

Too many lawyers and too much bureaucracy.

I sold my knee for money.

There was injustice.

*I lost my house because the
system moves too slowly.*

This is a good way to settle disputes.

Injured Workers' Views on Settlements and Hearings

Some results from the DLI settlement and hearing surveys

Minnesota Department of Labor &
Industry

I had a totally favorable ruling and felt vindicated.

I would have liked to have understood the benefits I was getting.

I don't think the judge looked at all the facts.

The system favors the insurance companies.

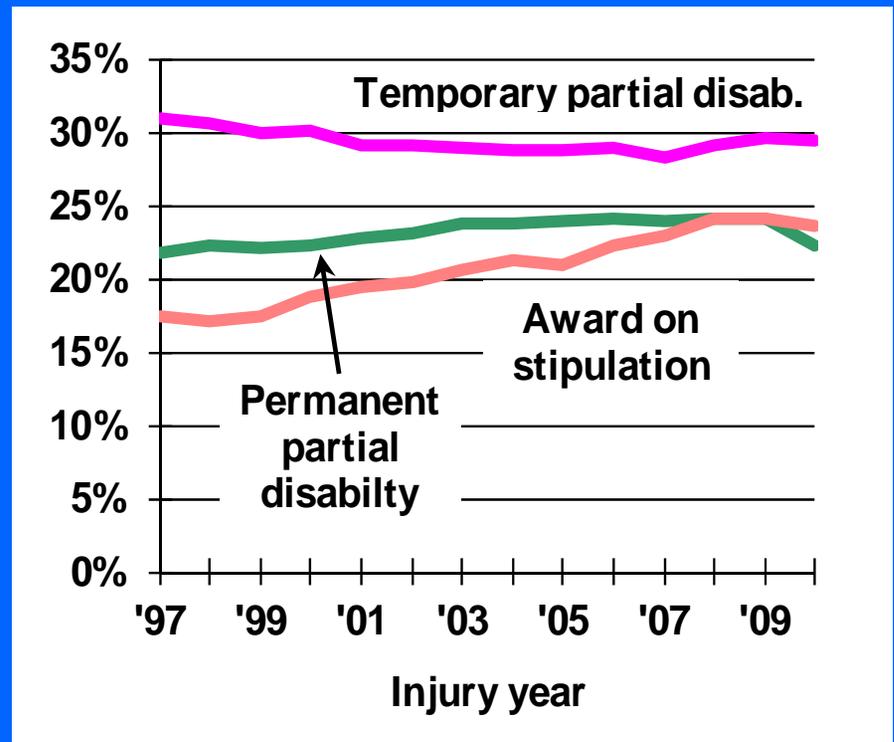
Everything is a problem and gets denied.

Overview of Main Points

- Many workers are unhappy about the outcomes of their disputes, especially those with settlements
- Workers often don't understand settlements and their implications
- Workers feel the dispute resolution system puts workers at a disadvantage.

Percentages of paid indemnity claims with different types of benefits*

- 1997 to 2010 —
 - Claims with TPD: 31% to 29%
 - Claims with PPD: 22% to 22%
 - Claims w/ award on stip.: 17% to 24%
 - Claims w/ total disability:** 84% to 83% (not shown in graph)

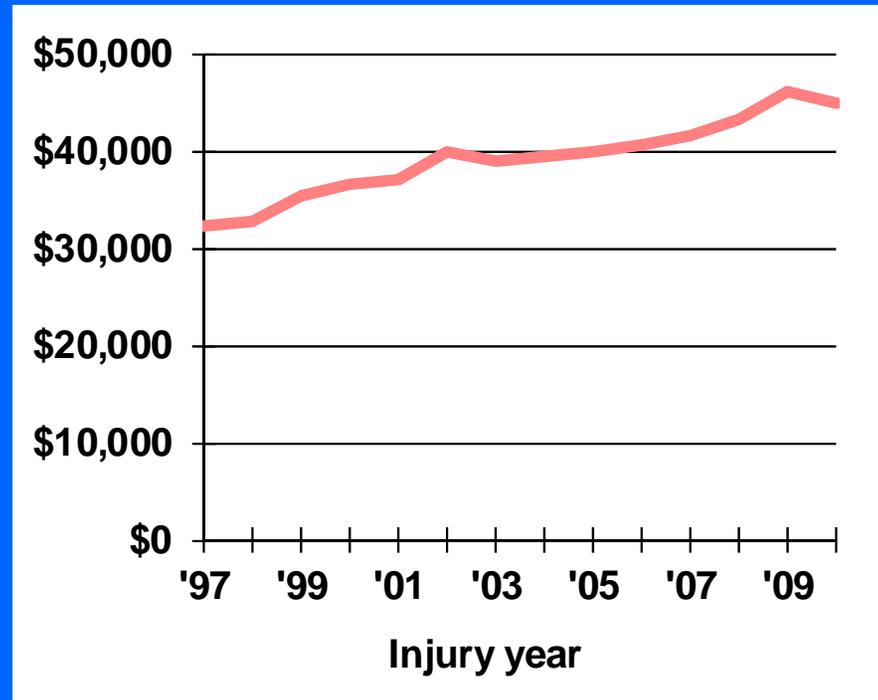


*DLI data. Projected to full maturity.

**Temporary total or permanent total disability.

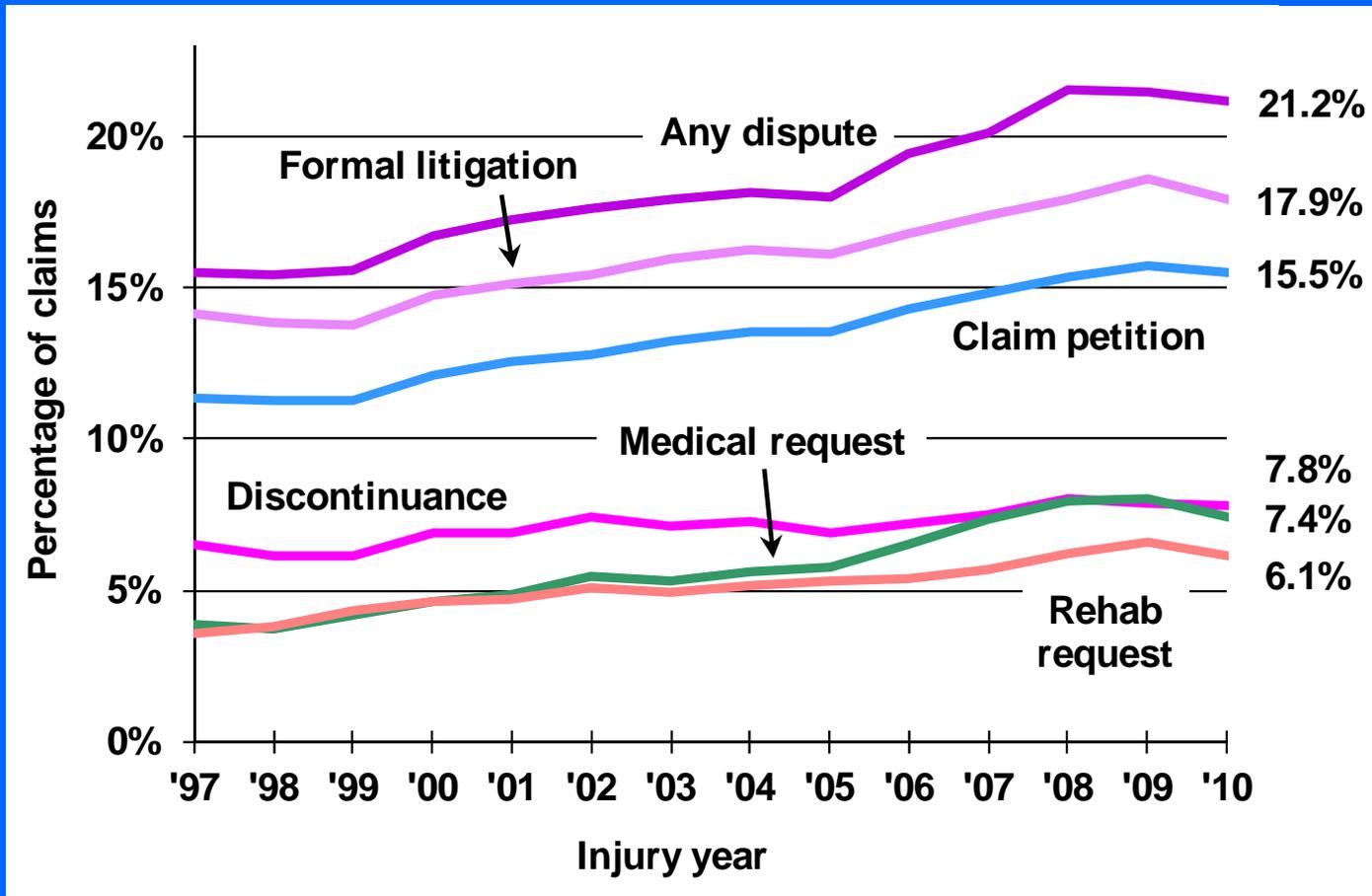
Increasing average award on stipulation (where paid)*

- 1997: \$32,000
- 2010: \$45,000
- 1997 to 2010: +39%



*DLI data. Projected to full maturity and adjusted for average wage growth (2010 dollars). An award on stipulation may include indemnity, medical, and voc rehab benefits.

Growing Dispute rates*



*DLI data. Projected to full maturity.

Most common points in dispute

from *Dispute Issue Tracking Study Report 3: Claim Petition Disputes from 2003* (published in 2010)

- Primary liability or causation
- Job or labor market issues
- Reasonableness and necessity of medical services
- Permanent partial disability rating

Why DLI conducted a survey

Office of the Legislative Auditor's report: Oversight of Workers' Compensation (2009)

"...in some cases, when workers accept voluntary agreements to end their claims, the terms of the agreements may not be in their best interests."

- Based on interviews and a survey of workers with settlements, with 171 responses from 700 surveys (24% rate).

Why DLI conducted a survey

Legislative Auditor's report recommended that:

“To ensure that voluntary settlements are in the workers’ best interests, the Dept. of Labor and Industry should track settlement terms and outcomes for the workers and, as needed, adjust the criteria for approving such awards.”

Why DLI conducted a survey

- We need more information to figure out how to implement this recommendation.
- How do settlements compare with hearings?
- Did the OLA's survey results include too many workers with complaints? Can we hear from a wider variety of workers?

Hearings cases

Selected all claims meeting these constraints:

- Findings & Orders resulting from filing a claim petition
- F&O dated from 7/01/2009 through 12/31/2011
- Injury on or after 10/01/1992
- Excluded cases with a settlement agreement, or F&O on appeal from a decision and order

Settlement cases

A random sample of claims meeting these constraints:

- Settlement agreement dated between Oct. 1 and Dec. 31 of 2009, 2010, 2011
- Injury on or after 10/01/1992
- No Findings and Order in file, no discontinuance decision & order

Study methodology

- Mailing handled by Management Analysis Division of the Dept. of Management and Budget
- Cover letter and survey on legal-sized paper, English and Spanish
- 4 mailings: March 8, March 27, and April 26, with reminder postcard mailed April 3

Response rate

- Overall rate: 33% (531 out of 1,597)
- Dropping claims with undeliverable surveys: 38%
 - Hearings: 43%
 - Settlements: 36%
- Response rates higher for:
 - More recent hearings and settlements
 - Older workers, full-time workers, longer job tenures, higher wages, higher PPD ratings

Are the respondents representative?

- Response rate near 40%, very good for mailed surveys
- Respondents more likely to be older, full-time workers, with higher wages
- If received survey, no differences if responded or not by gender, TTD duration, % with denial of liability, total benefits paid

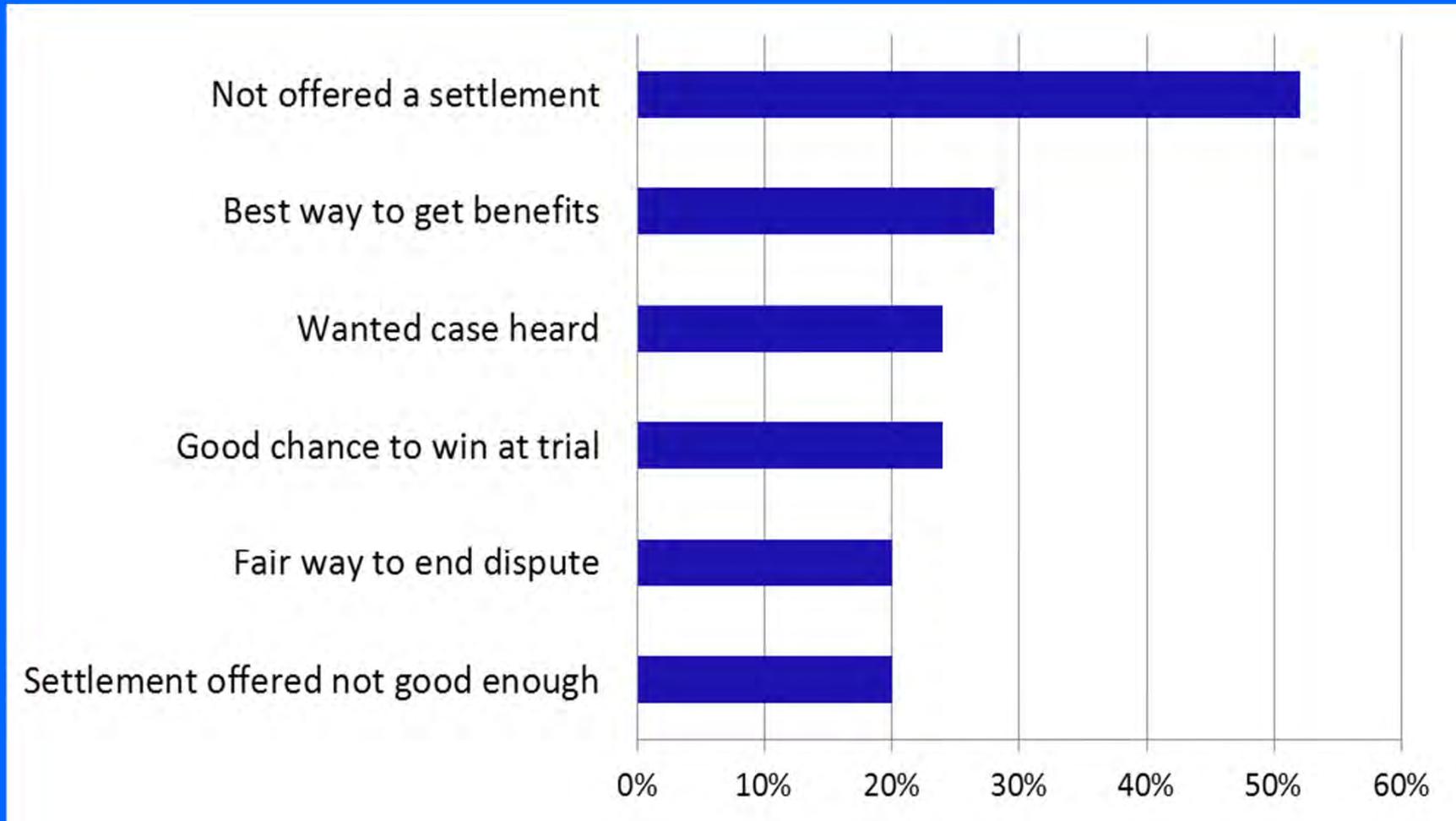
Are the respondents representative?

- The “bad address” group had:
 - the lowest wages, 21% earning less than \$300 per week
 - Younger than 45 years
 - Least benefits paid and lowest PPD ratings
 - Shortest TTD duration
 - Most likely to be from 2009 events

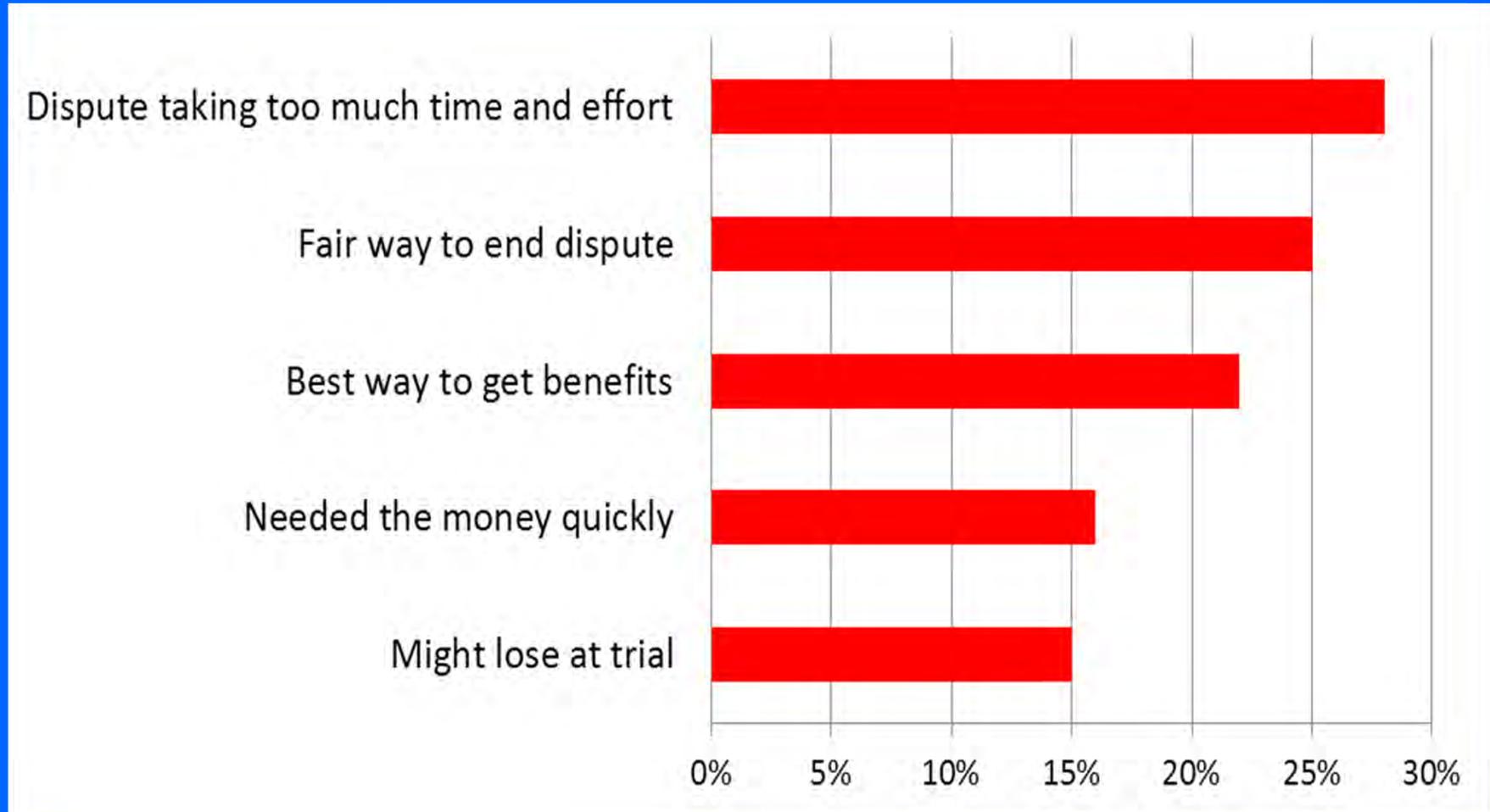
CAUTION!

- **Much more analysis is necessary. There is much more information to be learned from the survey.**
- **These results take a very broad view, but the claims themselves are very complex.**

Hearings claims: Why did you go to trial instead of settling your claim?



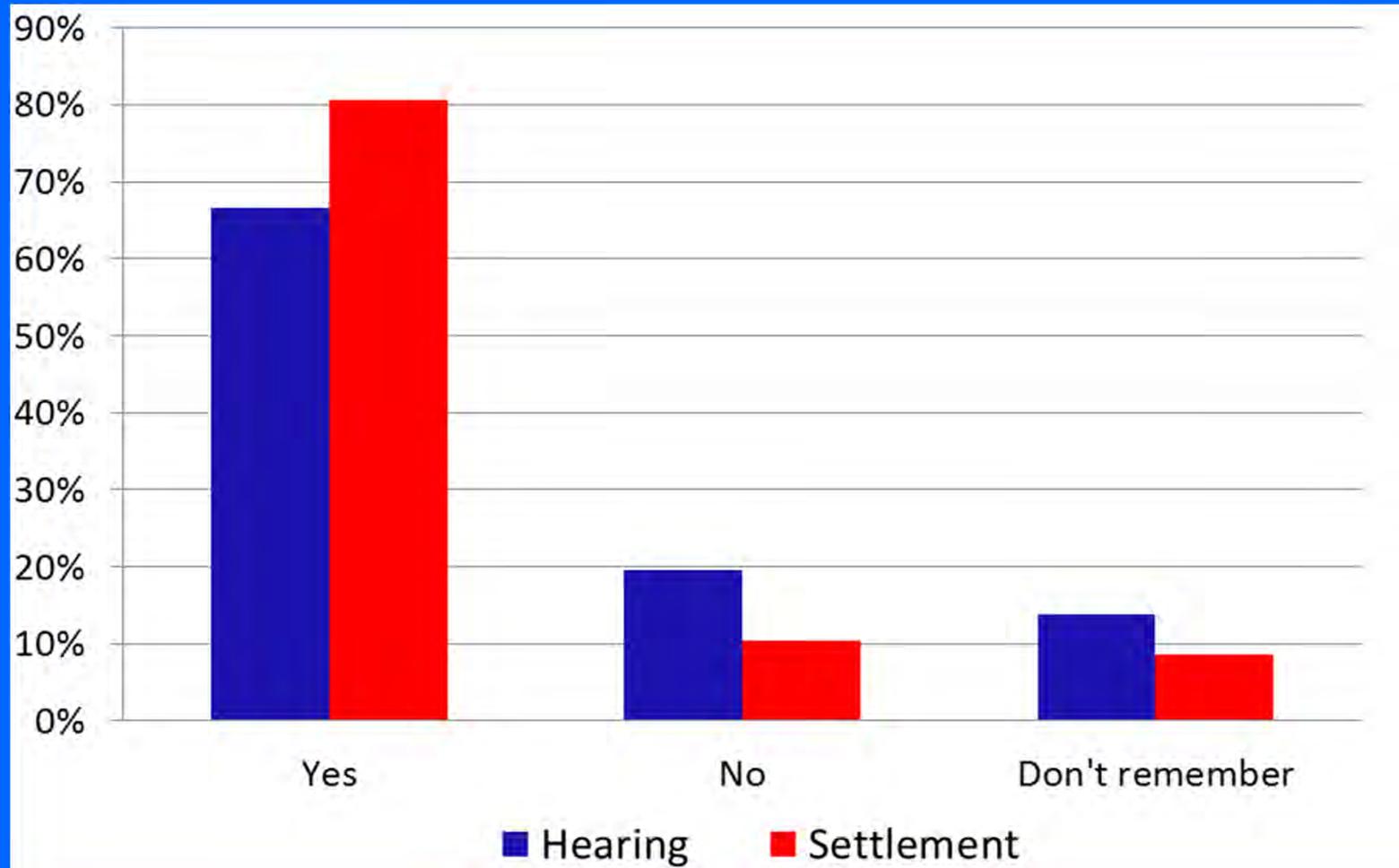
Settlement claims: Why did you settle your claim?



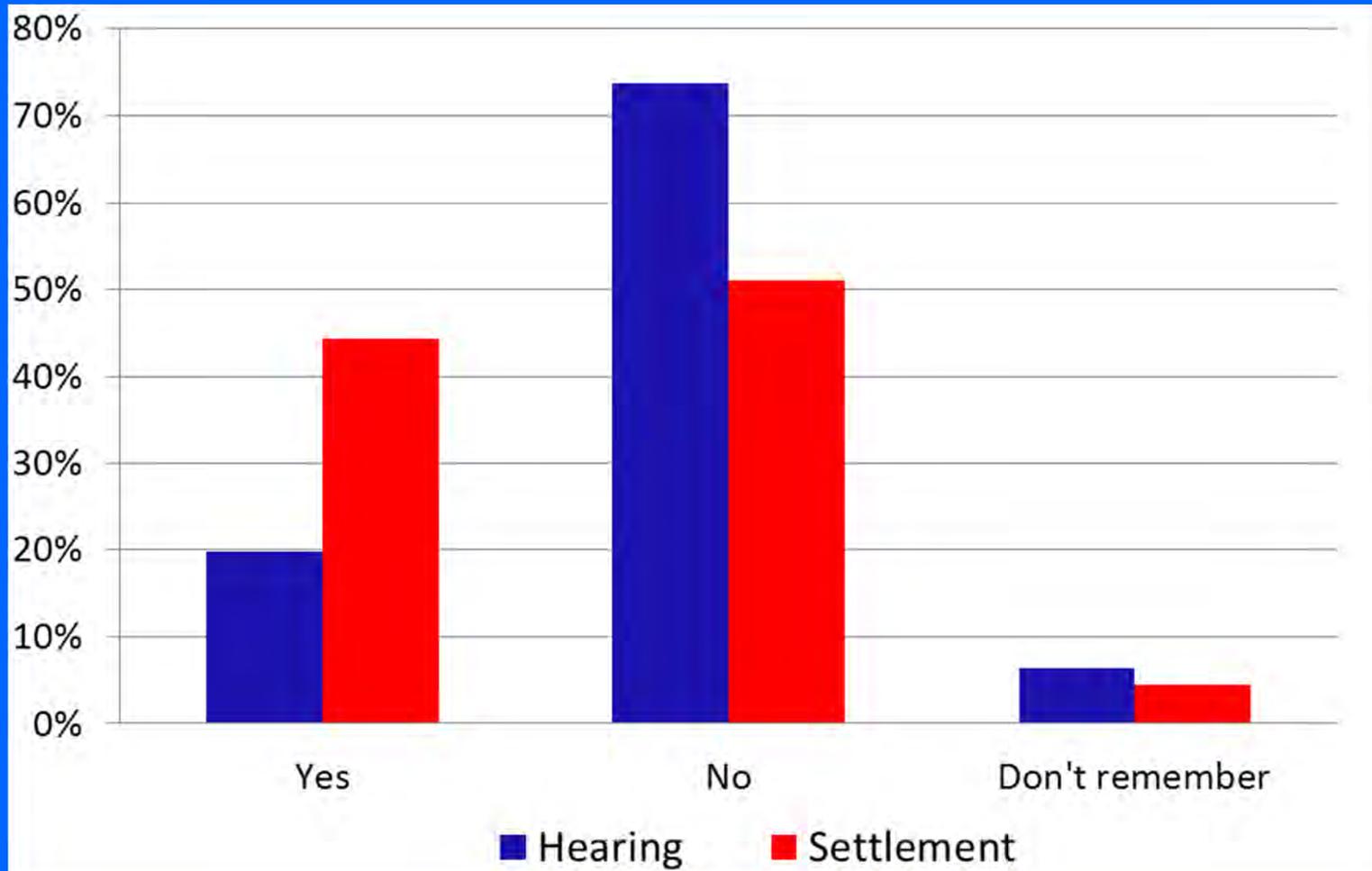
Other reasons for seeking a trial or settlement

- Hearings: Workers needed a hearing in order to obtain their benefits (17%)
- Settlements:
 - Advised by attorney (10%)
 - Had no other choice (7%)
 - Needed the benefits (5%)
 - Wanted the process to end (4%)

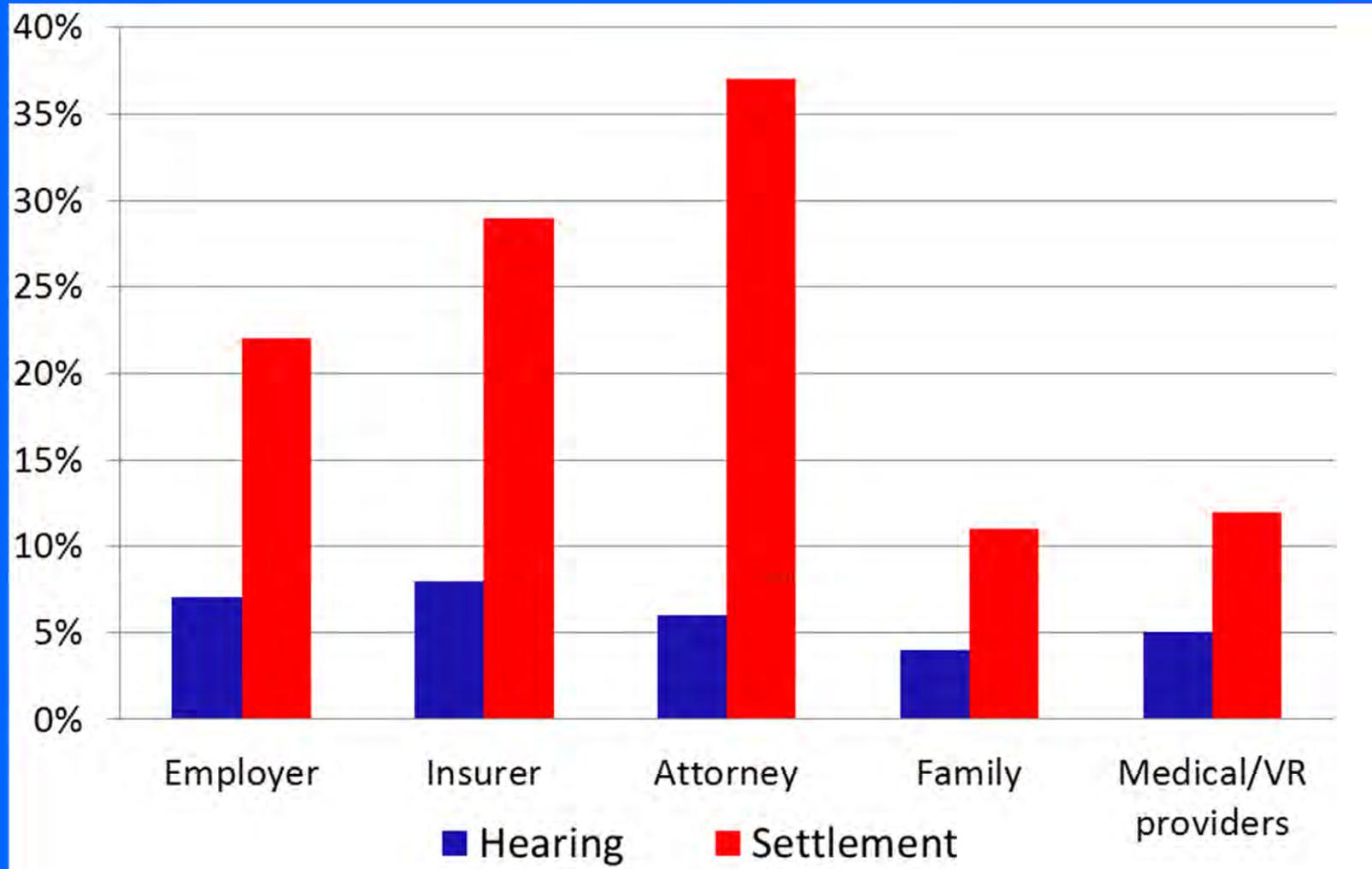
Did your attorney explain that you had a choice to go to trial or seek a settlement?



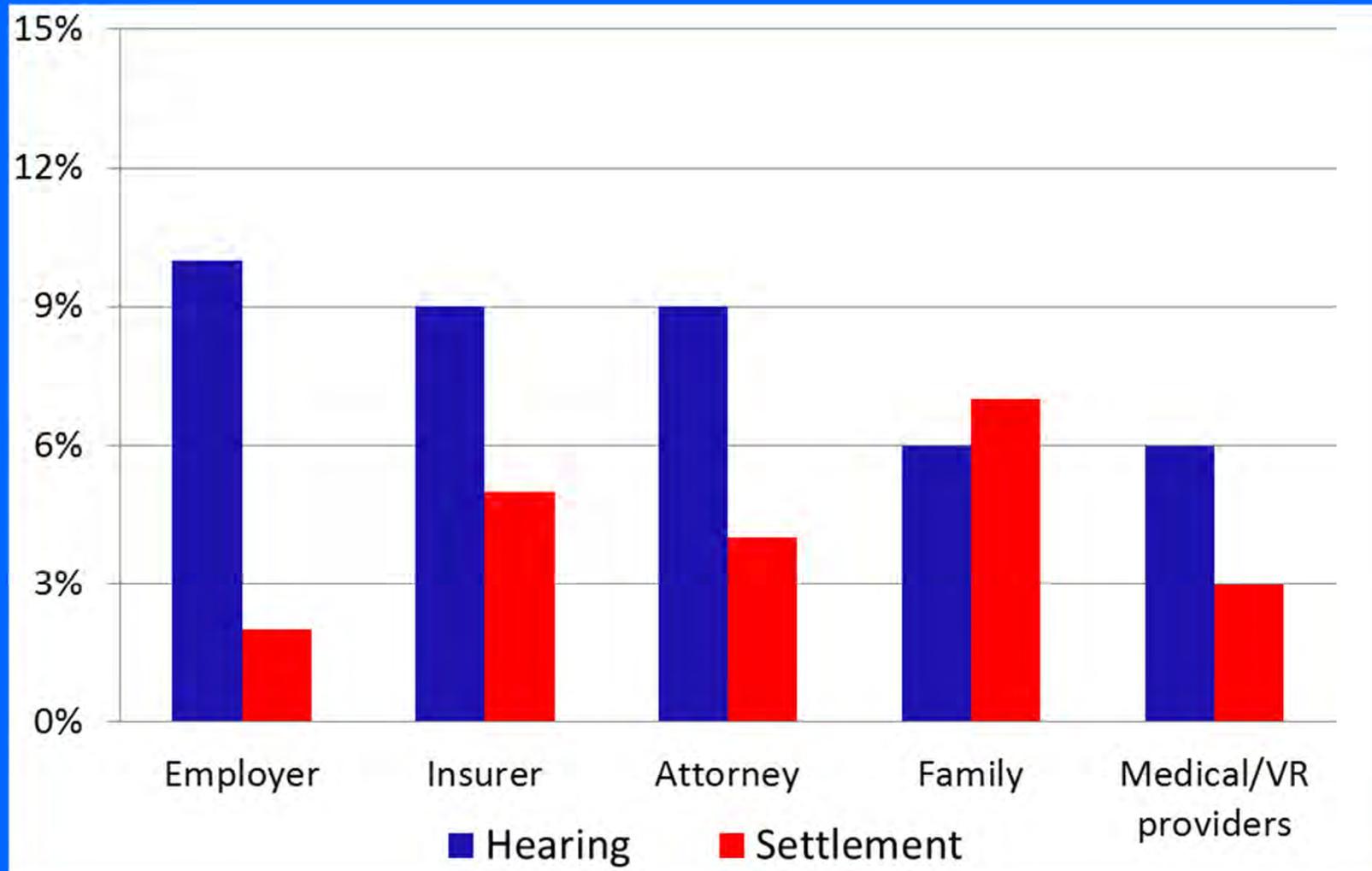
Did you feel any pressure to settle your claim or go to trial?



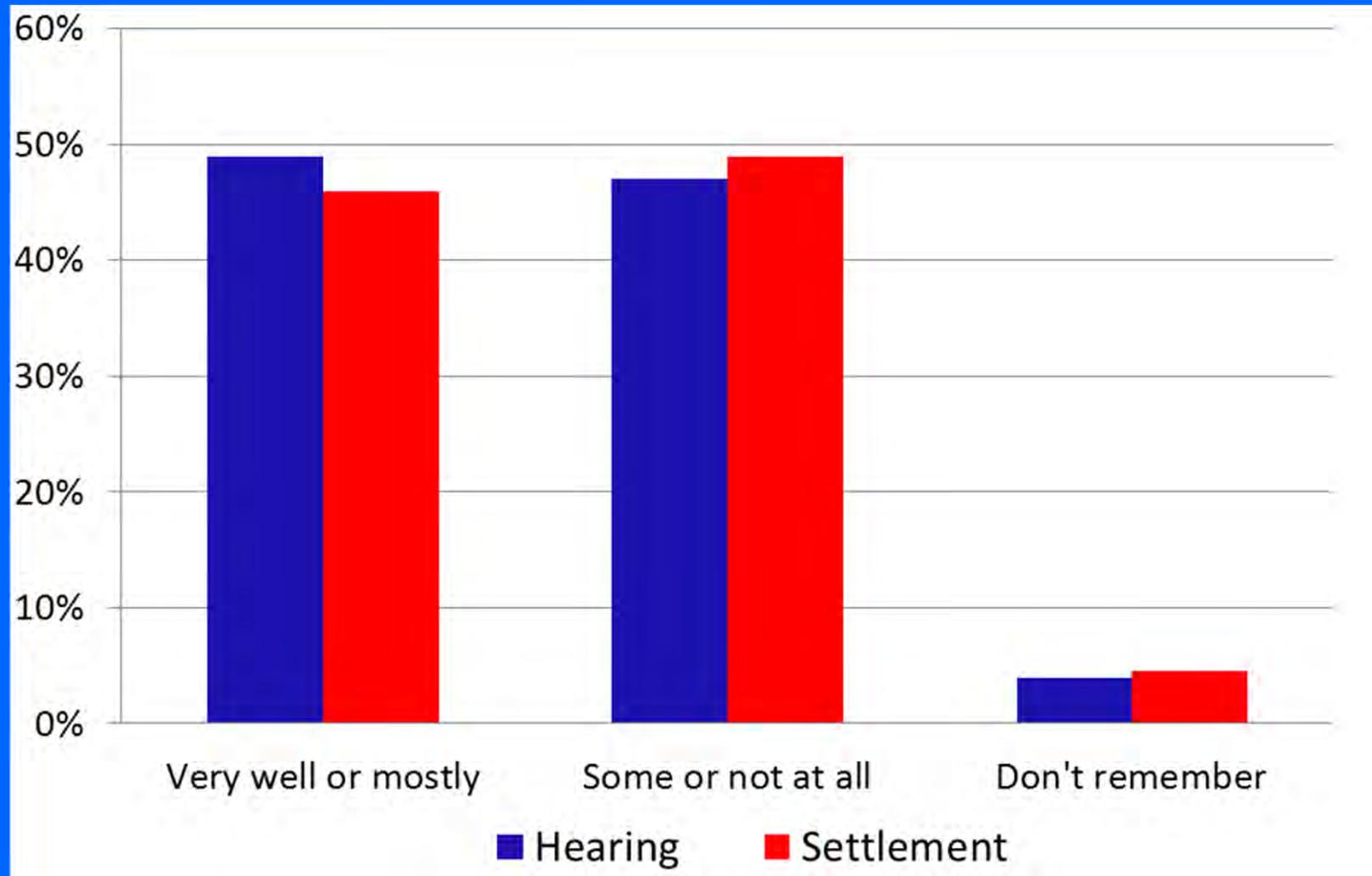
Pressure to SETTLE from:



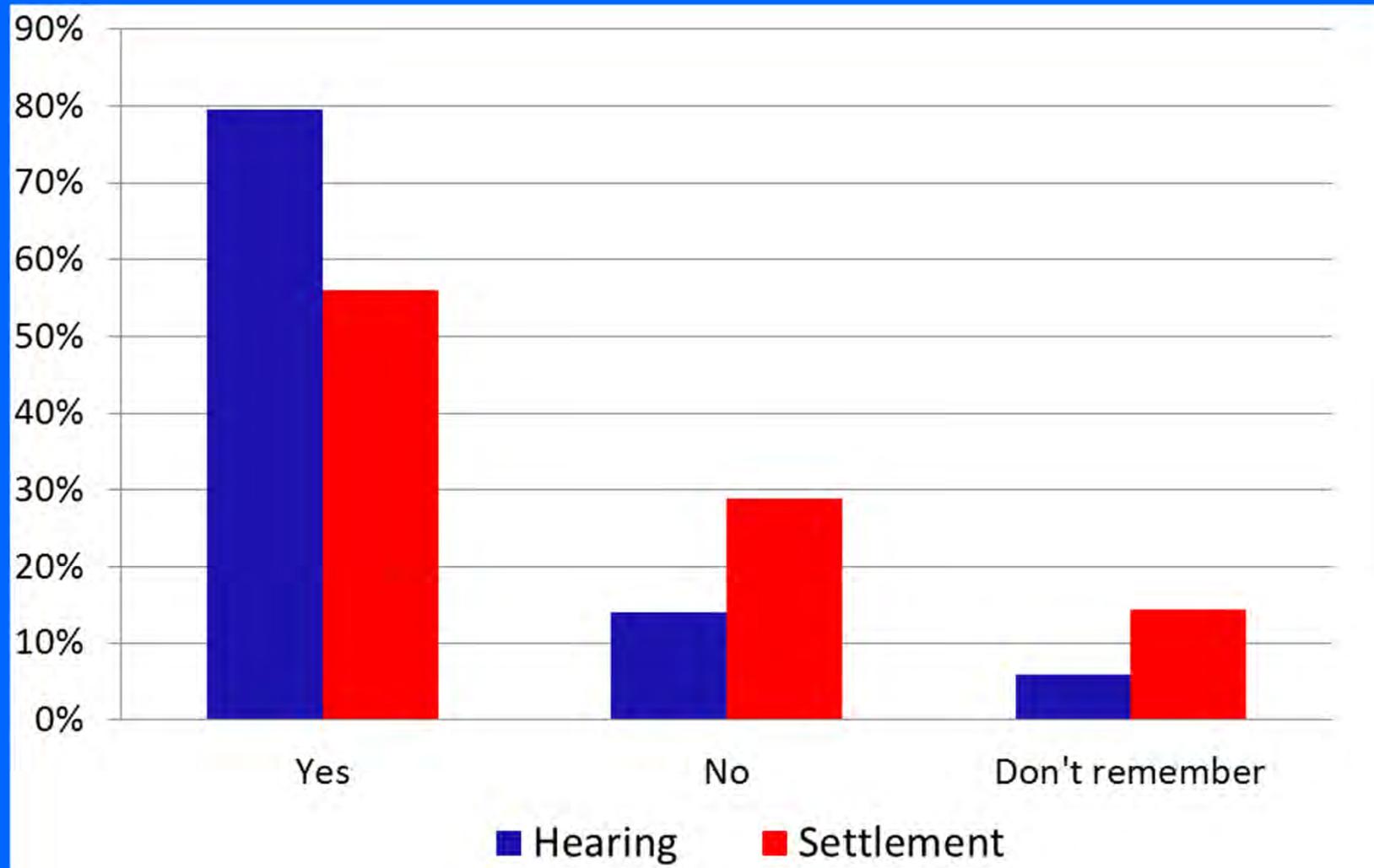
Pressure to GO TO TRIAL from:



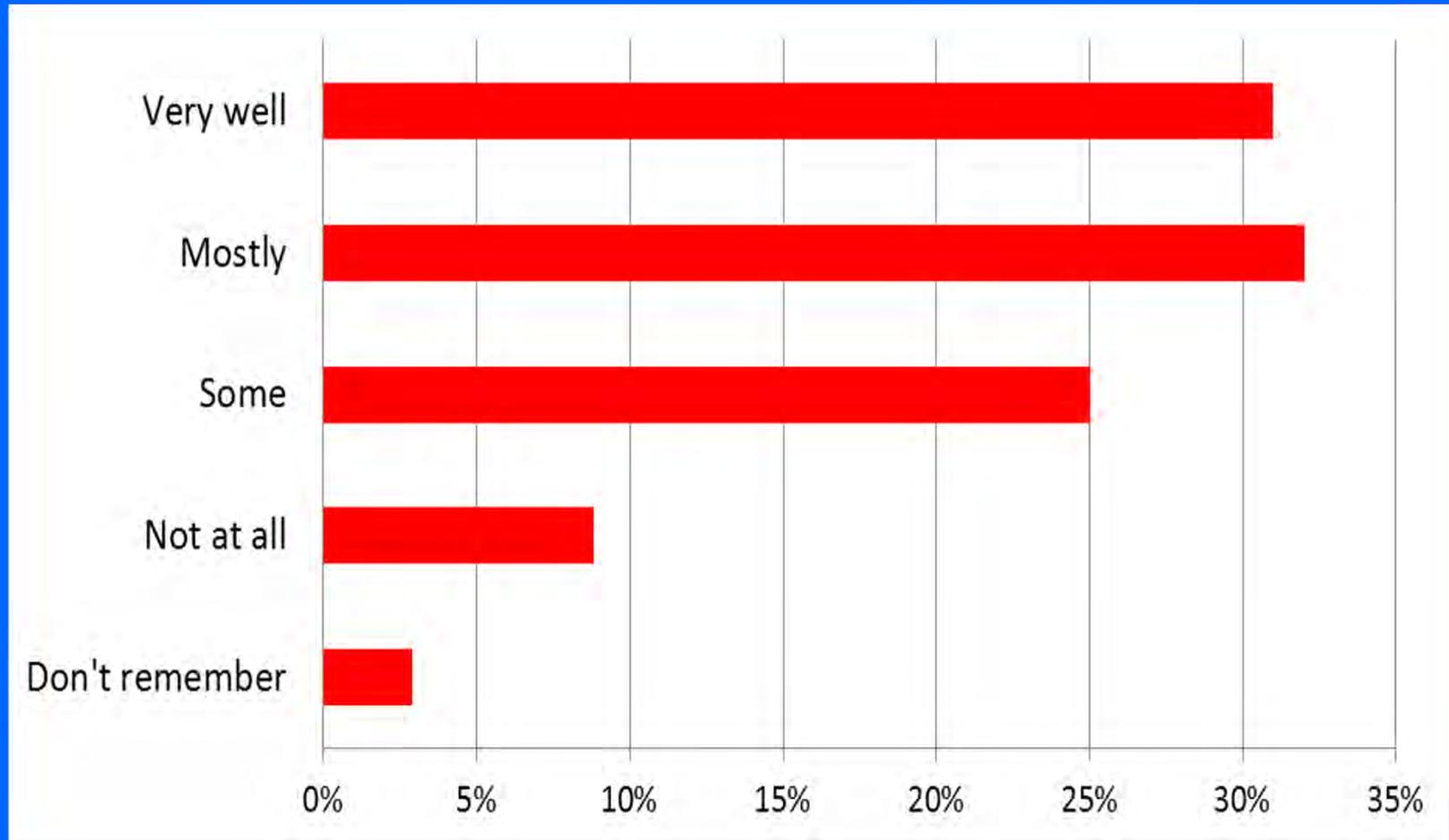
How well did you understand the benefits you might win / might have won at a trial?



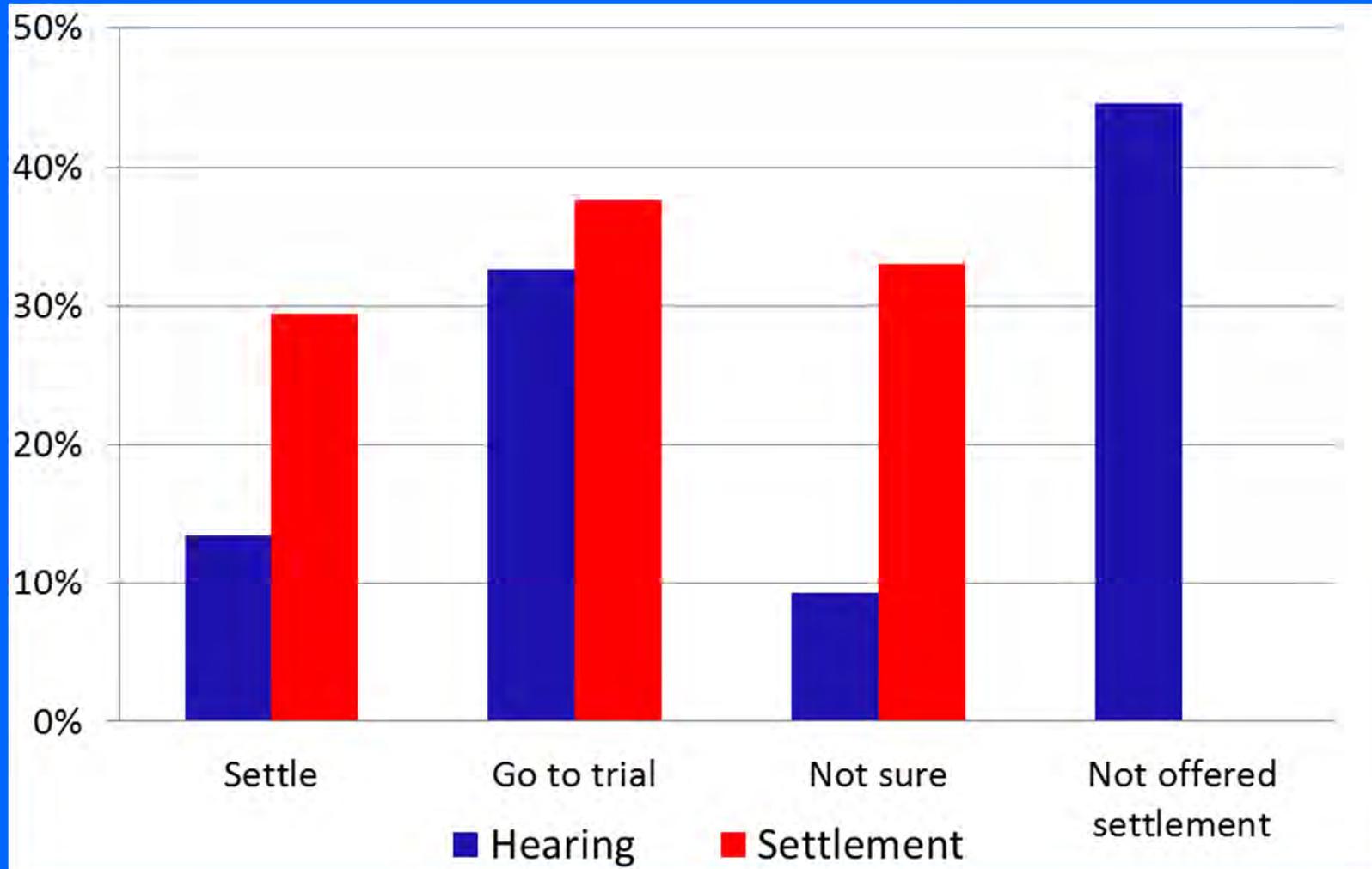
Did your attorney talk about your chances of winning at a trial?



How well did you understand what your settlement said?



If you were doing it over, would you settle your claim or go to trial?



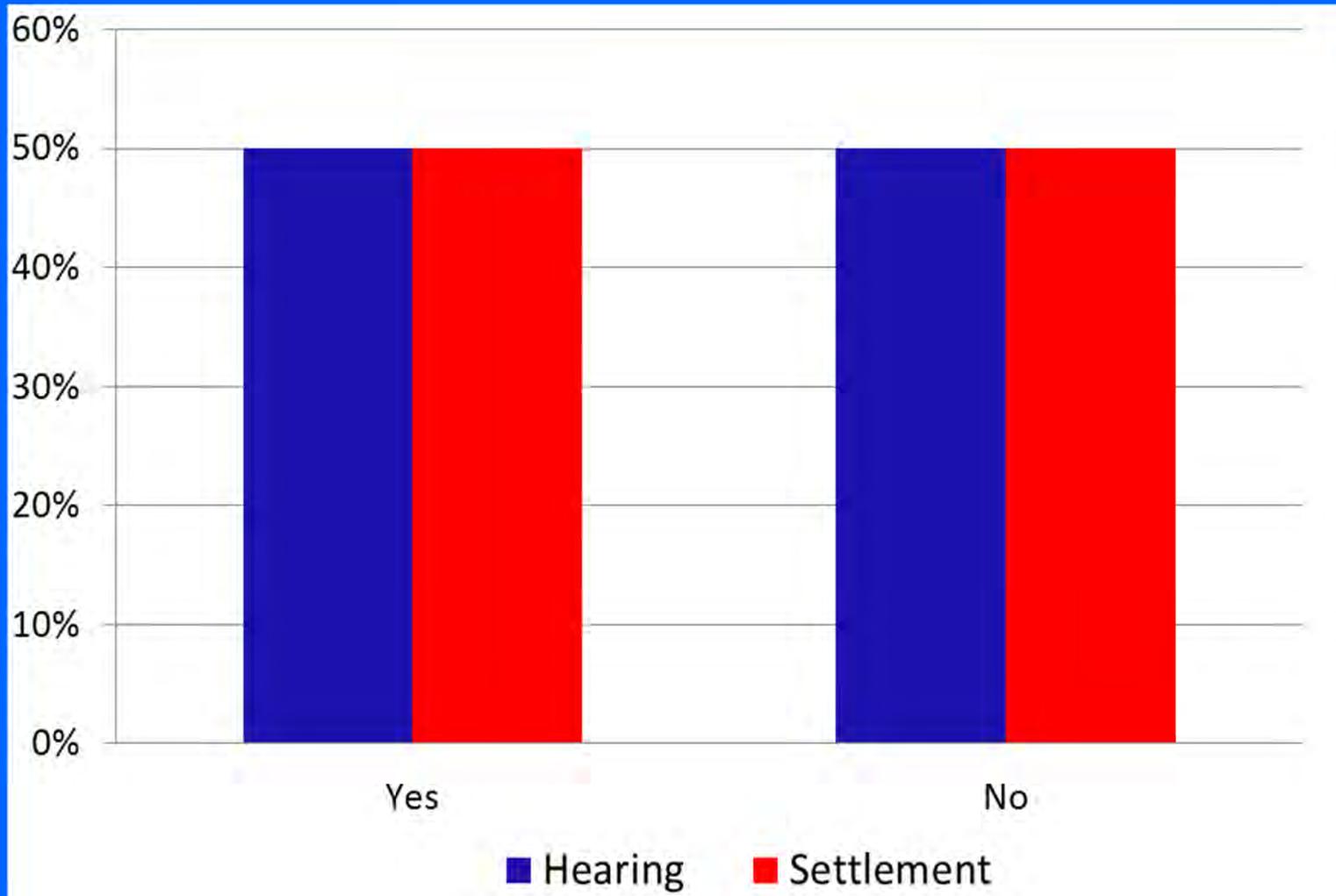
Hearings cases: What else would you like to have known?

- The judicial process itself, such as discovery or testimony, or potential outcomes, such as attorney costs or an employer's ability to appeal.
- Some expressed surprise about the judge's, employer's or insurance company's actions.
- Several respondents learned that the trial process is lengthy.
- Know more about how benefits are determined or what could be offered.
- A few respondents felt well prepared.

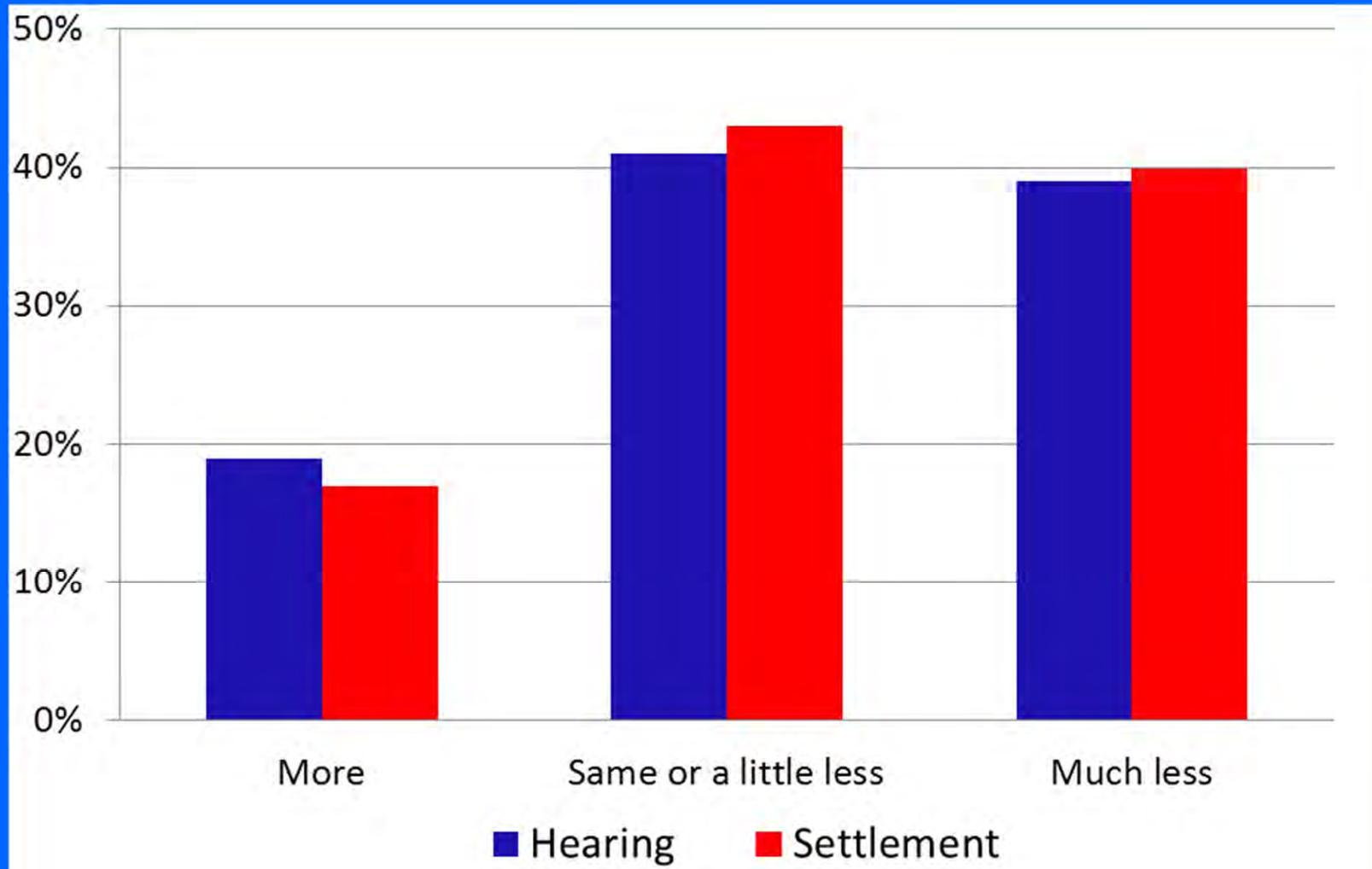
Settlement cases: What else would you like to have known?

- How future medical services would be covered if their condition worsened.
- The settlement was insufficient to cover their medical costs or provide income. Could they have settled for a higher dollar amount?
- Know more about their settlement details, options for medical and rehabilitation benefits and keeping their job.

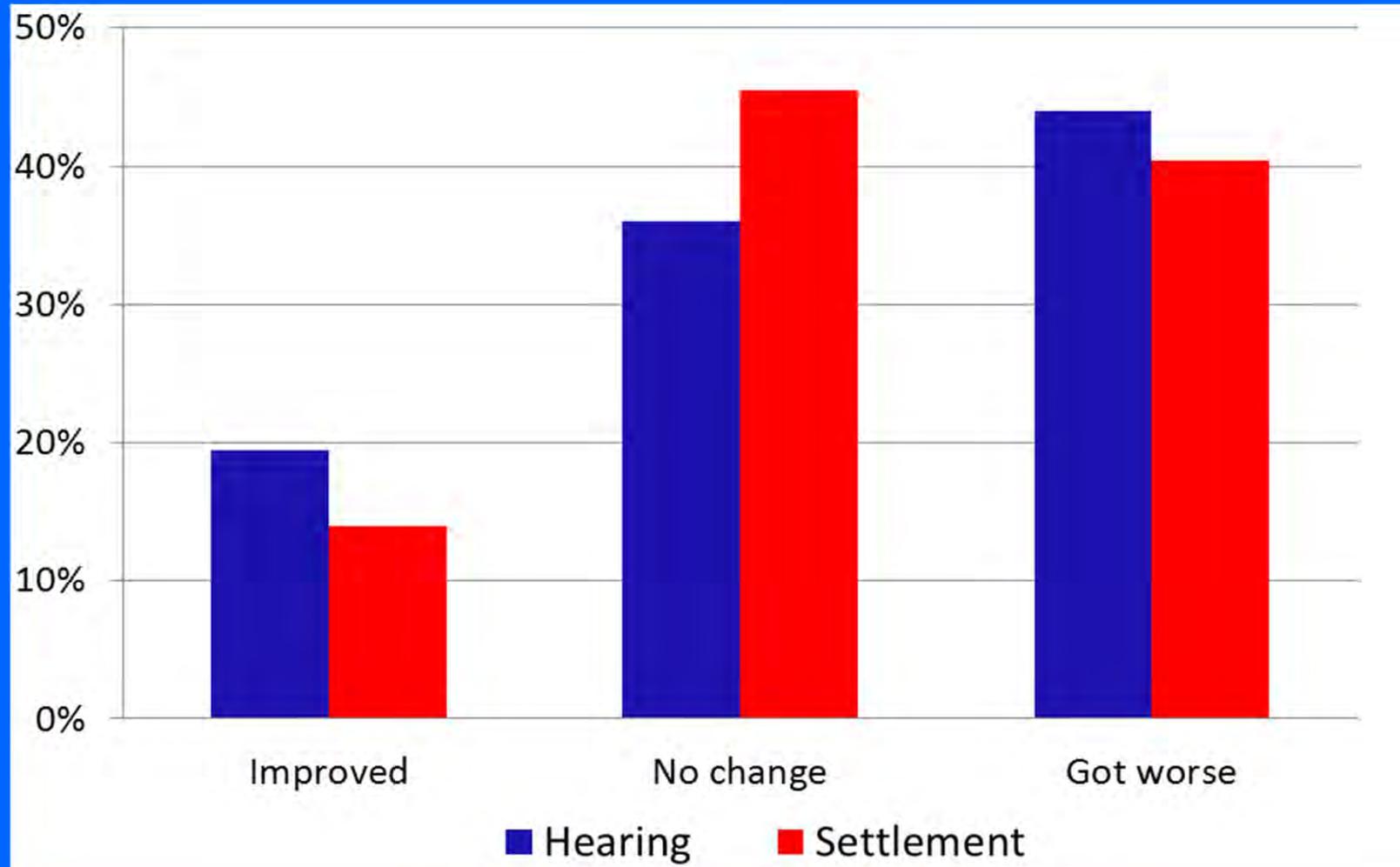
Are you employed right now?



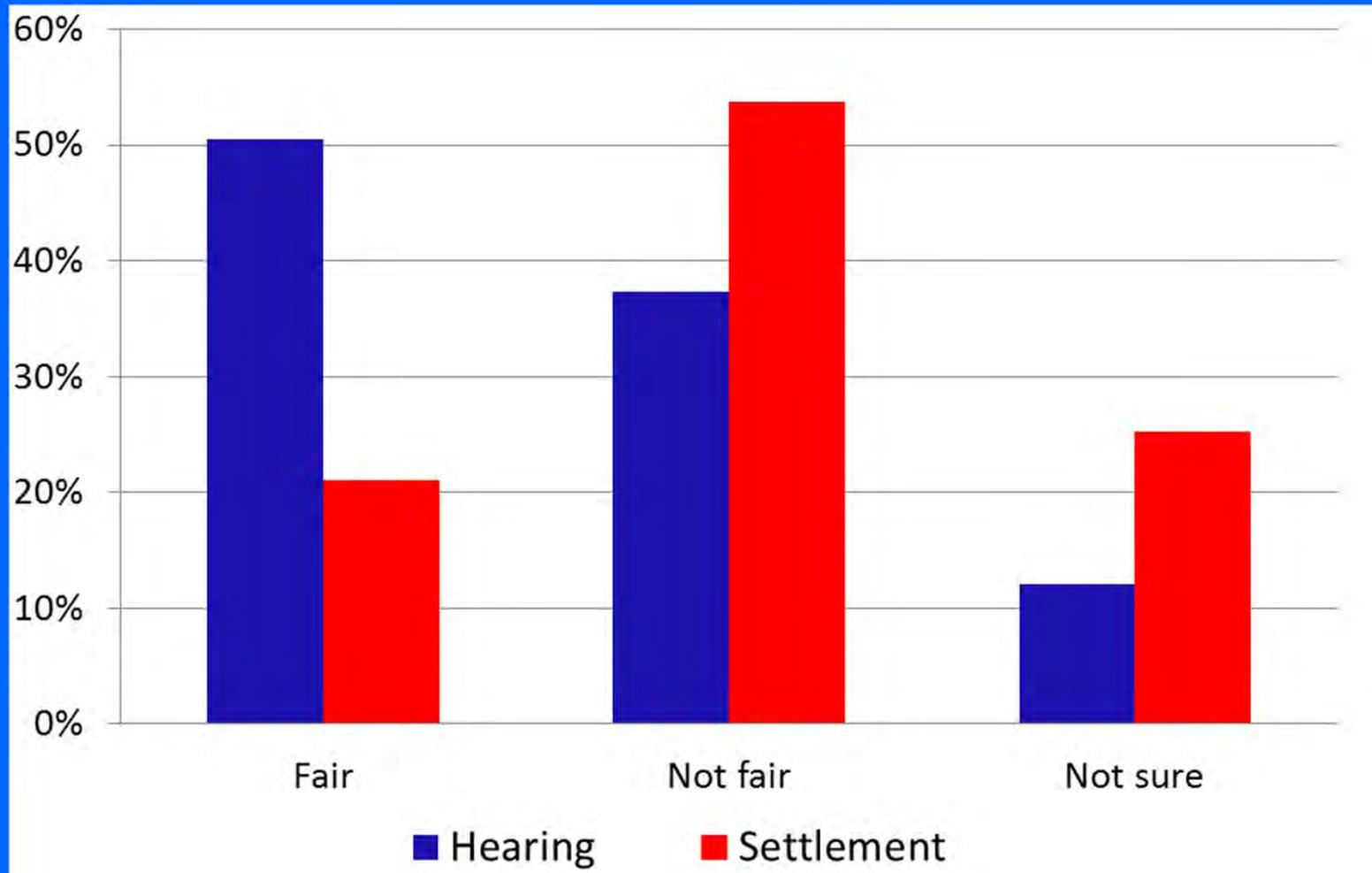
If you are employed, how does your pay compare to your pre-injury pay?



How has your medical condition related to your claim changed?



Was the judge's ruling fair? Was the settlement a fair compromise?



Comments about judge's fairness of ruling

- ¼ complimented of the judge's decision or conduct: the judge was well prepared, listened to both sides, considered all the evidence or explained the trial process.
- A few were satisfied with the outcome.
- Several wrote that the judge did not understand the person's injury or wrongly attributed the injury to other causes.
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Comments about judge's fairness of ruling

- Others said information was ignored, or criticized the judge for not listening to their side of the case or appearing biased.
- Many wrote that the opinion of the Independent Medical Examination doctor had more influence than other doctors' opinions.
- A few respondents said their employer has not paid the benefits or criticized how long the trial process took.

Comments about fairness of settlement compromise

- Most respondents wrote about their continued pain or said the compensation was insufficient compared to the income loss and a life-time injury.
- A small number of respondents were satisfied with the settlement, saying it was fair or they were happy with the outcome.

Other comments about workers' comp disputes: Hearings claims

- Many criticized how the system treats injured workers:
 - employers and insurance companies delaying the process to put financial pressure on workers,
 - their own statements and information were used against them,
 - they were made to feel at fault,
 - a sense of unfairness at being injured and then having to fight for their benefits.

Other comments about workers' comp disputes: Hearings claims

- Many complained about the length of time or how bad the experience was generally.
- There were many comments on how the workers' comp system is run by the state and the insurance companies.
 - Some workers see little distinction between the roles of Labor & Industry and the insurance companies.

Example comments about workers vs. insurers: Hearings claims

This whole system is totally against the injured party... you cannot beat the insurance company.

Not very fair to employees; the system definitely favors the insurance companies.

Too many Labor & Industry people used to work for insurance carriers; too many judges used to be lawyers for the insurance carriers.

Other comments about workers' comp disputes: Settlement claims

- Several complained about attorneys “getting all the money.”
- A few wrote that the IME doctors spent very little time examining them.
- Many wrote about continued pain, unfair compensation for their losses.

Other comments about workers' comp disputes: Settlement claims

- Many commented on how the system favors employers and insurance companies.
- A few complimented the Department of Labor and Industry's assistance, and,
- A few complained about the Department of Labor and Industry's lack of assistance.
- A number of respondents described how difficult or lengthy the process was.

The settlement was too small, but my attorney told me to accept it.

I should not have had to resign from my job as part of the settlement.

I did not have a good attorney.

Why do workers have to suffer to get their benefits?

There are more ways to screw a worker than to help him.

Next steps, questions to answer

- The department needs to help educate injured workers about the dispute resolution system.
 - General information
 - Information targeted to workers depending on the type of dispute, resolution forum
- Can DLI adjust its dispute resolution activities to mitigate workers' issues?

Next steps, questions to answer

- Do attorneys need to spend more time with the injured workers they represent?
- Does the current attorney fee structure provide incentives that
 - encourage settlements that leave workers feeling short-changed?
 - encourage attorneys to take more cases than they should?

More next steps, questions to answer

- Are guidelines needed for the approval of settlements?
- Should the work comp system allow workers to close out their medical benefits?
- Should the work comp system allow workers to close out their vocational rehabilitation benefits?

Still more questions

- Are settlements that much worse for workers than hearings?
- Should we allow settlement agreements?
 - Would the workers have been better off without settlements?
- Should we allow workers to back out of a settlement within a limited time period?

Even more questions

- Does the real problem rest in the nature of workers' compensation claim disputes?
- How many of these problems are problems with the claims themselves, and determining whether all or part of an injury is work-related?

It was the worst experience of my life.

It was a long and tedious process, but it was fair.

They should not instantly assume the worker is wrong.

This is a life-long injury, and the insurer got out of it with a few thousand dollars.

The lawyers make the money, not the workers.