Department of Workers Claims

ANNUAL REPORT

Fiscal Year 1996-1997

Paul E. Patton, Governor **Joe Norsworthy, Secretary**

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January 22, 1998

Governor Paul E. Patton
Commonwealth of Kentucky
Capitol Building, Room 106
Frankfort, Kentucky 40601

RE: Annual Report - Fiscal Year 96-97

Dear Governor Patton:

Pursuant to KRS 342.230(2) and KRS 342.435, I submit the Annual Report of the Kentucky Department of Workers Claims for Fiscal Year 1996-97, which encompasses the activities of the Department from July 1, 1996 through June 30, 1997. On December 12, 1996, House Bill 1, the Workers Compensation reform measure adopted during the Extraordinary Session became effective upon your signature.

This Annual Report details the steps taken to implement cost reduction strategies, while at the same time assuring that statutory benefits are expeditiously delivered to disabled workers. The innovations of the 1996 reform are now fully functional. Preliminary data supports the conclusion that the reform, together with a strong Kentucky economy, has worked to the extent of reducing the number of contested claims and the cost of securing workers compensation coverage.

With thanks for your encouragement and support.

Respectfully submitted,

Walter W. Turner
Commissioner

WWT/ld

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RESOURCEFUL ADMINISTRATION OF

THE KENTUCKY WORKERS COMPENSATION PROGRAM

AND EXPEDITIOUS AND EQUITABLE

RESOLUTION OF CLAIMS

No individual in the United States shall, on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, be excluded from participation in, or denied the benefits of, or be subjected to discrimination under any program or activity under the jurisdiction of the Kentucky Labor Cabinet.

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INTRODUCTION

This *Annual Report* highlights the workers compensation program structure, explains the services offered, details our goals and objectives, and describes both our accomplishments and failures during Fiscal Year 1996-1997 (July 1, 1996, to June 30, 1997). We are proud of our accomplishments which emphasize service to the public, particularly to injured workers. We trust this publication will be beneficial and informative. Comments are invited and may be directed to the Office of the Commissioner at the following address:

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Historical Perspective

The Commonwealth of Kentucky adopted a Workers Compensation Act in 1916 under which employees were granted replacement income and medical benefits for disability arising from on-the-job accidents. In exchange employers were afforded immunity from common lawsuits. The goal of the workers compensation program at its inception was to restore in part the income stream of a worker who had lost the ability to work and earn money by reason of a workplace injury. Procedures to separate valid from invalid claims (adjudications) were to be expeditious and simple. Over the past 81 years Kentucky's workers compensation program has undergone incremental changes generally marked by expansion of coverage to include additional work-related conditions (i.e., occupational diseases) and increases in the amount of benefits granted workers (i.e., uncapped liability for medical expenses).

Reform

Prior to 1994 the main function of the Department of Workers Claims (hereafter DWC) was to adjudicate disputes between employers and employees as to entitlement to benefits. Administratively other functions of DWC were restricted to minimal data collection, limited oversight of self-insured employers and employer groups, moderate enforcement of provisions requiring employers to secure insurance, and modest efforts at medical cost containment through fee schedules. Belt-tightening reform occurred during the 1994 General Session of the Kentucky Legislature with passage of House Bill 928 (HB 928). Through that statute the means of delivering industrial health care was altered, efforts began to curtail the expansion of benefits, and the administrative and adjudicative arms of the program were strengthened. In addition, HB 928 consolidated most

governmental functions relating to workers compensation in the Labor Cabinet and expanded the role of the Commissioner as the chief administrator of the compensation program.

Spurred by Governor Paul E. Patton's efforts, the General Assembly completed the overhaul of the workers compensation program during the 1996 Extraordinary Session. House Bill 1 (HB 1), commonly known as the Reform Act, was adopted on December 12, 1996. This sweeping reform emphasizes administrative resolution of benefit disputes, rather than adjudicative claims processing. Furthermore, the new law represents a marked shift toward fiscal responsibility in the workers compensation program and is intended to roll back the estimated price of $1 billion per year paid by the Commonwealth's employers to sustain the program. At the same time the General Assembly desired to restore the program to its core purpose of promptly delivering wage replacement benefits and medical services to industrially injured workers in a no-fault, nonadversarial manner.

Objectives of HB 1

The essential first step in implementing this far-reaching, complex law was to develop a vision as to what the General Assembly intended to accomplish. As sensed by the Commissioner of DWC, the objectives of HB 1 are:

- Improving access to and expediting delivery of benefits
- Improving carrier and self-insured employer performance
- Reducing system friction and claims resolution cost
- Lowering employer (premium) cost

Charged with the responsibility of implementing HB 1, DWC has revamped some program areas, while developing totally new strategies and delivery vehicles in others.

Statutory Authority

DWC exists and operates under the authority of Kentucky Revised Statutes (KRS) Chapter 342 and administrative regulations found at 803 KAR 25. Implementing legislatively established policies of the new law entails the tedious and time-consuming task of adopting administrative regulations. Regulations necessary to move HB 1 from design state to implementation are in place.

Funding Source

The Workers Compensation Funding Commission is a public agency whose purpose is to invest and manage money collected from employers pursuant to KRS 342.122. The Funding Commission raises money for DWC's operations through a special assessment imposed upon workers compensation premiums paid by insured employers and "simulated"

premiums for self-insured employers (KRS 342.350). Such assessments are restricted funds, segregated from all other public and state monies (KRS Chapter 446), and may only be expended for workers compensation purposes.

Definitions

- ***Commissioner*** as used in this report means the Commissioner of the Department of Workers Claims.
- ***DWC*** as used in this report means the Department of Workers Claims, organizationally assigned to the Kentucky Labor Cabinet.
- For injuries occurring prior to December 12, 1996, ***disability*** means a decrease of either present or prospective wage-earning capacity and/or the ability to compete to obtain the kind of work the employee was capable of performing, taking into account age, education, area of residence, work experience, and residual physical condition [*Osborne v. Johnson,* Ky., 432 SW 2d 800 (1968)].
- ***Income benefits*** are payments, excluding medical and related benefits, to the disabled worker or dependents/survivors in case of the worker's death.
- ***Medical and related benefits*** means payments made for medical, hospital, and other services, other than income benefits.
- For injuries occurring prior to December 12, 1996, ***injury*** means "any work-related harmful change in the human organism" but, pursuant to the 1994 amendment, does not include psychological or emotional change unless directly by a physical injury. For injuries occurring on and after December 12, 1996, ***injury*** means any work-related traumatic event or series of events, including cumulative trauma, which is the "proximate cause" of a harmful change in the human organism evidenced by "objective medical findings." Specifically excluded are effects of the "natural aging process" [KRS 342.0011 §1(1)].
- ***Objective medical findings*** mean information gained through observation of the patient or results of tests the physician observes that are not entirely dependent upon what the patient says.
- ***Occupational disease*** means a disease which develops as the result of an exposure occasioned by the nature of the employment [KRS 342.0011 §1(2) and (3)].
- ***Permanent partial disability (PPD)*** benefits are payable when an employee who, due to workplace injury, has permanent disability but retains the ability to work on a sustained basis in a competitive economy [KRS 342.0011 §1(11)(b); *Osborne v. Johnson*].
- ***Permanent total disability (PTD)*** benefits are payable when an employee, due to workplace injury or disease, has lost the ability to perform any regular work on a sustained basis in a competitive economy [KRS 342.0011 §1(11)(c)].

- ***Temporary total disability (TTD)*** benefits are payable when an injured employee has not reached maximum medical improvement (MMI) from an injury and has not reached a level of restored health that would permit a return to employment [KRS 342.0011 §1(11)(a)].

Coverage by Workers Compensation

Excluding farm operations, Kentucky's Workers Compensation Act is mandatory for employers. They must carry insurance or become self-insured, even if they only have one part-time employee (KRS 342.640). Exempted from mandatory coverage are:

- Farm workers
- Persons employed as domestic servants in the home of an employer who has only 1 employee
- Persons employed by homeowners for residential maintenance and repair for up to 20 days
- Employees protected by federal laws (including railroad and maritime workers)
- Members of certain religious sects
- Those who voluntarily execute a rejection of coverage
- Business partners who have a proprietary interest in the enterprise
- Independent contractors, but not their employees

Employee leasing corporations must register with DWC and prove that workers compensation coverage has been secured for job sites where leased employees work. Temporary help services companies are deemed the employers of temporary employees and must secure workers compensation insurance coverage.

A specific statutory provision allows employees to reject workers compensation coverage and thereby retain the right to sue employers for work-related injuries or diseases (KRS 342.395). To be valid, a waiver must be executed by an employee with full knowledge of available workers compensation benefits. This waiver must be filed with DWC before an injury occurs. It is unlawful for an employer to require an employee to sign a waiver as a condition of employment, and only voluntarily signed waivers are granted legal effect.

Approximately 80,000 Kentucky business entities employ a covered workforce of approximately 1.7 million employees. During FY 96-97, 10,333 rejections of workers compensation coverage were filed with DWC; the vast majority of these was for corporate officers.

STRUCTURAL ORGANIZATION OF DWC

Enactment of HB 1 necessitated organizational changes in DWC. Prior to HB 1, the Ombudsmen Branch was an arm of the Division of Information and Research. The Ombudsmen Branch and the newly created Workers Compensation Specialists Services Branch now constitute a separate division. The Division of Arbitration has been added and is managed by a chief arbitrator. Two new position titles, benchmarker and medical scheduler, were added to the Division of Information and Research. In addition, the Department of Insurance now handles all criminal fraud investigations. Figure 1 on page 6 depicts DWC's organization.

LAW SUMMARY

HB 1 provisions can be classified as either substantive or procedural changes. Substantive changes apply to any claim arising from an injury or last exposure occurring on or after December 12, 1996. Procedural changes apply to all claims irrespective of date of injury or last exposure.

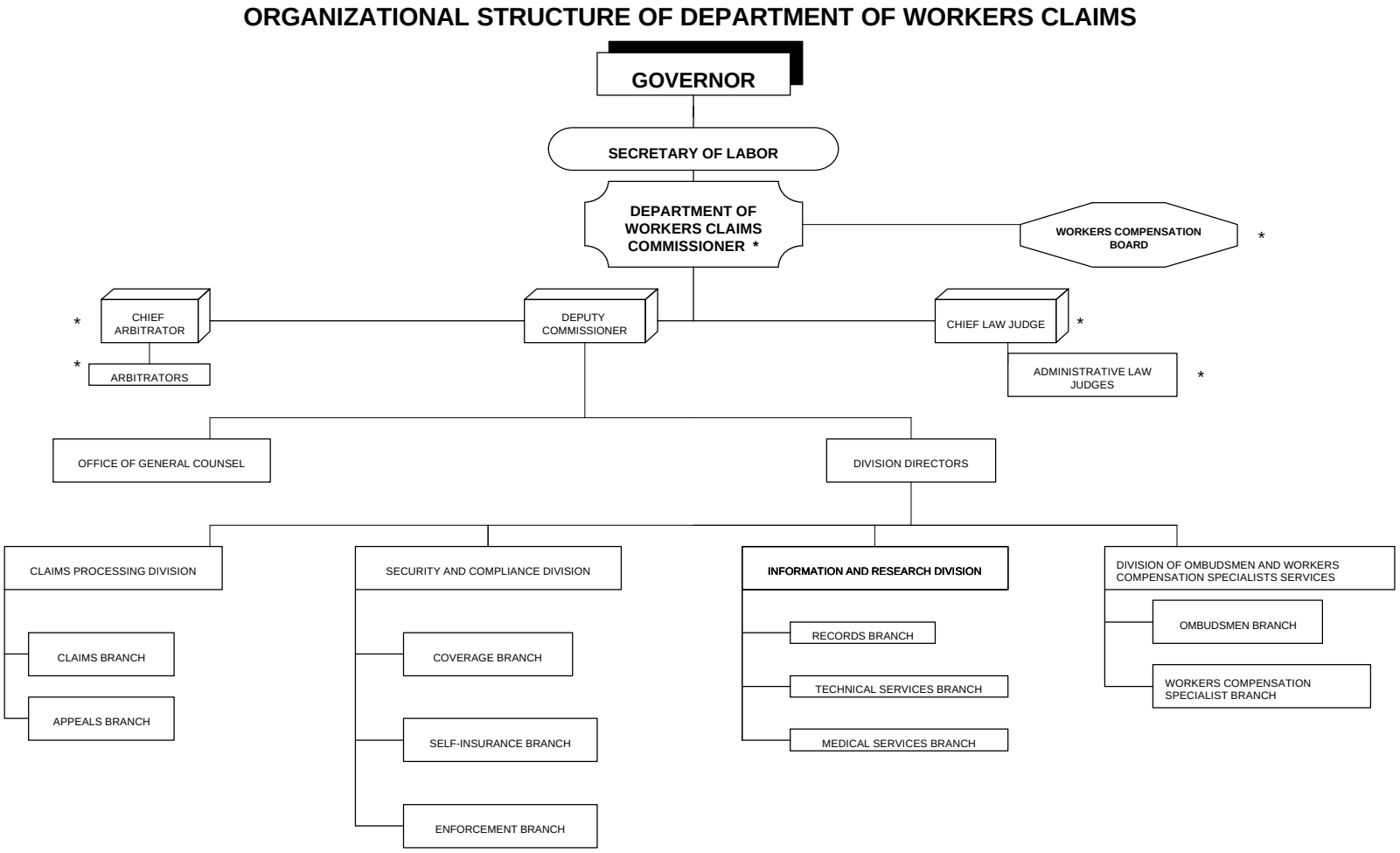
Substantive Changes

Benefits

Under HB 1 ***injury*** is redefined as any work-related traumatic event or series of events, including cumulative trauma, which is the proximate cause of a harmful change in the human organism evidenced by objective medical findings. *Injury* does not include the effects of the natural aging process. (*See Definitions, page 3*.)

Types of Benefits. Kentucky's Workers Compensation Act grants three types of benefits: medical, indemnity, and rehabilitative training. The extent of employer liability for medical care following a compensable injury is limited only by provision that the medical treatment be reasonable and necessary (KRS 342.020). For injuries occurring on or after December 12, 1996, weekly benefits for permanent disability are determined by the degree of the American Medical Association (AMA) impairment rating multiplied by other factors established by law. (*See Footnote b in Table 1, page 8*.) Indemnity benefits for coal workers pneumoconiosis (CWP) are scheduled. Rehabilitative training is extended when necessary to restore an injured worker to suitable employment and does not usually exceed 52 weeks (KRS 342.710). Employees who actually enroll and participate in an appropriate training program may elect to accelerate payment of the income benefits during the period of training.

FIGURE 1: DWC ORGANIZATIONAL CHART



*** Gubenatorial Appointment and Senate Confirmation**
Upon nomination of Workers Compensation Nominating Commission

Categories of Disability. HB 1 defines three categories of disability: temporary total, permanent total, and permanent partial. Disability is referred to as a "permanent disability rating," which is determined by multiplying the AMA impairment rating by other factors established by law. Table 1, page 8, summarizes the three categories of disability and lists the factors by which the AMA impairment ratings are multiplied.

Temporary and permanent total disability is compensated in weekly payments of 66 2/3% of the employee's average weekly wage (AWW), subject to maximums and minimums set forth in Table 2 on page 9. Payment of permanent disability benefits extends for the worker's lifetime, subject to benefit reduction or termination upon retirement (based on injury date) and to offsets of unemployment insurance or employer-funded disability insurance (unless the policy has a provision granting otherwise). Weekly benefits for permanent partial disability are subject to a cap of 99% of 66 2/3% of the employee's AWW and to the maximums set forth in Table 2. If the employee does not retain the physical capacity to return to the type of work performed at the time of injury, weekly benefits are multiplied by 1.5, subject to the maximums set forth in Table 2. If the employee returns to work at the same or greater wages, weekly benefits are reduced by 50%. If the employee subsequently ceases employment, weekly benefits are restored at the regular level. The duration of benefit payments depends on the disability rating, 425 weeks for 50% or less and 520 weeks for greater than 50%.

Death Benefits. If an employee's death occurs within 4 years of and as a result of a work-related injury, a lump-sum payment of $25,000 is paid to the employee's estate, in addition to any other benefits that may be due. This amount includes burial expenses. The surviving spouse and certain dependents will also be entitled to income benefits. These benefits will terminate, however, when the deceased worker would have qualified for Social Security retirement benefits.

Coal Workers Pneumoconiosis. For Kentucky workers compensation purposes, the presence of black lung (also known as ***coal workers pneumoconiosis*** or (***CWP***) is determined by interpretation of chest x-rays. The extent of the benefits for black lung depends on the x-ray classification of the disease (Category 1, 2, or 3) and the amount of breathing impairment attributed to black lung. Respiratory impairment is determined by spirometric pulmonary function tests administered by a physician, specifically the forced vital capacity test (FVC) and the forced expiratory volume in one-second measurement (FEV1).

TABLE 1: CATEGORIES OF DISABILITY

Category of Disability	Definition/Payable	Limit on Receipt of Benefits[a]
Temporary Total	Payable when employee has not reached maximum medical improvement (MMI) and has not reached level of improvement that would permit return to work. Not payable unless employee is unable to work for more than 7 days. Once employee misses 8 days from work due to work-related injury, employee is entitled to benefits for each additional day he or she is unable to work. If employee exceeds 2 weeks off, he or she is entitled to payment of benefits for the first 7 days as well.	Customarily stopped when employee recovers sufficiently to return to work or when physician reports that worker has reached MMI, or is released for work, regardless of whether employee has actually returned to the job.
Permanent Total	Payable when employee has a permanent disability rating[b] and a complete, permanent inability to perform any type of work. Not awarded until after the worker has reached MMI. (The fact that employee has not returned to work after an injury does not require a finding of permanent total disability.) Irrebuttable presumption of PTD exists when there is: ■ Total and permanent loss of sight in both eyes or total loss of hearing ■ Loss of both feet at or above ankle or both hands at or above wrist or one foot and one hand ■ Complete paralysis of both arms, both legs, or one arm and one leg ■ Incurable insanity	Paid as long as total disability continues, subject to offsets of unemployment insurance or employer-funded disability insurance (unless policy has a provision granting otherwise).
Permanent Partial	Paid when an employee has a permanent disability rating but retains the ability to work.	Maximum benefit for permanent partial disability is 75% of the state average weekly wage (SAWW) or 99% of 66 2/3% of employee's average weekly wage (AWW); there is no minimum benefit. ***For injuries prior to 4/4/94:*** ■ 425 weeks maximum ***For injuries occurring between 4/4/94 and 12/11/96:*** ■ 425 weeks for partial disability of 50% or less ■ 520 weeks for partial disability exceeding 50% ***For injuries occurring on and after 12/12/96:*** ■ Weekly benefits determined by the amount of the AMA impairment rating multiplied by a factor established by law. (See Footnote "b" below.) ■ 425 weeks for partial disability of 50% or less ■ 520 weeks for partial disability exceeding 50% ■ If employee does not retain "physical capacity" to return to type of work performed at the time of injury, weekly benefit is multiplied by 1.5. ■ If employee returns to work at the same or greater wages, weekly benefit is reduced by one-half, or 50%.

[a] Benefits are either reduced or terminated upon retirement. For injuries occurring between 4/4/94 and 12/11/96 (to workers younger than age 65), income benefits are reduced when the employee reaches age 65. Payment is reduced by 10% each year beginning with age 65 and extending through age 70. At the end of this tier-down of benefits, the employee retains 40% of the original award. For injuries occurring on or after 12/12/96, benefits will terminate on the date on which the employee qualifies for normal Social Security retirement benefits, or after 2 years, whichever occurs last. Similarly, all income benefits payable to spouses and dependents will terminate when they qualify for Social Security retirement benefits.

[b] Permanent disability rating is determined by multiplying the AMA impairment rating by the factor as set forth in the following table:

AMA Impairment Rating	Factor	AMA Impairment Rating	Factor	AMA Impairment Rating	Factor
0 - 5%	0.75	16 - 20%	1.50	31 - 35%	2.25
6 - 10%	1.00	21 - 25%	1.75	36% and above	2.50
11 - 15%	1.25	26 - 30%	2.00		

TABLE 2: SCHEDULE OF BENEFITS

Category of Disability	For Injuries Occurring			
	1-1-94[a] through 12-11-96	12-12-96 through 12-31-96	01-01-97 through 12-31-97	01-01-98 through 12-31-98
TEMPORARY AND PERMANENT TOTAL **KRS 342.730 §1(a)** **66 2/3% of employee's AWW,[b] subject to the following:**				
MAXIMUM[c]	**$415.94**	**$415.94**	**$447.03**	**$465.36**
MINIMUM[d]	**83.19**	**83.19**	**89.41**	**93.01**
PERMANENT PARTIAL (PRIOR TO 12-12-96) **KRS 342.730 §1(b)** **66 2/3% of employee's AWW, subject to the following:**				
MAXIMUM	**$311.96**	**N/A**	**N/A**	**N/A**
MINIMUM	**N/A**	**N/A**	**N/A**	**N/A**
PERMANENT PARTIAL (FOR INJURIES AFTER 12-11-96) **KRS 342.730 §1(b), (c)2, (d)** **66 2/3% of employee's AWW, subject to a cap of 99% of 66 2/3% of AWW or the following:**				
MAXIMUM[e]	**N/A**	**311.96**	**$335.27**	**$349.02**
MINIMUM	**N/A**	**N/A**	**N/A**	**N/A**
PERMANENT PARTIAL (FOR INJURIES AFTER 12-11-96) **KRS 342.730 §1(c)(d)** **When employee does not retain physical capacity to return to type of work performed at time of injury, 66 2/3% of employee's AWW, subject to the following:**				
MAXIMUM	**N/A**	**$415.94**	**$447.03**	**$465.36**
MINIMUM	**N/A**	**N/A**	**N/A**	**N/A**
RETRAINING INCENTIVE BENEFITS **KRS 342.732 §1(a)** **66 2/3% of employee's AWW, subject to the following:**				
MAXIMUM[a]				
MINIMUM	**155.98**	**311.96**	**335.27**	**349.02**
	N/A	**N/A**	**N/A**	**N/A**

[a] Workers compensation rates for January 1, 1994, through December 11, 1996, remain the same due to freezing of the state average weekly wage (SAWW).

[b] AWW = average weekly wage. AWW is calculated by using the highest calendar quarter of earnings during the year preceding the injury with the employer in whose service the injury occurred. Earnings for the highest quarter are divided by 13; the result is the employee's AWW.

[c] 100% of SAWW.

[d] 20% of SAWW.

[e] 75% of SAWW.

Working miners may file claims but may not receive benefits while working. Miners who have no pulmonary impairment are not eligible for benefits, except when progressive massive fibrosis is present. Income benefits for black lung with last exposure on December 12, 1996, or later are paid equally by the employer and the Coal Workers Pneumoconiosis Fund. Benefits for occupational diseases other than CWP with a last exposure date on or after December 12, 1996, are payable only by the employer. Table 3 shows how the duration of income benefits for CWP is determined.

Under new law RIB (retraining incentive benefits) payments do not begin on the date of the employee's last coal mine exposure. Rather, payment begins when the employee enrolls and participates in an approved vocational training program on a full-time basis (24 instructional hours per week). RIB benefits will be paid at the rate of 66 2/3% of the employee's AWW, not to exceed 75% of SAWW, for up to 104 weeks. The 104-week period begins when the employee enrolls in the program or 180 days after the award is entered. If the full RIB award has not been paid while the miner is in retraining, up to $3,000 is payable as a cash relocation allowance for movement greater than 50 miles to obtain a job in the employee's area of new training. In addition to weekly benefits, the employer must pay tuition and material costs (not to exceed $5,000) directly to the educational institution conducting the training program.

Hearing Loss. Benefits for hearing loss are available if the employee has a whole body impairment of 8% or greater under AMA guidelines. When audiograms or other testing reveals a hearing loss pattern compatible with hazardous noise exposure in the workplace, there is a rebuttable presumption that the hearing loss is work-related.

Special Fund

The Commonwealth's subsequent injury fund, the Special Fund, has historically participated in payment of injury claims when disability has been caused in part by the arousal of a pre-existing condition, loosely defined as "a departure from the normal state of health" (KRS 342.120). In addition, the Special Fund paid part of the award when disability occurred as the result of gradual cumulative trauma sustained in the employ of more than one employer. In 1987 the Act was amended to reduce Special Fund liability in back and heart claims through provision that the limit of Fund liability was 50% of the award (KRS 342.1202). In 1994 the same limit was extended to all injury claims.

TABLE 3: CWP: RELATIONSHIP AMONG X-RAY DIAGNOSIS, PULMONARY FUNCTION, PERCENTAGE OF DISABILITY, AND DURATION OF BENEFIT PAYMENTS

ILO Category (X-Ray Classification)	Pulmonary Function (FVC or FEV1)	Percent of Disability	Duration of Benefit Payments
Category 1, 2, or 3	80% - 100%	0%	0 weeks
1/1, 1/2	55% - 79%	RIB	104 weeks (maximum)
1/1, 1/2	less than 55%	50%	425 weeks
2/1, 2/2, 2/3	55% - 79%	50%	425 weeks
2/1, 2/2, 2/3	less than 55%	75%	520 weeks
3/2, 3/3	55% - 79%	75%	520 weeks
3/2, 3/3	less than 55%	100%	Lifetime
Progressive massive fibrosis		100%	Lifetime

For dates of last exposure prior to December 12, 1996, Special Fund liability is 75% for CWP awards where the miner was exposed while employed by more than 1 employer. In the rare single-exposure CWP case, the Special Fund pays 40% of the award. RIB awards for coal miners who have developed Category 1 CWP are the employer's sole responsibility. For all exposures after December 12, 1996, the employer defends CWP claims and then seeks participation administratively from the Kentucky Coal Workers Pneumoconiosis Fund (KCWPF), which is liable for 50% of benefits for CWP awards. These benefits are payable only to employees of employers engaged in the severance and processing of coal, and KCWPF benefit payments are contemporaneous with payments from employers.

HB 1 prospectively abolished the Special Fund as of December 12, 1996. The Special Fund is now in a runoff position and has no liability for injuries or occupational disease claims where the injury or last exposure occurs on or after December 12, 1996 [KRS 342.120 §3(2)]. The Special Fund will continue to process payments for the life of existing awards and to participate in claims and reopenings for injuries and dates of exposure prior to December 12, 1966. When the employee and employer enter into a settlement agreement after December 11, 1996, the Special Fund's period of payment commences on the approval date of the agreement [KRS 342.120 §3(3)]. For claims settled after December 11, 1996, the Special Fund has the option of settling its liability on the same terms as those reached between the employer and employee [KRS 342.365(1)].

Reopenings

Except for reopenings solely for medical issues, fraud, or return to work, no claim shall be reopened more than four years following the original award or order or within two years of the final order/award. No party may file a motion to reopen within two years of its previous motion to reopen. Claims decided prior to December 12, 1996, may be reopened within four years of the award or final order or within four years of December 12, 1996, whichever is later.

Attorney Fees

Under HB 1 both plaintiff and defense counsel attorney fees are subject to arbitrator or ALJ approval and are subject to the same maximum fees at each level of the claims resolution process. However, defense attorney fees are not contingent upon results received. Where the attorney-client relationship is established after December 11, 1996, claimant attorney fees are 20% of the award, subject to a maximum of $2,000 for proceedings before an arbitrator. Upon appeal to an ALJ, the attorney fee will be fixed based upon the effort, quality, and complexity of services, not to exceed 20% of the first $25,000, 10% of the next $15,000, and 5% of the remainder of any additional benefits awarded. The fee is not to exceed $10,000. This is in addition to any fee awarded by an arbitrator. If an appeal of a benefit review determination or an ALJ opinion by an employer is unsuccessful, the ALJ fixes an attorney's fee paid by the employer to the employee's attorney up to $5,000 per level of appeal. In addition, non-attorney representation of parties is no longer prohibited; however, fees will not be approved for any representative or assistant who is not an attorney.

Procedural Changes

An employee must include all known claims in an application for claim resolution. Failure to do so will bar a later claim. Employees need only submit *one* medical report for CWP claims.

Benefit Review by Arbitrators

Upon receipt of an application for claim resolution, the Commissioner serves notice to all parties and assigns the claim to an arbitrator for benefit review. The employer must file a notice of denial or acceptance of the claim within 45 days of this notice.

Arbitrators may conduct any proceeding necessary to resolve a claim, including holding a benefit review conference (BRC) or ordering the employee to submit to a medical evaluation at the medical schools of either the University of Kentucky (Lexington) or the University of Louisville. Arbitrators and ALJs must grant medical reports from these schools presumptive weight. Arbitrators shall issue written benefit review determinations within 90 days of assignment of a claim. However, if the

arbitrator finds that the claim presents issues best resolved before an ALJ, the arbitrator can transfer the claim to an ALJ for further proceedings. Proof before an arbitrator may be submitted via medical or vocational reports or affidavits. Cross-examination is available upon motion and good cause shown. A party can be disposed if the party agrees. Otherwise, parties can be served written questions to be answered within 15 days.

Appeals

Any party may appeal an arbitrator's benefit review determination within 30 days and obtain a hearing before an ALJ. Upon notice of appeal, the Commissioner assigns the claim to an ALJ and notifies the parties of proof time and time and place of hearing. All parties have 45 days to present proof, with 30 days for response only and 15 days for rebuttal. Final orders, other than benefit review determinations, may be appealed by filing a request for a *de novo* review by an ALJ within 30 days of the final order. The request is limited to 5 pages. Respondents have 15 days to file a response. The ALJ will issue a decision within 30 days of the last response.

Appeals from ALJ opinions are made to the Workers Compensation Board (WCB). However, the Board will be abolished as of July 1, 2000. Thereafter, appeals from ALJ decisions shall go directly to the Kentucky Court of Appeals.

Other Changes

Posting Notice of Coverage

Kentucky employers are now required to post a notice of workers compensation insurance coverage at their principal office or other location where employees report for payroll/personnel matters. The notice must include the following information:

- Insurance carrier's name
- Policy number
- Means to access medical care
- Other issues concerning employees' rights and obligations

Issuing Building Permits

Prior to issuing a building permit, a local building official must require proof of workers compensation insurance coverage from the builder or certification by affidavit that the contractor is exempt from mandatory coverage.

Penalties for Unfair Claims Settlement Practices

If a carrier or self-insured employer engages in unfair claims settlement practices under Chapter 342 or KRS 304.12-230 in the Insurance Code, the Commissioner shall impose penalties of $1,000 to $5,000 per violation.

If a pattern of violation is proven, the Commissioner may revoke the self-insured employer's certificate or request the Commissioner of Insurance to revoke the insurance carrier's certificate of authority.

Fraud Investigation

The Commissioner of DWC may issue civil citations against persons committing fraudulent acts and may assess a maximum penalty of $2,000. The Division of Insurance Fraud Investigation within the Department of Insurance (DOI) now handles all criminal fraud investigations. Penalties for fraudulent acts include both felony and misdemeanor penalties with incarceration for up to 5 years and a maximum fine of $10,000 per individual or $100,000 per corporation, or twice the gain, whichever is greater. Although shifting investigative functions to DOI, HB 1 did not change the DWC's Commissioner's authority to level civil penalties and to seek criminal prosecution.

ACHIEVEMENTS DURING FISCAL YEAR 1996-1997

FY 96-97 was a tumultuous period for DWC. The reform momentum produced by HB 928 (1994) was heightened by the adoption of HB 1, known as the Reform Act. To implement HB 1, DWC has undergone some sweeping changes.

Through HB1 the General Assembly advanced DWC's evolution from its historic role as principally an adjudication agency serving as clerk of the workers compensation court into a proactive component of the much larger workers compensation system. This system involves innumerable private and public sector parts. To reduce system friction and claims resolution cost and to enhance benefit delivery, DWC was directed to offer additional constituent services. It was told to improve the performance of workers compensation carriers and self-insured employers. DWC was also instructed to scrutinize the financial condition of individually self-insured employers and self-insurance groups.

Resources were allocated to accomplish these and other directives through an expansion budget of approximately $4.6 million per year. During the first quarter of 1997, new personnel were hired and trained (workers compensation specialists, arbitrators, medical schedulers, and benchmarkers), the fiscal plant was expanded through the acquisition of additional leased office space (8,600 square feet), and necessary equipment (computers, scanners, and furnishings) was purchased. Together the resources, personnel, building, and equipment constituted the tangible elements of implementation of HB 1. As of the second quarter of 1997, virtually all personnel and hardware necessary to implement the new law were in place.

Reforming Kentucky workers compensation entailed wide-ranging policy changes not only internal to DWC, but also externally throughout

the workers compensation system. Policy shifts were initiated during the first quarter of 1997 through:

- An informational campaign
- Training of personnel
- Cooperative agreements with other agencies and university medical schools
- Promulgation of necessary administrative regulations
- Increased constituent services
- Enhanced efforts to obtain carrier/employer compliance with both the letter and spirit of the new Workers Compensation Act

DWC continued to foster policy changes through the second quarter of 1997. Notable progress was marked by:

- Publication and dissemination of the *Workers Compensation Guidebook* in April 1997
- University medical school evaluation of noncoal occupational disease claims beginning in May
- Arbitration of the benefit disputes with benefit review conferences first held on May 21, 1997
- Approval of a series of administrative regulations by the Administrative Regulation Review Subcommittee on July 8, 1997

In addition to the above achievements, DWC also participated in updating the AS/400 computer system, made substantial progress in implementing the EDI program, and updated and redesigned its Web site.

AS/400 Update

DWC, Department of Information Systems (DIS), IBM, and Labor Cabinet technical staff jointly assessed the capacity of the Labor Cabinet's AS/400 computer system. The team concluded that the existing system was maximally taxed and could not accommodate additional users, especially with respect to optical imaging. A new processor sufficient for the Labor Cabinet's foreseeable needs was acquired and installed. DIS, Labor Cabinet staff, and vendors performed expeditiously and expertly in installing network devices and program changes.

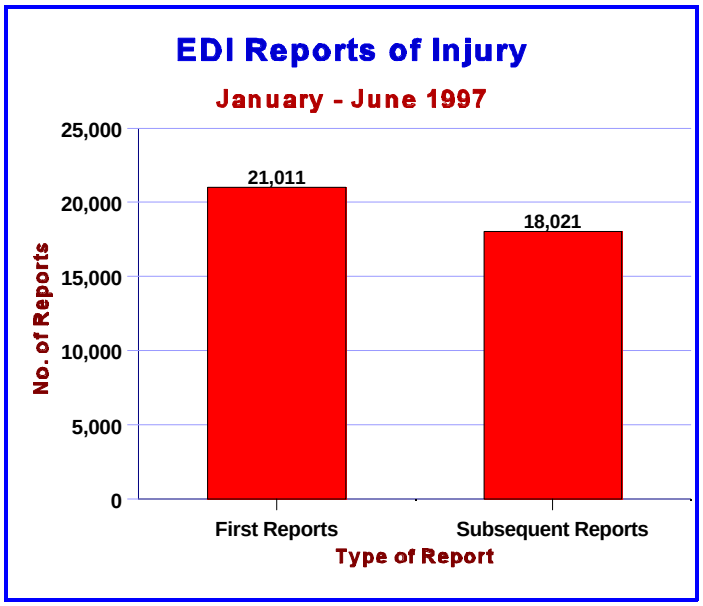
Electronic Data Interchange (EDI) Project

Adopted in 1994, KRS 342.039 requires the Commissioner to promulgate regulations by which insurance carriers and self-insurers file detailed claim information. Reporting requirements for EDI submission of claim information are delineated in 803 KAR 25:170. All first and subsequent reports of injury must now be electronically filed. Beginning January 1, 1998, all medical bills resulting from workplace injury or illness are to be electronically filed. Not the first state to use EDI for workers compensation reporting, Kentucky has nonetheless been aggressive in

implementing its EDI project incorporating IAIABC standards. Medical payment reporting standards are currently in the final stages of development. Kentucky will be the first state to use EDI reporting for medical payments when this phase of the EDI project is implemented. Figure 2 illustrates the number of EDI reports of injury that DWC received during FY 96-97.

Basically as its name implies, EDI is the electronic transmission of routine business documents between computers. However, EDI is more than sending e-mail messages or sharing files through a network, modem, or bulletin board. Rather, EDI uses a defined set of standards for transmission of business information that permit the data to be interpreted correctly, independent of the computer platform that trading partners use. Filing information electronically rather than in hard copy form reduces paperwork, decreases duplication of data entry, and increases accuracy and accessibility of information. As part of DWC's data retrieval process, an electronic acknowledgment is generated and returned to the sender. This acknowledgment identifies which reports were accepted or rejected and includes codes indicating why particular reports were rejected. The sender can then resubmit corrected reports.

FIGURE 2: EDI REPORTS RECEIVED, FY 96-97



Web Site

In 1996 the Research Section cooperated with DIS to develop DWC's Web site. During FY 96-97 the Web site was redesigned, updated, and expanded. Users can access information about the workers compensation program, print out forms in current use, or review DWC publications. The Research Section maintains and continuously updates the Web site as needed. DWC's Web site is located at:

http://www.state.ky.us/agencies/labor/wrkclaim.htm

Links are provided to the Legislative Research Commission (LRC) for review of statutes and regulations.

FISCAL AND PERSONNEL

Expenditures - Budget

HB 1 directed DWC to offer a new range of services, exercise greater program oversight, and resolve disputes as to entitlement to benefits in a more informal yet more expeditious fashion. To meet these objectives, HB 1 expanded DWC's FY 96-97 budget by approximately $2 million, raising the authorized expenditure from $10.2 million to $12.1 million and the personnel cap from 204 to 272. At the close of FY 96-97 on June 30, 1997, DWC's actual expenditures were $11,057,392, or $1,080,508 less than budgeted. (*See Figure 3, page 18.*)

Staffing

The budgetary savings mentioned above accrued from putting in place fewer personnel (36) than authorized as expenditures for capital equipment exceeded budget, largely due to the high investment in information system technology. (Table 4, page 19, lists the positions filled as of July 1, 1997.) Some positions within DWC remained vacant pending further review and assessment of new programs and work product derived as a result of HB 1. Through an ongoing assessment, personnel adjustments will be made as needed and additional vacancies may be filled. Within constituent services (Division of Ombudsmen and Workers Compensation Specialists), the need for additional personnel will rise as the service builds credibility with the public and workplace injuries governed entirely by "new law" become disputed claims. In several areas, including most notably critical support for the arbitrators, personnel vacancies exist because there are few qualified applicants to fill the positions. Positions that the agency has been unable to fill include paralegals, legal secretaries, data entry operators, and computer and network technicians. DWC intends to increase the size of these

elements of its workforce as soon as possible to avoid delay in the resolution of benefit disputes.

OFFICE OF THE COMMISSIONER

KRS 342.230 §2 provides that the Commissioner head DWC, supervise employees, and carry out all administrative functions of the agency.

Specific statutory duties include:

- Assimilating data regarding the program
- Processing claims and responding to inquiries
- Preparing fee schedules
- Promulgating regulations addressing adjudicative procedures, medical services, rehabilitation, data collection and interpretation, and self-insurance
- Participating in seminars, workshops, meetings, and conferences relating to workers compensation
- Periodically reporting to the Governor, Secretary of Labor, Legislature, and Workers Compensation Advisory Council

The Commissioner is assisted by a deputy who acts as chief personnel and financial officer for DWC.

FIGURE 3: DWC EXPENDITURES—BUDGET

Department of Workers Claims FY 96-97 Budget					
Item	**Pre HB 1**	**Post HB 1**	**Expansion Difference**	**Actual Expenditures**	**Budget Surplus (Deficit)**
Personnel	$ 8,247,000	$ 9,624,200	$1,377,200	$ 8,127,397	$1,496,803
Operating	1,912,800	2,458,700	545,900	2,784,061	(325,361)
Capital Equip.	0	55,000	55,000	145,934	(90,934)
TOTALS	$10,159,800	$12,137,900	$1,978,100	$11,057,392	$1,080,508

Department of Workers Claims FY 97-98 Budget			
Item	**Pre HB 1**	**Post HB 1**	**Expansion Difference**
Personnel	$ 8,702,400	$11,489,700	$2,787,300
Operating	1,799,800	3,530,800	1,731,000
Capital Equipment	112,000	162,000	50,000
TOTALS	$10,614,200	$15,182,500	$4,568,300

TABLE 4—POSITIONS FILLED AS OF JULY 1, 1997

Position	Location	No. of Each
Division of Ombudsmen and Workers Compensation Specialist Services		
Chief Workers Compensation Specialist	Frankfort	1
Workers Compensation Specialist	Frankfort	5
Workers Compensation Specialist	Pikeville	2
Workers Compensation Specialist	Madisonville	2
Workers Compensation Specialist	Louisville	3
Workers Compensation Specialist	Lexington	1
Workers Compensation Specialist	Paducah	1
Workers Compensation Specialist	Vacancies	3
Legal Secretary	Pikeville	1
Legal Secretary Senior	Frankfort	1
Legal Secretary Senior	Louisville	1
Paralegal Senior	Frankfort	2
Paralegal Senior	Lexington	1
Paralegal Senior	Louisville	1
Secretary Chief	Lexington	1
Division Director	Frankfort	1
Division of Arbitration		
Chief Arbitrator	Frankfort	1
Arbitrator	Frankfort	7
Legal Secretary Senior	Frankfort	6
Paralegal Senior	Frankfort	2
Note: Three additional Paralegal Senior positions are approved for this Division but have not been filled.		
Division of Information and Research		
Research Specialist (Benchmarker)	Frankfort	3
Administrative Specialist	Frankfort	3
Clerk Chief	Frankfort	2

OFFICE OF ADMINISTRATIVE SERVICES

The Office of Administrative Services is under the direct supervision of the Deputy Commissioner and employs four full-time personnel. This office serves as the logistical support unit for DWC. Essential activities include:

- With appropriate inventory control, purchasing and distributing all supplies and services
- Providing maintenance and security for all facilities and equipment
- Auditing and processing of invoices, requests for reimbursement, and travel expense vouchers
- Filling publications orders and disseminating printed materials
- Coordinating mail, supply, and equipment pickup and delivery
- Coordinating fiscal activities with the Finance and Administration Cabinet
- Securing leases of real property for DWC's field personnel
- Assisting in preparation of DWC's budget and tracking expenditures

OFFICE OF THE GENERAL COUNSEL

General Counsel and a staff of four attorneys provide legal services to DWC. Recurring activities of this office include:

- Assuring employer insurance coverage through the preparation of citations and injunctive actions
- Analyzing open records requests
- Researching and drafting law analysis reports, regulations, and statutes
- Conducting or participating in public hearings
- Appearing before legislative oversight committees
- Representing DWC in courts and before governmental agencies
- Managing claims of the SERF (South East Coal Restoration Fund)

HB287—SERF

House Bill 287 (HB 287) created a mechanism under which unclaimed Kentucky Utilities customer rebates were transferred into a special expendable trust fund. This fund is used to pay the workers compensation liabilities of a bankrupt self-insured employer, South East Coal Company. The sum of $6,817,846.43 was transferred on June 21, 1996, to the SERF, known as the South East Restoration Fund.

Eligible claimants were granted until August 26, 1996, to elect to participate in the SERF distribution. An initial distribution of $3,210,702 was made to 164 workers compensation claimants for past-due income benefits. Weekly benefit payments of the full amount due under awards/settlements against South East Coal were to resume under the SERF plan. Unresolved compensation claims were processed before ALJs

in a routine manner with SERF substituted as a defendant for the defunct coal company. The 72 claims pending upon creation of SERF were either settled, decided by ALJs, or currently in litigation. Six claims were pending, while 3 were on appeal as of September 19, 1997. A total of $4,120,058 had been paid from SERF by June 30, 1996. Concluded claims had a reserve of $3,570,587, and pending claims were reserved at $1,322,570.

DIVISION OF ARBITRATION

KRS 342.230(9) created the Division of Arbitration. This division consists of eight arbitrators, one of whom serves as chief, and support staff. On February 21, 1997, Governor Paul E. Patton appointed the arbitrators from nominees submitted by the Workers Compensation Nominating Commission, pursuant to KRS 342.213(4)(a). The chief arbitrator began duties on March 1, 1997. As well as carrying a caseload, the chief arbitrator assists in training and scheduling and supervises the support staff. The remaining arbitrators reported for duty on March 16, 1997.

Training

Training for arbitrators was conducted during the last two weeks of March. Topics included:

- Personnel and employment issues
- Black lung diagnosis
- Definitions of injury and disability
- Benefit determinations
- Effective opinion writing
- Medical issues
- Contractor matters
- Extraterritorial coverage issues
- Procedural regulations
- University medical evaluations
- Reopenings
- Ethics
- Computer skills

DWC staff, Workers Compensation Board members, ALJs, physicians, attorneys, insurance carrier personnel, and representatives of labor-management groups offered instruction.

Benefit Review

New regulations for claims resolution before an arbitrator, 803 KAR 25:010E, § 1-11, put in place a "user-friendly" system, one that relaxes procedural requirements and facilitates informal resolution. Affidavits and medical reports can be filed without resort to costly and time-consuming depositions. When an agreement is not reached, arbitrators render opinions within 90 days after a claim has been assigned. Benefit review conferences (BRCs) may be held at a DWC hearing site near the claimant's residence or telephonically. If a claim presents factual issues best resolved by a hearing before an ALJ, the arbitrator will transfer the case directly to an ALJ. Aggrieved parties can appeal to an ALJ from an arbitrator's benefit determination. The procedure on appeal is much the same as under "old law," although the time frame for disposition has been shortened. Hearings before the ALJs are *de novo*, meaning the ALJ is not bound by the arbitrator's determination.

Arbitrator Activity

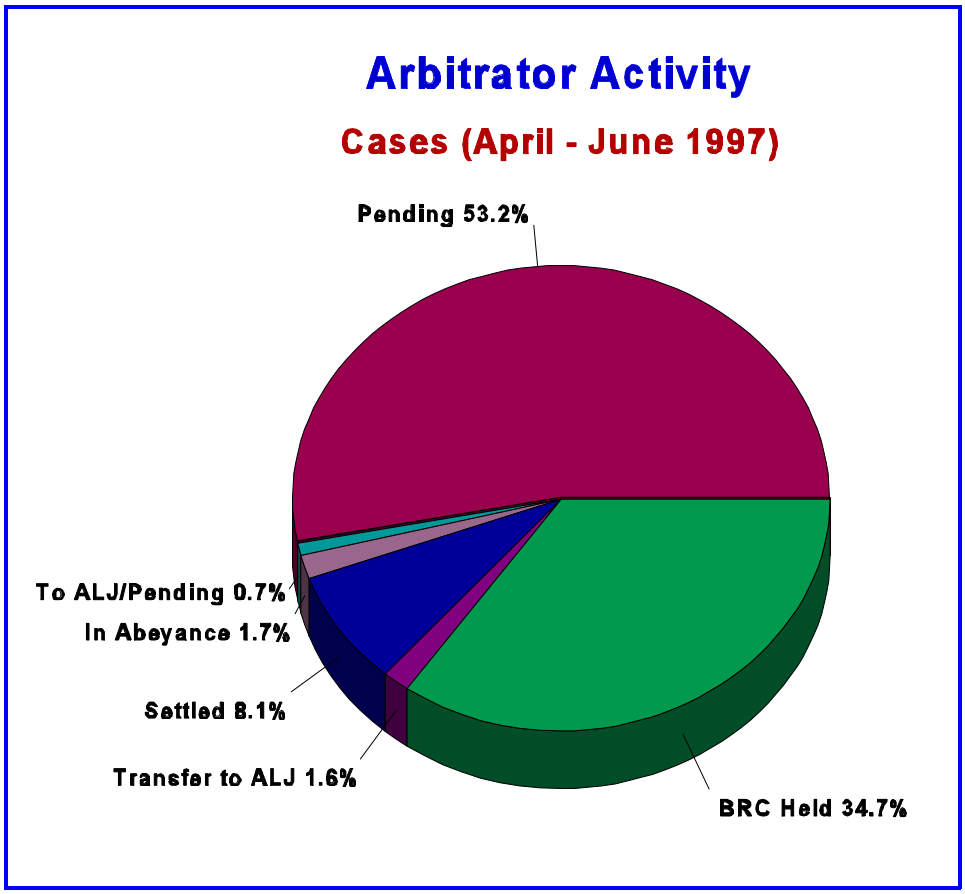
To equalize caseloads and economize travel expenditures, each arbitrator is assigned, during a period of 60 days, claims in 1 of 6 geographical regions of the state. Arbitrators "rotate" among the state's regions. Three arbitrators at a time share claim loads for the Louisville, Lexington, and Covington regions.

The arbitration process is well underway. Arbitrators began receiving claims on April 1, 1997. As of July 1, 1997, 1,262 cases were assigned to arbitrators. Of these cases, 1,047 were injuries, 60 were occupational disease, 88 were coal miner RIB claims, and 67 were hearing loss claims. Over 400 BRCs were held through June 1997, with a settlement ratio thus far of approximately 23%. Settlement rates are expected to increase as arbitrators become more experienced, participants gain familiarity with the process, and HB 1 provisions with respect to benefits and attorney fees apply to a progressively greater percentage of claims. Figure 4 illustrates arbitrator activity through June 1997. With few exceptions, arbitrators met the statutory mandate for timely issuance of final determinations.

Adjustments to Prior Procedures

Amendments were suggested to the emergency regulation, 803 KAR 25:010E, to allow the deposition of workers in arbitration proceeding ***by agreement***. This change was proposed to facilitate settlement and to assist parties in resolving claims before arbitrators. Arbitrators infrequently granted cross-examination of physicians but often allowed the taking of other depositions.

FIGURE 4: ARBITRATOR ACTIVITY THROUGH JUNE 1997



Trends and Concerns

Arbitrators at first noted that parties were reluctant to file documents necessary for informed decision making. However, parties have since increased the volume of documentary evidence submitted to arbitrators. Settlement rates appear to be climbing as complete disclosure of information pertinent to the compensation claim increases the likelihood that a dispute will be resolved by agreement.

Several requests for *de novo* hearings before ALJs were received as a result of arbitrators' benefit review determinations. However, none of these appeals has yet been brought to conclusion before ALJs.

ADJUDICATIONS—ADMINISTRATIVE LAW JUDGES

ALJs are supervised by a chief who reports directly to the Commissioner. There are currently 16 ALJs. Each ALJ is assigned 2 support personnel (1 paralegal and 1 legal secretary). The ALJs are located in 12 separate offices: Frankfort, Lexington, Louisville, Danville, Fulton, Henderson, London, Madisonville, Mt. Sterling, Pikeville, Pineville, and Richmond.

ALJs served as first-line adjudicators in workers compensation claims prior to December 12, 1996. Under HB 1 initial claims determination is vested in arbitrators with ALJ jurisdiction beginning on appeal from an arbitrator decision. Prehearing conferences and formal hearings before ALJs as first-line adjudicators will continue into the third quarter of 1997, with final decisions in these cases by November 1997. ALJs will receive the first appeals from arbitrator decisions during the third quarter of 1997 and will be available to serve in a dual capacity as arbitrators thereafter. 803 KAR 25:010 governs procedures in claims assigned to ALJs.

During FY 96-97 the ALJs rendered 9,628 opinions, conducted 10,878 prehearing conferences, and held 3,601 formal hearings during FY 96-97. (Hearing sites are located in Bowling Green, Covington, Frankfort, Hazard, Ashland, Lexington, London, Louisville, Madisonville, Owensboro, Paducah, Pikeville, Pineville, and Prestonsburg.) ALJs are currently assigned 11,489 claims (including claims on appeal) and observe the HB 928 (1994) mandate to issue decisions within 60 days of final hearing in 97% of the claims.

WORKERS COMPENSATION BOARD

The Workers Compensation Board (WCB) is composed of three members (one serving as chair) appointed by the Governor. They are full-time employees of DWC for a term of four years, and are each assigned an attorney and a legal secretary. WCB members hold the qualifications of an appeals court judge, except for residence in a district, and are subject to the same standards of conduct. A decision concurred by any two board members constitutes a decision of the Board.

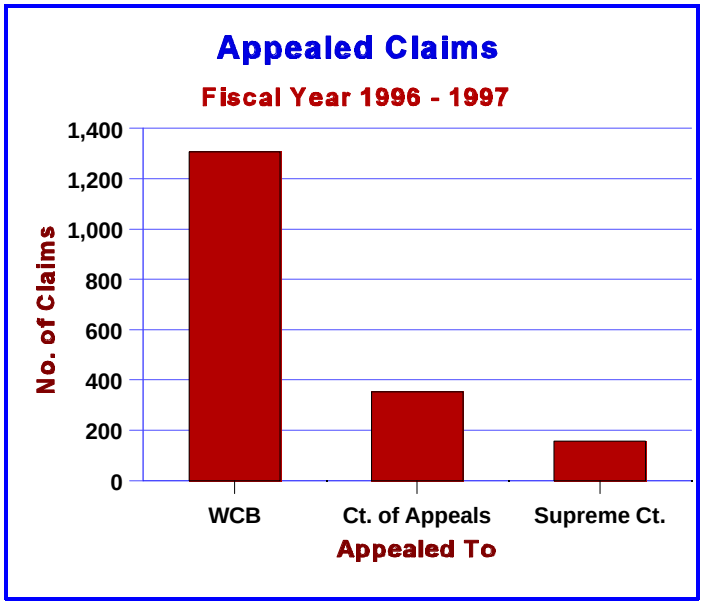
Since 1994 WCB has been charged exclusively with the responsibility of deciding appeals from ALJ opinions. During FY 96-97, WCB rendered 1,342 decisions. At fiscal year-end 286 claims were on appeal to the WCB, 71 of them submitted for decision, and 496 WCB decisions were on appeal to the Court of Appeals and Kentucky Supreme Court. Figure 5 shows a breakdown of the number of claims that have been appealed during FY 96-97. WCB was in full compliance with the statutory directive that decisions be rendered within 60 days of filing of the last appellate brief. Under HB 1, WCB will be abolished as of July 1, 2000. Thereafter the Kentucky Court

of Appeals will directly receive all appeals from ALJ decisions. (*See Procedural Changes, Appeals, in the Law Summary section.*)

DIVISION OF OMBUDSMEN AND WORKERS COMPENSATION SPECIALISTS SERVICES

Working as a team, the Divison of Ombudsmen and Workers Compensation Specialists, as well as the Rehabilitation Branch, provide constituent services to employees, employers, and other participants in the workers compensation program. Ombudsmen and workers compensation specialists are supervised by experienced attorneys who serve as chiefs, respectively, of the Ombudsmen and Workers Compensation Specialists Branches. This group's core function is the provision of accurate information regarding the workers compensation program, how it functions, what the rights and duties of employers and employees are, how to access the system, and how to resolve controversies over benefits. Ombudsmen and workers compensation specialists serve a conciliatory role and upon request intervene in disputes among workers, physicians, carriers, and self-insured employers and facilitate the flow of information necessary to resolve disputes.

FIGURE 5: APPEALED CLAIMS



During the second quarter of 1997, DWC adopted written standards to guide ombudsmen and workers compensation specialists in the performance of duties. Although most ombudsmen and workers compensation specialists are not attorneys, all have considerable experience in the workers compensation program and have been extensively trained for their positions.

Ombudsmen Branch

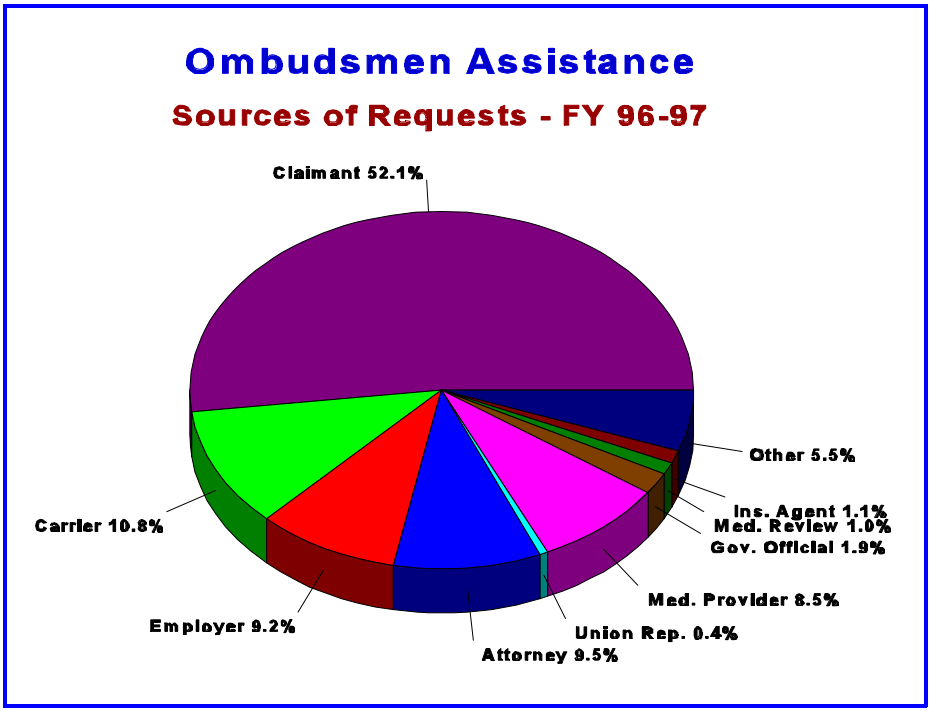
HB 928 (1994) required DWC to establish an Ombudsmen Branch to afford those interested in the workers compensation program immediate access to trained personnel to answer inquiries as to rights and duties under the Workers Compensation Act. During the General Session of 1996, the Legislature mandated that DWC perform a new function by offering mediation services to informally resolve disputes. A pilot mediation project began in September 1995 and was converted to a full-fledged part of the ombuds program at the beginning of 1996. After enactment of HB 1, the Ombudsmen Branch, an arm of the Division of Information and Research, was joined with the Workers Compensation Specialists Services Branch to form a separate division (KRS 342.329). Seven ombudsmen are on staff, six located at DWC's main office in Frankfort and one at the field office in Paducah.

The use of ombudsmen as an information and mediation source was extensive. During FY 96-97 ombudsmen fielded 19,650 calls for assistance and information (an average of 1,638 calls per month), handled 1,427 informal mediations, and conducted 14 face-to-face mediation conferences. Activity peaked after the December Extraordinary Session. During January and February 1997, ombudsmen logged an average of 2,222 requests. As Figure 6 illustrates, ombudsmen assistance was broad-based among workers compensation program participants. Primary callers were claimants, insurance carriers, employers, attorneys (who made 9.5% of the assistance requests), and medical providers. Union representatives, government officials, and insurance agents called upon ombudsmen to a less degree.

Workers Compensation Specialists Branch

HB 1 elevated the level of constituent services through provision that authorizes the division to assist workers in obtaining medical reports and other materials pertinent to a claim for benefits and to prepare documents necessary for a claim application. Each workers compensation specialist meets the minimum criterion of having four years of experience in workers compensation claims resolution or a similar field. After two weeks of intense training, workers compensation specialists began duty on March 1, 1997. Specialists services are available in Frankfort, Louisville, Pikeville, Madisonville, and Paducah.

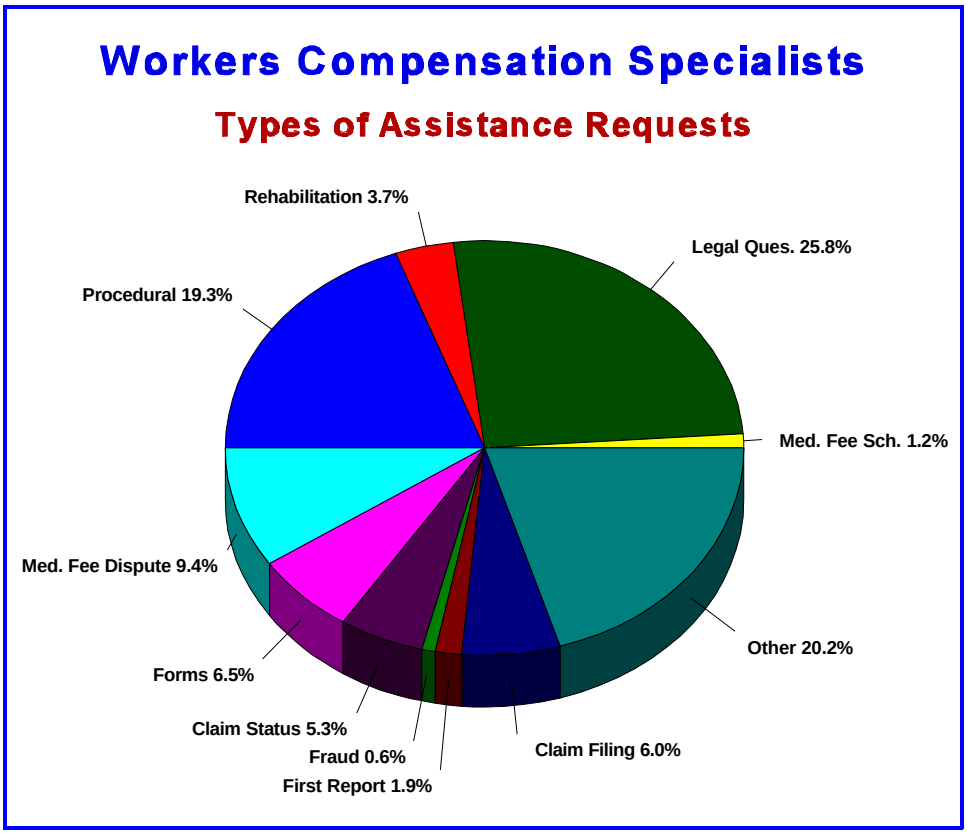
FIGURE 6: OMBUDSMEN ASSISTANCE—SOURCES OF REQUESTS



From March 1 through June 30, 1997, workers compensation specialists received 4,146 requests for assistance. As Figure 7 on page 28 shows, questions or issues involved ranged from simple requests for forms to more complex medical fee disputes. Ninety-three percent (93%) of requests for information or assistance were made by phone; 4%, in person; and 3% by letter/FAX. Workers compensation specialists assisted in filing 34 claims. Another service that workers compensation specialists offer is mediation intervention. Of the 757 requests for mediation intervention, 362 conflicts (48%) were successfully resolved; 126 (16%) were unsuccessful; and 276 (36%) were pending at fiscal year-end.

In April 1997 workers compensation specialists began to expedite rehabilitation evaluations precedent to vocational training (KRS 342.710 §3). Of 84 claims assigned to specialists, 42 efforts (50%) were successful and 3 (3.6%) were unsuccessful. The remaining claims involving a rehabilitation order remained pending.

FIGURE 7: WORKERS COMPENSATION SPECIALISTS—TYPES OF ASSISTANCE REQUESTS



DIVISION OF INFORMATION AND RESEARCH

The largest division of DWC, Information and Research has three branches—Records, Technical Services, and Medical Services.

Records Branch

The Records Branch contains five sections: Case Files, Data Entry, Micrographics, Coding, and Open Records. Departmental statistical data collection and dissemination of information relative to claims are conducted within the Records Branch. This branch is also charged with the responsibility of assembly and retention of all permanent files and documents. Other responsibilities include responding to open records requests and performing critical research functions. Table 5 lists the activity of the Records Branch by section.

TABLE 5: RECORDS BRANCH ACTIVITY

Section	Activity
Case Files	■ Handled 27,342 pieces of correspondence ■ Pulled 7,413 files to be microfilmed
Data Entry and Micrographics Sections	■ Filed 25,051 documents ■ Filmed 1,207,600 pages of documentation ■ Scanned 231,202 multipage documents into the DWC database
Coding	■ Processed 719 paper first reports of injury ■ Processed 214 no lost time first reports of injury ■ Received 53,183 EDI documents
Open Records	■ Responded to approximately 29,410 requests for information ■ Received $38,819.23 in fees for hard-copy documents

The Records Branch uses state-of-the-art technology for storage and retrieval of documents. Computer imaging makes it possible to file documents quickly, with minimal errors, and without retaining hard copy in the traditional mode. EDI, introduced in 1995, streamlined first report of injury transmission and eliminated hard copies of these documents. DWC is also in test mode status for EDI proof of workers compensation insurance coverage. EDI will enable DWC to better track carrier performance and the costs of the workers compensation program. (*See pages 15 and 16 for more information on EDI*.)

Case Files Section

The Case Files Section is responsible for transmitting and maintaining agency claim files through either hard copies or imaging into the electronic file folder. The duties of the Case Files Section have been expanded and modified from the narrow scope once associated with a records unit to a modernized, technologically advanced unit using EDI and computer imaging. Records clerks have been cross-trained as computer indexers and scanners.

Data Entry and Micrographics Sections

The Data Entry Section codes pleadings and other documents for entry into the DWC database. Information stored in the database is for statistical analysis; thus, accuracy is of utmost importance. This section logs incoming mail, the volume of which ranges between 500 and 1,800 pieces daily. The Micrographics Section is responsible for retaining claim file documents and other records. Closed cases that were filed prior to January 1, 1995, are microfilmed, and film is stored off-site with the Kentucky

Department of Libraries and Archives (KDLA). Microfilming is being phased out as DWC relies on imaging and EDI for current access and permanent storage. The imaging system implemented in January 1995 makes it possible to code and scan documents directly into DWC's database.

Coding Section

The Coding Section historically reviewed paper first reports of injuries to ensure that injuries were reported in the proper format and in accordance with statutory mandates. During FY 96-97 both first and subsequent reports of injury were transmitted via EDI. The Coding Section plays a key role in monitoring data quality to ensure that the information is valid.

Open Records Section

The Open Records Section responds to requests for copies of departmental documents and performs records searches solicited by employers, attorneys, the news media, and the public at large. This section confirms workers compensation awards for the Social Security Administration and the Kentucky Department of Fish and Wildlife.

Technical Services Branch

The Technical Services Branch has two sections: Technical Support and Research.

Technical Support Section

The Technical Support Section is responsible for the computer installation, maintenance, and networking functions of DWC's main office and its 11 field offices.

HB 1 generated a flurry of activity in the technical support area. Additional office space to accommodate expanded staff necessitated full-time assignment of DWC's Technical Support Section to computer setup, network wiring, data communication line installation, and placing file servers online. In addition, the AS/400 computer system was updated to accommodate additional users. Technical support staff also implements DWC's EDI project. (*See pages 15 and 16 for additional information about the EDI project.*)

Research Section

The Research Section compiles statistical reports, develops monthly and annual reports, prepares DWC publications, updates the agency Web site, performs special research projects, and benchmarks insurance carrier performance.

Benchmark Reports. Under HB 1, §80, DWC has assumed a proactive role in improving carrier and self-insured employer performance through an extensive benchmarking program. Detailed reports will be generated based on data elements transmitted electronically to DWC. This data will be analyzed and weighted for carrier market share and number of employees covered to formulate a ranking system of carrier performance. Through publication of benchmark reports, DWC will provide feedback regarding carrier achievements and deficiencies. Patterns of regulatory violation revealed through benchmarking will be referred to the Commissioner for consideration of citation. Benchmarking is designed to ensure:

- Timely filing of injury reports
- Prompt and accurate payment of indemnity benefits
- Prompt payment of medical expenses
- Timely filing of notice of coverage

Data elements necessary to benchmark carrier performance have been selected, and computer programming has commenced. The benchmarking project should be operational during the last quarter of 1997.

Medical Services Branch

The Medical Services Branch has two sections: Provider Relations and Cost Containment and Rehabilitation.

Provider Relations and Cost Containment Section

Managed Care. KRS 342.035 and 342.735 (effective April 4, 1994) provide the statutory basis for several medical cost-containment measures. Regulatory standards for managed care plans were adopted on July 15, 1994 (803 KAR 25:110). The first managed care plan was approved in October 1994, and Kentucky workers were being treated under approved plans the following month. Growth remained in the single digits until the last quarter of 1995, at which time 11.7% of the workforce was covered by industrial managed care. At the end of 1996, 39.87% of the total workforce was covered under managed care plan arrangements. DWC has approved 32 managed care plans, affording coverage in 116 of the Commonwealth's 120 counties. Not all approved plans are presently operational.

The Commonwealth is a proven leader in implementation of workers compensation managed care. Even absent a legislative mandate, DWC has implemented managed care at a rate unmatched elsewhere in the nation. Kentucky's managed care structure promotes cost-effective, quality medical treatment and assures employees a reasonable choice of providers.

Approved managed care plans have been effective in delivering appropriate medical care and in returning experienced workers to the workforce. Preliminary evidence suggests that return to work is expedited

for employees treated through managed care plans. The Ramsey Study in Florida and an NCCI (National Council on Compensation Insurance) report commissioned by Intracorp lend credence to this assertion. While the incidence of hospitalization of injured workers is reduced through managed care, up-front costs for medical care are often higher. However, the overall cost of care is lower in the long run.

Administrators of managed care systems must file an application with DWC for approval of a plan of operation. There is no application fee. The applicant must demonstrate:

- Administration experience
- Financial stability
- Adequate provider network
- Treatment standards for utilization review
- Internal grievance procedures
- Case management/Return-to-work plans
- Printed materials describing plan operations for stakeholders
- System monitoring, including data reporting and grievance disposition

Employees subject to managed care plans must choose gatekeeper physicians from the plan's provider network. They may change the gatekeeper one time without prior approval. If a plan physician recommends surgery, employees may obtain a second opinion from an outside physician at the employer's expense. When the circumstances listed below apply, employees may also obtain medical services outside the plan.

Medical services outside the network may be obtained when:

- Emergency care is not available through the plan. An employee may remain under the care of a non-network physician who has rendered emergency care, as long as the physician complies with plan requirements.
- A network physician makes referral outside the network.
- Authorized treatment is unavailable through plan providers.
- Continued treatment is necessary for injuries or illness incurred prior to the plan's implementation.

Medical Fee Schedule. The Commissioner is required to update hospital and physician fee schedules no less often than bienially. Since 1989 physician fee schedules for the Kentucky workers compensation program have been based upon the RBRVS system. The schedule lists common medical procedures and establishes reimbursement levels. Schedules become outdated as new medical procedures come into use and as prevailing payments for particular procedures change.

The development and promulgation of physicians' fee schedules are controversial. Consultants generally assure that fee schedule reimbursements are fair while at the same time significantly reduce medical

reimbursement. Payors argue that reimbursements are too generous, and medical providers lobby against the fee schedule, maintaining that prescribed payments are so stingy as to jeopardize employee access to medical care. Kentucky has experienced the turmoil surrounding the adoption of workers comepensation fee schedules on three occassions—1989, 1994, and 1996.

The 1996 General Assembly allowed the 1994 medical fee schedule to remain in effect until July 1, 1996, pending amendment. The Commissioner filed 803 KAR 25:089E (the 1994 fee schedule with amendments), which remained in effect until adoption of a new schedule. The *1996 Kentucky Medical Fee Schedule for Physicians*, which became effective December 12, 1996, effectively increased physician reimbursements by 8% over 1994 fee schedule levels.

Utilization Review and Medical Bill Audit. The Commissioner is required to promulgate regulations governing utilization review activities (KRS 342.035). Every insurance carrier and self-insured must implement a utilization review and medical bill audit program and submit a written plan describing the program for approval (803 KAR 25:190). ***Utilization review*** is a review of the medical necessity and appropriateness of medical treatment and services. However, with the exception of managed care, nearly all utilization review is "retrospective"—that is, after the medical treatment has been delivered and a bill for services has been generated. ***Medical bill audit*** is an examination of medical bills to assure compliance with the adopted fee schedules.

Amendments to 803 KAR 25:190 were filed August 15, 1996. These were primarily housekeeping measures, clarifying the utilization review process and attempting to gain greater compliance. The amended regulation became effective December 13, 1996.

Since April 1, 1996, DWC has approved 45 utilization review and medical bill audit programs. Many carriers and self-insureds have not reported to DWC that they have implemented utilization review and medical bill audit. In auditing the approved programs DWC identified several deficiencies that are addressed in the *Status Report on Utilization Review and Medical Bill Audit in Non-Managed Care*, scheduled for publication during the last quarter of 1997.

Practice Parameters. The Commissioner develops or adopts practice parameters or guidelines for medical providers (KRS 342.035 §8). Prior to being abolished, the Kentucky Health Policy Board developed the *Clinical Practice Parameter for Acute Low Back Problems in Adults* on March 18, 1996. The Commissioner officially adopted this guideline for use by medical providers and utilization reviewers.

Selection of Physicians and Treatment Plans. A single treating physician or physicians' is to supervise medical services rendered for work-related injuries and occupational diseases (KRS 342.035). The purpose of 803 KAR 25:096 is to limit "doctor shopping," avoid the duplication of medical services, and assure high-quality medical care for injured workers. Vehicles to accomplish this purpose include designated physicians, treatment plans, and a tracking system—the designated physician card. The regulation establishes the process whereby each injured worker designates a single physician to act as a gatekeeper who coordinates the worker's medical care. The designated physician must also prepare a treatment plan when the patient is placed under "long-term care," as defined by 803 KAR 25:096. Housekeeping amendments to the regulation became effective December 13, 1996.

Resolution of Medical Fee Disputes. The Commissioner establishes regulations to expedite the payment of medical expense benefits (KRS 342.735). 803 KAR 25:012 sets forth the procedures relative to resolving medical fee disputes. The regulation clarifies what must be done, when, and by whom to resolve issues concerning the payment, nonpayment, reasonableness, necessity, and work-relatedness of medical services and expenses. Basically, an aggrieved party in a medical service arrangement may file a Request to Resolve Medical Fee Dispute (Form 112) with DWC. An arbitrator makes a decision, when possible, based on the Form 112 and accompanying documents such as bills and affidavits. If a decision cannot be made based upon the documentary materials submitted by the parties to the dispute, more extensive proceedings are scheduled.

University Medical Evaluations. Prior to enactment of HB 1, ALJs often faced sharply contrasting opinions from the injured worker's treating physician and the employer's medical examiners. Existing law provided no guidance as to which medical opinion an ALJ should grant deference in making determinations of disability. HB 1 amended KRS 342.315 to require the Commissioner to contract with the University of Kentucky and the University of Louisville medical schools to perform evaluations of employees maintaining workers compensation claims. Referral is mandatory for occupational disease and hearing loss claims and is optional in traumatic injury claims. The statute provides that the findings and opinions of the designated university evaluators are to be afforded "presumptive weight."

Contracts were entered into between the Commissioner and the medical schools in February 1997 for CWP and hearing loss evaluations. The agreements address clinical algorithms and fee arrangements and include provisions to assure prompt scheduling, timely reporting, proper provider credentialing, and quality control. Preparation for injury evaluations, including staffing concerns and protocols, took place during the second

quarter of 1997, and it is anticipated that injury evaluations will take place during the third quarter of 1997. HB 1 requires the Cabinet for Health Services to annually assess the medical schools' performance.

By promptly assigning experienced staff to implement the program, the university medical schools contributed to the initial success of the evaluation program. The universities have devised quality assurance mechanisms, and each university has a medical director who oversees the program. Only university teaching staff, not residents, conduct evaluations; and only b-certified readers interpret x-rays in CWP claims. Creation of field locations, particularly in the east and west regions of the Commonwealth, is being explored.

Medical Schedulers. DWC hired three administrative specialists to serve as medical schedulers in February 1997. This staff is responsible for scheduling appointments, communicating with employees, notifying the employer/carrier to prepay mileage expenses, collecting and distributing reports and bills, and maintaining pertinent data.

Evaluations. The first group of evaluations were scheduled in early March and consisted of 272 CWP and hearing loss claims filed in December 1996. Between April 1 and the end of June 1997, medical schedulers processed 207 claims, and the medical schools performed 350 evaluations.

Through July 7, 1997, the medical schools submitted reports with respect to 108 hearing loss evaluations and 299 evaluations of coal miners asserting CWP claims. The data in Table 6 on page 36 quantify these evaluations in terms of the percentage of AMA impairment found in instances of hearing loss and the presence of CWP by category and the level of respiratory impairment.

Rehabilitation Section

During the 1994 Regular Session of the General Assembly both labor and business criticized the procedures by which certain categories of injured workers were automatically referred for rehabilitation services as being both too costly and ineffective. The Legislature responded through statute which specifically abrogated regulations promulgated by the former Workers Compensation Board mandating referral for rehabilitation. Over the past two years, staff within the Rehabilitation Section has been reduced to correspond with diminished functions. Nonetheless, KRS 342.710(3) still affords injured employees vocational rehabilitation services. Rehabilitation remains as a fundamental purpose of the Workers Compensation Act. Unfortunately, over the years DWC has proven ineffective in identifying those injured workers who are viable candidates for rehabilitation and has been equally incapable of expediting the

evaluation encompassed by KRS 342.710 aimed at promptly placing employees in appropriate retraining courses.

Rehabilitation evaluations are commonly delayed because of appeal of the ALJ's order, reluctance of the carrier to pay for rehabilitation, and/or disinterest on the employee's part. Of the 300 workers referred for vocational evaluation each year, only 3% to 4% start retraining and only half of those have historically completed retraining. DWC's performance has been dismal with respect to the time frame spanning from the order for a rehabilitation evaluation to the moment of actual evaluation, 9 months on average. Moreover, almost 3 years pass on average between the time of injury and the time of the ALJ order granting rehabilitation benefits. Another year passes from the evaluation of the worker to the commencement of training.

DWC recognizes that successful rehabilitation of injured workers depends upon early recognition of viable candidates and their immediate placement into training. Using workers compensation specialists to expedite

TABLE 6: UNIVERSITY EVALUATIONS—REPORTS FILED THROUGH JULY 7, 1997

Hearing Loss

No. of Evaluations	Percent of AMA Impairment			Loss Caused by Employment
	0%	1 - 7%	Greater than 8%	
108	17	50	41	87

Coal Workers Pneumoconiosis

Related No. of Evaluations	X-Ray Negative for CWP	Category of CWP				Respiratory Impairment		Occupational Breathing Impairment
		1/0	1/1	1/2	2 or Greater	Class I[a]	Class II[b]	
299	226	42	21	5	5	20	2	7

[a] Class I impairment indicates pulmonary function of more than 55% but less than 80% of predicted normal.

[b] Class II breathing impairment indicates pulmonary function of less than 55% of predicted normal. rehabilitation.

rehabilitation evaluations was an initiative launched in April 1997. In many instances an injured worker's first contact with DWC staff is through ombudsmen or workers compensation specialists. These personnel are cross-trained in rehabilitation techniques and are alert to the necessity of early recognition of viable candidates for rehabilitation. Workers compensation specialists process "hands on" each arbitrator's or ALJ's

order directing vocational rehabilitation. DWC's objective is to obtain full cooperation of the injured worker, the employer, and the carrier in closing the time gap between injury and delivery of rehabilitation services. Thus far, the new mechanism has worked to achieve earlier evaluations or case closure when evaluation does not appear warranted.

DIVISION OF SECURITY AND COMPLIANCE

The Division of Security and Compliance has three branches: Coverage, Self-Insurance, and Enforcement. The division's primary responsibility is to ensure that nonexempt Kentucky employers maintain workers compensation insurance coverage.

The Marketplace

The Department of Insurance (DOI) reports that subsequent to implementation of HB 1, several carriers have inquired with regard to lowering loss cost multipliers and that 66 rate filings were made through June 23 wherein additional premium reductions are proposed. An NCCI loss cost filing that takes into actuarial account the effects of HB 928 (1994) but not losses incurred post-HB 1 will be filed during the third quarter of 1997.

The workers compensation marketplace in the Commonwealth is generally described as "hot" and characterized by fierce competition that allows many employers to reduce premium cost at significantly greater percentages than carrier rate filings would suggest. This is generally good news for Kentucky employers even though decreasing premium volume may ultimately dictate that the Special Fund assessment rate be raised to generate sufficient revenues to pay off liabilities the subsequent injury fund incurred prior to adoption of HB 1. Predictably, rate reductions and stiff competition in the insurance market will reduce the number of workers compensation self-insurance groups in the Commonwealth.

Coverage Branch

The Coverage Branch maintains records documenting insurance coverage for Kentucky employers. Approximately 250 insurance companies, including the competitive state fund Kentucky Employers Mutual Insurance Company (KEMI), insure the Commonwealth's employers.Table 7 on page 38 shows the Coverage Branch activity during FY 96-97. The names of employers who are in voilation of statutory mandates will be forwarded to the Enforcement Branch. When EDI proof of coverage is in full operation (effective January 1, 1998), policy coverage will be tracked more expeditiously.

Self-Insurance Branch

The Self-Insurance Branch audits group and individual self-insured employers and processes new and renewal applications for self-insurers. The branch is also responsible for calculating the self-insured simulated premium upon which assessments are based and for establishing surety requirements. The division director, a CPA, is completing an evaluation of DWC's self-insurance oversight activities. Research has identified appropriate tools to advance recognition of self-insured employers whose finaincial condition does not warrant the privilege of self-insurance. Recommendations continue to be solicited for improving the administrative and regulatory strategies.

Guaranty Funds

HB 1 established three nonprofit, unincorporated guaranty associations to protect disabled workers and dependents in the event of a self-insured's insolvency. Separate guaranty funds now exist for individual self-insureds, group self-insureds, and coal employer self-insureds. Membership in a guaranty fund is mandatory. Durng the first quarter of 1997, all three guaranty associations held initial organizational meetings and adopted bylaws and plans of operation (KRS 342.906). During the second quarter of 1997, the Kentucky Group Self-Insurance Guaranty Fund began collecting the second $150,000 installment of the original annual assessment of $600,000. The Kentucky Individual Self-Insured Guaranty Fund and the Kentucky Coal Employers Self-InsuranceGuaranty Fund both initiated collection of original assessments.

TABLE 7: COVERAGE BRANCH ACTIVITY, FY 96-97

Category of Transactions	Activity
Noncoal	■ Logged 61,851 insurance transactions into DWC's database ● 11,447 new coverage ● 50,404 file updates
Coal	■ Loged 3,299 transactions into DWC's database ● 99 new coveage ● 3,200 file updates

Group Self-insurance

Group self-insurance is available to employers through 17 group self-insurance funds—some heterogenous and others homogeneous. With the increased market competition resulting in part from HB 1, several group self-insurance funds have considered converting to fully insured programs. HB 1 placed additional oversight requirements upon DWC relative to self-insured groups and provided DWC with free access to books and documents pertaining to the entity's self-insurance activities. KRS 342.347 mandates in-depth financial and actuarial examinations of each self-insurance group at least once every 4 years. Examinations of 3 self-insurance groups began on April 10, 1997. These examinations, although progressing at varying speeds, should be completed during the third quarter of 1997. The plan of implementation includes initial reliance upon certified financial examiners, consultants currently under contract with DOI, coupled with progressively greater involvement by DWC's self-insurance auditors.

Individual Self-insured Employers

As of June 30, 1997, 250 Kentucky companies and municipalities are certified to be self-insured. Since adoption of HB 1, 4 companies have been approved for self-insurance, while 7 companies, previously self-insured, have sought coverage in the voluntary market. HB 1 increased emphasis on monitoring and examining self-insured employer's financial condition (KRS 342.347).

Employee Leasing

KRS 342.615 was enacted in response to "mod laundering," a practice that some employee leasing companies use to artifically lower workers compensation insurance rates of participating employers. This practice understates the employer's true exposure and results in an inadequate rate for the risk. It also deprives the Workers Compensation Funding Commission of Special Fund assessment revenues. New law requires employee leasing companies to register with DWC and requires that the lessee's experience, modification factor be used for all leased employees. True temporary help services are exempted. 803 KAR 325:230E establishes the form and content of the registration. As of June 30, 1997, DWC has contacted 64 companies as part of the implementation of this initiative. Eighty-four percent of the companies have responded, and DWC is pursuing confirmation of status from the remainder. The summary in Table 8 on page 40 sets forth the complexion of "known" personnel services offering leased employees in Kentucky.

TABLE 8: PERSONNEL SERVICES OFFERING LEASED EMPLOYEES

Companies Contacted	No. of Respondents	Percent
Registered Employee Leasing Companies	38	59
Bonafide Temporary Agencies	10	16
Companies No Longer Operating	6	9
DWC Pursuing Response	10	16
Total Companies Contacted	64	100

Enforcement Branch

HB 1 requires DWC to be proactive to assure that Kentucky employers procure workers compensation coverage, that insurance carriers and self-insured employers promptly and reasonably address employees' benefit requests, and that carriers and self-insured employers comply with statutory and regulatory provisions with respect to data reporting and payment of medical bills. The Office of General Counsel spearheads all enforcement activity. Eight officers in the Enforcement Branch inspect Kentucky businesses to determine whether workers compensation coverage is in place.

The Enforcement Branch's activity for FY 96-97 is listed in Table 9. Employer citations for noncompliance have decreased from 246 in FY 95-96 to 130 in FY 96-97. The dollar amount of fines collected decreased from $216,506.16 in FY 95-96 to $130,063.86 in FY 96-97.

TABLE 9: ENFORCEMENT BRANCH ACTIVITY, FY 96-97

Activity	Number of/Dollar Amount of Fines Collected
Complaints	27
Routine Investigations	8,215
Citations for Noncompliance	130
Fines Collected	$130,063.86
Fines Collected (Carriers Cited for Untimely Filings)	$8,550.00

Unfair Claims Settlement Practices

KRS 342.267 grants the Commissioner authority to assess penalties ranging from $1,000 to $5,000 against insurance carriers or self-insureds who violate unfair claims settlement practices. If a pattern of violation exists, a self-insured's certificate can be revoked. Likewise, an insurance carrier's certificate to do business in Kentucky may be rescinded. This provision gives DWC the means to assure swift and fair claims resolution. Mechanisms were created within DWC for referral of alleged violations to the Commissioner, followed by appropriate investigation by legal staff. Workers compensation specialists were assigned unfair claims settlement practices complaints for initial investigation and attempted resolution. Seven claims of unfair claims settlement practices were deemed to merit investigation. Two investigations were closed, and penalties of $15,500 were assessed at show cause hearings before the Commissioner. Four show cause orders were issued under KRS 342.990 for violations of the statute's reporting provisions. Three open files were closed, and $2,000 in penalties were collected.

Employee Opt Outs

Predictions that HB 1 would generate a wave of employee opt outs from workers compensation coverage have not materialized. DWC finds a reduction in the incidence of Form 4 filings since the passage of HB 1. During 1996, 13,807 rejections were filed with DWC, with 8,367 filed during the first two quarters of 1996. In comparison, only 4,999 rejections were filed during the first two quarters of 1997.

DIVISION OF CLAIMS PROCESSING

The Division of Claims Processing is composed of two branches: Claims and Appeals.

Claims Branch

The Claims Branch has four sections: Claims Assignment, Agreements, Medical Fee, and Docket. The branch is responsible for receiving and processing applications for resolution of injury, occupational disease, hearing loss, and RIB. It also assigns claims to arbitrators and ALJs. In addition, the Claims Branch processes agreements as to compensation, attorney fee motions, and employee disability status reports. Branch employees also notify disabled workers of the statute of limitations for filing a claim, process medical fee dispute requests and chiropractor peer review filings, maintain and update the physicians' medical qualifications index, prepare weekly Frankfort motion dockets, process orders, compile

arbitrator and ALJ decisions, and maintain the database for all the above filings. Table 10 lists the Claims Branch activity for FY 96-97 by section.

Appeals Branch

The Appeals Branch is responsible for processing all documents and records upoon claims appealed from ALJ decisions to the Workers Compensation Board (WCB), the Kentucky Court of Appeals, and the Supreme Court of Kentucky. After the WCB is abolished, effective July 1, 2000, appeals from ALJ decisions will go directly to the Kentucky Court of Appeals.

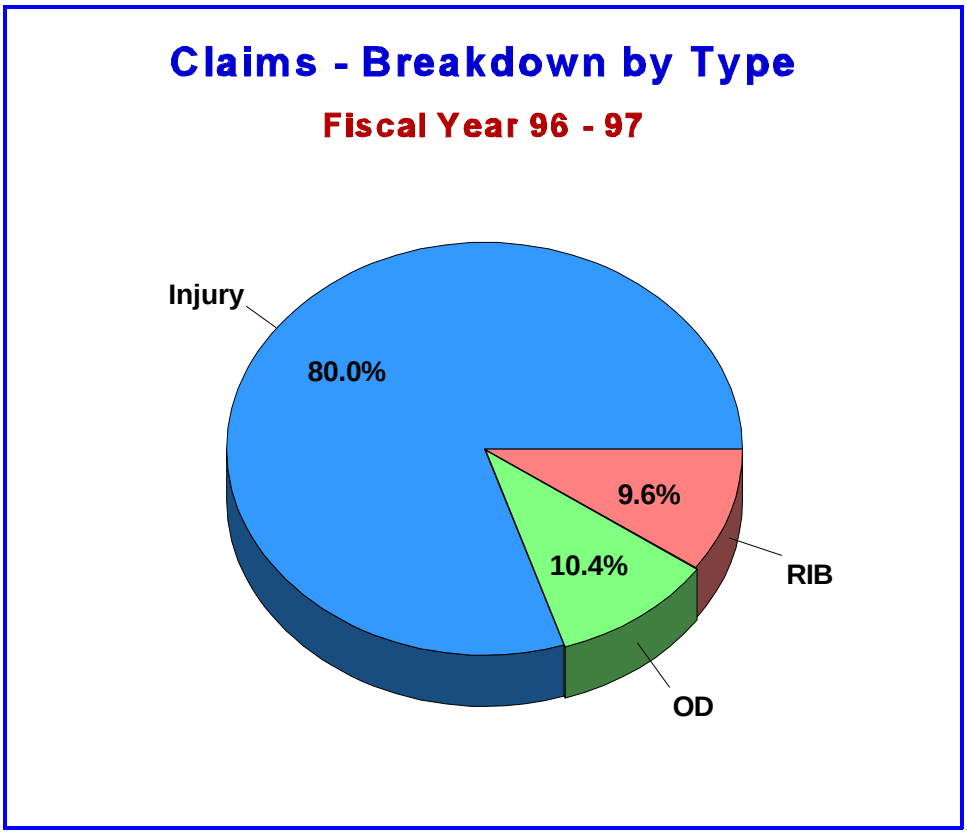
During FY 96-97 the WCB rendered 1,342 decisions. The number of cases appealed to the Court of Appeals during FY 96-97 was 352; 156 cases were appealed to the Supreme Court. (*See Figure 5, page 25.*)

TABLE 10: CLAIMS BRANCH ACTIVITY, FY 96-97

Section	Activity
Claims Assignment	■ Processed 8,575 claims[a] (*See Figure 8 for a breakdown*.) ■ Filed 432 motions to reopen ■ Scheduled 10,878 prehearing conferences ■ Assigned 1,262 claims to arbitrators ■ Scheduled 3,601 formal hearings
Agreements	■ Processed 11,411 paper employee disability status report forms (A total of 31,606 employee disability status reports were received. This number includes EDI transfer.) ■ Prepared 8,896 statute of limitation letters ■ Prepared 1,361 attorney fee motions ■ Processed 9,331 agreements and lump-sum settlements ■ Typed 4,413 orders
Medical Fee	■ Processed 2,601 motions that required orders ■ Processed 195 medical fee disputes
Docket	■ Prepared 47 dockets ■ Processed and typed 4,102 orders ■ Updated the awards database from ____ opinions

[a] Prior to January 1, 1997, hearing loss claims had been included in either injury or occupational disease/RIB, depending on whether the loss was due to traumatic or cumulative injury.

FIGURE 8: CLAIMS—BREAKDOWN BY TYPE



CLAIMS ACTIVITY

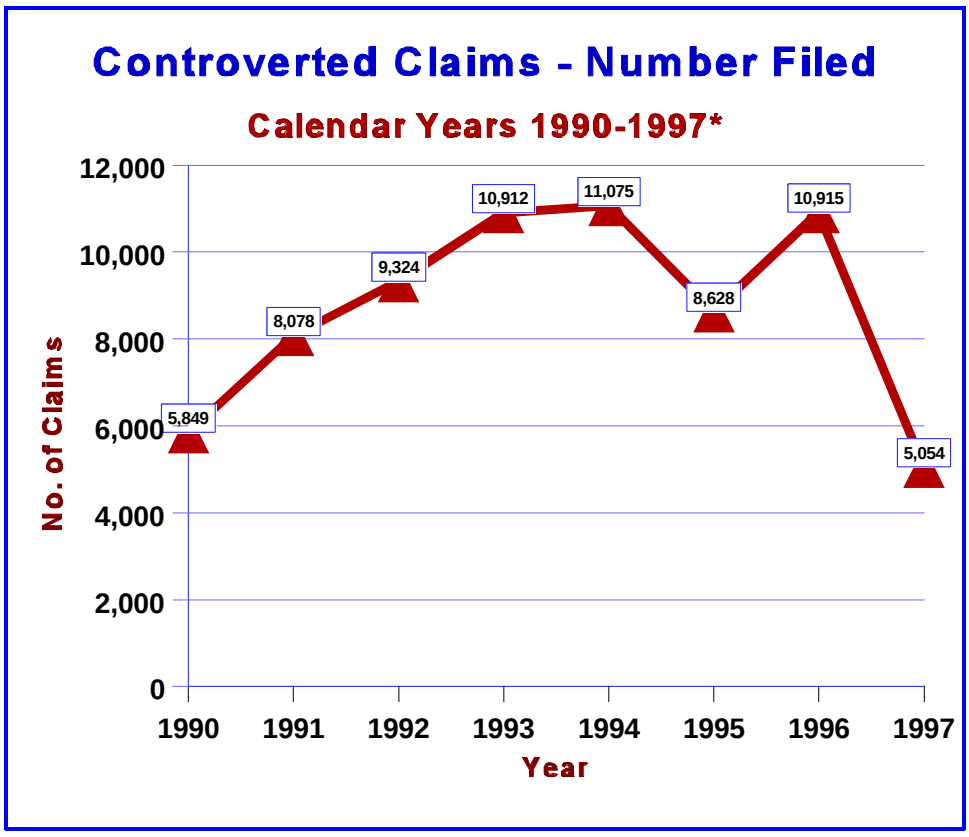
Since the early 90s, the volume of controverted claims filed has increased each year. The number of claims filed in 1990 was 5,849. Each year thereafter the flow increased to an all-time high of 11,075 claims filed in 1994. In 1995, the year after enactment of the workers compensation reform (HB 928), the number of claims filed (8,628) decreased markedly from the 1994 level. But, in 1996 the claim volume rose again by 21% (10,915), just slightly less than the number filed in 1994. During the first two quarters of 1997 (January through June), only 2,814 claims were filed. Multiplying this figure by 2 would yield a figure of 5,628 claims for 1997—nearly half the number of 1996 claims and even less than the number of 1990 claims. (*See Figure 9 on page 44.*)

Using the above figures, one might conclude that claim filings are on a downward trend. For 1997 this appears to be the case. However, there are many reasons why 1997 figures fall far below 1996 comparisons. First, the number of claims for 1996 contains approximately 1,700 “excess” claims that were filed during the month of December, when HB 1 was adopted. Second, the proactive, early intervention of agency personnel (workers compensation specialists and ombudsmen) to resolve disputes before

disagreements ripen to claims has certainly lowered claim volume. Third, provisions of HB 1 with respect to attorney fees and benefit structure have played some role in the current decline of claims filed. Lastly, claim filings have been historically lower during the months of May, June, and July. So, while the number of claims filed seems to be on a decline currently, DWC anticipates that claim volumes will rise in the third and fourth quarters of 1997.

FIGURE 9: CLAIMS FILED, 1990-1997

* Figures for 1997 are projected based on data through June 30, 1997.



COMMISSIONER'S YEAR-END ASSESSMENT

During Fiscal Year 96-97, the equivalent of a hundred year flood washed over the Commonwealth's workers compensation program. The waters of change have been swift and turbulent. Long held notions about what the workers compensation program should be, how it should perform, and who it should serve have been swept away by House Bill 1 adopted during the Extraordinary Session of the General Assembly in December 1996. In the aftermath of this far-reaching legislation, we find that the foundation principle remains in place- workers compensation exists to assure prompt payment of wage replacement benefits and delivery of necessary medical care to employees disabled in the course of employment. House Bill 1 emphasizes that the only bonafide program stakeholders are Kentucky's workforce and its employers. This reform was adopted in recognition that the Commonwealth's economy cannot prosper in an environment where workers compensation program costs are extreme and the process of accessing workers compensation benefits estranges the labor-management relationship.

HB1 diminishes the role of the Department of Workers Claims as the "workers compensation court" and channels resources to test the proposition that through conciliatory intervention by agency personnel, delivery of program benefits to injured employees can be expedited, costs for both employers and employees reduced, and the labor-management relationship preserved. Early returns suggest that these objectives are attainable.

During the fiscal year, DWC has met the challenge of becoming a more proactive administrative agency by bearing greater responsibility for:

- Monitoring the workers compensation system;
- Assuring statutory and regulatory compliance;
- Expediting claims closure;
- Delivering constituent services;
- Developing a data repository;
- Researching the issues; and,
- Reporting the trends.

Employees of this agency worked diligently to timely process claims under the "old" system while at the same time developed the mechanisms and procedures and hired and trained the personnel necessary to implement the new law. In terms of logistics alone, it has been a monumental task. Although, travel has been impeded in a number of areas by bumps, obstructions, and the recalcitrance of segments resisting change, progress has been steady upon the legislatively defined course.