

# COMMISSIONER'S QUARTERLY ACTIVITY REPORT OCTOBER 1 - DECEMBER 31, 1997

(Implementation of House Bill 1, Extraordinary Session, December 1996)

Copies to:

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Workers Compensation Advisory Council

Interested Citizens



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## Self-Insurance

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**Guaranty Funds.** HB 1 established three nonprofit, unincorporated guaranty associations to protect workers and their dependents in the event of insolvency of a self-insured. During 1997, all three guaranty associations conducted organizational meetings, adopted bylaws and plans of operation, and completed the collection of their initial assessments. As of the end of the fourth quarter, no insolvencies of self-insureds have occurred to impact the guarantee funds.

**Group Self-Insurance.** Group self-insurance is available to employers through 13 group self-insurance funds. With the increased market competition resulting from HB 1 several group self-insurance funds have converted to fully insured programs. On July 1, 1997, ABC Safety & Workers Comp. Fund of Kentucky completed the first conversion of a group self-insurance fund to a fully insured product since the passage of HB 1. By the end of the year three more self-insured groups completed successful conversions or were purchased by a fully insured carrier. The following summary provides the conversion activity during the fourth quarter of 1997.

### Conversion Activity

	Non-Municipal Self-Insured Groups	Municipal Self-Insured Groups
September 30, 1997	13	3
Completed Conversions	3	0
January 1, 1998	10	3

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 self-insurance activities of the entity. KRS 342.347 mandates in-depth financial and actuarial examinations of each self-insurance group at least once every four years. Examinations of three self-insurance groups (AIK, KACo, & The League of Cities) commenced on April 10, 1997, pursuant to orders of the Commissioner designating George Nichols III, Commissioner of the Department of Insurance [DOI] as his designee to conduct the examinations. As of the end of the fourth quarter, all three examinations have been completed. These examinations resulted in "Agreed Orders" between DWC and two of the three self-insured groups, under the terms of which the self-insurance groups will remedy material deficiencies noted in the examiners' reports. The most pervasive defect in the operations of AIK and KACo was the failure of the sponsoring organization to exercise appropriate management control. Monitoring of the workers compensation operations of AIK and KACo will remain a priority of DWC. As we proceed with audits of the remaining self-insured groups we anticipate continued participation

by Certified Financial Examiners, consultants currently under contract with DOI, coupled with progressively greater involvement by DWC's self-insurance auditors.

**Individual Self-Insured Employers.** Self-Insurance is a privilege available to the financially strongest employers in the Commonwealth. As of December 31, 1997 there were 234 Kentucky companies and municipalities qualified as self-insured. The following summary of 1997 self-insured employer activity is provided for review.

**Self-Insured Employer Activity**

	<b>Calendar Year 1997 Activity</b>
New Self-Insured Employers	5
Voluntarily Left Self-Insurance	18
Self-Insurance Authority Revoked	1
Self-Insured Company Mergers	1

HB 1 called for more stringent monitoring by DWC of the financial condition of self-insured employers. An evaluation of DWC's self-insurance activities resulted in the implementation of additional procedures to enhance oversight. A "watch list" for financially stressed self-insureds continues to be used requiring increased reporting and potentially increased surety requirements. "Watch list" companies represent 5.5% of the total self-insured employers in the Commonwealth.

**Watch List**

<b>Watch List Employers</b>	<b>Coal Self-Insured Employers</b>	<b>Non-Coal Self-Insured Employers</b>
Dec. 31, 1997	1	12

DWC recently initiated new procedures for submitting information utilized for the 1998 surety and simulated premium calculations upon which the Special Fund assessment is based. These changes allow both self-insured employers and DWC to operate more efficiently by utilizing the latest technology for data transmission and enables self-insured employers to more accurately project future Special Fund assessments, surety requirements, and associated expenses. In a continuing effort to assist self-insured employers in submitting complete and timely data, DWC will conduct informational seminars in January 1998, providing self-insured employers and industry representatives an opportunity to "walk through" the new reporting process.

**Employee Leasing.** KRS 342.615 was enacted in response to the practice of leasing companies utilizing a contractual relationship with an employer to lower workers compensation rates by a maneuver known as “mod laundering.” This practice also allowed some employers to reduce their Special Fund assessments. The 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 25:230 establishes the form and content of the registration. As of December 31, 1997, 87 companies have been contacted by DWC as part of the implementation of this initiative. Responses from 90% have been received and DWC is pursuing confirmation of status from the remainder. An analysis is provided below.

Registered Employee Leasing Companies	57
Bonafide Temporary Agencies	12
Companies No Longer Operating	9
DWC Pursuing Response	9
<b>Total Companies Contacted</b>	<b>87</b>

**Exclusive Remedy - 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 frequency of Form 4 filings since the passage of HB 1. During 1996, 13,807 rejections were filed with DWC, of which 2263 were filed in the fourth quarter. Only 1,344 employee rejections of workers compensation coverage were filed during the first two months of the fourth quarter of 1997. A complete analysis of rejection notices, investigations, and citations since the passage of HB 1 is shown below.

**Rejection Notices**

<b>Quarter</b>	<b>1996 Filings</b>	<b>1997 Filings</b>	<b>Ratio of 1997 to 1996</b>
<b>First</b>	4362	2654	61%
<b>Second</b>	4005	2345	59%
<b>Third</b>	3177	2140	67%
<b>Fourth</b>	2263	1344*	59%
<b>Total Annual</b>	13,807	8483	61%

\*Rejection notices filed through the end of November, 1997.

**Coverage Inspections.** DWC’s Enforcement Branch inspects places of business and analyzes various records in an attempt to assume that all employers subject to the Workers Compensation Act maintain insurance coverage as required by law.

## Coverage Inspections

Quarter	Employers In Compliance		Employers Noncompliance		Total Investigations	
	1996	1997	1996	1997	1996	1997
	First	2282	1551	397	262	2679
Second	2655	1983	449	313	3104	2296
Third	2103	2118	427	386	2530	2504
Fourth	1816	2120	357	299	2173	2419
<b>Total</b>	<b>8856</b>	<b>7772</b>	<b>1630</b>	<b>1260</b>	<b>10,486</b>	<b>9032</b>

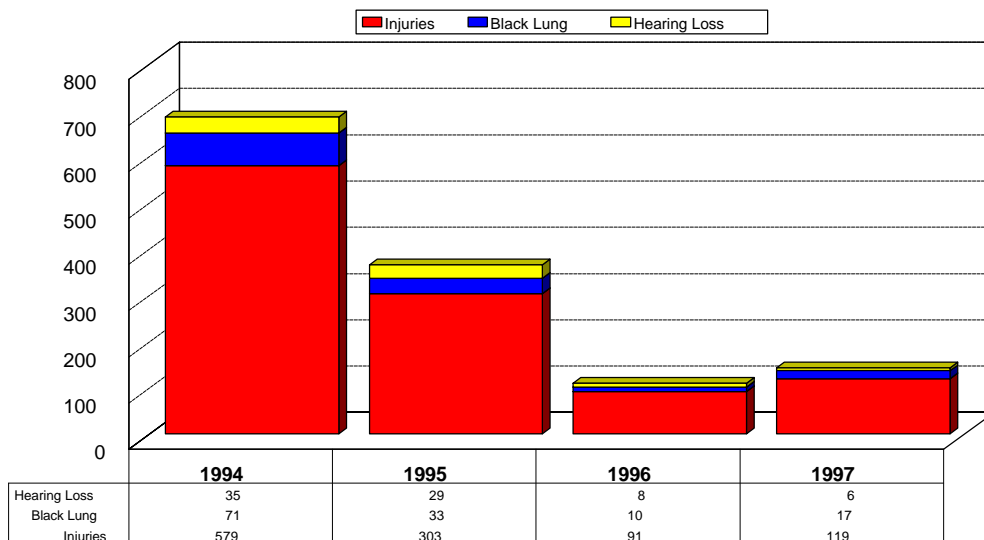
## Citations Against Uninsured Employers

Quarter	Employers Issued Citations		Collected Fines	
	1996	1997	1996	1997
	First	67	35	\$50,711.53
Second	62	39	\$76,641.39	\$28,545.00
Third	26	124	\$25,241.74	\$55,475.00
Fourth	34	70	\$42,245.22	\$73,834.34
<b>Total</b>	<b>189</b>	<b>268</b>	<b>\$194,839.88</b>	<b>\$196,577.98</b>

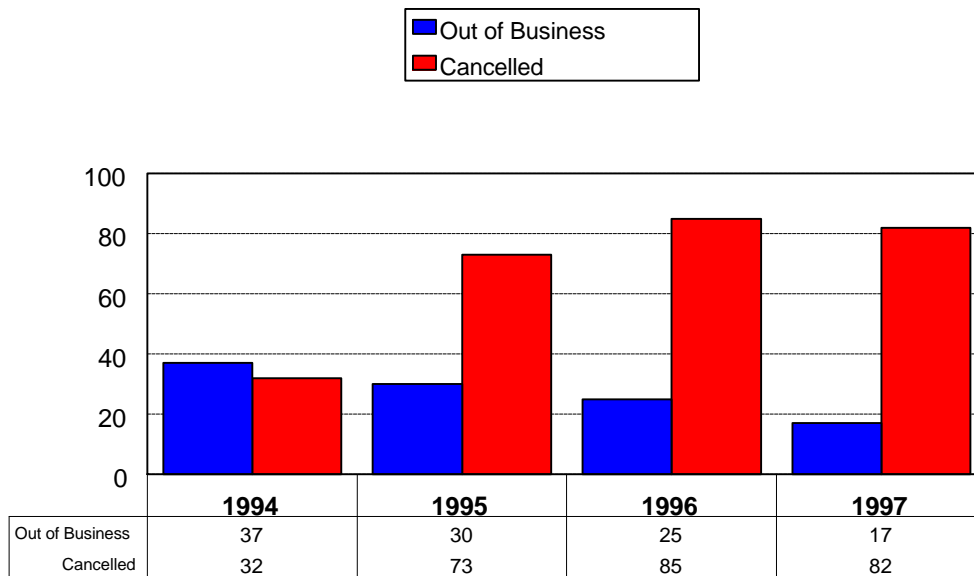
## Coal Mine Activity

In the months leading up to the December 1996 Special Session, the coal industry produced compelling data indicating a workers compensation cost crisis in that industry impacting the economy of the state and the tax revenues of state government. One main objective of HB 1 was to relieve this extraordinary burden. Since passage of HB 1, there has been a reduction in the number of out-of-business coal operations and mines upon which workers compensation coverage has been canceled, coupled with a slight increase in the number of claims filed by former employees of these operators. A detailed analysis is included in the following graphs.

### Claims on Canceled/Out of Business Coal Companies



# Annual Statistical Report of Coal Companies



Source: Department of Workers Claims, 1-22-98, F:\Shared\Reasearch\Qtr\_rpt

## Benchmarking Carrier Performance

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**Carrier Report Cards.** HB 1, Section 80 requires DWC to monitor the activities of carriers to improve carrier, self-insured, and group self-insured performance. To ensure this goal is reached, DWC benchmarking staff is publishing a series of report cards which focus on 11 key performance areas. The DWC report card program is based on data received through electronic data interchange (EDI). The first report cards have proven to be an effective educational tool, providing feedback to third-party administrators, carriers, and self-insureds as to their comparative level of performance. The report cards have also been useful in determining reasons for violations and in developing strategies to bring carriers into compliance. In addition, benchmarking has facilitated examination of the quality of both carrier and DWC data. This in turn has improved data integrity and operating systems.

**Report Card 1- *Timely Filing of Fatalities.*** The report card on *Timely Filing of Fatalities* marked the beginning of Phase I of DWC Report Card Program. Each carrier reporting a fatality between January 1 and June 30, 1997, received an individualized report in October. DWC recorded 49 work-related fatalities occurring during this time frame, represented by 29

carriers. Of the fatalities filed, 17 were in compliance; 32 were not. Delayed processing due to carrier coding errors was the reason for the majority of late filings.

Pursuant to KRS 342.038, every employer must keep a record of all injuries, fatal or otherwise, received by employees in the course of their employment. Within one week after the occurrence and knowledge of a fatality, a report must be rendered to DWC. An employer's insurance carrier or other party responsible for payment of workers' compensation benefits is responsible for reporting to DWC within one week of receiving notification of death. Those fatalities reported to DWC more than 15 days past the date the employer was notified were considered to be in violation.

Additional fatality benchmarking efforts have been ongoing in cooperation with OSHA and DWC's specialist division. Pursuant to 342.750(6) of HB 1, specialists are tracking accurate and timely payment of death benefits for the deceased's estate. With more than 60 work-related fatalities occurring since 12/12/96, specialists confirm timely payment of the \$25,000 death benefit made to each family. If the payment has not been received, further investigation is conducted by the specialists.

**Report Card 2- *Timely Filing of First Reports of Injury***. Each carrier and self-insured reporting an injury between January 1 and June 30, 1997, received an individualized Report Card in December. Pursuant to KRS 342.038, every employer must keep a record of all injuries received by employees in the course of their employment. Within one (1) week after the occurrence and knowledge of an injury to an employee causing an employee's absence from work for more than one day, a report must be rendered to DWC. An employer's insurance carrier or other party responsible for the payment of workers' compensation benefits is responsible for reporting to DWC within one (1) week of receiving notification of the injury. Those injuries reported to DWC more than 15 days past the date the employer was notified were considered to be in violation for purposes of this project. With the report cards, an EDI training questionnaire was enclosed. Report card feedback from the carriers' questionnaires has led DWC to plan EDI training seminars to work with carriers to improve performance on timely filing via EDI. In addition to meeting statutory requirements, the report cards provide positive feedback, constructive criticism, and an opportunity for discussion, all of which improve services to both the injured workers and insuring interests. Future report cards, scheduled for publication in 1998, will track accurate and timely payment of benefits and timely filing for proof and cancellation of coverage.

**National Standards.** As new indicators of carrier performance are added to the report cards, communication and feedback is essential to determine the validity of the data being passed. As this project progresses, new needs are discovered that are not currently included in the national standards. DWC is working with the International Association of Industrial Accident Boards and Commissions (IAIABC) to address specific requirements. The process of adding or changing data elements unique to Kentucky is proving to be a time-consuming endeavor.



**Show Cause Orders for Failure to File First Reports Electronically.** Currently, DWC has initiated enforcement actions to bring carriers and self-insureds into compliance with statutory filing requirements, KRS 342.038 and KRS 342.039, and 803 KAR 25:170.

Despite the implementation of the electronic filing requirements on January 1, 1996, several carriers and self-insureds failed to file requisite electronic reports. DWC issued warning letters to non-compliant entities and to those who failed to electronically file these reports despite warnings, DWC issued orders requiring the respondents to show cause why penalties should not be imposed.

To date, show cause orders have been filed against 16 carriers/self-insureds, representing failure to file 40 first reports of injury. Nine carriers and/or employers corrected their filings after receiving a November 1997 warning letter. DWC will become more aggressive in imposing penalties in the future as reporting entities have been afforded ample time to have their EDI systems fully operational.

## **Technical Services**

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**Electronic Data Interchange (EDI) Project: First Reports of Injury and Subsequent Reports of Injury.** During the fourth quarter of 1997, the total number of EDI trading partners increased from 153 to 158. The number of first reports of injuries (FROI) trading partners increased from 92 to 109. During the year, 43,123 FROI and 42,330 subsequent reports of injury (SROI) were received.

Although the EDI process includes edits for ensuring technical accuracy, a substantial part of the transmitted data currently lacks credibility. Deficiencies and inconsistencies have been identified through a consuming benchmarking effort. Open dialogue has been established with each trading partner to correct discrepancies. DWC has adopted a hands-on approach to educate trading partners in areas that require further attention. A survey was sent to numerous trading partners during the fourth quarter to ascertain what types of training each partner felt would be most beneficial. Several trading partners have requested and received instruction from DWC staff. As the training survey results are compiled, the agency will be in a better position to serve trading partners and ensure that benefits are delivered promptly and in the correct amount.

**EDI- Proof of Coverage (POC).** As ordered by regulation, effective January 1, 1998, all proof or termination of insurance coverage must be electronically filed with the National Council for Compensation Institute (NCCI), which has been designated to serve as DWC's data collection agent. The necessary POC programming on the AS/400 was completed in November and testing of POC data from NCCI began in earnest on December 1, 1997. With each new electronic endeavor, standardized formats, edits, and codes must be integrated with

DWC's current system. To ensure that the transition from a paper to an electronic environment is smooth, DWC is working in close communication with NCCI.

**Medical Bill Reporting.** Programming efforts continue at the agency level in order to accommodate the anticipated 1.3 million medical bills accumulated yearly by insurance carriers, individual self-insured, and self-insured groups. Each insurance carrier, and self-insured shall file electronically medical information set forth upon standardized uniform health claim forms.

## **Constituent Services**

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DWC's constituent services are provided through the Division of Ombudsmen and Workers Compensation Specialists. In addition to serving as an informational source, the specialists and ombudsmen continue to assist in informal conflict resolution and in the swift delivery of workers compensation benefits.

During the fourth quarter of 1997, 6,647 requests for assistance were made to the ombudsmen and specialists. The monthly average of 2,215 requests exceeds the 1,667 requests for assistance per month received by ombudsmen in the fourth quarter of 1996. The ombudsman and specialists received 27,671 requests in 1997, compared to 20,825 requests in 1996. A month-by-month summary of fourth quarter activity follows.

### **Requests for Assistance**

	<b>Ombudsmen</b>	<b>Specialists</b>	<b>Total</b>
<b>October</b>	1,429	1,243	2,672
<b>November</b>	1,161	796	1,957
<b>December</b>	1,022	996	2,018
<b>1997 Total</b>	16,820	10,851	27,671

### **Mediation Intervention\***

	<b>Number</b>	<b>Successful</b>	<b>Unsuccessful</b>	<b>Pending</b>
<b>October</b>	15	95	36	84
<b>November</b>	141	84	58	115
<b>December</b>	153	129	56	106
<b>1997 Total</b>	1,957	1,030	821	106

\**Mediation intervention* refers to dispute resolution attempted by the workers compensation

specialists. *Pending* indicates instances of intervention from current and prior months which are not completed.

**Number Claims Prepared\***

October	20
November	12
<u>December</u>	<u>9</u>
<b>1997</b>	<b>105</b>

\*Chief specialist and specialists only.

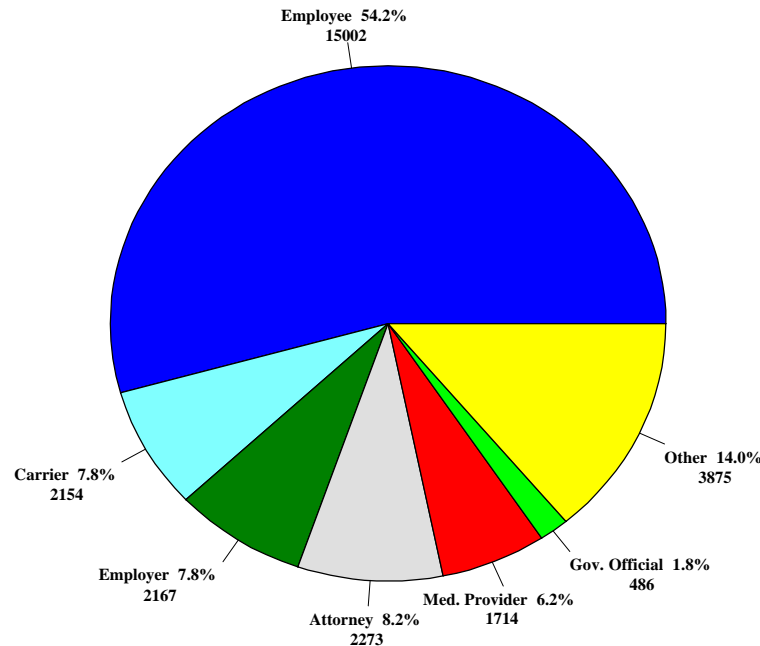
**Rehabilitation Intervention\***

	Number	Approved	Disapproved	Pending
<b>October</b>	77	43	12	32
<b>November</b>	78	49	13	40
<b>December</b>	44	22	3	39
<b>1997 Total</b>	329	254	36	39

\*Rehabilitation intervention involves prompt contact by specialists to employees and employers and insurance carriers when rehabilitation is ordered by arbitrators or ALJs. The specialists facilitate approval of evaluations and retraining recommendations. *Pending* indicates instances of intervention from current and prior months which are not completed.

The specialists and the ombudsmen have been effective in achieving several of the major objectives of HB 1. Specifically, by providing mediation, disputes and claims filings have been reduced. The specialists provided assistance in 41 claim filings during the fourth quarter and 105 during 1997. Mediation efforts of both the specialists and the ombudsmen have provided improved access to benefits.

## Sources of Constituent Services: Assistance Requests for 1997



NOTE: Workers Compensation Specialist services began 3/1/97  
 Source: Department of Workers Claims - 1/22/97  
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Carrier performance has been improved through mediation efforts as well as the Unfair Claims Settlement Practices (UCSP) investigations performed by the specialists. In this quarter, there were 19 new investigations assigned. Eight of these investigations were completed in addition to completion of 10 previously pending investigations. Forty-three UCSP investigations were performed during 1997, with 33 completed and reports forwarded to the Commissioner.

### Utilization Review

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After the compilation and publication of the *Status Report on Utilization Review and Medical Bill Audit in Non-Managed Care*, (discussed in detail in the third quarter report) DWC pursued several avenues in an effort to identify regulatory and system changes which would improve utilization review within the workers compensation setting. Improvement is a 'must' in order that this portion of the program not be an 'add on' claims adjustment cost without benefit.

Warning letters were sent to insurance carriers and self-insureds that had not reported to DWC regarding mandated utilization review and medical bill audit activities. Many responded appropriately identifying vendors with whom contractual relationships had been

made to provide these services. Carriers and self-insureds who are not in compliance will be

administratively penalized during the first quarter of 1998.

DWC tapped private-sector resources through the creation of a Utilization Review Advisory Committee. During round table discussions committee members (including physicians who deliver care to injured workers, adjusters, utilization review vendors, adjudicators, and administrators) presented various perspectives as to what utilization review should be and what it should accomplish. Amendment of the current regulatory scheme was discussed and new regulations were proposed.

Advisory committee members stated that current regulations requiring injured workers designate treating physicians have often been ineffective. In many instances carrier personnel did not follow through with attempts to secure employee designation of a physician for continuing medical care. While in other instances, employees failed to execute designation of physician forms.

Amendments also address issues discovered during field audits of carrier utilization review activity. Often medical services were approved on a necessity basis but denied because the underlying injury was deemed noncompensable by carrier personnel. The existing process resulted in confusion among medical providers who sought assurance of payment prior to performing medical services. Current amendments provide a single mechanism by which medical providers can receive an assurance of payment. This change should expedite the delivery of medical services to injured workers. The amendments also reduce the time between initiation of the utilization review process and communication of utilization review decisions to physicians and workers. Proffered amendments are intended to reduce claims resolution costs and provide a mechanism to agree on medical procedures in advance.

## **Managed Care**

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KRS 342.035 and 342.735 (effective 4/4/94) provide the statutory basis for several workers compensation medical cost containment measures. Regulatory standards for managed care plans were adopted on July 15, 1994 (803 KAR 25:110). The first plan was approved in October and by November 1994, some Kentucky workers were being treated under an approved plan. Percentile growth in coverage remained in single digits until the last quarter of 1995. At that time, 11.7% of Kentucky's work force was covered by approved managed care plans. At the end of 1996, approximately 40% of the total work force (1.65 million) was covered. The figure has remained relatively constant through 1997, with about 45% of the workforce covered as of the end of 1997. Previous reports as to a higher degree of managed care penetration were erroneous as one large plan overstated the number of covered workers. By the end of 1996, 25 managed care plans were approved and together afford coverage in 100 of the Commonwealth's 120 counties. However, all plans were not operational. To date, 33 plans have been approved by DWC, some affording coverage in all 120 counties.

During 1998 DWC intends to evaluate the impact of managed care through analysis of EDI

data, patient and physician satisfaction surveys, standardization of reporting requirements and uniform guidelines for submission of annual reports by qualified plans.

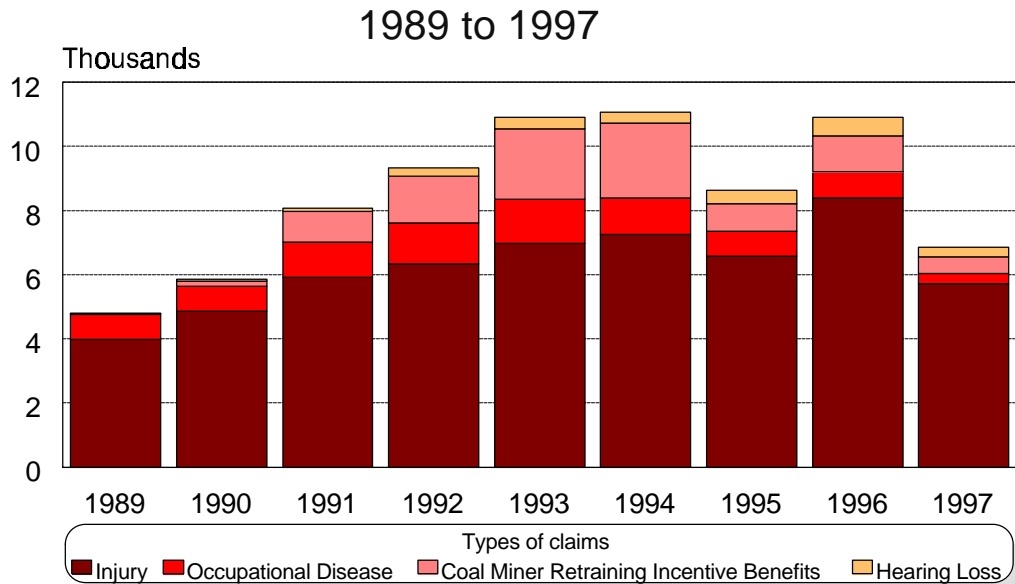
## Claims Activity

**History.** A prime component of DWC's mission is to expeditiously and equitably resolve disputes as to entitlement to workers compensation benefits. Disputes presented to DWC for resolution are referred to as "claims" although the term "claim" is often used in workers compensation more generically to encompass any workplace injury for which either indemnity or medical benefits are extended.

In 1995, the year following enactment of the reform embodied in House Bill 928 (effective April 4, 1994), the number of claims presented for adjudication (8,628) dropped markedly from 1994 levels (11,075). However, in 1996 the volume of filed claims rose by 24 percent to 10,915. 1996 claims growth appears to be an aberration created by the filing of more than 2,500 claims in December 1996, contemporaneous with the Special Session. Prior to December claim filings for 1996 were at a pace of about 9,200 for the year, only 4% above the 1995 level.

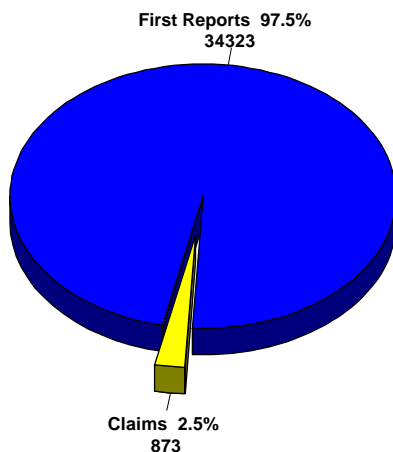
### Number of Claims Filed by Type

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INJURY	3988	4859	5907	6331	6965	7257	6571	8399	5727
O.D.	775	784	1112	1279	1391	1130	778	802	321
R.I.B.	23	158	948	1469	2197	2346	871	1125	508
HEARING LOSS	17	48	111	245	359	342	408	589	309
TOTAL	4803	5849	8078	9324	10912	11075	8628	10915	6865

## Percentage of First Reports that Became Claims Post House Bill 1



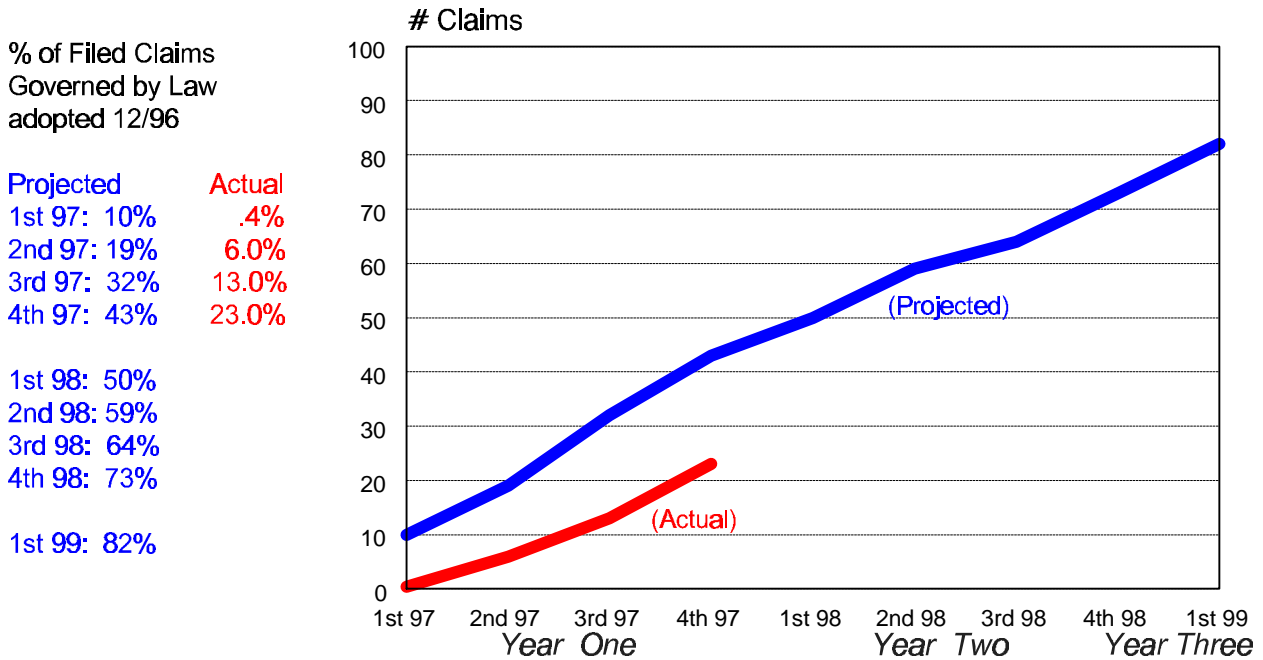
Injury dates on or after 12/12/96; total number of first reports filed 35,196.  
*Source:* Department of Workers Claims, 1-8-98

**1997 Activity.** During 1997, 6,865 claims were filed, an average of 572 per month. For the 4th Quarter of 1997, 1,099 claims were filed. Of these, 979 were injuries, 51 occupational disease, 33 retraining incentive benefits and 36 were hearing loss. Lower claims volume in 1997 is due in part to the extraordinarily high rate of filings in December 1996, before HB 1 was enacted. Ordinarily the bulk of these claims would have been filed over a period of six or so succeeding months.

**House Bill 1 Effects.** HB 1 contains a more narrow definition of an "injury" compensable under the Workers Compensation Act than prior law and adopts an "impairment model" for determination of the degree of a permanent partial disability. These provisions will result in fewer claims, however, the impact of these statutory changes cannot be measured until claims governed by the "new law" are presented for resolution.

## Trend Projection/Actual

### TIME LAPSE NEW LAW INJURIES TO CLAIMS



Methodology: Trend based upon claims filed for period between 12/12/94-3/31/97. Actual based on % of claims filed during calendar year '97 with injury dates GE 12/12/96.  
 Source: Kentucky Department of Workers Claims, 1/26/98. F:\shared\research\reform.prs

In instances of serious work-related injury, temporary total disability benefits typically are paid for several months while the employee is physically recovering from the injury. Several more months usually pass after the termination of temporary total benefits before a claim application is filed with DWC. The law in effect at the time of injury governs the amount of benefits due under the Workers Compensation Act for that injury, *Maggard v. International Harvester Co.*, Ky.App., 508 SW2d 777 (1974). Thus, the loss cost ramifications of HB 1 will not be fully known until a significant number of claims covered by that new law pass through the claims resolution process.

In order to develop a model to predict when claims arising from injuries occurring on and after December 12, 1996, will appear as a significant part of claims decided by arbitrators, DWC analyzed historical data. For purposes of comparing projections to actual claims, the database was queried for successive quarterly periods to determine the percentage of claims presented in which the injury or date of last exposure was December 12, 1994, or later. Assuming the same time lapses would occur between injurious occurrence and filed claims under HB 1, the previous graph projects when "new law" claims will be presented for adjudication. During the 4th quarter of 1997, 23% of the actual claims filed were governed



by the substantive provisions of HB 1. Trending of claims is desirable to monitor program and law performance.

## **1997 University Functional Impairment Evaluations**

HB 1 amended KRS 342.315 to require university medical evaluations in all occupational disease and hearing loss claims. It further provided that the findings and opinions of the designated university evaluators must be afforded “presumptive weight” by Arbitrators and ALJs. Referrals to the university medical school physicians for injury evaluation are optional and subject to the discretion of the arbitrators and ALJs.

HB 1 also 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. This provision was implemented with respect to coal workers pneumoconiosis and hearing loss claims during the first quarter of 1997 and with respect to injury and occupational disease evaluations in the third quarter of 1997.

By fourth quarter end, 905 workers were referred to the universities for evaluation, and 771 reports were received. Of those, 207 claimed disability due to occupational hearing loss, 538 due to coal workers pneumoconiosis and 26 disabilities in other categories of injury and occupational disease.

Of those workers asserting hearing loss, 177 of 207 (86%) were found to be hearing impaired to some degree. In 175 (99%) of those instances, the hearing loss was attributed in part to industrial noise exposure, and 68 (39%) were found to be both occupationally related and meet indemnity benefit thresholds (8% whole body impairment).

One hundred forty-four (27%) of the coal miners were found by x-ray interpretation to have coal workers pneumoconiosis at Category 1/0 or greater, while most of those, 89 (61%), had developed the condition at its earliest diagnosable stage - Category 1/0.

Of the 36 instances rated as Class I breathing impairment (25% of the positive claims), 10 were deemed to be occupationally related (30% of the Class I's). Of the 11 that were rated Class II breathing impairment (8% of positive claims), 3 were deemed to be occupationally related (27% of the Class II's), for a total of 10 occupationally related breathing impaired claims (7%) of the 144 positive x-ray interpretations for coal workers pneumoconiosis claims. The remaining 8 claims (6%) were positive claims, classified by x-ray at higher than the 1/0 level but without breathing impairment. A Class I impairment is marked by pulmonary function of <80% and >55% of predicted norms. A Class II impairment is less than 55% of predicted norms.

Goals over the next two years are to continue to fine tune the collection of data by implementing Access software program. This will allow a larger number of data elements to be collected and enhance interpretation of the results. Also, with other software that allows the loading of this information onto the mainframe and AS/400 computers, further querying will be possible.

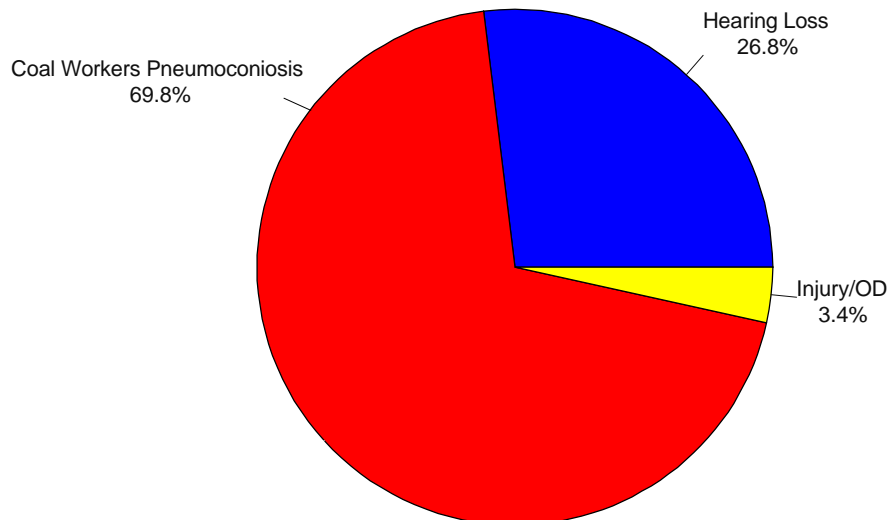
**University Evaluations** (Reports Filed through January 9, 1998)  
**Hearing Loss**

# Evaluations	% of Impairment	Loss Caused by Employment	Invalid/Unknown
207	0% = 26 1-7% = 104 8% & > = 73	Total = 175 8% & > = 63	4

**Coal Workers Pneumoconiosis (CWP)**

# Evaluations	X-ray Negative for CWP	Category of CWP	Respiratory Impairment	Occup. Related Breathing Impairment
538	394 (0/-0/1)	1/0 = 89 1/1 = 38 1/2 = 9 2 or > = 8	Class I = 36 Class II = 11	10

**Breakdown of University Evaluation Reports Received**



The total number of referrals for evaluations was 905, the total number of reports received was 771.  
 Source: Department of Workers Claims, 1-22-98, F:\Shared\Research\4qtr.prs

## Arbitrator Activity

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KRS 342.230(9) created a new, less formal, first-level of decision making - arbitration. DWC's eight arbitrators conduct proceedings necessary to the resolution of the claims, including presiding at benefit review conferences (BRCs). Arbitrators issue written determinations within 90 days after a claim has been assigned. Any party may appeal an arbitrator's decision to the ALJ level. Proceedings are "de novo" as ALJs are not bound by the arbitrator's decision. The impact of HB 1 on the arbitration process is beginning to be visible in third and fourth quarter activity.

### 1997 Arbitrator Activity By Quarter

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
<b># Claims Assigned</b>	N/A	1,373	1,330	1,320	3,917
<b>Benefit Review Conferences Held</b>	N/A	438	1,060	1,154	2,446
<b>Settlement Ratio</b>	N/A	23%	31%	35%	33%
<b>Determinations Past 90 Days</b>	N/A	N/A	117	176	293

In the fourth quarter of 1997 (October-December), 1081 claims were resolved before the arbitrators by settlement, benefit determination, transfer to an ALJ or voluntary dismissal by the claimant. Of the claims resolved, 35% were through settlement and 58% were by arbitrator determination.

The number of claims which have not been resolved within 90 days of assignment reflects the number of claims in that status for each month, e.g. there were 62 claims past 90 days in October. Some of those claims which are past 90 days were either placed in abeyance or the parties were granted additional proof time.

### Fourth Quarter Resolved Claims

Benefit Review Determinations	622.5
Consolidations	14
Transfers	52
Settled	377.5
Other	15
<b>Total Resolved Claims</b>	<b>1,081</b>

## Administrative Law Judge Activity

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During the fourth quarter of 1997, Administrative Law Judges (ALJs) completed opinions in the final claims assigned to them for first-level adjudication, and began rendering opinions in appeals from arbitrators. While some pre-HB 1 initial ALJ assigned cases remain in abeyance and will be subsequently decided by ALJs, the majority of the ALJ workload will consist of appeals from arbitrator benefit review determinations. ALJs conducted 354 informal conferences and 377 formal hearings, while rendering 650 opinions during the fourth quarter.

Personnel changes, with attendant caseload redistribution and staffing changes, occupied much of the fourth quarter. Three ALJs completed their terms and were not reappointed, while three others were reappointed by the Governor for four-year terms commencing on January 1, 1998. One new ALJ, John B. Coleman, was appointed to a four-year term commencing on January 1, 1998 and received initial training in December 1997.

All ALJs participated in a training session organized by the chief ALJ on topics including judicial ethics, evidentiary issues, interpretation of the *AMA Guides to the Evaluation of Permanent Impairment*, and HB 1 law changes. In addition, a two-day mediation course for all ALJs and arbitrators provided important dispute resolution skills.

## Workers Compensation Board

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Since 1994, the three-member Workers Compensation Board (WCB) has been charged exclusively with the responsibility of deciding appeals from Administrative Law Judge (ALJ) decisions. Under HB 1, the WCB will be abolished as of July 1, 2000. After that date, all appeals from ALJ decisions will be heard directly by the Kentucky Court of Appeals. WCB member Larry Greathouse was reappointed to another term beginning January, 1998. The WCB is in full compliance with the 1994 legislative mandate that it issue opinions within 60 days of the filing of the last brief. Eighty appealed claims are currently ripe for decision. Thirty-one claims are being held in abeyance awaiting precedent setting decisions upon cases involving the same issue now pending before the Court of Appeals or Supreme Court. There are nearly 431 Board decisions on appeal to the Court of Appeals and the Supreme Court.

### Claims Appealed to the WCB in 1997

1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1997 Totals
255	286	247	285	1073

### Claims Disposed of by the WCB in 1997

1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1997 Totals
347	358	326	343	1374

### Cases Held in Abeyance (HIB)

Code	# HIB	Issue
00	13	Miscellaneous
19	0	(11-13-95) Joinder of KU in South East cases <i>UEF v. Spangler</i> (95-CA-2173)(92-23490) (was <i>UEF v Bentley</i> )
38	4	(8-2-96) Impact of 1994 amendment to 342.120(8)(b) relative to <i>Newberg v. Weaver</i> (96-SC-459)(91-26072)
39	0	(10-11-96) Does Sextet apply when part of second disability is preexisting active <i>Ky. Stone v. Brumley</i> (89-30555)
41	2	(10-18-96) Psychiatric apportionment based on physical injury apportionment <i>Spurlin v Coleman</i> (94-42267)
43	1	(12-16-96) Is 45 day rule of 342.020 insufficient to deny payment of claimants medical bills <i>Parsons v. The Shoe Assembly</i> (89-30418)
44	1	(2-21-97) Showing of progression necessary to reopen award under 342.732(1)(b) <i>Lemarr v. New Hope Co. of Kentucky, Inc.</i> (93-33551)
45	1	(2-28-97) Does payment of TTD benefits under KY. law extend the time for filing an extra territorial claim <i>Mercer Transportation s. Butler</i> (93-29262)
46	1	(2-28-97) X-ray reading necessary to reopen RIB under 342.125(2)(a) <i>Wooten v. AAA Mine Services &amp; Special Fund</i> (91-16917)
52	1	(6-20-97) Does <i>Cook v. Paducah Recapping</i> apply under KRS 342.730(1)(c) <i>Gayheart v. Cyprus Mountain Coals Corp.</i> (95-16772 et al.)
53	3	(7-18-97) Whether an award for functional impairment without occupational disability can be made under 342.730 (1)(b) as amended <i>Special Fund v. Larry Johnson</i> (95-36132)
55	1	(9-2-97) Whether ALJ may award a RIB when either the FVC or FEV-1 is below 80% <i>Special Fund v. Larry Menser</i> (94-34234)
56	1	(10-17-97) Whether AK Steel & Armco Steel are considered separate entities for purposes of apportionment <i>Armco Steel vs. Hayes</i> 96-CA-3175 (94-08859)
57	1	(12-8-97) Retroactive application & definition of the presumptive weight to be provided a medical school physician's examination as provided in KRS 342.315(2) pending WCB decision in <i>Fox v Magic Coal</i> (97-00369) & <i>Hawes v Peabody Coal</i> (96-08675)
58	1	(12-19-97) Length of benefits on reopening, when original award was a total <i>Special Fund v. Maurice Little</i> (84-31052) & <i>Special Fund v. Kermit Glenn Morrison</i> (86-07645)
<b>Total</b>	31	

## Fiscal

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**Expenditures and Budget.** HB 1 directed DWC to offer new 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 budget for FY 97-98 from \$10,614,200 to \$15,182,500 and raised the personnel cap from 204 to 272 employees. For the second quarter of this fiscal year (ending Dec. 31, 1997), DWC's actual expenditures were \$6,079,068. Thus, with the lapse of 50% of the fiscal year, the agency has spent only 40% of its budget.

### Budget Details

97-98 Budget	Pre HB1	Post HB1	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

### 1997-98 Actual Expenditure as of Close of Business 12/31/97

	Budgeted	Spent	Balance	%Spent
Personnel	\$11,489,700	\$4,952,586	\$6,537,114	43.1%
Operating	\$ 3,530,800	\$1,120,194	2,410,606	31.7%
Capital Equip.	<u>\$ 162,000</u>	<u>\$ 6,288</u>	<u>\$ 155,712</u>	<u>3.9%</u>
Totals	\$15,182,500	\$6,079,068	\$9,103,432	40%

The total permanent full-time personnel "compliment" now stands at 230. Forty-two vacancies exist. Efforts are underway to fill these slots when necessary as quickly as possible.

## ***From the desk of the Commissioner:***

### **Fourth Quarterly Report Summary of House Bill 1**

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Some thirteen months after adoption of the 1996 Workers Compensation Reform (House Bill 1, Extraordinary Session 1996) the Department of Workers Claims reports that all mechanisms necessary to implementation of the new law are operational. In several areas, new systems are not operating as smoothly as hoped. For example, tremendous advances have been made in information technology; yet credibility and utility of data are at issue.

The ultimate question with respect to the adoption of House Bill 1 has two prongs. Is the workers compensation program more affordable for employers? And does it more expeditiously and equitably meet the needs of the Commonwealth's injured workers? Stated differently, has this piece of legislation as implemented improved the condition of the program's legitimate stakeholders?

Concrete evidence that House Bill 1 is meeting the intended purposes of shrinking the monetary size of the program and the cost paid by Kentucky employers is depicted in Appendix 1. Premiums paid by employers purchasing workers compensation coverage from carriers and self-insurance groups were approximately 766 million dollars in 1996. Based upon the first three quarters of 1997, the same market segment will have paid 630 million dollars for coverage. Even though annual payroll growth has been 5.5% for insured employers, the cost of securing coverage has been reduced by 136 million dollars (18%) in a single year. Given hot market competition and reductions contained in National Council of Compensation Insurance (NCCI) loss cost filings with the Department of Insurance, it is virtually certain that the reduction in employer cost for 1997 will ultimately prove to be even greater when fourth quarter figures are available. Note that simulated premium for self-insured employers has not been included in this analysis because provisions of House Bill 1 changed the formula by which simulated premium is calculated and increased simulated premium but not the losses self-insureds will pay.

Evidence as to how injured workers have fared under the new law is less objective. In fact, so few claims governed by new law have cleared the system that meaningful data analysis is impossible. Certainly, fewer workers are filing claims for benefits. We surmise that this is due in part to successful conciliation interventions by personnel within the Division of Workers Compensation Specialists and Ombudsmen. Through mediation efforts involving employees and carriers, benefits are being extended promptly to workers during temporary total disability. When disputes arise, they are often resolved more quickly and at less cost to the employee through the program's new arbitration system. Payments for temporary and permanent total disability have not been altered by the new law, although maximum disability payments have increased due to a higher state average weekly wage and salary growth. The data is both too meager and too immature to ascertain benefit levels typically delivered under the new grid system applicable to permanent partial disability.

During 1997 the Department has accomplished in large measure what it was instructed to do under House Bill 1. Major objectives that have been reached include:

- Created Guaranty Funds
- Strengthened Self-Insurance Oversight
- Developed Arbitration System
- Enhanced Constituent Services
- Technologically Advanced Information System
- Heightened Carrier/Employer Responsibility
- Expedited Dispute Resolution
- Improved Monitoring and Reporting

The challenge of implementing this far reaching legislation has been great. Yet we believe the Department of Workers Claims efforts have measured up to the task.

Respectfully submitted,

Walter W. Turner, Commissioner  
Department of Workers Claims