

**IN THE SUPREME COURT OF FLORIDA**

MARVIN CASTELLANOS,	)	Case No.: SC13-2082
	)	
Petitioner,	)	Lower Tribunal: 1D12-3639
	)	
v.	)	OJCC No.: 09-027890-GCC
	)	
NEXT DOOR COMPANY and	)	
AMERISURE INSURANCE CO.,	)	
	)	
Respondents.	)	
_____	)	

**APPENDIX TO  
JOINT BRIEF OF ASSOCIATED INDUSTRIES OF FLORIDA,  
INC.; ASSOCIATED BUILDERS & CONTRACTORS; FLORIDA  
ELECTRIC COOPERATIVES ASSOCIATION; FLORIDA RETAIL  
FEDERATION; FLORIDA ROOFING, SHEET METAL AND  
AIR CONDITIONING CONTRACTORS ASSOCIATION; FLORIDA  
UNITED BUSINESSES ASSOCIATION; and PUBLIX SUPERMARKETS  
AS AMICI CURIAE IN SUPPORT OF THE RESPONDENTS**

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**Counsel for Amici Curiae**

## **APPENDIX INDEX**

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<b>EXHIBIT A</b>	<b>Workers' Compensation Laws as of January 1, 2014</b>
<b>EXHIBIT B</b>	<b>2012-2013 Annual Report of the OJCC</b>
<b>EXHIBIT C</b>	<b>NCCI 2013 Florida State Advisory Forum</b>

# **EXHIBIT A**



# **WORKERS' COMPENSATION LAWS**

## **AS OF JANUARY 1, 2014**

Originally created by the U.S. Department of Labor, this version is produced through a joint effort by the International Association of Industrial Accident Boards and Commissions (IAIABC) and the Workers Compensation Research Institute (WCRI)

WC-14-28

April 2014

WORKERS COMPENSATION RESEARCH INSTITUTE  
CAMBRIDGE, MASSACHUSETTS



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Tables Only

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## ACKNOWLEDGMENTS

Many people contributed to making this report possible and to making it better than it otherwise would have been. I am grateful to all of them. The U.S. Department of Labor's Office of Workers' Compensation Programs pioneered the compilation of regulatory information annually in the original publication entitled *State Worker's Compensation Laws*.

The data are at the foundation for this report and could not have been collected without the workers' compensation experts in 59 jurisdictions who contributed to this project. We extend our deep appreciation to the staff at all of the public agencies who provided comments and a detailed review of these tables.

The International Association of Industrial Accident Boards & Commissions and members of WCRI staff also contributed. Heather Lore and Jennifer Wolf Horejsh facilitated completion of the process. Dr. Richard Victor's support allowed this valuable public information project to continue. Lastly, I am deeply appreciative of the support and assistance of Callison Lawson and Sarah Solorzano, who attended to all the details as project assistants.

Of course, any errors or omissions that remain in the report are the responsibility of the author.

Ramona P. Tanabe  
Cambridge, Massachusetts  
April 2014

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## INTRODUCTION

The following tables are intended to represent workers' compensation regulations and benefit levels in effect as of **January 1, 2014** (unless a footnote indicates otherwise) in the United States and in the Canadian jurisdictions that chose to participate in this project.

This survey builds on many years of valuable work by the U.S. Department of Labor (USDOL). The USDOL pioneered the use of a standard set of tables to promote uniformity in responses across states and consistency in reports from year to year. For budgetary reasons, the USDOL suspended their production of their tables after regulations that went into effect as of January 1, 2006. Based on popular demand for the continuation of these tables, the Workers Compensation Research Institute (WCRI) and the International Association of Industrial Accident Boards and Commissions (IAIABC), for a fifth edition, have agreed to work as partners in the continuation of this important resource. The WCRI funded the principle effort of survey administration and the publication of responses into useful tables. The IAIABC assisted in obtaining cooperation from jurisdictions.

### CAUTION TO USERS

We recognize that both the jurisdictions responding to this survey and users of the results want the characterizations of laws to be accurate and fairly stated. Yet, it is inherently difficult to summarize complex laws with complete accuracy for all applications of that law. We have tried to strike a balance between the utility of summary data and the complexity of application of the law.

Several important caveats are important for users regarding weaknesses in the survey data. Many of our disclaimers are well known to seasoned workers' compensation researchers but are worth emphasizing here for those less familiar with workers' compensation, the survey, and the current survey methodology.

In Canada and the United States, workers' compensation is entirely under the control of sub-national legislative bodies and administrative agencies. For this reason, jurisdictions tend to have individualistic approaches to administering workers' compensation and often use the same legal constructs but apply different terms to describe them. For example, permanent partial disability seeks to provide a benefit to an injured worker for future wage losses resulting from an occupational occurrence. States use a variety of structures to attempt to accomplish this but sometimes do not use the term, *permanent partial disability*, to describe them.

Workers' compensation is inherently complex, both in terms of coverage and of benefits. It is easy to misunderstand subtle differences between jurisdictional laws and regulations. The differences in law are expanded by agency interpretive bulletins and traditional practices. Additionally, case law is continually redefining interpretations and application, and the laws are riddled with exceptions to the general rules. For example, the law may nominally call for universal coverage of all businesses with three or more employees, yet there could be a dozen exemptions from the universal coverage. The exemptions for on-farm employment, domestic workers, and sole proprietors are notoriously inconsistent from jurisdiction to jurisdiction.

The wording of the survey and table headings was also open to misinterpretation and inconsistency of responses. Even within the same agency, different people might respond to the survey with different answers. Given all the complexities cited above, some inconsistency is inevitable. So an additional level of quality

assurance was added to this project to attempt to gain as much accuracy and consistency as possible.

Notwithstanding these limitations, the 2014 tables provide a valuable tool for researching and understanding workers' compensation system differences. It is best used to understand macro-level differences and general tendencies across jurisdictions. Examples of questions well suited for this survey data include the following:

- How many states/provinces allow individual or group self insurance?
- How do the maximum and minimum payments for temporary total and permanent total disability benefits vary?
- How many states cover mental stress claims, hearing loss, and cumulative trauma?
- How many jurisdictions allow the worker to choose the treating physician, and how many allow the employer to do so?

Employer coverage responsibilities, coverage and benefit determinations, and other compliance issues must be based on a careful review of the laws in each jurisdiction. To illustrate, assume two jurisdictions each had three-day waiting periods and paid 66 and 2/3 percent of lost wages for temporary total disability benefits. The actual indemnity benefit payable may be complicated by exceptions and qualifications:

- When the first day of disability begins
- How intermittent periods of disability are treated
- Compensation that is included in determining the wage
- Period(s) over which the average wage is calculated
- Caps on wages earned by the injured worker
- Differences in the calculation of the compensation rate
- Reductions due to safety violations or additions due to the worker's age or the fact he or she may be an apprentice
- Allowable attorney fees
- Government and/or pension offsets

This same need to consider the facts surrounding particular applications of the law is true of most areas of workers' compensation. This is why we have encouraged jurisdictions to footnote their responses. In many cases the footnotes provide valuable insights and should be closely examined by the serious user of these tables. None of the information should be considered legal advice, and anyone wanting to understand specific details about any particular jurisdiction should consult the actual statute and rules or seek legal counsel.

## **DATA COLLECTION AND QUALITY ASSURANCE PROCESS**

The tables were populated with information requested of jurisdictions in November of 2013. The fields asked were similar to those for the 2012 edition and allowed jurisdictions to see their earlier response so that they could either update the response for 2014 or approve it as still valid.

The information gathered from the participating jurisdictions was input into the resulting tables. Every attempt was made to enter the actual information given by the jurisdiction into the tables accurately. However, in some cases, the information given was a statutory cite. In those instances, the information was summarized in the table or notation rather than citing the entire statute. This could result in an interpretation

other than what was intended by a thorough reading of the statutory language.

These resulting tables were returned to each jurisdiction for final sign-off to ensure the data contained were accurate and current as displayed.

Finally, we ask that each user also become part of the continuous improvement process. If you find any information within these tables that is incorrect, please send the correct information to us with the statutory cites, rule number, or case law cite that will allow us to correct the information in subsequent publications. We would also appreciate your suggestions about extensions or modifications to the survey scope. Questions and suggestions should be sent to [clawson@wcrinet.org](mailto:clawson@wcrinet.org).

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TABLE 14. ADVOCATE AND ATTORNEY FEE PROVISIONS UNDER WORKERS' COMPENSATION STATUTES AS OF JANUARY 1, 2014

Indicate whether the agency provides ombudspeople or other worker and/or employer advocates, the basis of attorney fee calculations, who determine attorney fees, whether there are additional fees allowed and under what circumstances, whether laypersons can represent claimants, what the source of payment for a worker's attorney is, and whether defense attorney fees are regulated.

Jurisdiction	Laypersons Can Represent Workers	Public Advocates Or Ombudspeople Provided By Agency		Fees For Worker's Attorney Established By	Worker's Attorney Fee Formula	Formula For Medical-Only Disputes	Source Of Payments To Worker's Attorney	Worker's Attorney Fee Must Be Approved By
		For Employee	For Employer					
Alabama	No	No	No	Statutory formula	15% of award	No	15% of award	None
Alaska	Yes	No	No	Statutory & administrative rule; fees must be approved by adjudicative body	25% of first \$1,000 and 10% of remainder; or if actual fees are awarded if requested by attorney	No	Employer/insurer	Alaska Workers Compensation Board
Arizona	No	No	No	The Commission may set attorney fees only if a petition is filed under A.R.S. 23-1071	If attorney fees are awarded under A.R.S. 23-1071, the fees shall not be more than 25% up to 10 years from the date of the award. In cases involving solely loss of earning capacity, the maximum shall be 25% up to 3 years from the date of the final award; when the payment of the award to the claimant is made in installments, or in other than a lump-sum manner, in no event may an amount in excess of 25% of any one such installment payment be withheld for the attorney's fees	No	Paid out of worker's benefits	None unless either party requests they be approved by the Commission
Arkansas	Yes	No	No	Statutory formula, determined in each case by the judge or commissioner	25% of indemnity awarded	No fee is allowed for only medical benefits	1/2 comes from award, 1/2 from employer	Arkansas Workers' Compensation Commission
California	Yes, as long as he or she is not a certified attorney	Neutral information and assistance at each office	Neutral information and assistance at each office	Administrative rule	Based on time spent, results obtained, responsibility assumed, and care exercised per California Code of Regulation 10775	No	Costs out of an award but lay representatives cannot be paid	Workers' Compensation Appeals Board
Colorado	Yes	No	No	Statutory up to 20% excess at the Director's discretion	A fee in excess of 20% of the benefits awarded is to be presumed unreasonable, but the Director can make exceptions for cases that have been appealed	Reasonable fees calculated on a per hour basis, contingent fee if approved by Director	Paid out of the worker's benefits	None
Connecticut	Yes, during informal hearings	No	No	Administrative rule	20% of total award	No	Paid out of the worker's benefits	Workers' Compensation Commissioner hearing the case
Delaware	No	Yes	No	Statutory formula, determined in each case by the judge, commissioner, and magistrates by agreement of the parties	The Board can award as costs 10 times the state AWW	No	Employer/insurer and employee benefits	The Industrial Accident Board; fees must be approved only as part of an award for contribution
District of Columbia	No	No	No	Statute	Not to exceed 20% of benefits secured	No	Paid out of the worker's benefits, but there are exceptions	

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Information on whether the agency provides ombudsmen or other worker and/or employer advocates, the basis of attorney fee calculations, who determines attorney fees, whether there are additional fees after an appeal, and under what circumstances, whether injured workers can represent claimants by what the source of payment for a worker's attorney fee, and whether defense attorney fees are regulated.

Jurisdiction	Laypersons Can Represent Workers	Public Advocates Or Ombudsmen Provided by Agency		Fees For Worker's Attorney Established By	Worker's Attorney Fee Formula	Formula For Medical-Only Disputes	Source Of Payments To Worker's Attorney	Worker's Attorney Fee Must Be Approved By
		For Employees	For Employer					
Florida	Ombudsman can intervene on injured worker's behalf but cannot represent the injured worker before the judge	Ombudsman	No	Statutory formula	20% of first \$5,000 of the amount of the benefits secured; 15% of the next \$5,000 of the amount of the benefits secured; 10% of the remaining amount of the benefits secured to be provided during first 10 years after the date the claim is filed; 5% of the benefits secured after 10 years	\$1,500 once per accident based on hourly rate of \$750	Employer, in addition to employee's benefits/the employee, unless the employee prevails before a judge, then it would be the employer/carrier	The Office of Judges of Compensation Claims
Georgia	No	No	No	Statutory formula	Fees over \$100 approved by the Board; maximum fee is 25% of income benefits	No fees unless medical intervention denied	Employee or employer/insurer if unreasonable defense	If over \$100.00 approved by the Board
Idaho	No	No	No	Administrative rule	None	No	Is a lien upon compensation to be paid to employee	Disability Compensation Division
Idaho	No	No	No	Administrative rule	25% of benefits secured by the attorney without hearing, 30% with hearing	No	A set percentage of the benefits paid to the employee that were secured by the attorney, or if employer/surety actions are found unreasonable, employee's attorney fees are paid by employer/surety as awarded by the Commission	Subject to approval by the Commission
Illinois	No	No	No	Statutory formula; additional fees by order of Commission	20% of disputed amount up to 364 weeks of benefits at permanent total disability rate	No	Out of award; employer may be ordered to pay fee as penalty	IMCC
Indiana	No	No	No	Statutory formula	20% of first \$50,000; 15% of an excess of \$50,000	No	Comes out of employee's recovery	None
Iowa	No	No	No	Agreement of parties	None	No	From award of benefits or percentage of settlement	None
Kansas	No	Yes	Yes	Statutory formula	25% of the amount of compensation recovered and paid	No	Comes out of the employee's award	Department of Labor, Division of Workers Compensation administrative law judge
Kentucky	No	No	No	Statutory	20% of first \$25,000 of the income benefits recovered in an award or settlement; 15% next \$10,000; 5% remainder with \$12,000 max.	N/A	Income benefits recovered on behalf of the worker by way of award or settlement	Administrative law judge with Department of Workers Claims
Louisiana	No	Yes (very limited)	Yes (very limited)	Statutory formula	20% of award	No	Paid out of the employee's benefits	Louisiana Office of Workers' Compensation
Maine	Yes	Yes	No	Agreement of parties and subject to limits and appealable to a hearing officer	May not exceed 30% of award after deducting expenses	No	Deducted from employee's award	None
Maryland	No	No	No	Administrative rule; determined in each case by the judge, commissioner, magistrate	For PRD, up to 20% of the first 75 weeks awarded; up to 15% of the amount due for the next 120 weeks; and up to 10% of the amount due in excess of 195 weeks (see COMAR 14.09.01.25)	Absent exceptional circumstances, no fee allowed	Injured worker's weekly benefit is reduced by the amount of the fee	Workers' Compensation Commission

TABLE 14. ADVOCATE AND ATTORNEY FEE PROVISIONS UNDER WORKERS' COMPENSATION STATUTES AS OF JANUARY 1, 2014

Information on whether the agency provides independent or other worker and/or employer advice, the basis of attorney fee calculations, who determines attorney fees, whether there are additional fees allowed and under what circumstances, whether laypersons can represent claimants, what the source of payments is, whether a worker's attorney fee, and whether defense attorney fees are regulated.

Jurisdiction	Laypersons Can Represent Workers	Public Advocates Or Ombudspersons Provided By Agency		Fees For Worker's Attorney Established By	Worker's Attorney Fee Formula	Formula For Medical-Only Disputes	Source Of Payments To Worker's Attorney	Worker's Attorney Fee Must Be Approved By
		For Employee	For Employer					
Arkansas	No	No	No	Statutory formula, percentage of lump-sum agreement	20% of lump-sum settlement or award ordered by administrative judge	N/A	Attorneys are entitled to fees if an administrative judge awards benefits in a conference order or a hearing decision; a percentage is taken out of any lump-sum settlement (20% if liability is established, 15% if not)	Department of Industrial Accidents, but rates are set by statute (see M.G.L. c. 152, secs. 12A and 13A)
Massachusetts	Yes	No	No	Statutory formula and by administrative rule	Reasonable expenses and then a fee no more than 30% for a redemption or 15% of the first \$75,000 and 10% thereafter (see 408.44 for details)	No	Paid out of benefits awarded to employee	Approved by workers' compensation magistrate under Michigan Administrative Hearing System Agency (LAHS)
Minnesota	No	Yes	Yes	Statutory formula; by agreement of the parties with judge's approval; attorney may petition for additional fees	20% of the first \$150,000	Some formula applies to the dollar amount of disputed medical benefit awarded; where no dollar value is ascertainable, the amount is hourly or \$200, whichever is less	Employee's awarded benefits, unless contingency fee is inadequate to reasonably compensate the attorney in medical and rehabilitation cases, in which case the employer or insurer is liable for the attorney fees (4)	A compensation judge at the Office of Administrative Hearings
Mississippi	No	No	No	Statutory rule 25%	25% of total award	No	Only from the award	Mississippi Workers' Compensation Commission
Missouri	No	Yes, limited (5)	Yes, limited (5)	Determined in each case by the ALJ or the Labor and Industrial Relations Commission (LIRC) (6)	No statutory formula	No	Generally, the employer's attorney's fee is paid out of the sum paid to the employee by settlement or award, subject to the approval of the ALJ or LIRC, but see (7)	Missouri Division of Workers' Compensation or the Labor and Industrial Relations Commission of Missouri
Montana	Yes (8)	No	No	Determined in each case by the judge or by agreement of the parties (39-71-613, M.C.A.)	20% of benefits gained through attorney's efforts; 25% if prevails in court	N/A	Paid out of worker's benefits, unless court assesses fee against the insurer	Employment Relations Division
Nebraska	No	No	No	Determined in each case by the judge, commissioner, magistrate, or by agreement of the parties	"Reasonable"	No	Paid out of worker's benefits, and may be awarded in addition to benefits paid to the worker	Workers' Compensation Court in order to be an enforceable lien
Nevada	Yes	Yes	No	By agreement of both parties	None	No	Paid by the state if represented by the Nevada Attorney for Injured Workers	None
New Hampshire	Yes	Yes	No	Administrative rule	20% of the retroactive indemnity benefits	Yes (9)	Award comes from employee award (10)	Department of Labor
New Jersey	No	No	No	Statutory formula but determined in each case by the judge, commissioner, etc.	Statutory formula up to 20% of award, but determined in each case by the judge, commissioner, etc.	No	From award and/or paid all or in part by respondent	Division of Workers' Compensation



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Information on whether the agency provides compensation or other worker benefits under workers' compensation statutes, the basis of attorney fees, which state, who determines attorney fees, whether there are additional fees allowed and under what circumstances, whether laypersons can represent claimants, what the source of payment to a worker's attorney is, and whether defense attorney fees are regulated.

Jurisdiction	Laypersons Can Represent Workers	Public Advocates Or Out-of-Pocket Provided By Agency		Fees For Worker's Attorney Established By	Worker's Attorney Fee Formula	Formula For Medical-Only Disputes	Source Of Payments To Worker's Attorney	Worker's Attorney Fee Must Be Approved By
		For Employee	For Employer					
South Dakota:	No, unless a medical-only dispute of \$5,000 or less	No	No	Statutory rule	Maximum of 25% of disputed benefits if settled; 30% if hearing; 35% if appealed to court	No	Out of employee's award unless insurer's conduct unreasonable/erratic	CLR
Tennessee	No	No	No	Statutory formula; determined in each case by the judge, commissioner, and magistrate by agreement of the parties	The attorney's fees to be charged employees shall not be in excess of 20% of the amount of the recovery or award to be paid by the party employing the attorney	No, but worker's attorney can recover a fee not in excess of 20% of the amount of the recovery or award for disputed medical bills	Worker's attorney fees come from the award	Worker's Compensation Division or Courts
Texas	Yes <a href="#">(21)</a>	Yes, provided by a separate state agency—Office of Injured Employee Counsel	No	By administrative rule and are determined in each case by the judge, commissioner, magistrates	Number of hours multiplied by hourly fee; number of hours and maximum hourly fee established by rule	No	Paid from employee's weekly income benefits; amount may not exceed 25% of weekly benefit amount	Texas Department of Insurance, Division of Workers' Compensation or a court of competent jurisdiction
US Federal Programs - FECA	Yes	No	No	Claimant and representative agree on fees; DMCP approves them—no contingency fees allowed	N/A	N/A	N/A	The Office of Workers' Compensation Programs
US Federal Programs - Longshore	Yes	No	No	Market rates, determined in each case by the tribunal before whom earned	None	No	Employee (though fees may shift to employer/carrier in certain circumstances)	DOL
Utah	No	No	No	Statutory formula; administrative rule	25% of first \$25,000; 20% of second \$25,000; and 10% of remainder up to a maximum of \$17,468	Paid by employer/carrier using same formula	If the total award is \$4,000 or less, attorneys' fees are paid by the employer/carrier using same formula	Labor Commission
Vermont	No	No	No	Administrative rule and determined in each case by the judge, commissioner	Up to 20% of award or up to \$145.00 per hour	No	If awarded by commissioner/judge, fee paid by the employer/carrier in addition to employee's benefits	None
Virginia	No	No	No	Determined in each case by the Commission	None	No	Payable by worker directly or paid out of comp award unless bad-faith defense on part of employer/insurer, in which case all or part can be assessed against employer/insurer	Virginia Workers' Compensation Commission
Washington	Yes	Yes	No	Statutory formula or by agreement of the parties	30% of increase in award or benefits secured by the attorney	No	Paid out of the benefits awarded to the employee	None
West Virginia	No	No	No	Statute	20% of indemnity benefits to a maximum of 20% of 208 weeks of benefits <a href="#">(22)</a>	N/A	Paid from employee's benefits; attorney fees may be ordered to be paid by carrier for medical issues and TTD denials when the denial is deemed to be "unreasonable" <a href="#">(23)</a>	None <a href="#">(24)</a>

**TABLE 14. ADVOCATE AND ATTORNEY FEE PROVISIONS UNDER WORKERS' COMPENSATION STATUTES AS OF JANUARY 1, 2014**

Information on whether the agency provides ombudspeople or other worker and/or employee education, the scale of attorney fees, whether there are additional fees allowed and under what circumstances, whether laypersons can represent claimants, what the source of payment to a worker's attorney is, and whether defendant attorney fees are regulated.

Jurisdiction	Laypersons Can Represent Workers	Public Advocates Or Ombudspeople Provided By Agency		Fees For Worker's Attorney Established By	Worker's Attorney Fee Formula	Formula For Medical-Only Disputes	Source Of Payments To Worker's Attorney	Worker's Attorney Fee Must Be Approved By
		For Employee	For Employer					
Wisconsin	Yes [25]	No	No	Statutory formula, administrative rule	20% of the disputed amount, if no dispute, 10% of the amount awarded up to a maximum of \$250	No	Paid out of employee's award	An administrative law judge in the Worker's Compensation Division
Wyoming	No	No	No	Administrative rule	None	No	Always paid in addition to the worker's benefits whether the worker wins or loses	Attorney General's office
<b>Canadian Jurisdictions: Provinces/Territories</b>								
British Columbia	Yes	Yes [26]	Yes [26]	Policy item #100.40 of the BSCM sets out that WorkSafeBC does not pay expenses for any advocate or any fees for legal advice or advocacy	N/A	N/A	N/A	N/A
New Brunswick	No	No [27]	No [27]	Worker and employer advocates are a free service provided by the provincial government and funded by WorkSafeNB	N/A	N/A	N/A	N/A
Nova Scotia	Yes	Yes	No	N/A [28]	No fees	N/A	N/A	N/A
Ontario	Yes	WESB funds the Office of the Worker's Advocate	WESB funds the Office of the Employer's Advocate	Arrangement between the worker and their attorney	None	Fee	Arrangement between the worker and their attorney	N/A
Prince Edward Island	Yes	Yes	Yes	Legal fees are not covered	N/A	N/A	N/A	N/A
Saskatchewan	Yes	Yes	No	Attorneys are not involved in our system	N/A	N/A	N/A	N/A
<b>Notes for Canadian Jurisdictions: Provinces/Territories</b>								
1. Arizona - Commission has an ombudsman available for employees; however, the ombudsman cannot provide legal advice or advocate for the employee in a hearing.								
2. Arkansas - Legal advisors are available to both parties and the public but are not advocates.								
3. Illinois - Except a legal guardian.								
4. Minnesota - A portion of fees are reimbursed to the employee by the employer/insurer if the worker's attorney successfully procures payments from a denial of liability, notice of disallowance of benefits, or failure to make a payment of compensation or medical expenses within the statutory period after notice of injury or occupational disease, or otherwise unsuccessfully resists the payment of rehabilitation benefits or other aspects of a rehabilitation plan. Reimbursement is not available if the employee's attorney fees were paid by the employer/insurer.								
5. Missouri - The Missouri Division of Workers' Compensation has a voluntary alternative dispute resolution process to mediate disputes that arise soon after an injury occurs over issues such as medical treatment and lost wages.								
6. Missouri - Fee arrangements can be made between the employee and the attorney. The fee must be reasonable and must be approved by the AJ or the LIRC.								
7. Missouri - \$287,560, ASMA, has been interpreted to provide that, if the AJ or the LIRC determines that any proceedings have been defended without reasonable ground, it may order the employer to pay the whole cost of the proceedings, including the employee's attorney's fee.								
8. Montana - If they are not paid for representation.								
9. New Hampshire - Reasonable fees if bills are ordered after a hearing.								
10. New Hampshire - Unless it is after an appeal to the Compensation Appeal Board.								
11. New Jersey - A non-attorney cannot be compensated.								
12. New York - If they are licensed by the Board for this purpose.								
13. New York - Fee is to be commensurate with the services rendered, having due regard for the financial status of the worker, whether the attorney engaged in dilatory tactics or failed to comply with Board rules in a timely manner. In no case shall the fee be based solely on the amount of the award.								

K-14

TABLE 14. ADVOCATE AND ATTORNEY FEE PROVISIONS UNDER WORKERS' COMPENSATION STATUTES AS OF JANUARY 1, 2014

Information on whether the agency provides ombudspersons or other worker and/or employer advocates; the basis of attorney fee calculations; who determines attorney fees; whether there are additional fees allowed and under what circumstances; whether laypersons can represent claimants; what the source of payment to a worker's attorney is; and whether defense attorney fees are regulated.								
Jurisdiction	Laypersons Can Represent Workers	Public Advocates Or Ombudspersons Provided By Agency		Fees For Worker's Attorney Established By	Worker's Attorney Fee Formula	Formula For Medical-Only Disputes	Source Of Payments To Worker's Attorney	Worker's Attorney Fee Must Be Approved By
		For Employee	For Employer					
14	North Carolina	Information specialists assist claimants who are not represented by an attorney, employers, or other parties in protecting their rights, but they do not give legal advice or appear at proceedings. Information specialists answer questions pertaining to all aspects of workers' compensation.						
15	North Carolina	The Industrial Commission can tax attorney fees as costs for appeals in a limited class of cases. The attorney fee is determined by multiplying the number of hours reasonably expended on the case by a reasonable hourly rate.						
16	North Carolina	The Industrial Commission may, in its discretion, tax attorney fees if any hearing has been brought, prosecuted or defended without reasonable ground; it may assess the whole cost of the proceedings, including reasonable fees for the defendant's attorney or the plaintiff's attorney upon the party who has brought or defended.						
17	North Dakota	Decision Review Office Statute 65-02-27 and Admin Rule 92.01-03.						
18	Oklahoma	Please note that the Oklahoma workers' compensation system underwent significant legislative change on February 1, 2014.						
19	Oregon	On initial challenge of PPD award, the fee is 10% of additional compensation awarded. Where the claim is settled through a claim disposition agreement (ORS 656.289) which results in a dispute, fees are 25% of the first \$17,500 plus 10% of the proceeds in excess of \$17,500. Where the insurer unreasonably delays or refuses to pay compensation, fee is up to 25% of amount due, based on matrix in administrative rules. In vocational disputes and where the insurer unreasonably delays or refuses to pay compensation, fees are based on results achieved and time devoted; the statute provides the maximum fee and administrative rule provides the matrix. The fee is adjusted annually based on the change in average weekly wage. The fee for insurer failure to pay disputed claim settlement is based on the percentage of settlement proceeds allocated to the claimant's attorney as fees; administrative rule provides the matrix. Assessed fees are not based on the formula and must be reasonable; factors in administrative rule must be considered. Assessed fees are awarded when a denial is overturned, when the insurer requests review and the worker prevails, when penalties are assessed against the insurer, and in responsibility disputes.						
20	Oregon	ORS 656.385, OAR 436-001 - 0410. By published matrix, based on the value of the benefit received and number of hours attorney worked on the issue.						
21	Texas	The lay representative must register with the Division. A lay representative may not receive a fee or remuneration, directly or indirectly, for the representation.						
22	West Virginia	In the case where a claim is settled, the fee may not exceed 20% of the total value of the medical and indemnity benefits. However, this fee, when combined with any fees previously charged or received by the attorney for PPD or PTD benefits, may not exceed 20% of the award of benefits to be paid during a period of 208 weeks.						
23	West Virginia	Also can be paid if the denial of compensability is determined unreasonable.						
24	West Virginia	Yes, if there has been an unreasonable denial of medical or TTD benefits.						
25	Wisconsin	The lay representative must be approved by the WC Division if he or she has had three or less appearances in formal hearings. If the lay person has had more than three appearances, he or she must be a licensed representative in order to appear.						
26	British Columbia	The statute provides for the Office of the Workers' Adviser at no cost to workers. All other advocates are not funded by WorkSafeBC.						
27	New Brunswick	Public advocates are available for both employees and employers as a free service, however they are provided by the Provincial government.						
28	Nova Scotia	Workers do not pay fees for attorneys. The WCB has a legislated obligation to pay for a separate body, the Workers' Advisors Program, which provides legal representation for workers at no cost.						

# **EXHIBIT B**

# STATE OF FLORIDA

## Division of Administrative Hearings

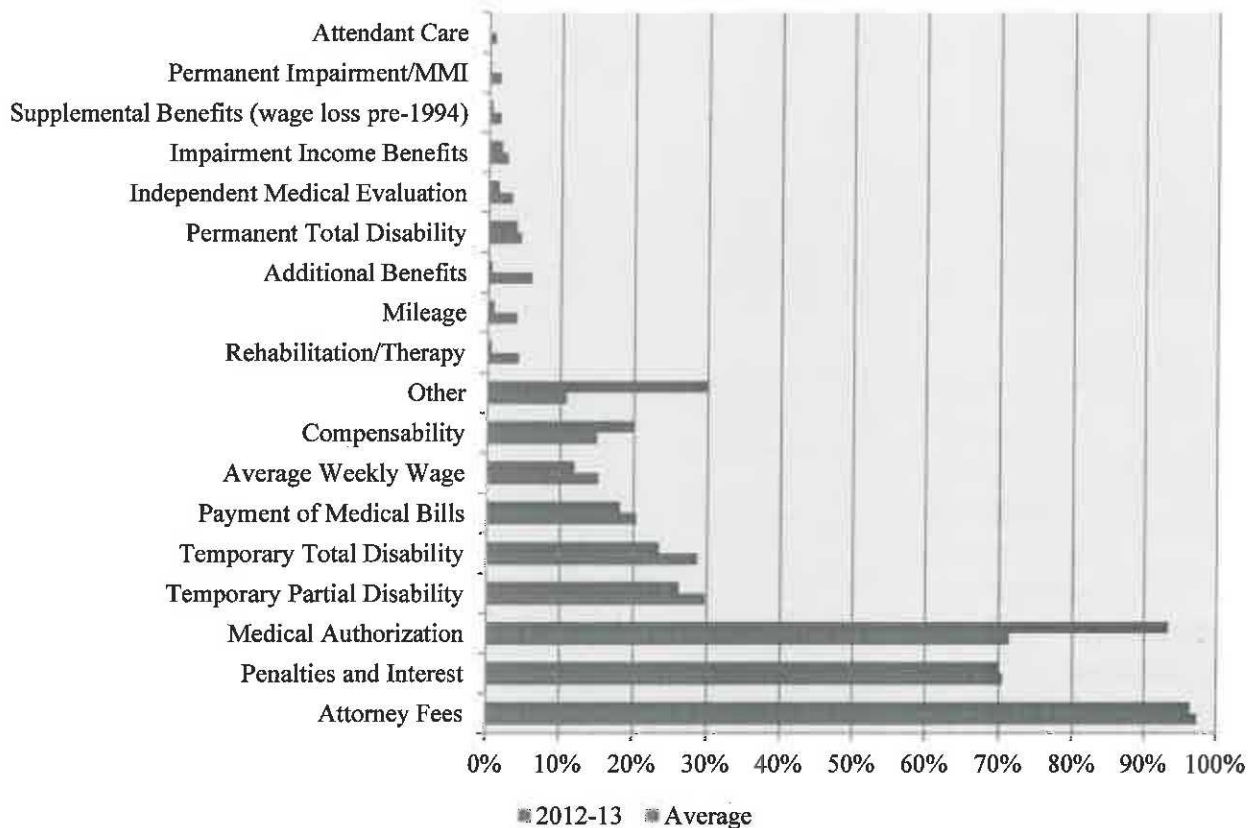


## 2012-2013 Annual Report of the Office of the Judges of Compensation Claims

### The OJCC Mission:

To maintain a statewide mediation and adjudication system for the impartial, efficient and timely resolution of disputed workers' compensation claims.

A single PFB could theoretically seek each and every benefit potentially available to an injured worker under the law. An injured worker seeking that same quantum of benefits might instead serially file a multitude of individual PFBs, each seeking one particular benefit. Typically, most PFBs seeking a substantive benefit will also seek related issues such as penalties and interest related to indemnity claimed, and the costs and attorney fees associated with litigating the claimed substantive benefits. The OJCC clerk documents the categories of benefits sought in each PFB. The following chart depicts the average frequency of claims for these various distinct benefits within PFBs filed over the eight-year period 2003-04 through 2011-12 (blue bars on the bottom of each category) and the rate of filing for those categories in the current fiscal year, 2012-13 (red bars). The rate of medical authorization claims and “other” claims in 2011-12 was notable, and remains so in 2012-13. The volume of “compensability” and “other” disputes is also notably above average in 2012-13.



The data supports a marked increase in medical authorization claims and “other” claims. Though not presented in this graph, there has also been a significant increase in claims for “advances.” In 2011-12, seven hundred sixty-one (761) claims for advance were filed in PFB format. That decreased to 676 in 2012-13. Interestingly, there is evidence that many requests for advance are conversely filed by motion, and so this figure understates the volume of claims for advances.

### **Gross Petition for Benefit (“PFB”) Filing:**

The Florida Legislature enacted significant amendments to the Florida Workers’ Compensation Law in 1994 and again in 2003. Just prior to the 2003 reforms, PFB filings peaked at 151,021. The progressive increase in PFB filings between 1994 and 2003 belie the efficacy of the 1994 reforms’ intent to decrease litigation. After the 1994 reforms, PFB filing consistently increased each year. Immediately following the 2003 reforms, the PFB filing volume decreased at a consistent annual rate of approximately fifteen percent (15.21% to 15.9%) over each of the next three years, and then continued to decline with reasonable consistency through fiscal 2013 with the sole

exception of a slight increase in 2008-09. Despite these decreases, PFB filing volume in 2012-13 remains in excess of the volume in 1994 when that particular reform was passed.

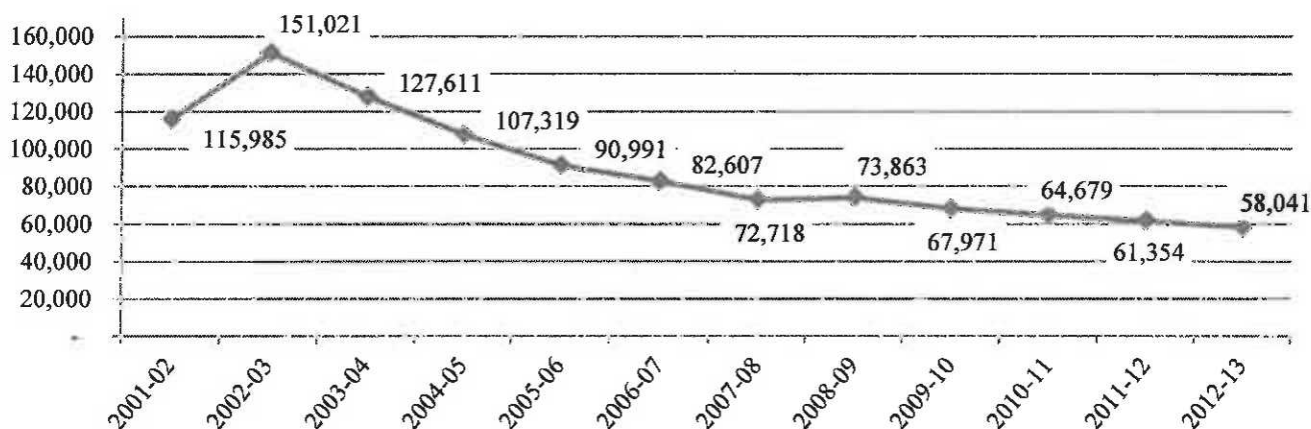
One component of the 2003 reforms was an amendment to Fla. Stat. §440.34, which addresses the payment of attorneys' fees in workers' compensation cases. The interpretation of that statutory change was litigated extensively, and multiple decisions of the First District Court of Appeal ("DCA") interpreted Fla. Stat. §440.34(2003) as limiting fees to a "percentage of recovery" fee in most cases.<sup>10</sup> Under those DCA interpretations, hourly attorney's fees were forbidden in most cases. In October 2008, the Florida Supreme Court rendered their decision in Murray v. Mariner Health, 994 So.2d 1051 (Fla. 2008). The Supreme Court's interpretation of Fla. Stat. §440.34 differed from the DCA decisions, and effectively restored entitlement to hourly attorney fees for cases with a date of accident after 2003.

The overall decrease in PFB filing volume between fiscal 2003 and fiscal 2008 was approximately fifty-two percent (51.85%). Until rendition of the Supreme Court Murray decision, the PFB filings (for the first quarter of fiscal 2008-09) had continued to demonstrate a similar downward trend. In the spring of 2009, the Florida Legislature amended Fla. Stat. §440.34 to again forbid hourly fees. Therefore, the Court's Murray decision affects cases between October 1, 2003 and July 1, 2009.<sup>11</sup> Although PFB filings trended down before the Court's analysis, at year end, the 2008-09 PFB filings overall increased minimally (1.6%) from fiscal 2007-08.

In 2009-10 the PFB volume returned to its downward trend (8%). Although that trend moderated somewhat in the last two fiscal years, it has continued to decline. On March 23, 2011 the Florida First DCA rejected various constitutional challenges to Fla. Stat. §440.34 (2009) in Kauffman v. Community Inclusions, Inc., 57 So.3d 919 (Fla. 1<sup>st</sup> DCA 2011). Early in fiscal 2011-12, the Florida Supreme Court denied a petition for review of that decision based on a lack of jurisdiction.

Fiscal Year	Petitions Filed	% Change
2002-03	151,021	
2003-04	127,611	-15.5%
2004-05	107,319	-15.9%
2005-06	90,991	-15.2%
2006-07	82,607	-9.2%
2007-08	72,718	-12.0%
2008-09	73,863	1.6%
2009-10	67,971	-8.0%
2010-11	64,679	-4.8%
2011-12	61,354	-5.1%
2012-13	58,041	-5.4%

### Petitions Filed 2001-2013

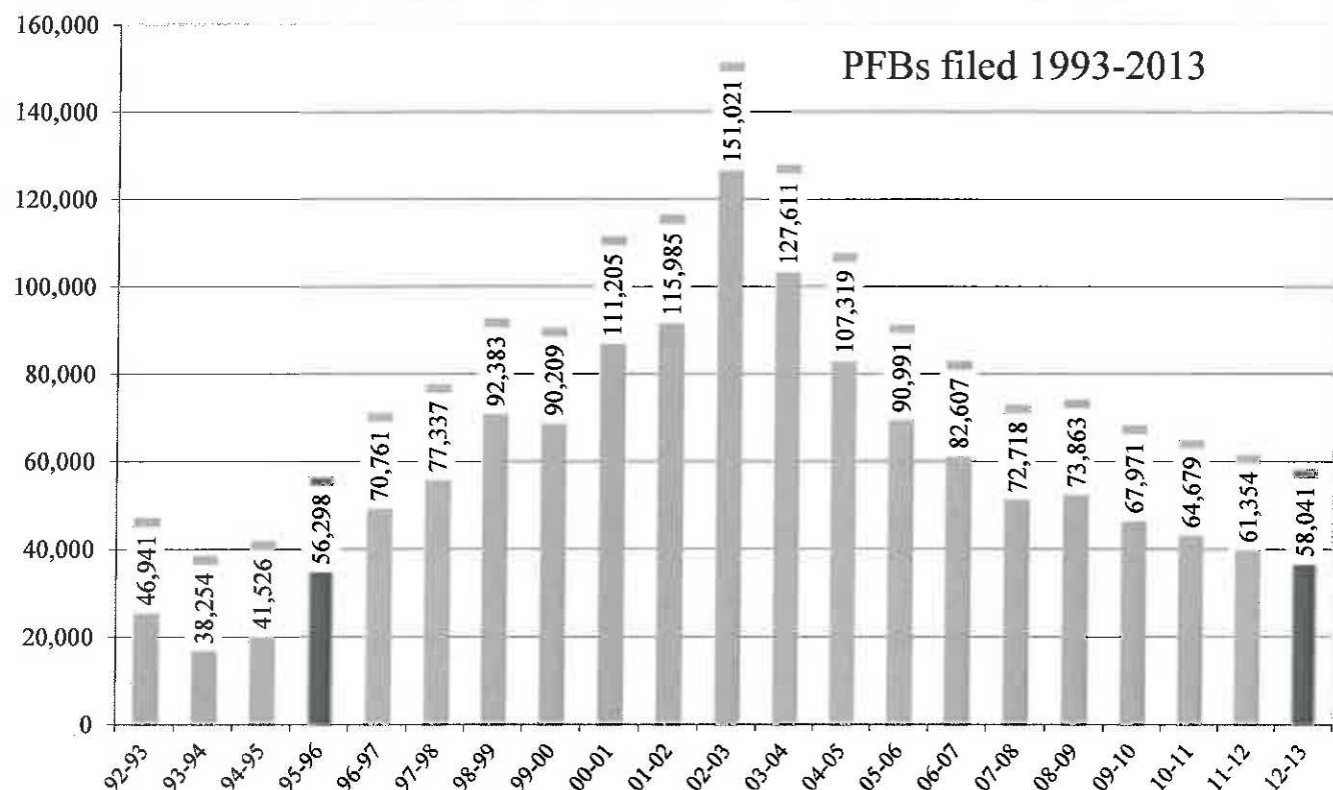


Florida workers' compensation premiums decreased significantly after the 2003 reforms. The cumulative premium decrease through fiscal 2008-09 was approximately 58%. Interestingly, in that same time period, PFB filings had decreased approximately fifty-two percent (51.85%); which might be interpreted as a close correlation. In fiscal 2009-10, despite the continued downward trend in PFB filings (-8%), the Florida Insurance Commissioner approved a 7.8% increase in workers' compensation rates. Likewise, despite the 4.8% decline in PFB filings in 2010-11, the Commissioner approved a rate increase of 8.9% for 2012<sup>12</sup> and an additional 6.1% increase for 2013.<sup>13</sup> As this report was prepared, the Commissioner considered another increase for 2014, albeit a very small 1%

increase.<sup>14</sup> Ultimately, a .7% increase was approved.<sup>15</sup> According to the Office of Insurance Regulation, the cumulative decrease in premiums since the 2003 reforms remains 56%, even considering the 2013 increase.<sup>16</sup>

The cumulative change in PFB volume for the period 2002-03 through 2011-12 has been 61.6 percent, to 58,041 PFB filed last fiscal year. The consistent recent increases in workers' compensation premiums, despite the continuing decrease in PFB filings, supports that any correlation between PFB and premium, seen immediately following the 2003 reforms, is not a direct correlation.

The following graph represents PFB filing since 1992-93. Notably, the 1994 reforms were intended to curtail litigation. Despite that intention, the PFB filings increased markedly thereafter. The OJCC was staffed by 31 judges in 1993. Following the 2012 budget/position reductions, the OJCC is again staffed by 31 judges. While the judicial workload has decreased from the demands of the exceptional filings in recent years, it has not yet returned to the baseline of 1994. The 2012-13 filings (58,041) remain about 52% higher than in 1993-94 (38,254).



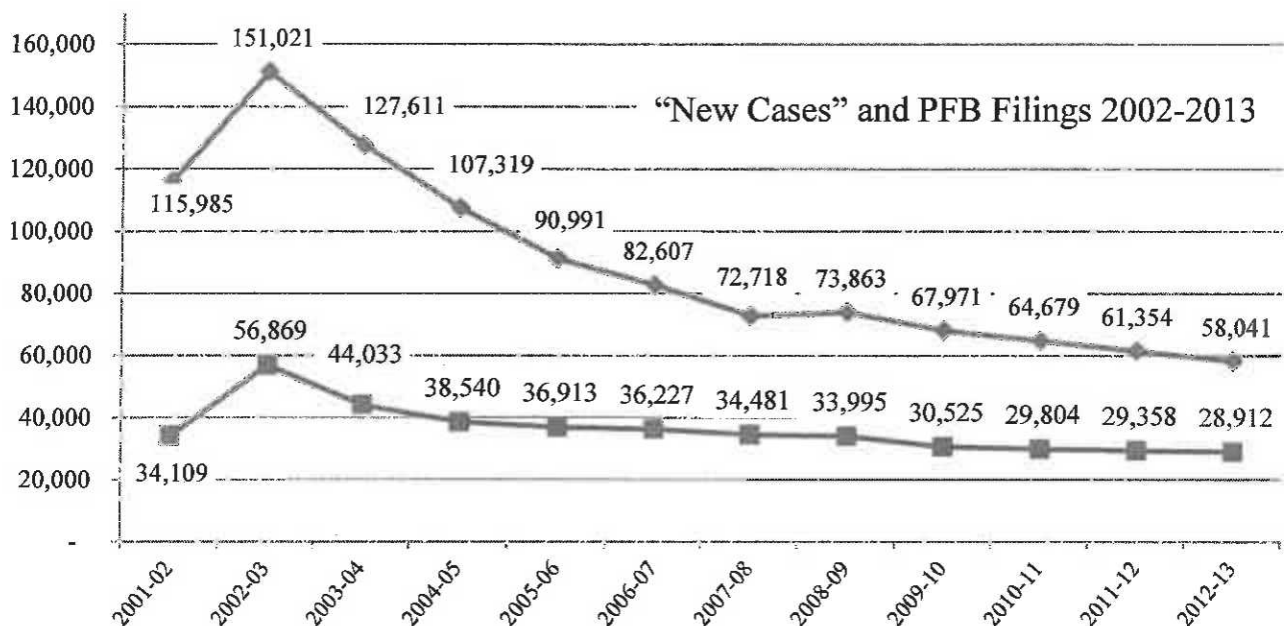
The figures for periods prior to 2001 (the transfer of the OJCC from the DLES to the DOAH) are based upon data provided by the DLES. The reliability of these statistics can no longer be independently verified.<sup>17</sup> Some question as to the validity of these figures is raised by the fact that the Petition for Benefits (PFB) process was not added to Chapter 440, F.S. until the 1994 statutory amendments, and that the DLES figures nonetheless reflect "PFB" filing prior to that time. This could be indicative of an actual flaw in the data, or the figures prior to 1994 may represent the filing of "Claims for Benefits." Prior to the PFB process, "claims" were filed to put an E/C on notice of a dispute, but the jurisdiction of the OJCC was not invoked until a separate pleading, an "Application for Hearing," was filed. The current statutes' PFB is therefore effectively a combination of the prior "Claim" and "Application." Because of this distinction, it may or may not be appropriate to compare "claim" filing to PFB filing. As reported by the DLES through 2001, and thereafter by the DOAH, this graph illustrates the volume of PFB filing since 1992-93. Presuming the accuracy of these FDLES numbers, the PFB filing rate in 2012-13 was the lowest in seventeen years, since 1995-96. If the current rate of decline<sup>18</sup> remains constant, the PFB volume will regress to the 1993-94 volumes in 2021-22, in eight fiscal years.

### New Case Filing:

The volume of "new cases filed" has been monitored only since the OJCC joined the DOAH in 2001. The term "new cases filed" refers to the volume of PFBs filed, which represent the first PFB in the history of that particular accident by that particular injured worker. Workers' Compensation cases often involve the litigation of multiple, serial PFBs over the course of years. The rate at which "new cases" are filed is indicative of the rate at which discrete cases are entering the OJCC litigation process, and is not affected by the serial nature inherent to workers' compensation generally, and thus of PFB filing.

Generally speaking, this is the inverse of the volume of settlements approved in a year, which is similarly statistically indicative of the trend rate at which cases are leaving the OJCC litigation process. Although cases can be resolved without settlement, those that are not settled may have some potential to return to the litigation process on some future additional claims or issues. The "new case" measure may arguably be a more accurate indicator of the effect of legislative changes to the substantive benefits provided to Florida employees through Chapter 440 F.S.

However, a "new case" filed in 2012-13 could involve an accident that year, or could involve an accident that occurred years prior, even prior to the 2003 statutory amendments. It is possible that an injured worker might receive all benefits due, without any need for litigation, for many years following a work accident.<sup>19</sup> Such a case may enter litigation after many years of administrative delivery of some benefits. The OJCC has not attempted to delineate the age of accidents that enter the OJCC system as "new cases" each year. The volume of "new cases" filed has continued to decline since the 2003 statutory amendments. The rate of decline in "new cases" filing has been less than the rate of PFB decline in every fiscal year since 2003, except in 2009-10, when "new case" filing decreased by over ten percent (10%) compared to that year's decrease in overall PFB filing of eight percent (8%). The following graph depicts the declining OJCC "new case" filings (red), and the PFB filings (blue).



These figures support that "new cases" and PFB filings each increased significantly between 2001-02 and 2002-03. Notably, in 2004-05 (107,319), two years after the 2002-03 volume "spike" (151,021), PFB volumes returned to a level reasonably consistent with 2001-02 (115,985). The "new cases" volume similarly "spiked" markedly in 2002-03 (56,869), but returned to pre-2002-03 levels five years later, in 2008-09 (33,995). This comparison supports that overall PFB filing volume has demonstrated more elasticity than the "new cases" volume, but that the elasticity demonstrated a marked change in 2009-10, which appears to have moderated, as supported by the 2011-12 and 2012-13 volumes.

The volume of “new cases” filed may also be expressed as a percentage of the gross volume of petitions for benefits (PFB) filed during the same time period. This compares the relationship of each annual “new cases” volume to the corresponding annual overall PFB filing volume. This comparison demonstrates that the percentage of all PFBs that were “new cases filed” remained fairly consistent after the 2003 reforms; in fiscal 2003-04 (34.5%) and 2004-05 (35.9%). As overall PFB volumes have decreased significantly, and “new case” volumes decrease more moderately, the percentage of “new cases” has remained above 40% since 2005-06, and the overall trend is upward. In fiscal year 2001-02, new cases were approximately thirty percent (29.4%) of the overall PFB volume. In fiscal 2012-13 that percentage has increased to approximately fifty percent (49.8%).

Fiscal Year	PFBs Filed	Cases Filed	New/Filed
2001-02	115,985	34,109	29.4%
2002-03	151,021	56,869	37.7%
2003-04	127,611	44,033	34.5%
2004-05	107,319	38,540	35.9%
2005-06	90,991	36,913	40.6%
2006-07	82,607	36,227	43.9%
2007-08	72,718	34,481	47.4%
2008-09	73,863	33,995	46.0%
2009-10	67,971	30,525	44.9%
2010-11	64,679	29,804	46.1%
2011-12	61,354	29,358	47.9%
2012-13	58,041	28,912	49.8%

In summary, the available data supports several conclusions. First, the overall PFB volume after appearing to stabilize in 2008-09, has returned to a measured and consistent decline. The volume of “new cases filed” has decreased at a much slower rate generally, punctuated by a marked decrease in 2009-10 (10.21%). Fewer petitions are being filed overall and the volume of “new cases” has remained reasonably stable in comparison. Thus, new cases are accounting for a larger percentage of the overall workers’ compensation litigation. This data does not support that constraints on the litigation process, that is the 2003 statutory amendments, are decreasing the litigation of issues in claims occurring after those revisions. The data appears to support the contrary, that litigation involving new claims remains reasonably consistent, while litigation on previously filed claims decreases.

The intuitive conclusion from this analysis might focus on attorney fee payments, as amended in 2003. One might conclude that there is a perception that litigation early in claims is more lucrative than subsequent litigation. This might be demonstrated by a willingness to file new cases. It is possible that the potential volume of future benefits is sufficient, early in a claim to accommodate litigation. This may be more supported in claims that are completely denied, or in which there are vast disparities in perceptions of the degree of medical care required, leading to denial of benefits with significant monetary value and thus significant associated fee issues.

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In the past fee statute iterations, there was less compression on fee entitlement in subsequent litigation of comparatively minor medical issues. With hourly fees, litigation was economically viable on moderate to low monetary value benefits. With the strict percentage fee calculation in place since 2009, those subsequent benefit disputes may be less likely to enter litigation, and thus represent a significant portion of the overall decrease in general PFB filing.

### **Petition Replication and Duplication:**

As discussed briefly above, there has been some tendency of attorneys to file multiple “single issue” petitions for benefits (PFB) in a particular case on a particular date. A PFB may include as many discrete issues as a Claimant elects to assert. Some issues, which are ancillary to other benefits, are likely to be included in a single PFB. For example, claims for costs or attorneys fees for obtaining a change of physician are normally pled in the same PFB that asserts that change of physician claim. Similarly, permanent total disability (PTD) supplemental benefits are normally pled in the same PFB that seeks the underlying PTD benefits determination. Other issues are more easily separated for multiple filings. For example, a Claimant that is seeking both a change in physicians and PTD could file a PFB for each of these, with each of these two PFB also seeking attorney’s fees and costs, or the Claimant could file one PFB seeking both of these and the related attorney fees and costs. The situation involving multiple “one issue” PFBs cannot be described as “duplicate” PFBs because they are not identical, or in some cases even similar. Therefore, an accurate appellation for the second single PFB is a “replicate” PFB in that it replicates the act of filing, albeit for a separate discrete claimed benefit. The purpose of this practice is unclear, and it artificially inflates the apparent PFB volume. This practice was identified in the OJCC 2008 Annual Report. Some portion in the overall decline in PFB filing volumes may be attributable to the decline in the practice of replicate filings.

Anecdotally, the belief is evidenced currently in a portion of the attorney fee stipulations submitted to this Office claiming a “medical only fee.”

Although there has been speculation as to the pervasiveness of the replicate PFB practice, there was only anecdotal evidence until the analysis published in the OJCC Annual Report 2007-08. For whatever reason, following that documentation of the process, the replicate practice has decreased significantly. Anecdotal evidence supports that both replicate and duplicate filing continues at this time. Replicate filing increased in 2010-11, and again in 2011-12. The cause for resurgence of this practice is not apparent.

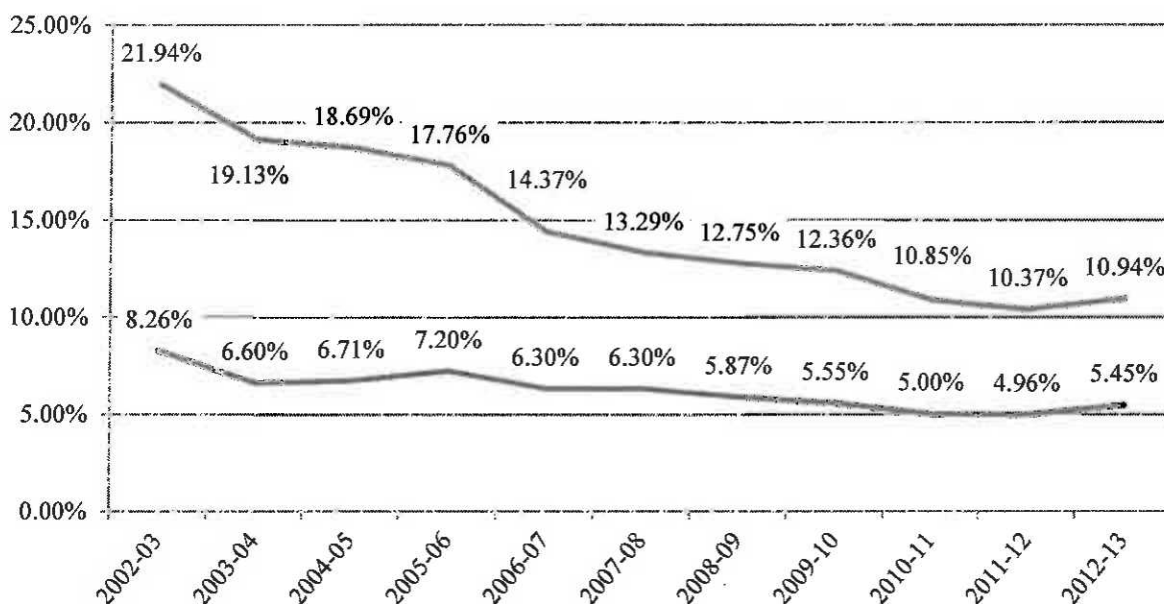
### Pro se Cases:

The Office of Judges of Compensation Claims (OJCC) has been asked whether there is evidence of changes in the volume of “pro se claimants,” or claimants who represent themselves. Phrased otherwise, this question is fundamentally “are more claimants filing their own cases?” This is a difficult question, which cannot be definitively answered by the JCC Application database as it is currently configured. This database was not designed to answer this question, and cannot be readily or inexpensively adapted to do so. Whether a particular claimant is represented or not at a given moment in time can be determined with accuracy. However, this does not answer whether that claimant in fact filed any pro se petition(s) for benefits (PFB). For example, a claimant might hire counsel and through that counsel file three PFBs for various benefits. The JCC Application database would then reflect three “open” PFBs attributable to a “represented” claimant. If the claimant thereafter ceased to be represented, and filed one pro se PFB, the database would then reflect four “open” PFBs attributable to a “pro se” claimant, despite the fact that three of those were in fact filed by (former) counsel. If that same claimant then hired a new attorney, who then filed a fifth PFB, the JCC Application database would then reflect five “open” PFBs attributable to a “represented” claimant, despite the fact that one of those five was in fact filed pro se.

The JCC Application can report the total volume of “new cases” opened in a given fiscal year and the percentage on a given day that are “represented” and “pro se” cases, compared to the “new cases” filed that year. Likewise, the OJCC can calculate the percentage of “pro se” cases, compared to the total volume of PFBs filed during the preceding year. Neither of these is an accurate reflection of the actual population of PFBs that have been filed by injured workers on their own behalf. However, these two calculations are the best answer the OJCC can currently provide to the question of pro se litigant volume.<sup>21</sup> This chart depicts the percentage of all “new cases” filed each year, to the pending PFB population attributable to “pro se” claimants at the end of that same fiscal year (each ends on June 30). Notably, if the raw number of “new cases” attributable to “pro se” claimants remained static each June 30, the percentage would nonetheless increase due to the decrease in overall “new case” filings discussed above. Therefore, the available data does not support the conclusion that the “pro se” claimant population is increasing. It is notable that some portion of the “new cases” filed each year are not filed because there is a petition issue, or need for filing a petition. Some “new cases” filed each year are created for the purpose of filing a motion for determination or for the purpose of filing a Joint Petition to settle the case.

Because the “pro se” percentage has decreased, in the midst of significant PFB filing decreases generally, the available data supports that fewer injured workers are representing themselves in the OJCC system, as illustrated in the chart above and the following graph. However, there was an approximately one-half percent (10.37% to 10.94% =.57%) increase in the pro se percentage. There are multiple perspectives regarding what this data indicates.

Fiscal Year	New Cases	Pro Se June 30	
2002-03	56,869	12,477	21.94%
2003-04	44,033	8,423	19.13%
2004-05	38,540	7,205	18.69%
2005-06	36,913	6,555	17.76%
2006-07	36,227	5,205	14.37%
2007-08	34,481	4,583	13.29%
2008-09	33,995	4,333	12.75%
2009-10	30,525	3,774	12.36%
2010-11	29,804	3,234	10.85%
2011-12	29,358	3,044	10.37%
2012-13	28,912	3,162	10.94%



The graph above depicts the ratios (blue) of “new cases” to the population of “pro se” petitions on June 30 of each of the last eleven (11) fiscal years. Also represented are the ratios (red) of overall PFB volume filed to the year-end “pro se” population. This comparison of those PFBs that are “pro se” as of June 30, 2010, to the total of PFBs filed during the fiscal year, also does not support the conclusion that the volume or percentage of self-represented claimants is increasing over the course of the last eleven years. However, both figures increased in 2012-13 to similar levels seen in 2010-11. It is unclear whether this slight increase foretells a new trend or is a single-year anomaly. The 2013-14 figures will provide greater clarity in this regard.

### **AMOUNT OF LITIGATION RESOLVED:**

The OJCC struggled early in the 21<sup>st</sup> Century with the closure of petitions for benefits (PFB). The legislature has defined statutory time parameters for the mediation and trial of PFBs in Fla. Stat. §440.25. This legislative mandate for timely adjudications is inconsistent with a practice of utilizing petition (and before 1994 “claim”) filing to indefinitely preserve the status quo against the possible effectiveness of the statute of limitations in Fla. Stat. §440.19. So long as a PFB is “pending,” then the statute of limitations will not run. Anecdotally, there is support for a historical practice of filing PFBs, not necessarily to seek provision of a particular benefit, but instead, to act as an indefinite “tolling” of the statute of limitations. PFB closure was a difficult issue for the OJCC following the massive influx of PFBs in 2002-03 (151,021). The sheer volume of PFBs in 2003 affected workload in most districts. The OJCC has operated without significant increases in either Judges or staff since the addition of the mandatory mediation process in 1994. In more recent legislative cycles, the OJCC has lost significant personnel, including one judge, four mediators, and multiple staff positions.

Since 1994, Florida’s population grew 33% from fourteen million to almost nineteen million people.<sup>22</sup> Effective management of the PFB volume early this Century was further hindered by a lack of effective data management tools to identify PFBs based upon age. At the end of fiscal 2005-06 (06.30.06), the JCC Application database reflected one hundred eighty-six thousand seven hundred sixty-five (186,765) “open” PFBs. It was discovered that this figure was understated by the database, and the actual volume was later calculated as one hundred ninety-four thousand four hundred sixty-nine (194,469). The 2006-07 OJCC Annual Report provides details. During fiscal 2006-07, the OJCC worked to identify “active” PFBs, whose status should have previously been changed to reflect a “resolved” or “closed” status. This effort included providing the Judges with access to database reports that identified aging PFBs. The inventory of “pending” PFBs for many Judges improved dramatically in 2006-07, and that improvement continues. The following chart illustrates, the OJCC is close to equilibrium in terms of the PFBs being filed (blue line) and the PFBs being closed (red line) each year.

# **EXHIBIT C**



# Florida

## State Advisory Forum 2013

October 3, 2013

Lori\_Lovgren@ncci.com

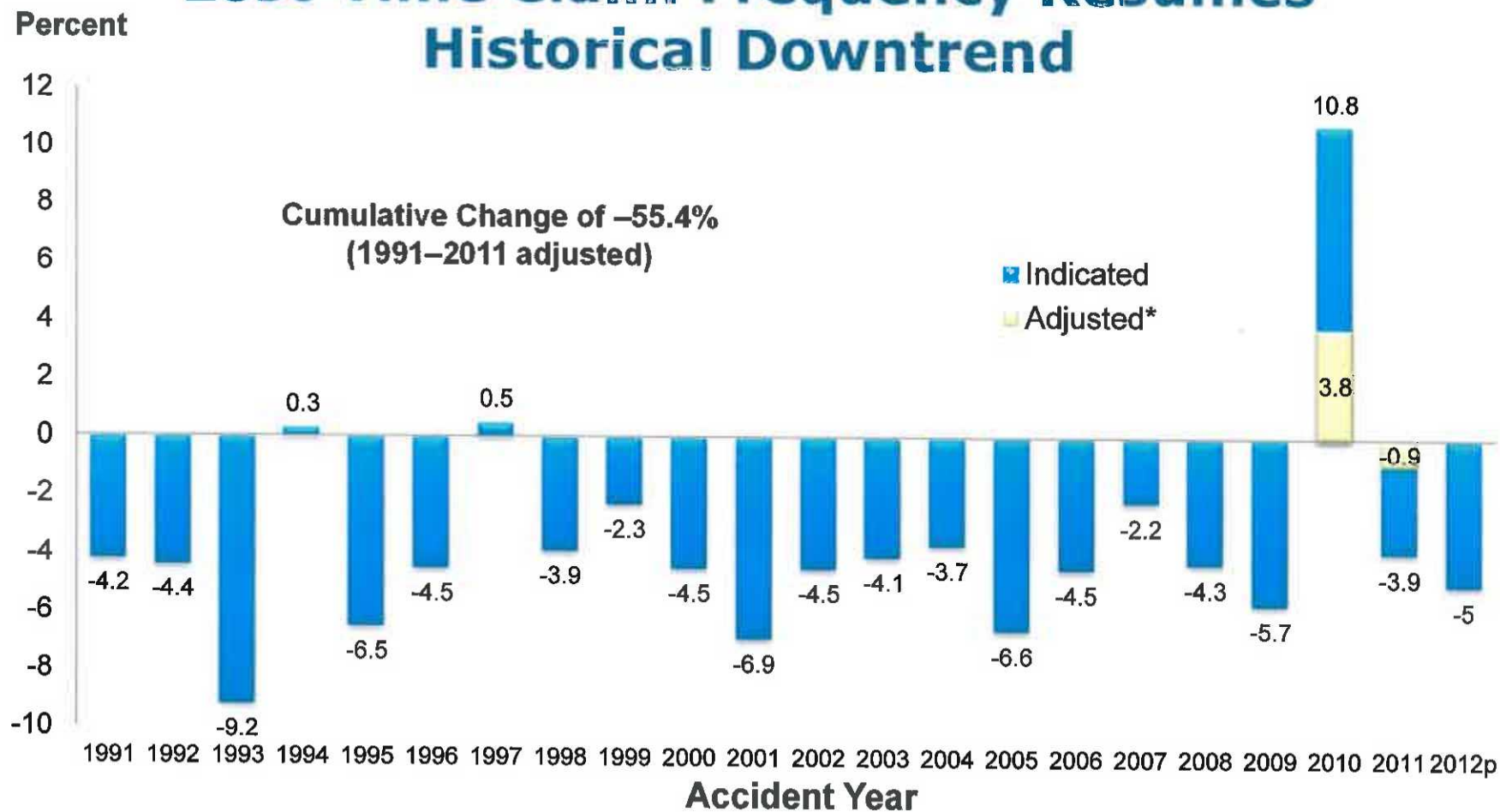
561-893-3337

Kirt\_Dooley@ncci.com

561-893-3068



# Countrywide Workers Compensation Lost-Time Claim Frequency Resumes Historical Downtrend



\* Adjustments primarily due to significant changes in audit activity

2012p: Preliminary based on data valued as of 12/31/2012

1991-2011: Based on data through 12/31/2011, developed to ultimate; excludes high deductible policies

Average frequency for the states where NCCI provides ratemaking services, excluding WV; including state funds

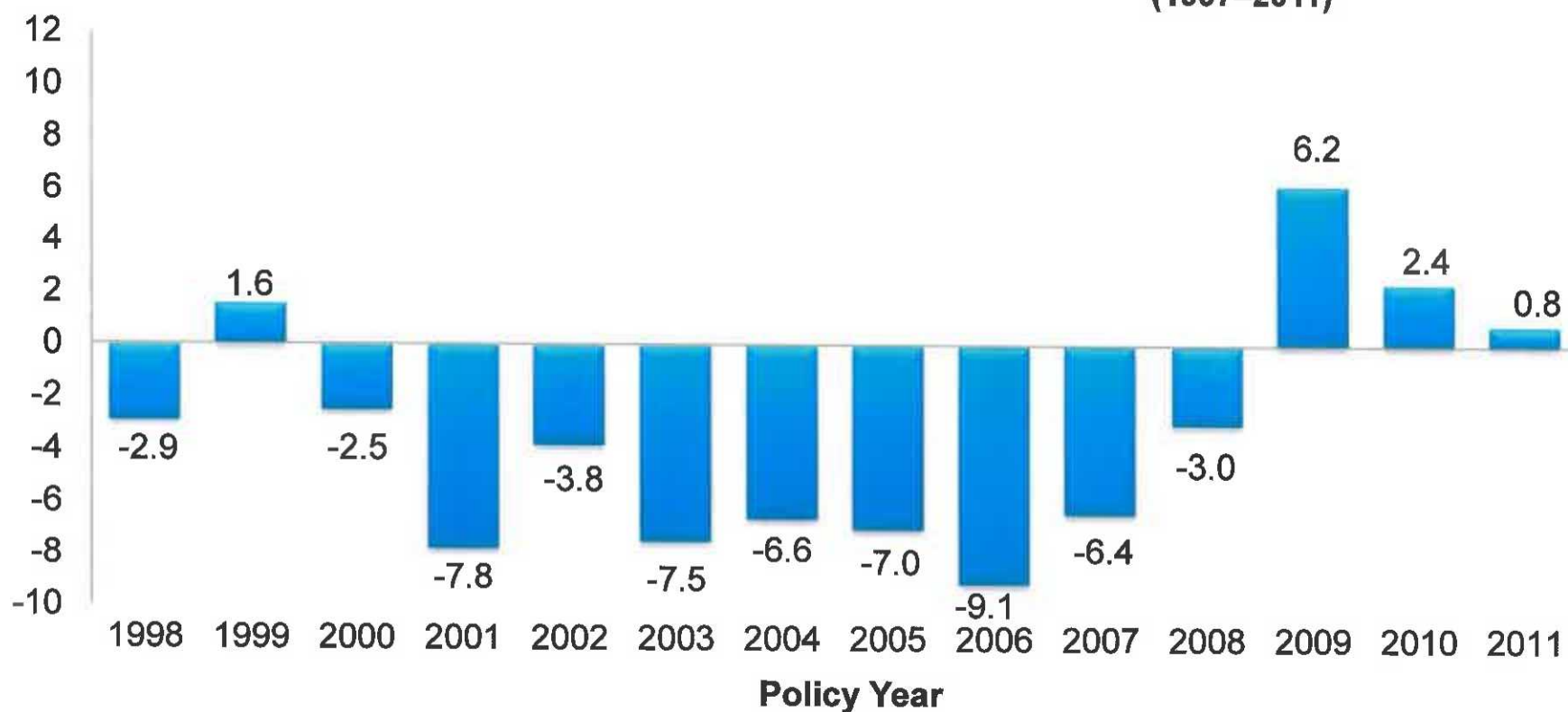
Frequency is the number of lost-time claims per \$1M pure premium at current wage and voluntary loss cost level

# Florida Workers Compensation Lost-Time Claim Frequency

## Lost-Time Claims

Percent Change

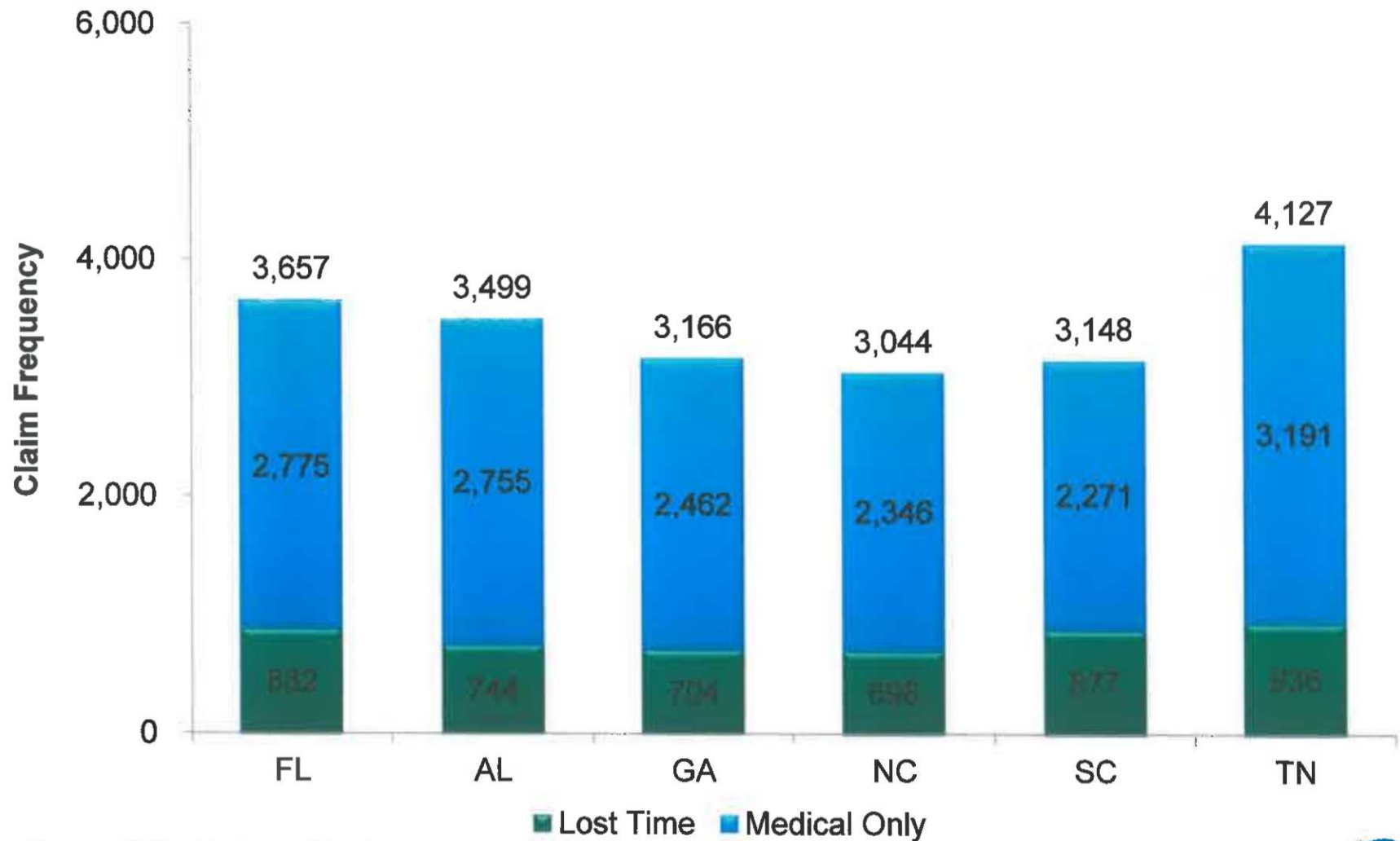
Cumulative Change of -38.0%  
(1997-2011)



Based on data through 12/31/2012, developed to ultimate

# Florida's Average Claim Frequency

Frequency per 100,000 Workers--All Claims



Based on NCCI's *Statistical Plan* data

