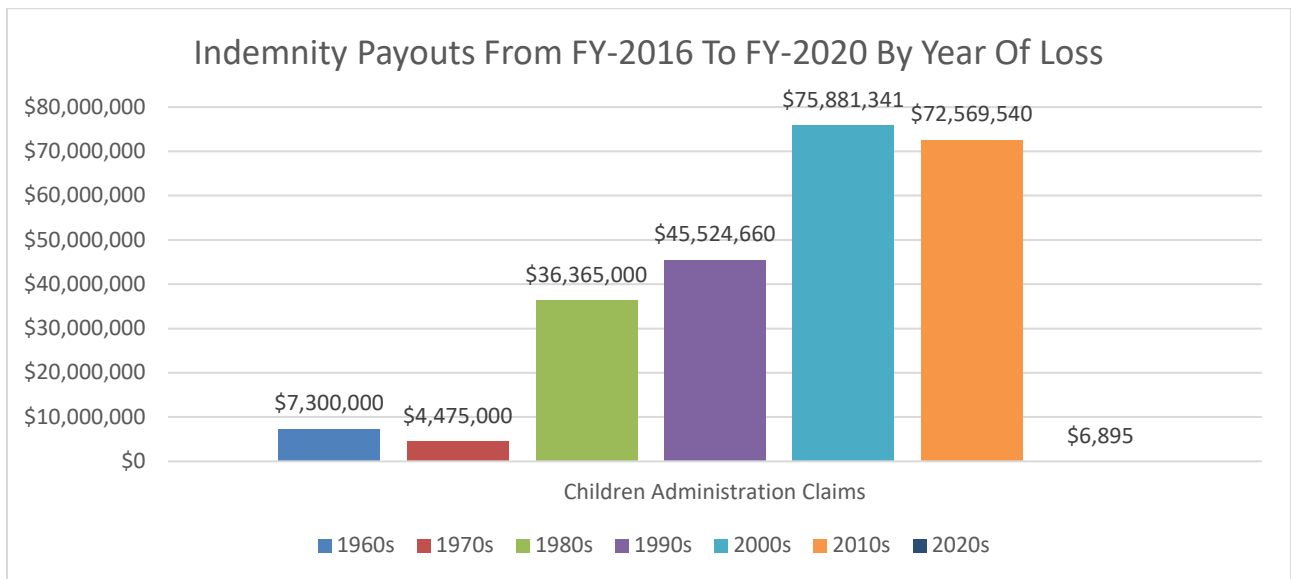
The costs to the state of Washington for tort claims is expected to continue increasing. One of the elements of the biennial actuarial study commissioned by the Office of Risk Management is an estimate of the state’s outstanding liability, based upon a review of pending claims. In their most recent report, the actuaries estimated the state’s outstanding retained losses at \$1.145 billion as of June 30, 2020. The prior study estimated the outstanding retained losses at \$604 Million as of June 30, 2018.⁵ The actuaries’ assessment was issued with a note of caution in that their analysis occurred early in the COVID-19 pandemic crisis and could not accurately predict the impact to the state’s expected tort spend from that event.

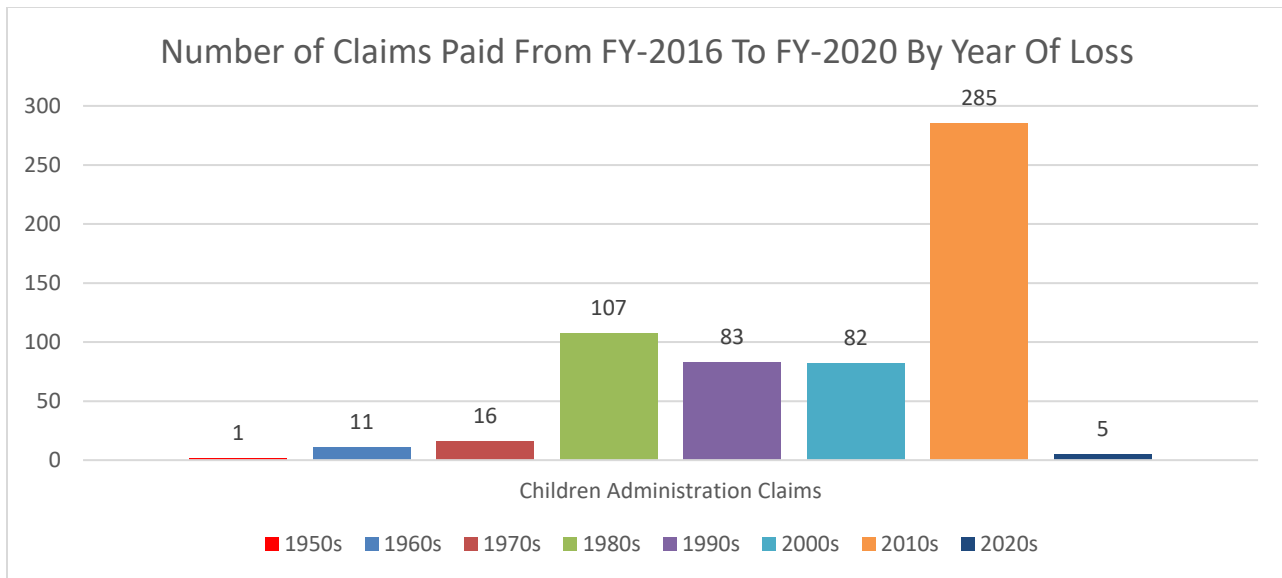
The Statute of Limitations for Childhood Sexual Abuse is Effectively Unlimited at this Time

A substantial number of claims made against DCYF, especially those resulting in a high payout, involve claims of childhood sexual abuse. Pursuant to RCW 4.16.340, the statute of limitation, normally three years in personal injury cases, is tolled until three years after the prospective claimant realizes that the sexual abuse suffered is a cause of his/her injuries. Washington courts have recognized that injuries from childhood sexual abuse may not manifest until well into adulthood. Given the subjective nature of this statute of limitations, the State has had little success in obtaining dismissals of cases alleging childhood sexual abuse based on time bar.

⁵ *State of Washington Actuarial Overview Self-Insurance Liability Program (SILP)*, Aon Global Risk Consulting, (June 25, 2020),

The impact of the elongated statute of limitation is apparent when reviewing the date of loss from which claims against DCYF arose. The following charts display the quantity of claims and also the amounts spent on claims, sorted by the decade from which the loss being claimed arose:





In the past five years, the State has paid claims against DCYF for childhood sexual abuse that occurred in the 1950s and 1960s. A substantial number of recent claims have their genesis in the 1970s, 1980s and 1990s. Many of the sexual abuse claims stemming from incidents in these time periods arose from group homes utilized by DCYF after foster home placements failed. The long statute of limitations on such cases means that, even with changes in policy implemented by DCYF decades ago, claims still arise from that era. For example, as of October 1, 2020, there were 30 active claims and 20 lawsuits arising from 14 different group homes/juvenile facilities. Eventually, these claims will work through the system. This will likely take many years due to the lack of limits on the window of time a claimant has to make their claim. The state is still receiving claims that arose in the Kiwanis' OK Boys Ranch facility which closed in 1994. Old cases like this present significant barriers to an effective defense because documents have been destroyed pursuant to state retention schedules, and witnesses are deceased, cannot be located, or have little to no memories of the events underlying the lawsuit. In some cases, the only evidence of the alleged abuse is the plaintiff's own testimony.

The following list provides the specific facility from which pending lawsuits and claims arose, the number of claimants and the years the facility operated. This list includes only claims and suits that are currently pending as of October 1, 2020. It does not reflect the complete history of lawsuits involving group homes.

- Echo Glen Children's Center (1967-Present); 1 claim
- Green Hill (1891-Present); 2 lawsuits involving 10 plaintiffs; 2 claims
- J Bar D (operated 1979-1985); 2 lawsuits involving 9 plaintiffs
- Jessie Dyslin Boys Ranch (in operation since 1926); 2 lawsuits involving 4 plaintiffs; 4 claims

- Kiwanis Vocational Home (operated 1979-1994); 6 lawsuits involving 14 plaintiffs; 10 claims
- Maple Lane (1914-2014); 1 lawsuit with 2 plaintiffs; 2 claims
- OK Boys Ranch (in operation from 1971-1994); 1 lawsuit involving 2 plaintiffs
- Pioneer Group Home (1970's to mid-1980's); 1 lawsuit involving 1 plaintiff
- Secret Harbor/Cypress Island (1947 – 2009); 2 lawsuits involving 5 plaintiffs
- Toutle River Boys Ranch (1960-1996); 1 lawsuit involving 5 plaintiffs; 7 claims
- Kamp Kachess/Double K Ranch (1965-1975); 1 lawsuit with 1 plaintiff
- Boysville; 1 claim
- Boys Village; 1 claim
- Maple Lane School (1914-2009) 1 lawsuit with 2 plaintiffs and 2 claims

Total Plaintiffs/Claimants: 77

Institutions involved: 14

Number of Lawsuits: 20

Number of Claims: 30

A 2018 Washington Supreme Court Decision Expanded DCYF Tort Duties

In November 2018, the Washington Supreme Court's decision in *HBH v. State*, 192 Wn.2d 154 (2018), changed the legal landscape for DCYF cases, creating a new and expansive basis for DCYF liability. The *HBH* decision announced that DCYF has a previously unrecognized tort duty to protect dependent foster children from harm by their foster parents. This newly recognized duty is a significant factor in the FY2019 and FY2020 spike in DCYF indemnity payouts. In combination with the essentially unlimited statute of limitations for childhood sexual abuse, this new duty will likely lead to more high risk claims that extend back decades.

Prior to *HBH*, the primary basis for DCYF tort liability in the foster care context was a duty arising out of the statute that mandates DCYF to investigate referrals of child abuse and neglect. For a plaintiff to prevail on a claim based on this duty—a statutory negligent investigation claim—a plaintiff must prove: (1) that DCYF received a referral of child abuse or neglect; (2) that DCYF conducted a biased or incomplete investigation of that referral, and (3) that the deficiencies in DCYF's investigation resulted in a "harmful placement decision."^{6, 7} Courts have defined a "harmful placement decision" as: the failure to remove the child from a dangerous home, the removal of the child from a safe home, or the placement of the child into a dangerous home, such as relative or foster placement.⁸ In lawsuits alleging statutory negligent

⁶ *M.W.*, 149 Wn.2d at 602.

⁷ *Id.*; *Petcu v. State*, 121 Wn. App. 36, 56, 86 P.3d 1234 (2004).

⁸ *M.W.*, 149 Wn.2d at 590.

investigation, DCYF can often prevail by establishing that no referrals of child abuse or neglect were made or that the evidence supports that a proper investigation was conducted.

The *HBH* Court decided that DCYF has an additional actionable tort duty that is not created from the statutory responsibilities defined for DCYF by the Legislature. This new duty, based in the common law, requires DCYF to protect dependent foster children from reasonably foreseeable harm by their foster parents.⁹ As a general rule under the common law, an actor has no duty to another person to prevent a third person from harming them by controlling the conduct of the third person. However, a duty may exist where the actor and the other person have a “special relationship” that gives the other person a right to protection.¹⁰ The *HBH* Court recognized the existence of such a special relationship between DCYF and dependent foster children, stating: “the establishment of a dependency imposes essential rights and duties on the State to care for dependent children.”¹¹ The Court’s decision imposed on DCYF a duty enforceable in tort to make reasonable efforts to protect foster children from reasonably foreseeable harm by acts of their foster parents.¹² Notably, this DCYF duty to protect dependent children is greater than the duty biological parents owe to their own children. And under the case law, whether DCYF has made reasonable efforts sufficient to satisfy the duty is not necessarily satisfied by DCYF following all statutory, policy, and procedural requirements regarding care for foster children.

Defending DCYF from lawsuits brought under the duty imposed by *HBH* presents several distinct challenges. Unlike negligent investigation lawsuits, the plaintiff does not have to prove: that DCYF received a referral of child abuse or neglect, that DCYF conducted a deficient investigation of that referral, and that DCYF investigatory deficiencies caused a harmful placement decision. Rather, liability under the *HBH* duty is established by the existence of the special relationship (established by the child’s status as a dependent child) and DCYF’s failure to prevent the child from experiencing reasonably foreseeable harm. In addition, unlike negligent investigation claims, lawsuits that include a claim based on the *HBH* duty are unlikely to be dismissed on summary judgment motion because courts are very likely to find that the question of whether the harm suffered by the child was reasonably foreseeable is a question of fact for a jury to decide.

Since the *HBH* decision, subsequent lawsuits have sought to expand the scope of the *HBH* special relationship duty to include harm to dependent children by individuals other than foster parents. For example, recent claims and lawsuits have alleged that DCYF has a duty to prevent: injuries to foster children by other foster children, injuries to former foster children who

⁹ *HBH*, 192 Wn.2d at 181.

¹⁰ *Restatement (Second) of Torts* § 315(b)

¹¹ *H.B.H.*, 192 Wn.2d at 168.

¹² *H.B.H. v. State*, 192 Wn.2d at 183.

are adopted and the injury occurs after adoption, injuries to foster children by biological children of foster parents, injuries to foster children by relatives/friends of foster parents, injuries to foster children in group care either by other children in the same group care facility or by group care facility staff, and injuries to dependent children by their own parents. Additionally, claims are being filed against DSHS arguing that it has a “special relationship” with certain categories of its clients. Such claims, (and lawsuits) will likely test the *HBH* decision’s application to programs that provide assistance to vulnerable adults who receive social services from governmental agencies.

Because the duty under *HBH* has existed for less than two years, the payout history on these claims is still very limited. A small backlog of cases asserting the duty was created while *HBH* was pending on appeal. Following the Supreme Court’s decision, those stayed cases proceeded to resolution in FY2019 which contributed to the spike in indemnity spend for DCYF in that year. About 40% of the payout from FY2019, the peak year for DCYF indemnity payouts, arose from claims and cases asserting an *HBH* duty. Further, about 57% of pending DCYF cases include an *HBH* cause of action. The *HBH* Court’s imposition on DCYF of this special relationship duty in combination with the essentially unlimited statute of limitations for claims of childhood sexual abuse will likely lead to more high risk claims that extend back decades.

DCYF Workload and Staffing Have a Delayed Impact on Tort Claims

Although lower workloads and caseloads, and higher staffing levels correlate to positive outcomes for children and families, it can be decades before policy, staffing, and workload improvements impact tort claim payouts because of the long statute of limitations applied to many DCYF cases. The tort claims and lawsuits currently in litigation often arose from policies, procedures and staffing levels which were improved many years ago. Therefore, an assessment of the underlying reasons behind current claims against DCYF does not necessarily reveal current problems in DCYF practices because for a large percentage of current claims, those practices have changed in the decades since the date of loss which led to the claim.

Several studies show that child protection agencies with high caseloads have higher employee turnover and that higher caseloads and turnover have a negative impact on child welfare outcomes.¹³ For example, a study by the Child Welfare League of America found that child welfare agencies should strive to ensure that their staff has manageable workloads to achieve positive outcomes for the children and families they serve.¹⁴ In a county by county study of child welfare agencies in California, counties with low-turnover had lower

¹³ Government Accountability Office. (2006) *Improving Social Service Program, Training, and Technical Assistance Information Would Help Address Longstanding Service-Level and Workforce Challenges*.

¹⁴ Child Welfare League of America, *Caseload & Workload: A Synthesis of the Evidence Base, Current Trends, and Future Directions*.

maltreatment recurrence rates. Higher turnover counties had double the rate of recurrences of abuse and neglect compared to lower turnover counties.¹⁵

DCYF maintains and publishes detailed statistics on workload levels, caseload levels, and vacancy rates for child welfare employees and is able to assess the workload of its employees rather than merely the caseload carried. However, historical workload and staffing statistics are difficult to compile for years earlier than the last decade due to record retention policies and changes in the way data was compiled and maintained. Additionally, because a substantial percentage of the claims filed against DCYF are based upon incidents that occurred decades ago, it is difficult to correlate workload or vacancy rates to the number and/or magnitude of tort claims filed many years later. Anecdotally, however, a review of the large pay-out cases suggests that higher staffing levels, less turnover and retention of experienced staff may have led to different outcomes at the time of the circumstances which led to the claim.

DCYF continually evaluates its practices and policies to improve the delivery of services to children and families. One method of improvement is developing and applying “lessons learned” from events that may have resulted in tort settlements or verdicts. Additionally, some tort settlements include a commitment from DCYF to implement new policy, increase staff communication about a particular policy, or revise policy training. DCYF, in conjunction with the AGO, conducted over 60 different trainings for staff on a variety of such topics between July 1, 2018 and January 1, 2020. Of course, because some percentage of the claims and cases being filed and resolved now involve alleged failures from decades ago, no amount of training or new strategies can be implemented to address some of the agency’s risk.

Efforts to reduce DCYF tort claims numbers and fiscal impact should take into account DCYF’s need to retain staff at levels sufficient to ensure the best service to children and families in the state. This is particularly important in light of the expanded tort liability that now constitutes the legal landscape in which DCYF operates.

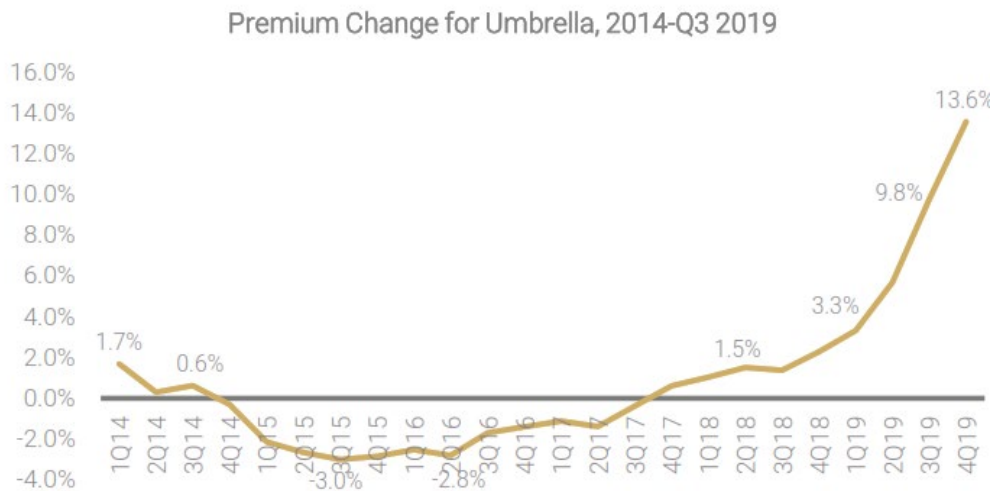
Commercial Insurance is Not a Cost-Effective Solution

The world is facing the worst insurance market in over 30 years. “Higher premiums are unavoidable, even for loss-free accounts”¹⁶ According to the State’s Broker of Record, the 2017-2018 policy year was the worst loss year market-wide since 2002 with record losses of \$230 billion. Losses over the past several years have forced insurance companies to raise rates in order to maintain profitability. Insurance companies are reducing their risk profile by avoiding entire classes of business. The impact of COVID-19 on the insurance market will

¹⁵ National Council on Crime and Delinquency. (2006) *Relationship Between Staff Turnover, Child Welfare System Functioning and Recurrent Child Abuse*. (Cited by, AFSCME Department of Research and Collective Bargaining Services, (June 2016) *Cost Savings from Reasonable Child Welfare Workloads*.

¹⁶ Advisen/AXA XL; Alliant Insurance Services, Inc. June 25, 2020.

exacerbate the problem. In May 2020, Lloyds of London projected that their loss impact from COVID-19 related claims will be over \$4 Billion. The estimated impact on the industry as a whole ranges from \$40 Billion to \$100 Billion.¹⁷ The following chart displays the significant percentage increase in liability insurance premiums over the past several years:



Source: Council of Insurance Agents & Brokers, Q4 2019 Index

Within this backdrop, Washington State has seen a significant increase in its insurance premium costs for excess coverage over the past five years. Premiums for excess coverage to insure the state from losses above its self-insured retention have risen from approximately \$8 million per year in 2016 to over \$16 million in the current year (50% increase). In addition, the total amount of coverage insurance companies are willing to sell the State has decreased from \$75 million in 2016 to \$50 million in the current year (FY2021).

While insurance companies are making less coverage available to high-risk entities like Washington as a means of reducing their own financial risk, the state has experienced increases in the self-insured retention for the highest risk agencies. For example, the DCYF self-insured retention, which is the amount DCYF must pay before the excess coverage insurance begins to pay, has gone from \$16.5 Million in FY2016 to \$20 Million in the current year (FY2021).

Washington is also a uniquely difficult venue for liability insurers compared to other jurisdictions. Washington is one of the few remaining states with almost no tort

¹⁷ Alliant Insurance Services, Inc. June 25, 2020.

immunities.¹⁸ The State is also subject to joint and several liability, which means the State can be liable for 100% of the cost of a tort judgment if the plaintiff is free of fault, even if there are other at-fault co-defendants.¹⁹ The increasing severity of claims and increases in verdict amounts in Washington and nationwide limit the number of large liability insurers willing to cover the State.

The insurance market for large, complex public entities such as the state of Washington has always been extremely limited. There are currently less than ten insurers in the world that will participate on an account as complex and risky as Washington. In order to remain solvent and profitable, an insurer would have to charge Washington a premium greater than what it anticipates paying out in coverage. Procuring insurance to cover the total indemnity and legal defense costs of DCYF is not a cost-effective option.²⁰

Conclusion and Recommendation

A review of the DCYF tort claims shows several root causes of the uptick in the number of claims filed and the increase in costs. First, due to the effective lack of a statute of limitations for childhood sexual abuse claims, DCYF is defending claims which arose from circumstances often decades in the past. Many of the claims filed in recent years, and the subsequent millions of dollars paid, are from incidents that occurred in the 1980s and 1990s, specifically the cases arising from sexual abuse that occurred in group homes. Although the agency changed the policies and procedures which contributed to those claims decades ago, the lack of a statute of limitations requires the agency to defend claims in which the workers involved have long since retired or died and the records related to the incidents were long ago purged. The pending group home cases will eventually work their way through the process, but this will likely take several decades due to the length of time a claimant is

¹⁸ For a summary of tort immunities and limitations in the various states, See, <https://www.mwl-law.com/wp-content/uploads/2018/02/STATE-SOVEREIGN-IMMUNITY-AND-TORT-LIABILITY-CHART.pdf>

¹⁹ For example, if a plaintiff is fault free in a car accident and sues the driver who was at fault for the accident and also sues WSDOT for slippery road conditions, and the jury determines that the at-fault driver had 98% of the fault, and WSDOT had 2%, WSDOT can be looked to for the total verdict amount, rather than just its 2% of total damages.

²⁰ By way of example, insurance carriers have even revoked some policies sold to the City of Seattle in order to reduce their risk profile. https://www.seattletimes.com/seattle-news/politics/as-legal-claims-over-protests-and-police-pile-up-seattle-faces-insurance-risks/?utm_source=marketingcloud&utm_medium=email&utm_campaign=TSA_090820165723+Seattle+faces+insurance+risks+as+legal+claims+over+protests+pile+up_9_8_2020&utm_term=Active%20subscriber

allowed to bring their claim. There are claims filed against now defunct group homes that will likely continue for many years.

The second and most significant root cause is the expansion of the duty of care brought about by the Supreme Court's *HBH* decision. Had DCYF's tort duty remained confined to the preexisting statutory duty regarding investigations, rather than expanding to the new common law special relationship duty, the peak spend year of FY2019 would have been substantially less. The Court's *HBH* decision also creates an unclear area in the law that current litigation is pressuring to expand significantly. Even without an expansion of the duty under *HBH*, the *HBH* duty as it stands is expected to significantly increase future costs. Replacing the current *HBH* common law duty of care with a new statutory duty of care, or reverting to the previous statutory duty regarding investigations alone is strongly recommended as a means of decreasing the DCYF tort spend going forward.

Appendix A

Claim: 30071488
Claimant: T.T.
Date of Incident: 01/01/01
Date Claim Filed: 12/04/15
Indemnity Paid: \$2,050,000

Plaintiff alleged that when she was a minor living in her mother's home, she was beaten and sexually assaulted by her mother and a multitude of men. Plaintiff alleged that DSHS failed to properly investigate the many referrals received about the home, the maltreatment of the children, and the failure to protect and remove plaintiff from the abusive home. Plaintiff alleged she suffered from physical, emotional and psychological abuse as well as sexual abuse and assault.

Claim: 30071326
Claimants: R.S.
E.S.
Date of Incident: 01/01/01
Date Claim Filed: 12/23/14
Indemnity Paid: \$2,000,000

Plaintiffs, who are sisters, allege repeated abuse and neglect by their foster mother and foster brother between 2001 and 2012.

Plaintiffs allege that DSHS failed to adequately investigate the reports of abuse and also failed to take appropriate action to prevent further abuse and neglect. Plaintiffs claimed emotional distress and pain and suffering.

Claim: 30071403
Claimant: L.R.
Date of Incident: 03/30/98
Date Claim Filed: 7/9/2015
Indemnity Paid: \$1,100,000

Plaintiff L.R. alleges that while she was a foster child she was sexually and physically abused while in three different foster homes.

Plaintiff alleges that DSHS negligently licensed these foster homes. Plaintiff suffered from severe depression, anxiety, PTSD. Plaintiff claimed negligent foster care placements, negligent investigation, failure to remove, and civil rights violations.

Claim: 30071017
Claimants: Davis, Kenneth L.
Davis, Tracy L.
Date of Incident: 12/03/03
Date Claim Filed: 05/09/13
Indemnity Paid: \$4,625,000

Plaintiffs alleged that DSHS failed to disclose to them the prior sexual abuse of their adopted child, A.H. The parents alleged they were informed of the abuse by the Cowlitz County Sheriff's Office who was conducting criminal investigations. Plaintiffs alleged that after the abuse was disclosed, they discovered the child was acting out sexually in the home which forced them to install video surveillance. Subsequently the child was sent by his parents to a boys' home in Missouri. Plaintiffs claimed negligent investigation, failure to disclose, and financial damages. The jury returned a verdict awarding the parents \$5,070,078. This case was settled on appeal for \$4.635 million.

Claim: 30071211
Claimant: M.C.
Date of Incident: 08/09/90
Date Claim Filed: 05/14/14
Indemnity Paid: \$1,000,000

Plaintiff alleged that she suffered physical, sexual, and emotional abuse by her foster parent, Mr. Carroll. The Carroll's eventually adopted her with DSHS' consent. Plaintiff alleged that DSHS was aware of the abuse, failed to protect her from Carroll by allowing her to remain in the home, and for ultimately allowing the Carroll family to adopt her. Plaintiff alleged that Mr. Carroll was the subject of several CPS reports that resulted in other children being removed from the home due to alleged physical and sexual abuse. Plaintiff claimed negligent foster home licensing, negligent placement, failure to remove, loss of enjoyment of life, financial damages relating to her injuries, and financial loss due to impaired earning capacity.

Claim: 31078899
Claimants: Stahl, Dale
Stahl, Brittany
Howland, Deana
Date of Incident: 04/07/12
Date Claim Filed: 02/20/13
Indemnity Paid: \$6,500,000

Plaintiff alleged that her father, Dale Rex Stahl, was killed on 4/7/2012 by DOC Corrections Officers at Airway Heights Corrections Center. Plaintiff alleged that Mr. Stahl suffered from hypoglycemic shock and was improperly treated and restrained by the corrections officers, causing asphyxia. Plaintiff claimed emotional and financial damages, wrongful death, excessive force, negligent medical care, and attorney fees. A jury returned a verdict for plaintiff in the amount of \$8 million. The matter was settled on appeal for \$6,500,000.

Claim: 30070760
Claimant: A.B.
M.B.
Date of Incident: 11/18/08
Date Claim Filed: 11/17/11
Indemnity Paid: \$5,006,300

Plaintiff, at 12 days old, sustained a fracture of the left humerus that was deemed to be an accidental injury by the child abuse medical expert relied upon by Child Protective Services (“CPS”). CPS’ investigation did not substantiate a finding that Plaintiff’s injury was non-accidental and Plaintiff was released to return home to his parents and grandparents. Approximately one month later, Plaintiff was assaulted by his father and sustained severe and permanent injuries. Plaintiff alleged CPS conducted a negligent investigation that resulted in Plaintiff’s return to an abusive home where he was permanently injured.

Claim: 30071095
Claimant: W.S.
C.S.
L.S.
B.S.
P.S.
S.S.
Date of Incident: 04/01/12
Date Claim Filed: 10/10/13
Indemnity Paid: \$4,750,000

Plaintiffs, S.S. and P.S., adopted three foster children. Plaintiffs alleged that DSHS knew of, and failed to disclose, one of the adopted children's history of sexual abuse and assaultive behavior in previous foster homes. Plaintiffs alleged that their biological children were sexually assaulted by the adopted child. Plaintiffs were forced to move their adopted child to a separate residence to keep the other children safe. Plaintiffs claimed physical and emotional injuries, statutory and regulatory violations, punitive damages, negligent training, and misrepresentation.

Claim: 30071480
Claimant: H.C.
Date of Incident: 08/01/03
Date Claim Filed: 11/23/15
Indemnity Paid: \$4,750,000

Plaintiff is a vulnerable adult with cerebral palsy and spastic quadriplegia. Plaintiff alleged that DSHS was negligent when it placed her in the home of the Hendersons where she was severely neglected. Plaintiff alleged that DSHS failed to remove her from the Hendersons' home despite numerous warnings, failed to report the abuse to Adult Protective Services or Child Protective Services, and also failed to investigate reports of abuse, neglect, and exploitation. Plaintiff claimed permanent physical and emotional injuries.

Claim: 30071201
Claimants: A.S.
P.S.
Date of Incident: 04/13/00
Date Claim Filed: 04/30/14
Indemnity Paid: \$2,750,000

Plaintiff, A.S., through her father P.S., is a minor with special needs. She alleged that she was physically, sexually, and emotionally abused in DSHS-placed foster homes. Plaintiffs alleged that DSHS failed to protect her by negligently placing her in homes where she was harmed.

Claim: 30071436
Claimant: M.E.
J.E.
Albertson, Dan
Date of Incident: 08/01/11
Date Claim Filed: 08/26/15
Indemnity Paid: \$2,650,000.00

Plaintiffs, M.E. and J.E., through Dan Albertson as their Legal Guardian ad Litem, alleged that DSHS was negligent by failing to protect them from sexual abuse by their mother's boyfriend, a convicted sex offender. Plaintiffs further alleged that DSHS failed to properly investigate the numerous referrals of sexual abuse, that DSHS failed to conduct background searches and that DSHS failed to properly interview them regarding the identity of their abuser and the scope of the sexual abuse. Plaintiffs claimed physical, emotional and mental injuries, negligent investigation, hiring, training, and supervision, and regulatory violations.

Claim: 30071360
Claimants: E.Q.
C.Q.
R.Q.
Date of Incident: 08/01/03
Date Claim Filed: 02/27/15
Indemnity Paid: \$2,500,000

The Plaintiffs alleged that E.Q. was subjected to neglect and physical, sexual, and psychological abuse by her biological parents and that DSHS /CPS should have been aware that they were grossly unfit to be parents. The Plaintiffs alleged DSHS should also have been aware that the paternal grandparents to E.Q. were grossly unfit to be caregivers for her. The Plaintiffs allege DSHS was negligent in placing E.Q. back into the custody of her parents. The Plaintiffs allege DSHS was negligent in their investigation of multiple referrals regarding E.Q. and her biological family.

Claim: 30071449
Claimant: S.P.
J.P.
Date of Incident: 08/28/02
Date Claim Filed: 10/01/15
Indemnity Paid: \$2,400,000

Plaintiffs alleged that minor children, S.P. and J.P. were sexually, physically, and emotionally abused by their father who was later convicted of Rape of a Child First Degree and Child Molestation First Degree and is now incarcerated. Plaintiffs alleged DSHS failed to properly investigate, supervise and protect the minor children following complaints of sexual, verbal, physical, and emotional abuse and neglect.

Claim: 30071407
Claimant: K.H.
Date of Incident: 05/01/05
Date Claim Filed: 07/14/15
Indemnity Paid: \$2,000,000

Plaintiff alleged she was sexually, physically and psychologically abused by her parents. Plaintiff further alleged DSHS was aware of the abuse for years, failed to remove her from the home, was negligent in its investigations, and failed to take adequate measures to protect her. Plaintiff claimed physical and emotional injuries due to DSHS' failure to report, negligent investigation, statutory and regulatory violations, and breach of duty.

Claim: 30071333
Claimant: S.J.
Date of Incident: 12/20/95
Date Claim Filed: 01/09/15
Indemnity Paid: \$1,825,000

Plaintiff alleged she was physically abused and neglected by her mother and that she was raped by three different adult males.

Plaintiff asserted she was repeatedly abused, both sexually and mentally. DSHS placed claimant in foster care and then reunified her with her biological father. DSHS approved overnight unsupervised visits with her father during which he allegedly sexually assaulted S.J.

Claim: 30071348
Claimant: T.T.
Date of Incident: 03/29/96
Date Claim Filed: 02/05/15
Indemnity Paid: \$1,500,000

Plaintiff alleged that she suffered emotional, physical, and sexual abuse while living in several foster homes, including wrongfully being returned to her birth mother several times when DSHS knew that her mother was an abuser of alcohol and drugs. Plaintiff alleged DSHS failed to investigate many complaints made between 1996 and 2009 regarding Plaintiff's safety and well-being. Plaintiff claimed physical, emotional, and sexual abuse due to DSHS' negligent investigation, wrongful multiple foster care placements, and failure to protect and remove.

Claim: 30071176
Claimant: A.A.
C.A.
Date of Incident: 10/05/11
Date Claim Filed: 03/19/14
Indemnity Paid: \$1,500,000

Plaintiff, biological father of then seven-month-old C.A., asserted that C.A. was physically abused by C.A.'s mother's boyfriend.

Plaintiff alleged that DSHS was negligent by not investigating the claims after Plaintiff took C.A. to Mary Bridge Children's Hospital several weeks after the abuse had occurred. Plaintiff also alleged that DSHS did not follow up after receiving a call from local police.

Plaintiff claimed emotional and financial damages.

Claim: 35770013
Claimants: J.A.
C.A.
Date of Incident: 01/01/10
Date Claim Filed: 10/02/13
Indemnity Paid: \$1,902,500

Plaintiff minors alleged they were sexually assaulted while attending the All Hours Childcare. Plaintiffs alleged that the Department of Early Learning, who licensed the daycare, knew there was a history of sexual assault of other children at the daycare but did nothing about it. Plaintiffs claimed physical and emotional injuries, negligent licensing, negligent investigation, negligent training, and financial damages.

Claim: 30071572
Claimants: D.H.
T.H.
R.T.W.
R.L.W.
E.W
Date of Incident: 01/01/90
Date Claim Filed: 04/07/16
Indemnity Paid: \$5,800,000

Plaintiffs alleged they were physically, sexually and mentally abused throughout their placements by DSHS within the foster care system. Plaintiffs each alleged they were subjected to preventable abuses at various placements and that DSHS failed to protect the children in foster care.

Claim: 30071991
Claimant: J.G.
Date of Incident: 07/13/11
Date Claim Filed: 01/3/18
Indemnity Paid: \$5,500,000

Plaintiff alleged DSHS knew or should have known of the unsafe conditions he was forced to live in with his biological mother and step-father. Plaintiff alleged DSHS failed to properly investigate referrals of neglect, physical abuse, and maltreatment, and negligently allowed him to remain in his mother's care. Plaintiff further alleged he was subjected to years of extreme abuse, neglect, and malnutrition. Plaintiff claimed physical, emotional, and psychological injuries, pain and suffering, loss of enjoyment of life, mental anguish, negligent investigation, and failure to remove.

Claim: 30071664
Claimants: K.K.
M.K.
C.M.
A.S.
Date of Incident: 05/12/05
Date Claim Filed: 09/22/16
Indemnity Paid: \$5,375,000

The claimants alleged DSHS should have been aware of the neglect and abuse they were subjected to by their biological father. The claimants alleged DSHS was negligent in placing the children with or in close proximity to their paternal grandparents as they were unfit to be caregivers for them. The claimants alleged DSHS was negligent in placing the children back into the custody of their parents. The claimants alleged DSHS was negligent in their investigation of referrals regarding the children and their biological family. The claimants claimed physical, emotional, and psychological injuries.

Claim: 30071653
Claimant: C.G.
Date of Incident: 12/12/07
Date Claim Filed: 09/08/16
Indemnity Paid: \$4,050,000

Plaintiff alleged that DSHS knew or should have known of the unsafe condition plaintiff was forced to live in by her biological mother and step-father. Plaintiff alleged that DSHS failed to investigate referrals of neglect, physical abuse, and maltreatment. Plaintiff further alleged she was subjected to years of abuse, neglect, and malnutrition. Plaintiff claimed physical, emotional, and permanent psychological injuries, pain and suffering, loss of consortium, and mental anguish.

Claim: 30071670
Claimant: E.M.
Date of Incident: 07/05/07
Date Claim Filed: 09/30/16
Indemnity Paid: \$3,100,000

Plaintiff J.M., parent of minor E.M., alleged that DSHS knew or should have known that E.M.'s biological father was a registered sex offender. Plaintiff further alleged that DSHS allowed him regular access to E.M. even though there were multiple concerns for her overall safety while in his care. Plaintiffs alleged that E.M. was subjected to sexual abuse when she was returned to father's full-time custody following the dismissal of E.M.'s dependency case. Plaintiff claimed physical injuries, emotional and psychological injuries, negligent supervision and placement, financial damages, and attorney fees.

Claim: 30071553
Claimant: P.K.
Date of Incident: 03/20/03
Date Claim Filed: 03/16/16
Indemnity Paid: \$1,700,000

Plaintiff alleged she was the victim of childhood sexual abuse by her father despite at least two separate reports to DSHS that she had been sexually abused by him. Plaintiff alleged that DSHS failed to investigate and plaintiff was placed in a harmful placement.

Plaintiff claimed suffering from sexual abuse, emotional distress, physical injury, and loss of enjoyment of life.

Claim: 30071297
Claimant: R.N.
Date of Incident: 10/01/89
Date Claim Filed: 11/03/14
Indemnity Paid: \$1,500,000

Plaintiff was placed by DSHS at the Kiwanis Vocational Home for Youth (KVH). Plaintiff alleged that during his placement at KVH, employees sexually and physically abused him. Plaintiff alleged that DSHS knew KVH had a history of misrepresenting qualifications of employees, hiring unqualified employees, failing to report incidents of physical and sexual abuse on resident youths by employees, and fraud. Plaintiff alleged that DSHS knew of the program deficiencies and abuse but failed to address or correct the issues. Plaintiff claimed severe and permanent emotional distress, physical injuries, mental anguish, neglect, mistreatment, negligent supervision, loss of future earnings, and financial damages.

Claim: 30071519
Claimants: K.C.
C.F.
G.F.
Date of Incident: 01/23/02
Date Claim Filed: 01/25/16
Indemnity Paid: \$1,500,000

Plaintiffs alleged that DSHS failed to remove K.C. from his foster care placement despite reporting by K.C.'s school, daycare, counselors, and doctors that he was being abused. Plaintiffs alleged that K.C. was subjected to continuous physical, mental, and sexual abuse. Plaintiffs claimed rape, battery, extreme and irreparable psychological, emotional, and physical injuries, and pain and suffering.

Claim: 30071329
Claimant: T.P.
Date of Incident: 01/01/81
Date Claim Filed: 01/06/15
Indemnity Paid: \$1,317,000

Plaintiff alleged that DSHS negligently placed him in the OK Boys Ranch when it knew or should have known that such placement exposed him to neglect, mistreatment, and denial of basic human services. Plaintiff alleged that DSHS failed to take action and as a result, plaintiff was physically, mentally, and sexually mistreated, and now suffers from severe and permanent mental, emotional, and physical injuries.

Claim: 30071230
Claimants: Z.W.N.
M.W.
Date of Incident: 06/01/08
Date Claim Filed: 06/23/14
Indemnity Paid: \$1,300,000

Plaintiff alleged that DSHS placed her in a foster home where she was sexually abused. Plaintiff further alleged that during the foster home licensing process, the foster father disclosed he had been the victim of sexual abuse and incest but DSHS failed to investigate. Plaintiff claimed physical injuries, permanent sexual and psychological injuries, negligent placement, wrongful placement, failure to remove, financial damages, and loss of enjoyment of life.

Claim: 30070465
Claimants: K.H.
J.H.
Date of Incident: 11/01/03
Date Claim Filed: 06/29/10
Indemnity Paid: \$1,250,000

Plaintiffs alleged that their father and step-mother physically and sexually abused them for years. Plaintiffs' grandmother allegedly reported the abuse to CPS but say nothing was done. Plaintiffs claim abuse, severe emotional distress, and psychological damages.

Claim: 30071456
Claimants: M.D.
Coster, Barbara (as guardian for minor child)
Date of Incident: 04/01/2015
Date Claim Filed: 10/16/2015
Indemnity Paid: \$19,300,000

Plaintiff, Guardian ad Litem for minor M.D. alleges that DCYF negligently placed the child in the care of her biological father without performing a background check. The child suffered serious physical abuse that ultimately led to seizures and cardiac arrest. The child was rendered permanently disabled, requiring lifelong care. Plaintiff claimed physical, mental, emotional injuries, pain and suffering, negligent investigation, wrongful placement, failure to remove, PRA violations, and loss of enjoyment of life.

Claim: 30071269
Claimants: C.L.
S.L.
Date of Incident: 01/01/2003
Date Claim Filed: 09/25/2014
Indemnity Paid: \$9,145,665

Plaintiffs alleged that they were sexually abused by their adopted brothers over a period of several years. Plaintiffs alleged that DCYF knew of the brothers' sexually abusive histories but, despite this knowledge, recommended the placement and adoption with the family. Plaintiffs claimed emotional injuries, negligent investigation, wrongful adoption placement, failure to remove, and past and future medical expenses.

Claim: 30072005
Claimant: T.P.
Date of Incident: 01/29/1997
Date Claim Filed: 01/24/2018
Indemnity Paid: \$4,000,000

The plaintiff alleged the Department of Children, Youth and Families neglected to act on several warnings about the inability and/or lack of care being provided by the woman in whose care he was placed, resulting in long-term physical and mental abuse. The plaintiff claimed physical, financial, and emotional and psychological injuries.

Claim: 30770019
Claimant: G.H.
Date of Incident: 01/01/1964
Date Claim Filed: 08/17/2018
Indemnity Paid: \$3,500,000

Plaintiff claimed that she suffered sexual, physical, psychological and emotional abuse from her foster parents while residing in foster placement. Plaintiff claimed severe physical, psychological and emotional injuries.

Claim: 30071829
Claimants: T.P.
J.S.
L.Y.
Date of Incident: 01/01/1967
Date Claim Filed: 06/07/2017
Indemnity Paid: \$3,500,000

Plaintiffs are biological sisters who claimed that during the 1960s, they were placed in a foster home where they were repeatedly raped, molested, sexually abused, and subjected to physical and emotional abuse, neglect, and maltreatment. Plaintiffs further alleged that DCYF failed to conduct a background investigation before licensing the foster home, failed to conduct an adoption placement study, and failed to investigate reports of abuse, neglect, and maltreatment by mandatory reporters. Plaintiffs claimed severe physical, psychological, and emotional injuries.

Claim: 30770063
Claimant: P.P.
Date of Incident: 06/10/2000
Date Claim Filed: 12/04/2018
Indemnity Paid: \$3,000,000

The plaintiff alleged the Department of Children, Youth and Families neglected to act on several warnings about the inability and/or lack of care being provided by the woman in whose care she was placed, resulting in long-term physical and mental abuse. The plaintiff claimed physical, financial, and emotional and psychological injuries.

Claim: 30072074
Claimants: D.R.
M.R.
C.B.
Date of Incident: 01/06/1988
Date Claim Filed: 04/24/2018
Indemnity Paid: \$3,000,000

Plaintiffs alleged they were repeatedly raped and molested by an authorized caretaker while in foster care. Plaintiffs alleged that DCYF failed to properly investigate multiple complaints against the foster home and continued to place children in the home. Plaintiffs claimed emotional and psychological injuries and financial liability.

Claim: 30071812
Claimant: A.H.
Date of Incident: 01/01/1993
Date Claim Filed: 05/09/2017
Indemnity Paid: \$2,600,000

Plaintiff alleged DCYF negligently placed her with her biological father who had a history of criminal convictions, including rape of a minor, when he was 26 years old. Plaintiff further alleged she was negligently placed in multiple foster homes where she was subjected to physical and sexual abuse. Plaintiff claimed past, present, and future pain and suffering, physical, emotional, and psychological injuries, loss of enjoyment of life, financial damages, and loss of earning capacity and educational opportunities.

Claim: 30070705
Claimants: K.H.
H.H.
S.C.
K.R.
J.H.
Date of Incident: 08/01/1999
Date Claim Filed: 08/24/2011
Indemnity Paid: \$2,264,045

Plaintiffs claimed they were physically and sexually abused by foster/adoptive parents from 1990 to 2008. Plaintiff alleged that DCYF failed to perform proper investigations into the multiple referrals and reports. They also claimed DCYF failed to remove them after reports of abuse were reported. Plaintiffs claimed emotional and physical injury.

Claim: 30071609
Claimant: L.S.C.
Date of Incident: 11/07/2012
Date Claim Filed: 06/22/2016
Indemnity Paid: \$2,000,000

The claimant, biological mother and guardian of two minors alleged DCYF was negligent in protecting her children from being sexually abused by their biological father—a convicted sex offender. The claimant alleged DCYF failed to properly investigate claims of sexual abuse that continued until the father was arrested and convicted for Rape of a Child-1st Degree and Child Molestation-2nd Degree. The claimant alleged DCYF failed to properly train and supervise its social workers and failed to follow proper policies and procedures for investigating and preventing sex abuse. The claimant alleged damages of negligent infliction of emotional distress, pain and suffering, and physical and psychological injuries.

Claim: 30071095
Claimants: C.S.
L.S.
B.S.
P.S.
S.S.
W.S.
Date of Incident: 04/01/2012
Date Claim Filed: 10/10/2013
Indemnity Paid: \$1,812,309

Plaintiffs adopted three foster children. Plaintiffs alleged that DCYF knew of—and failed to disclose—one of the childrens’ extensive history of sexual abuse and assaultive behavior in previous foster homes. Plaintiffs alleged that their biological children were sexually assaulted by one of the adopted children. Plaintiffs were forced to move the adopted child to a separate residence to keep the other children safe. Plaintiffs claimed physical and emotional injuries, statutory and regulatory violations, punitive damages, negligent training, and misrepresentation.

Claim: 30071885
Claimant: K.H.
Date of Incident: 01/01/1990
Date Claim Filed: 08/31/2017
Indemnity Paid: \$1,700,000

Plaintiff alleged that when she was 14 years old, DCYF received a report from plaintiff's teacher advising that plaintiff was pregnant by the man she was living with, a known drug dealer. Plaintiff alleged DCYF knew or should have known she was being physically and sexually abused. Plaintiff claimed emotional, psychological, and physical injuries, mental pain and suffering, loss of enjoyment of life, breach of duty, past/future medical expenses, and punitive damages.

Claim: 30072004
Claimant: D.Y.
Date of Incident: 01/01/2002
Date Claim Filed: 01/22/2018
Indemnity Paid: \$1,600,000

Plaintiff claimed he was placed by DCYF, along with his siblings, in an unlicensed foster placement where he suffered sexual and physical abuse. Plaintiff also alleged DCYF ignored reports from daycare workers and counselors reporting evidence of abuse throughout his childhood.

Claim: 30071762
Claimants: G.V.
T.V.
C.V.
Date of Incident: 01/01/1991
Date Claim Filed: 02/23/2017
Indemnity Paid: \$1,500,000

Plaintiffs alleged that DCYF was aware that they were being physically and sexually abused by their parent in their home when they were young. Plaintiffs alleged that because DCYF failed to properly investigate their home life, which could have resulted in their removal, they remained in their abusive environment. Plaintiffs alleged physical and emotional injuries, sexual abuse, negligent training and financial loss.

Claim: 30072027
Claimant: E.B.
Date of Incident: 01/01/1980
Date Claim Filed: 02/13/2018
Indemnity Paid: \$1,500,000

Plaintiff claimed he was placed by DCYF in a Kiwanis Vocational Home during the late 1980s and early 1990s. He claimed that while there, he suffered sexual and physical abuse.

Claim: 30770045
Claimant: M.Y.
Date of Incident: 01/01/2002
Date Claim Filed: 10/11/2018
Indemnity Paid: \$1,500,000

Plaintiff claimed he was placed by DCYF, along with his siblings, in an unlicensed foster placement where he suffered sexual and physical abuse. Plaintiff also alleged DCYF ignored reports from daycare workers and counselors reporting evidence of abuse throughout his childhood.

Claim: 30071763
Claimants: A.B.
Brown, Danielle (as guardian for minor child)
Date of Incident: 01/01/2012
Date Claim Filed: 02/27/2017
Indemnity Paid: \$1,000,000

After minor child A.B. was placed in foster care, he was subjected to physical and emotional abuse and neglect. Plaintiff alleged that DCYF failed to recognize multiple red flags, ignored warnings by physicians, and failed to properly investigate claims of abuse. On August 15, 2013, the child was admitted to Children's Hospital Pediatric Intensive Care Unit after suffering an intracranial bleed, broken bones, extensive bruising, and for being grossly malnourished. Plaintiff claimed gross negligence, physical, emotional and psychological injuries, and negligent investigation.

Claim:	30071095
Claimants:	S. S. P. S.
Date of Incident:	04/01/12
Date Claim Filed:	10/10/13
Indemnity Paid:	\$1,187,691

Plaintiffs, on behalf of their three minor children, alleged that DCYF knew of, and failed to disclose, their adoptive son's extensive history of sexual abuse and assaultive behavior in previous foster homes. Plaintiffs alleged that their children were sexually assaulted by the adopted son, forcing plaintiffs to move him to a separate residence to keep the other children safe. Plaintiffs claimed physical and emotional injuries, statutory and regulatory violations, punitive damages, negligent training and misrepresentation.

Claims: 30770069, 30072065
 30770017, 30770091
 30072082, 30770093
 30770064, 30770039
 3071000831, 30770040
 30770083

Claimants:	C. T. D. B. M. S. J. P. P. H. J. P. L. B. M. B. T. S. M. B. C. D.
Date of Incident:	1980 - 1992
Date Claims Filed:	2018 & 2019
Indemnity Paid:	\$4,500,000

Plaintiffs were dependent youths who were placed at the Kiwanis Vocational Home in the 1980s and early 1990s. Plaintiffs claimed that DCYF failed to monitor the children placed in the facility despite multiple reports of physical and sexual assaults. Plaintiffs further claimed that, while they were residents of the facility, they suffered serious injury and damages after being sexually assaulted by other residents and by staff members.

Claim:	30071706
Claimants:	S. C. M. C.
Date of Incident:	02/15/15
Date Claim Filed:	11/21/16
Indemnity Paid:	\$1,500,000

Plaintiffs allege that a foster child, placed in their home, sexually assaulted all three of their biological children. Plaintiffs allege that DCYF failed to inform them of the foster child's history of sexually acting out. Plaintiffs further alleged that, due to DCYF's failure to disclose the foster child's history, they were unable to make an informed decision about the child's placement in their home. Plaintiffs allege physical, emotional and psychological injuries, loss of consortium, financial damages and attorney fees.

Claim:	30071955
Claimant:	M. J.
Date of Incident:	01/29/89
Date Claim Filed:	11/15/17
Indemnity Paid:	\$3,250,000

Plaintiff alleged that, for 12 years, she was subjected to physical, sexual, and emotional abuse by her biological father. Plaintiff further alleged that DCYF knew that her father was a drug addict, abusive and violent, and an unfit parent, but failed to investigate. Plaintiff claimed damages for physical, emotional, and psychological injuries, loss of enjoyment of life, past and future medical expenses, negligent investigation, wrongful placement, failure to remove and attorney fees.

Claim:	30071973
Claimant:	C. G.
Date of Incident:	01/01/78
Date Claim Filed:	12/04/17
Indemnity Paid:	\$1,500,000

Plaintiff alleged that, when she was five years old in 1977, DCYF negligently placed her with a foster parent who sexually abused her for five years. Plaintiff claimed severe emotional and physical injuries, negligent investigation and wrongful placement.

Claim:	30071996
Claimant:	J. S.
Date of Incident:	01/01/78
Date Claim Filed:	01/09/18
Indemnity Paid:	\$1,500,000

Plaintiff alleged that DCYF negligently placed him in a foster home where he was sexually abused for six years. Plaintiff claimed emotional and psychological injuries and financial damages.

Claim:	30072047
Claimant:	D. G.
Date of Incident:	04/01/12
Date Claim Filed:	03/09/18
Indemnity Paid:	\$4,000,000

Plaintiff alleged DCYF negligently placed plaintiff in a foster home where they knew or should have known that another foster child in the home had a known history of troubling behavior. Plaintiff alleges that the other foster child repeatedly sexually and physically abused plaintiff. Plaintiff claimed emotional, psychological and financial damages.

Claim:	30072048
Claimants:	B. B. J. B.
Date of Incident:	09/01/07
Date Claim Filed:	03/08/18
Indemnity Paid:	\$3,800,000

Plaintiffs alleged that DCYF negligently placed them in foster care where they were sexually abused and raped. Plaintiffs alleged DCYF knew or should have known that the foster father had a criminal history of sexually abusing children and negligently investigated plaintiffs' biological father's suspicions that the foster father was sexually abusing his children. Plaintiffs claimed emotional, physical, and psychological injuries and financial damages.

Claim:	30072083
Claimants:	H. W. A. W. B. W.
Date of Incident:	04/09/15
Date Claim Filed:	05/03/18
Indemnity Paid:	\$7,200,000

Plaintiffs alleged DCYF negligently investigated allegations of abuse and failed to exercise ordinary care in protecting them. Plaintiffs claimed emotional, physical, psychological and financial damages.

Claim:	30770001
Claimant:	C. W.
Date of Incident:	06/06/13
Date Claim Filed:	07/19/18
Indemnity Paid:	\$3,500,000

Plaintiff alleged that DCYF negligently placed her in the custody of her biological father, who subjected her to prolonged and continuous sexual abuse and assault. Plaintiff alleged damages arising from physical, emotional and psychological injuries.

Claim:	30770029
Claimant:	N. U.
Date of Incident:	01/01/89
Date Claim Filed:	09/06/18
Indemnity Paid:	\$1,687,500

Plaintiff alleged that DCYF failed to remove him from his biological father's abusive home. Plaintiff further alleged that after his father was placed on community supervision/probation after being found guilty of 4th degree assault of a minor, he continued to abuse plaintiff. Plaintiff claimed emotional, psychological and financial damages.

Claim:	30770079
Claimants:	R. M. E. L.
Date of Incident:	08/30/09
Date Claim Filed:	01/15/19
Indemnity Paid:	\$3,500,000

Plaintiffs alleged DCYF failed to investigate dozens of reports of abuse and neglect directed toward them by their mother resulting in severe physical, psychological and sexual abuse. Plaintiffs claimed physical, emotional, psychological and financial damages.

Claim:	30770098
Claimants:	L. B. W. C.
Date of Incident:	10/28/81
Date Claim Filed:	03/19/19
Indemnity Paid:	\$2,000,000

Plaintiffs allege DCYF negligently placed them into a foster home where, for years, they were sexually, physically and emotionally abused. Plaintiffs alleged DCYF failed to properly train staff, monitor the home and investigate reported incidents. Plaintiffs claimed emotional, physical, and psychological injuries and financial damages.

Claim:	3071000108
Claimants:	K. T. J. T. C. T. C. T. R. L.
Date of Incident:	04/19/96
Date Claim Filed:	07/22/19
Indemnity Paid:	\$11,000,000

Five plaintiffs alleged they were subjected to physical, sexual and emotional abuse by their biological parents. The plaintiffs claimed that DCYF failed to properly investigate referrals and properly assess prior evidence of abuse and neglect. Plaintiffs claimed damages for physical, sexual and emotional abuse as well as financial damages.