

WORKERS' COMPENSATION BOARD'S 2011 ANNUAL REPORT

The Workers' Compensation WCB (WCB) is pleased to submit its 2011 annual report. Pursuant to Workers' Compensation Law § 153, this report sets forth basic data regarding the WCB's operations, including assembly and adjudication of workers' compensation claims and issuance of stop work orders against employers that fail to maintain appropriate workers' compensation coverage.

WCB Operations

The WCB maintains 11 district offices throughout the state. (Appendix ("A") – 1.)

Stop Work Orders

Nearly all employers in New York State are required to secure workers' compensation insurance. In 2007, the WCB gained the authority to issue a stop work order (SWO) if an employer fails to maintain required workers' compensation coverage or to pay WCB penalties (WCL § 141-a). The SWO has proven to be an effective vehicle to promote compliance. Since 2007, the WCB has issued 6,897 SWOs. In 2011, the WCB issued 1,477 SWOs, the overwhelming majority of SWOs were issued downstate – 1,097 in New York City. (A – 2.)

Claims

Assembly

Claim assembly occurs when the WCB learns of a workplace injury and assigns the claim a WCB claim number.¹ The WCB "assembles" a claim in which an injured worker has lost more than one week of work, has a serious injury that may result in a permanent disability, is disputed by the carrier or employer, or receives a claim form from the injured worker (Form C-3). In August 2011, the WCB began assembling every claim for which it received a Notice to Chair of Carrier's Action on Claim for Benefits (Form C-669).

The number of assembled claims increased 1% over 2010 to 123,245. (A – 3.) This represents the second consecutive increase in the number of assembled claims after eight consecutive years of declining claim counts. (A – 3.) The geographic distribution of assembled claims is reflected in the map at A – 5.

Reopened Claims

There was a 16% increase in reopened claims over 2010 (227,030 v. 196,160). (A – 3.) A reopened claim is one that has been reactivated to resolve new issues following a finding that no further action was necessary. We believe that the introduction of Medical Treatment Guidelines (MTG) in December 2010 is likely responsible for a significant

¹Claim assembly was introduced in 2008 in connection with the "Rocket Docket" regulations for controverted claims, part of the 2007 reform. Prior to 2008, new claims were both assembled and "indexed" when the WCB received notice of the workplace injury. The standard for assembling a claim is very similar to that of indexing for claims before 2008. The count of assembled claims excludes claims that are assigned a WCB claim number but for which the Board does not receive sufficient information, despite requests, to take further action.

portion of the increase. The Board reopened many claims, some of which were many years old, to resolve disputes over whether medical treatment that was not recommended by the MTG (for which a variance was submitted and denied by the carrier) should be approved.

Controverted Claims

Controverted claims are those in which the insurance carrier or self-insured employer challenges the injured worker's eligibility for workers' compensation benefits and in which a pre-hearing conference is held.² The 2007 reform created the Rocket Docket to speed the resolution of controverted claims and to reduce the incidence of unnecessarily controverted claims. Since 2008, the number of controverted claims has declined dramatically. In 2011, there were 9,008 controverted claims (A – 6.) There has been a similar decline in the number of C-7 forms filed, with 18,439 filed in 2011. (A – 6.) A breakdown of controverted claims by district is at A – 7. The rate of controversy, measured at 90, 180 and 360 days, is relatively stable at 7 – 7.4%. (A – 8.)

The Rocket Docket sets a goal of having a pre-hearing conference within 30 days of the date of controversy and of resolving the controverted claim within 90 days. On average, pre-hearing conferences were held after just 26 days (A – 9), and on average it took 75 days to address the issues in the controverted claims. (A – 10.) Nearly 60% of controverted claims met the goal of being resolved within 90 days, while another 21% were resolved in 91-180 days. (A – 11.)

Accepted Claims

Regulations require the WCB to issue a formal decision determining liability in all claims involving more than one week of lost time, even if the carrier has accepted the claim and is making payment. The WCB also issues such determinations in claims that are assembled where there is no compensatory lost time. To find liability, the WCB must determine that there was 1) an accident or occupational disease, 2) timely notice given to the employer, and 3) a causal relationship between the work injury or illness and the consequential disability. This is known as ANCR³ or ODNCR⁴.

In 2011, the WCB established 103,052 claims, 102,451 under the Workers' Compensation Law and the remaining 601 under either the Volunteer Firefighter or Volunteer Ambulance Workers Benefit Laws. (A – 12.) The breakdown of established claims by district is in A – 14. These claims include both controverted and non-controverted claims. Almost a third of these claims were established within 90 days from assembly, and more than 70% were established within 180 days.⁵ (A – 14.)

² Carriers file a C-7 form to challenge a claim, but the WCB's business rules do not treat a claim as controverted unless a qualifying medical form is filed by an authorized health care provider. In many claims, the carrier withdraws the C-7 or the claimant does not pursue the claim.

³ Accident, Notice, Causal Relationship

⁴ Occupational Disease, Notice, Causal Relationship

⁵ 4,122 established claims were excluded from the analysis of duration to acceptance due to data anomalies. (A – 14.)

Claim Resolution

By statute, the WCB resolves issues in workers' compensation claims through both formal and informal means. Formal resolution refers to the formal hearing process, in which a workers' compensation law judge receives evidence, hears testimony, decides disputed legal and factual questions, and awards benefits. Informal resolutions do not involve hearings. Decisions are made based on information collected in the electronic case file of the injured worker. Informal resolutions, which include administrative determinations and conciliation, are used to memorialize certain events in a claim that require a WCB decision or to propose a decision when there is no significant dispute between the parties. Informal resolutions are proposed by the WCB and are not effective if either party objects within 30 days.

In 2011, the WCB issued 329,319 resolutions, almost 60% of which were formal. There were 191,319 formal resolutions in 2011, including 12,256 that involved Section 32 waiver agreements. (A – 15.) In 2011, there were 71,334 administrative determinations and 56,666 conciliation decisions. (A – 15.) Relative to 2010, there was a modest decline in formal resolutions and a significant increase in informal resolutions, particularly conciliation decisions. (A – 15.)

Hearings

The WCB is unique in the country for its use of formal hearings to address issues in workers' compensation claims. In 2011, the WCB held 266,046 hearings, more than any other state in the country. (A – 16.) The number of hearings declined by more than 10%, despite the increase in number of claims assembled and reopened, in part due to the WCB using informal resolution more effectively. (A – 17.) On average, 1.5 hearings were required before the first indemnity benefit was awarded for those claims handled by the hearing process. (A – 19.)

Although the WCB has steadily reduced the number of claims pending at the end of the year, 2011 saw the first increase in claims in ten years (99,995 compared to 85,286 in 2010). The increase is due in part to a reduction in judges in 2011 (nine judges resigned or retired and two were on extended medical leaves in 2011).

Average Weekly Wage

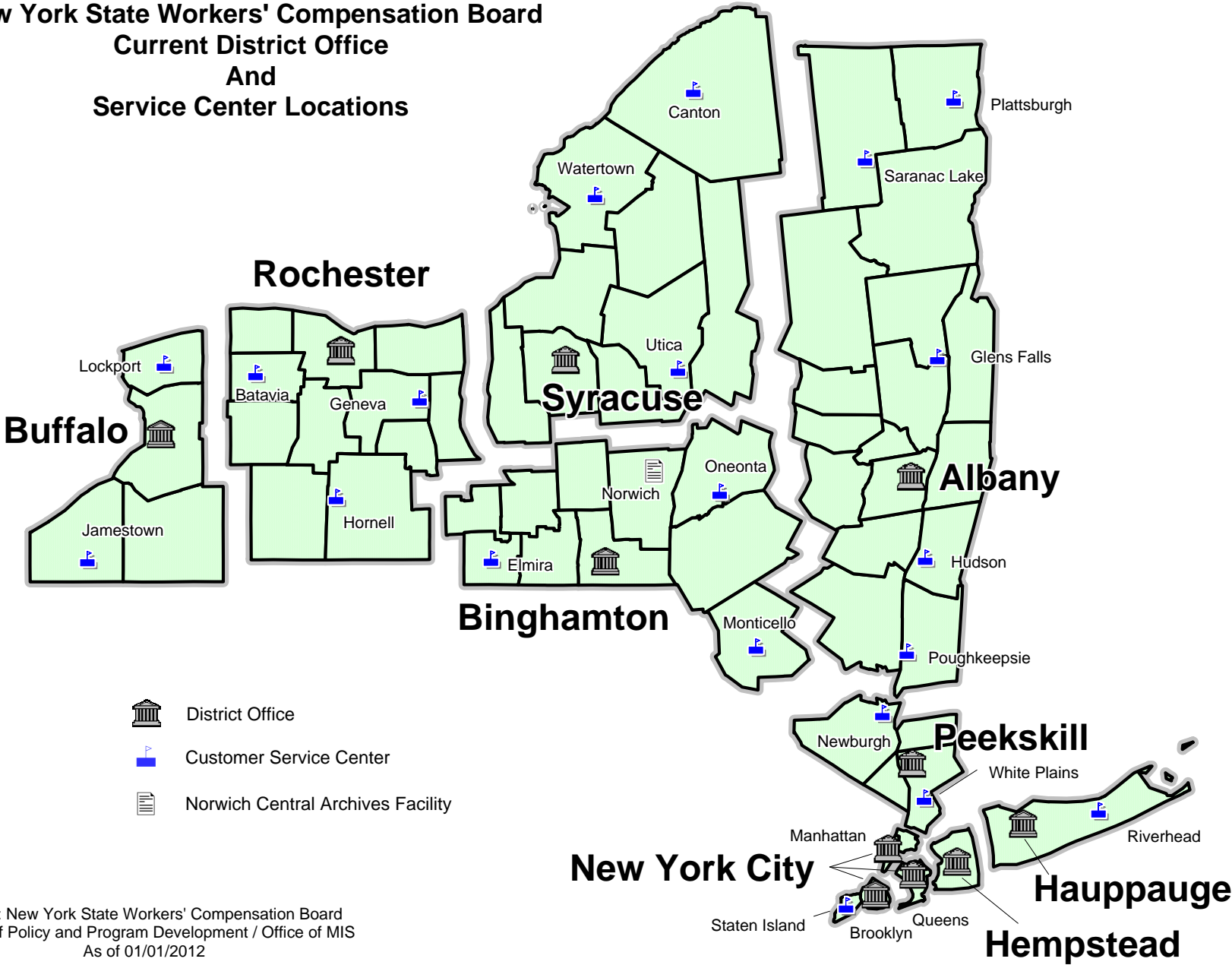
Indemnity benefits are based on the injured worker's average weekly wage (AWW) in the year prior to the accident, subject to statutory maximum benefit rates. The 2007 reform provided for a series of increases in the maximum benefit rate for the first time in more than a decade. For accidents between July 1, 2011 and June 30, 2012, the maximum rate is \$772.96, which is 2/3 of the prior year's state average weekly wage. This was a 4.5% increase over the 2010-11 maximum rate.

There is a wide distribution of AWW in established claims in 2011. More than 36% of claimants had an AWW of less than \$600, while 22.2% had an AWW above the state average weekly wage of \$1,159.44 and another 26.9% had an AWW between \$750 and \$1,159.44. (A – 21.)

Table of Contents

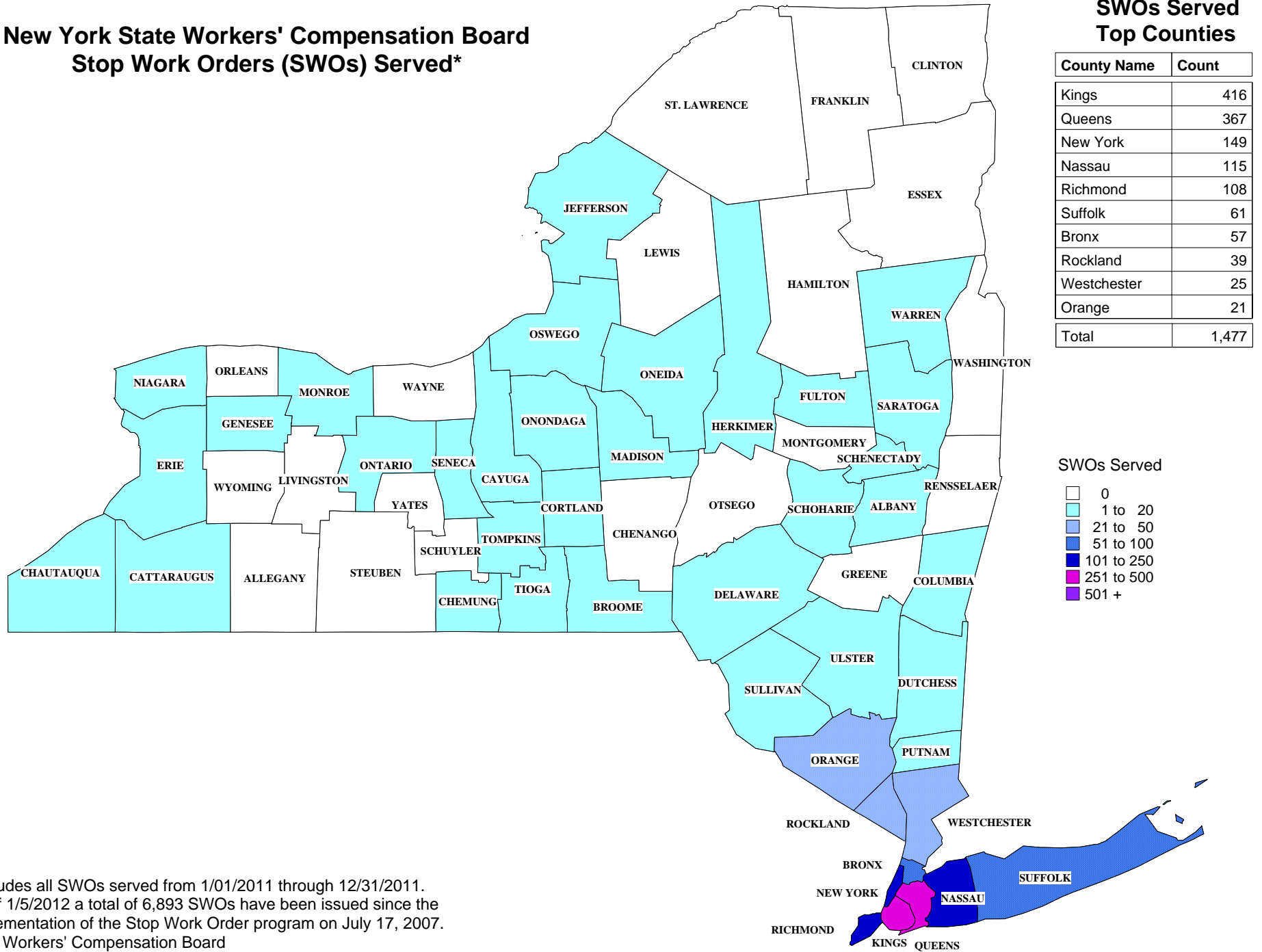
Current District Office And Service Center Locations	A-1
Stop Work Orders Served.....	A-2
Claims Assembled Ten Year Trend.....	A-3
Claims Assembled and Claims Reopened Ten Year Trend	A-3
Claims Assembled by District Office	A-4
Claims Assembled and Claims Reopened by District Office	A-4
Claims Assembled by County	A-5
Controverted Claims and C-7 Forms Filed.....	A-6
Claims Controverted by District Office	A-7
Percentage of Assembled Claims Controverted	A-8
Claims Controverted in the First Nine Months By Number of Days to Resolve the Issues.....	A-9
Average Number of Days to Resolve the Issues Raised in a Controverted Claim by Month	A-10
Pre-Hearing Conferences (PHC) Held - Controversy to PHC by Month.....	A-11
Claims Accepted by Claim Type and Month.....	A-12
Percentage of All Claims Accepted by District Office	A-13
Claims Accepted by District Office.....	A-13
Accepted Claims By Number of Days from Assembly to Acceptance.....	A-14
Resolutions by Board Processes	A-15
Hearings Held by District Office.....	A-16
Number of Hearings Held Ten Year Trend	A-17
Number of Claims Resolved by Hearing Process by Month	A-18
Average Number of Hearings to First Indemnity Award for Claims that Required Hearings by Month	A-19
Number of Claims Pending Ten Year Trend	A-20
Average Weekly Wage For Accepted Claims with First Indemnity Award	A-21

**New York State Workers' Compensation Board
Current District Office
And
Service Center Locations**



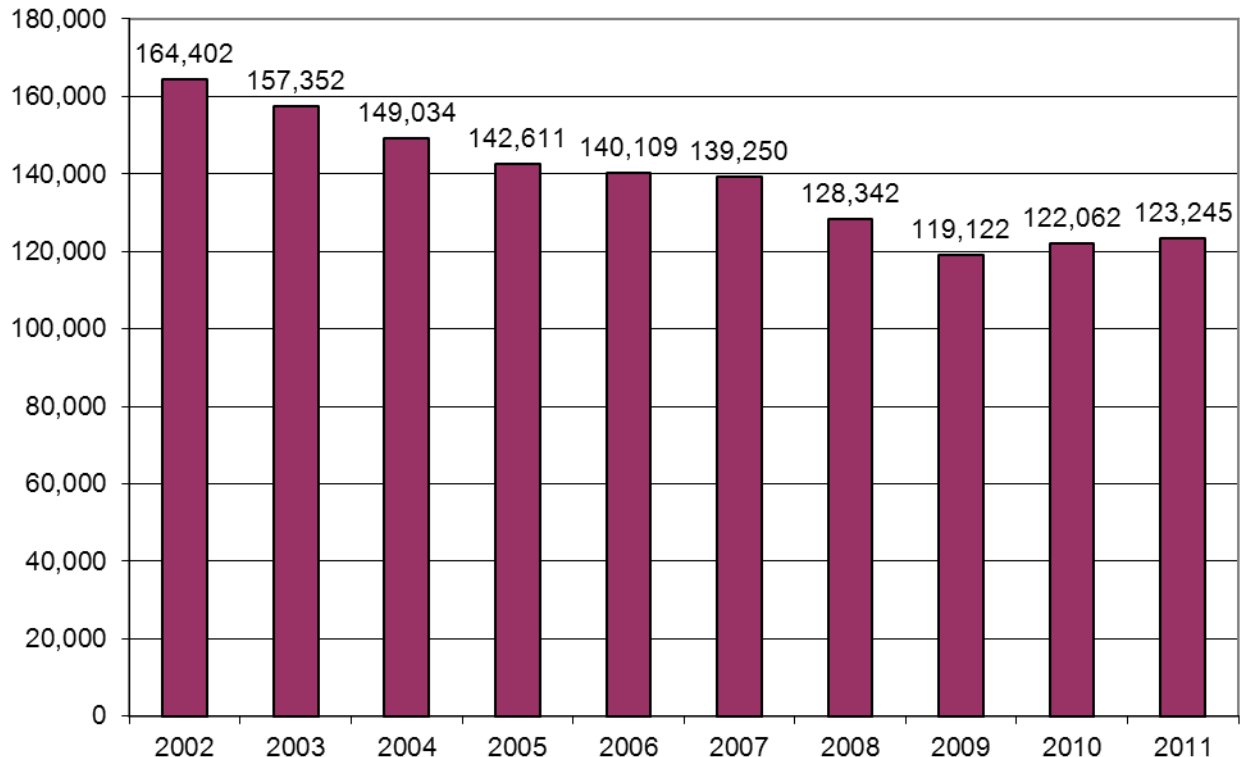
Source: New York State Workers' Compensation Board
Division of Policy and Program Development / Office of MIS
As of 01/01/2012

New York State Workers' Compensation Board Stop Work Orders (SWOs) Served*



*Includes all SWOs served from 1/01/2011 through 12/31/2011.
 As of 1/5/2012 a total of 6,893 SWOs have been issued since the implementation of the Stop Work Order program on July 17, 2007.
 NYS Workers' Compensation Board
 Division of Policy and Program Development / Office of MIS

Claims Assembled from 2002 to 2011 Ten Year Trend



Claims Assembled and Claims Reopened Ten Year Trend

Calendar Year	Total Assembled Claims	Total Reopened Claims
2002	164,402	156,847
2003	157,352 *	166,721
2004	149,034	172,812
2005	142,611	177,480
2006	140,109	182,028
2007	139,250	181,943
2008	128,342	191,805
2009	119,122	201,134
2010	122,062	196,160
2011	123,245	227,030

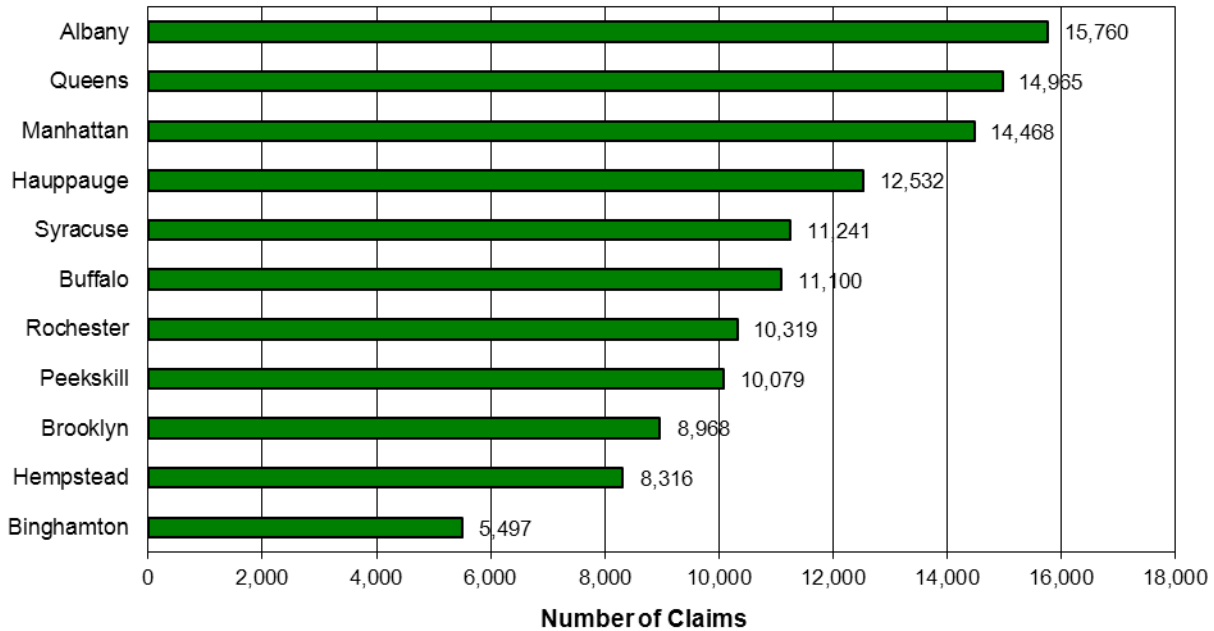
* The number of claims was reduced by 459 volunteer claims.

The count of claims assembled post WCB reform (after September 28, 2008) excludes claims that were assigned a WCB claim number but for which the Board did not receive sufficient information, despite requests, to take further action. Claims that were handled using an Alternative Dispute Resolution (ADR) program were not included in the above count of claims. ADR claims are handled outside of the traditional Workers' Compensation System in New York State. The WCB has changed its claim assembly process several times over the past few years. While this makes trend analysis difficult, the number of claims assembled continues to reflect the number of reported workplace injuries for which the agency may be called upon to resolve issues, monitor compliance and ensure the timely and appropriate payment of benefits.

A reopened claim is one which has been reactivated to resolve new issues following a finding that no further action was necessary.

Source: NYS Workers' Compensation Board
Division of Policy and Program Development / Office of MIS

Claims Assembled in 2011 By District Office



Assembled and Reopened Claims in 2011 By District Office

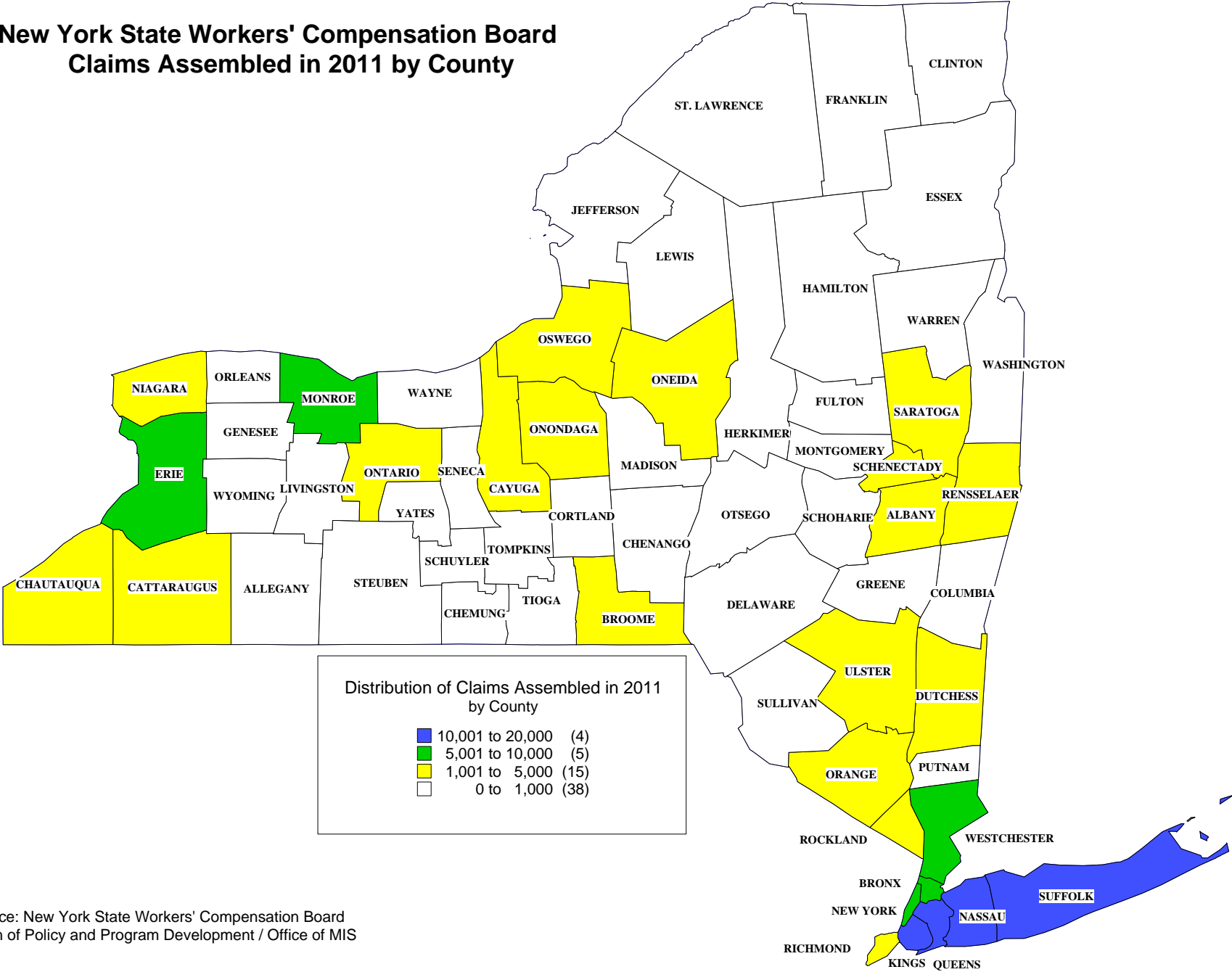
District Office	Claims Assembled	Claims Reopened
Albany	15,760	22,824
Queens	14,965	26,060
Manhattan	14,468	23,360
Hauppauge	12,532	20,584
Syracuse	11,241	23,688
Buffalo	11,100	26,757
Rochester	10,319	17,868
Peekskill	10,079	23,669
Brooklyn	8,968	15,608
Hempstead	8,316	16,350
Binghamton	5,497	10,262
Total	123,245	227,030

The count of claims assembled post WCB reform (after September 28, 2008) excludes claims that were assigned a WCB claim number but for which the Board did not receive sufficient information, despite requests, to take further action. Claims that were handled using an Alternative Dispute Resolution (ADR) program were not included in the above count of claims. ADR claims are handled outside of the traditional Workers' Compensation System in New York State.

A reopened claim is one which has been reactivated to resolve new issues following a finding that no further action was necessary.

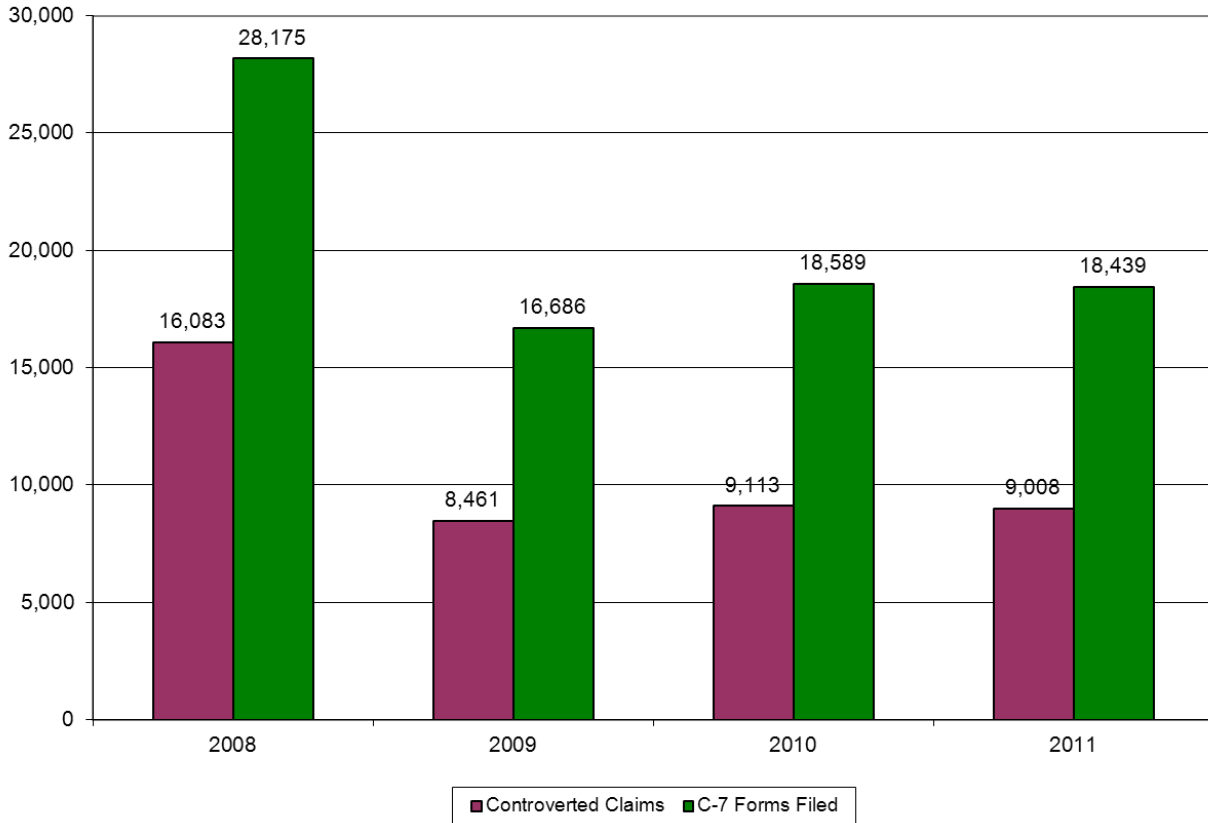
Source: NYS Workers' Compensation Board
Division of Policy and Program Development / Office of MIS

New York State Workers' Compensation Board Claims Assembled in 2011 by County



Source: New York State Workers' Compensation Board
Division of Policy and Program Development / Office of MIS

Controverted Claims and C-7 Forms Filed From 2008 to 2011



Controverted Claims and C-7 Forms Filed From 2008 to 2011

Year	Controverted Claims*	Percent Change	C-7 Forms Filed	Percent Change
2008	16,083	N/A	28,175	N/A
2009	8,461	-47%	16,686	-41%
2010	9,113**	8%	18,589	11%
2011	9,008***	-1%	18,439	-1%

* Approximately five percent of the Controverted Claims reported may have data issues that cannot be resolved without manual intervention.

** 101 claims removed from this population due to data anomalies.

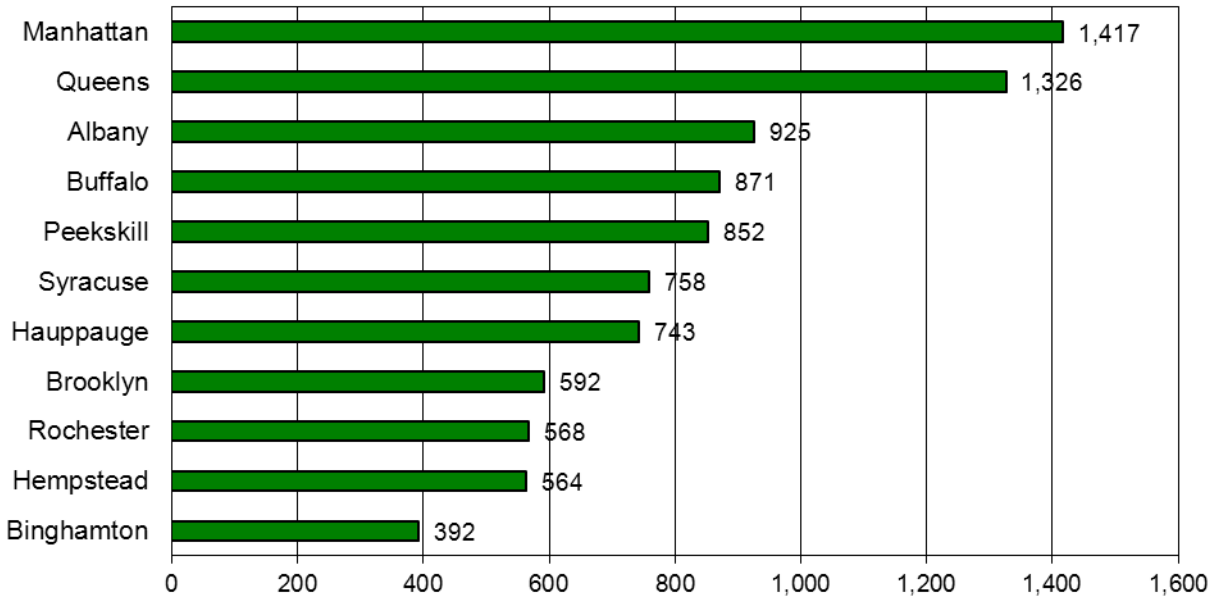
*** 121 claims removed from this population due to data anomalies.

A controverted claim is one for which the Board has received: 1) "Notice That Right To Compensation Is Controverted" (C-7) indicating that the Carrier disputes the claim, and 2) qualifying medical documentation.

"C-7 Forms Filed" is a count of the "Notice That Right To Compensation Is Controverted" forms filed with the Board.

Source: NYS Workers' Compensation Board
Division of Policy and Program Development / Office of MIS

Claims Controverted in 2011 By District Office



District Office	Number of Claims Controverted*
Manhattan	1,417
Queens	1,326
Albany	925
Buffalo	871
Peekskill	852
Syracuse	758
Hauppauge	743
Brooklyn	592
Rochester	568
Hempstead	564
Binghamton	392
Total	9,008**

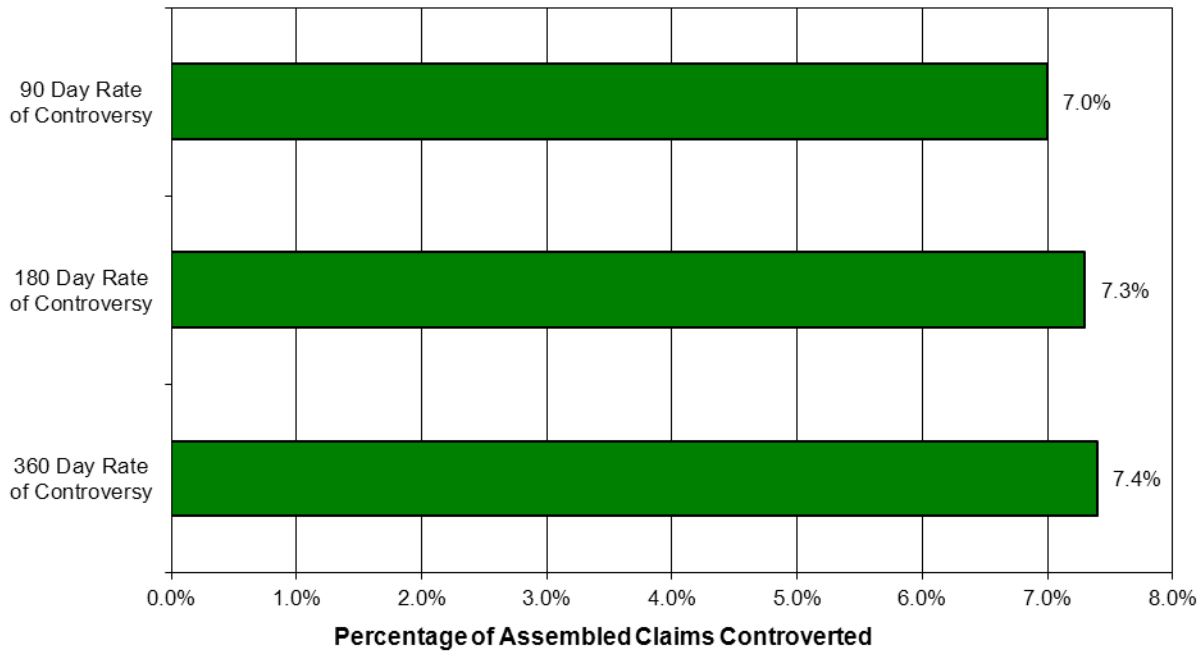
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Source: NYS Workers' Compensation Board
Division of Policy and Program Development / Office of MIS

Percentage of Assembled Claims Controverted 2011 Report



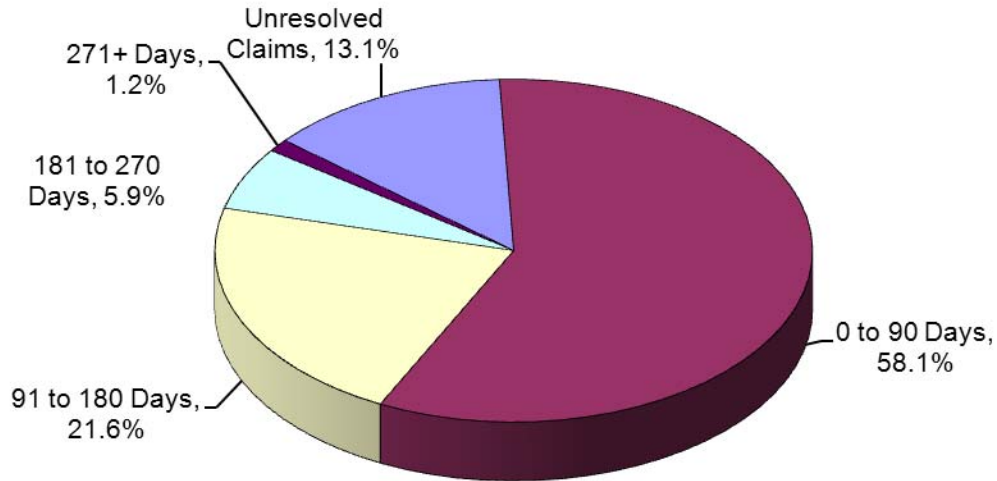
Rate of Controversy	Totals
90 Day Rate of Controversy	7.0%
Claims Assembled (Oct. 2010 to Sept. 2011)	117,953
Claims Controverted	8,224

180 Day Rate of Controversy	7.3%
Claims Assembled (July 2010 to June 2011)	117,936
Claims Controverted	8,630

360 Day Rate of Controversy	7.4%
Claims Assembled (Jan. 2010 to Dec. 2010)	119,208
Claims Controverted	8,858

This report is run with a '90 day', '180 day' and '360 day' lag. It presents the rates of controversy for claims assembled during the 12 month periods ending 90 days ago, 180 days ago and 360 days ago as of January 1, 2012. Claims that were handled using an Alternative Dispute Resolution (ADR) program were not included in the above count of claims. ADR claims are handled outside of the traditional Workers' Compensation System in New York State.

Claims Controverted in the First Nine Months of 2011 By Number of Days to Resolve the Issues



Days	Controverted Claims*	Percentage of Claims
Unresolved Claims	869	13.1%
0 to 90 Days	3,848	58.1%
91 to 180 Days	1,432	21.6%
181 to 270 Days	393	5.9%
271+ Days	79	1.2%
Total	6,621 **	100.0%

* Approximately five percent of the Controverted Claims reported may have data issues that cannot be resolved without manual intervention.

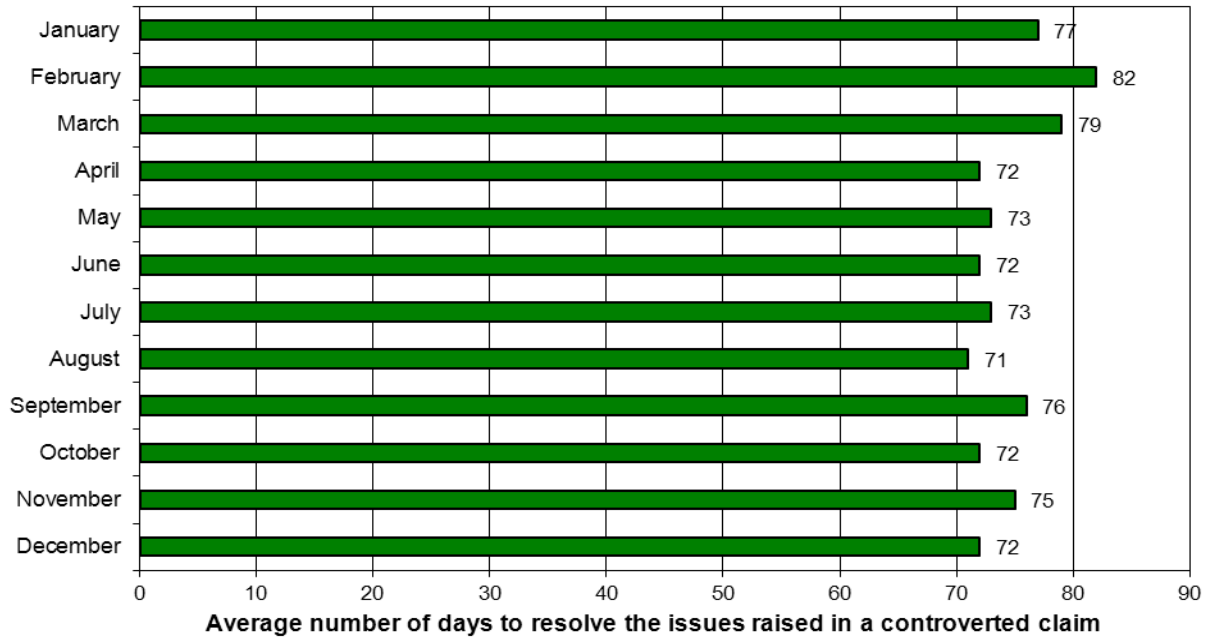
** 90 claims removed from this population due to data anomalies.

A controverted claim is one for which the Board has received: 1) "Notice That Right To Compensation Is Controverted" (C-7) indicating that the Carrier disputes the claim, and 2) qualifying medical documentation.

Controversy is resolved when the Board accepts the claim, closes it administratively, decides that no further action is necessary, or files a typist form letter "Notice to Carrier Regarding Action Taken on Form C-7" indicating the controversy is resolved.

Source: NYS Workers' Compensation Board
Division of Policy and Program Development / Office of MIS

**Average Number of Days to Resolve the Issues
Raised in a Controverted Claim in 2011
By Month**



Month	Average Number of Days
January	77
February	82
March	79
April	72
May	73
June	72
July	73
August	71
September	76
October	72
November	75
December	72
Average	75

A claim is considered eligible for hearing as a controverted claim only if a C-7 form and a qualifying medical form have been filed.

Controversy is resolved when the Board accepts the claim, closes it administratively, decides that no further action is necessary, or files a typist form letter "Notice to Carrier Regarding Action Taken on Form C-7" indicating the controversy is resolved.

Source: NYS Workers' Compensation Board
Division of Policy and Program Development / Office of MIS

**Pre-Hearing Conferences (PHC) Held in 2011
Median Days from Controversy to PHC
By Month**

Month	Total PHC	Eligible PHC*	Median Days from Controversy to PHC	Unknown Controversy Date
January	568	520	26	48
February	539	518	26	21
March	659	613	26	46
April	689	642	26	47
May	733	679	26	54
June	747	715	25	32
July	549	522	26	27
August	758	710	25	48
September	631	597	26	34
October	712	679	25	33
November	775	738	25	37
December	699	682	26	17
Year	8,059 **	7,615	26	444***

Approximately five percent of the Controverted Claims reported may have data issues that cannot be resolved without manual intervention.

* An 'Eligible PHC' is the first pre-hearing conference for a controverted claim.

** The total number of PHCs held in calendar year 2011 is 8,561; out of these claims, 502 had a PHC in the previous year.

*** The 'Unknown Controversy Date' number reflects re-opened controverted claims, data anomalies, and claims with unknown controversy dates.

A controverted claim is one for which the Board has received: 1) "Notice That Right To Compensation Is Controverted" (C-7) indicating that the Carrier disputes the claim, and 2) qualifying medical documentation.

**Claims Accepted in 2011
By Claim Type and Month**

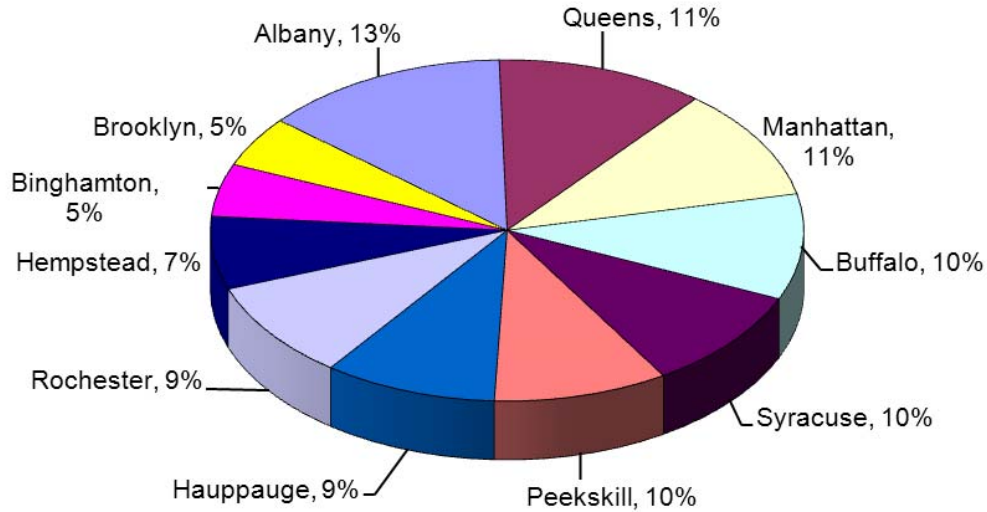
Month Accepted	Total Claims Accepted	WCL Claims (a)	VFBL Claims (b)	VAWBL Claims (c)
January	7,717	7,680	35	2
February	7,639	7,596	40	3
March	9,409	9,354	54	1
April	7,378	7,334	39	5
May	8,330	8,290	30	10
June	9,024	8,971	51	2
July	9,089	9,032	49	8
August	10,140	10,066	66	8
September	8,498	8,446	49	3
October	7,637	7,603	30	4
November	8,120	8,074	43	3
December	10,071	10,005	62	4
Total	103,052	102,451	548	53

- (a) Claims under the Workers' Compensation Law
- (b) Claims under the Volunteer Firefighters' Benefit Law
- (c) Claims under the Volunteer Ambulance Workers' Benefit Law

Claims Accepted: Claims for which there was a finding made by the Board that (1) the claimant sustained an injury or illness arising out of and in the course of employment; (2) timely notice thereof was given to the employer; and (3) there is a causal relationship between the work injury or illness and a consequent disability.

(The claims accepted data for 2011 includes some previously established claims for which a Board finding during calendar year 2011 amended or reaffirmed the claim's status; it is estimated that these affirmations account for less than 5% of the total.)

**Percentage of All Claims Accepted in 2011
By District Office**



**Claims Accepted in 2011
By District Office**

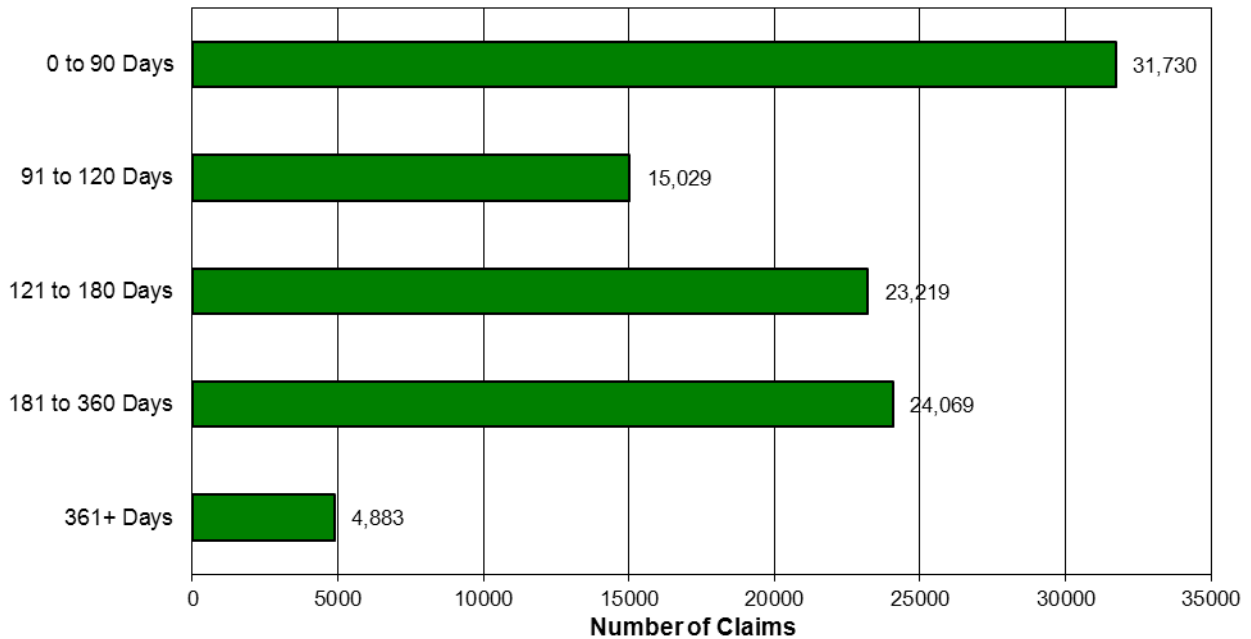
District Office	Claims Accepted
Albany	13,875
Queens	11,741
Manhattan	10,917
Buffalo	10,322
Syracuse	9,895
Peekskill	9,798
Hauppauge	9,724
Rochester	9,555
Hempstead	7,121
Binghamton	5,158
Brooklyn	4,946
Total	103,052

Claims Accepted: Claims for which there was a finding made by the Board that (1) the claimant sustained an injury or illness arising out of and in the course of employment; (2) timely notice thereof was given to the employer; and (3) there is a causal relationship between the work injury or illness and a consequent disability.

(The claims accepted data for 2011 includes some previously established claims for which a Board finding during calendar year 2011 amended or reaffirmed the claim's status; it is estimated that these affirmations account for less than 5% of the total.)

Source: NYS Workers' Compensation Board
Division of Policy and Program Development / Office of MIS

**Accepted Claims in 2011
By Number of Days from Assembly to Acceptance**



**Accepted Claims in 2011
By Number of Days from Assembly to Acceptance**

Days	Accepted Claims	Percent
0 to 90 Days	31,730	32.1%
91 to 120 Days	15,029	15.2%
121 to 180 Days	23,219	23.5%
181 to 360 Days	24,069	24.3%
361+ Days	4,883	4.9%
Total Claims	98,930	100.0%

Note: 4,122 claims were excluded from this analysis due to data anomalies.

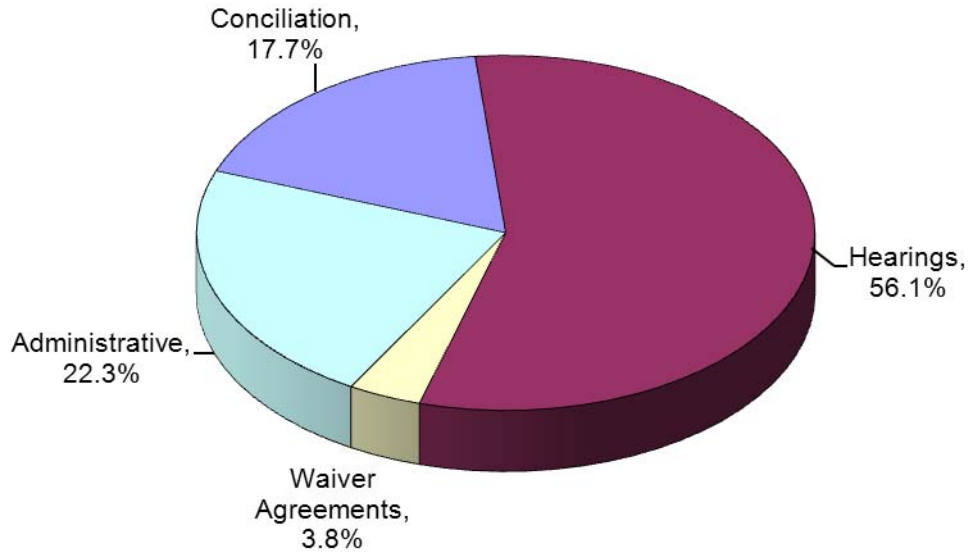
Claims are assembled when the Board has received sufficient documentation that a work related accident or disease may have occurred.

Claims Accepted: Claims for which there was a finding made by the Board that (1) the claimant sustained an injury or illness arising out of and in the course of employment; (2) timely notice thereof was given to the employer; and (3) there is a causal relationship between the work injury or illness and a consequent disability.

(The claims accepted data for 2011 includes some previously established claims for which a Board finding during calendar year 2011 amended or reaffirmed the claim's status; it is estimated that these affirmations account for less than 5% of the total.)

Source: NYS Workers' Compensation Board
Division of Policy and Program Development / Office of MIS

Resolutions by Board Processes in 2011



Claim Resolution	Number of Resolutions	Percentage of Resolutions
Informal	128,000	40.1%
Administrative	71,334	22.3%
Conciliation	56,666	17.7%
Formal	191,319	59.9%
Hearings	179,063	56.1%
Waiver Agreements	12,256	3.8%
Total	319,319	100.0%

“Administrative” includes Administrative Determinations, Administrative Closures and Cancellations (A claim is cancelled if it is determined to be a duplicate).

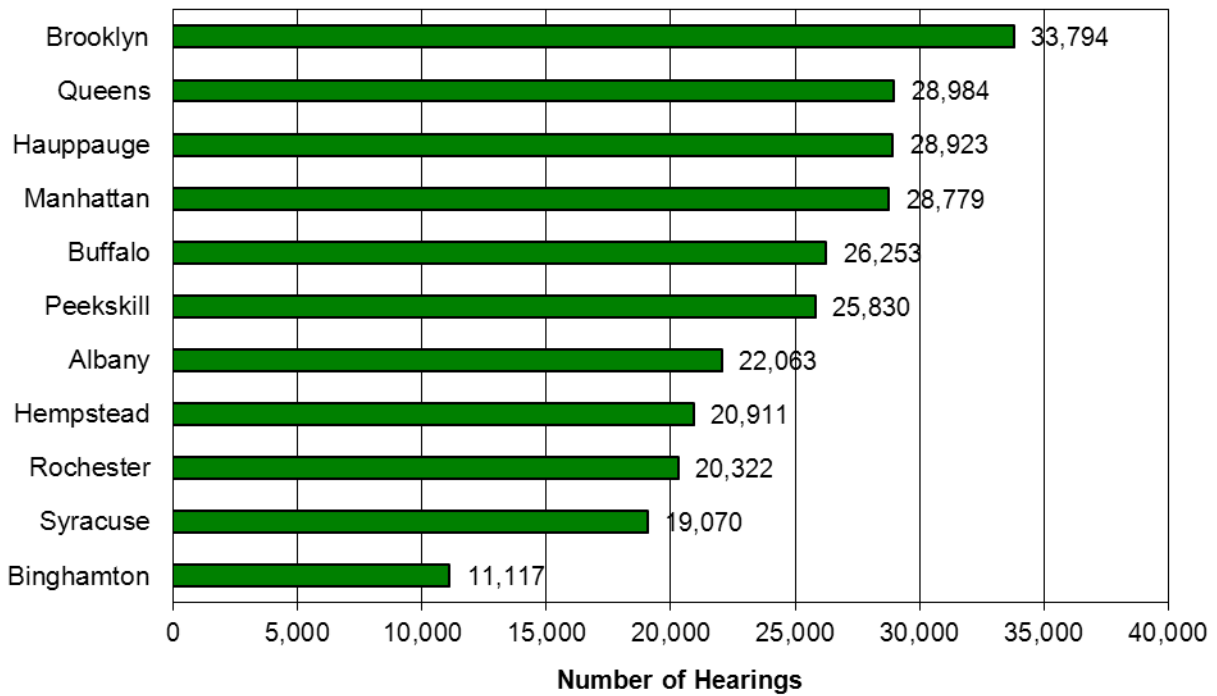
“Conciliation” provides an informal and prompt resolution of the claim based upon the cooperation of both parties: the injured worker and the insurance carrier/self-insured employer.

A claim resolved by the “Hearing” process is one for which a judge had determined that no further action by the Board was necessary at the conclusion of the hearing, this includes Pre-Hearing Conferences. A Pre-Hearing Conference provides a mechanism for the identification of issues and relevant evidence and to permit parties [in interest] an opportunity to assess their case and to resolve outstanding issues prior to [trial] scheduling a hearing regarding those issues.

“Waiver Agreements” settle any or all issues in a claim for workers’ compensation benefits, subject to the Board’s approval.

Source: NYS Workers’ Compensation Board
Division of Policy and Program Development / Office of MIS

Hearings Held in 2011 By District Office

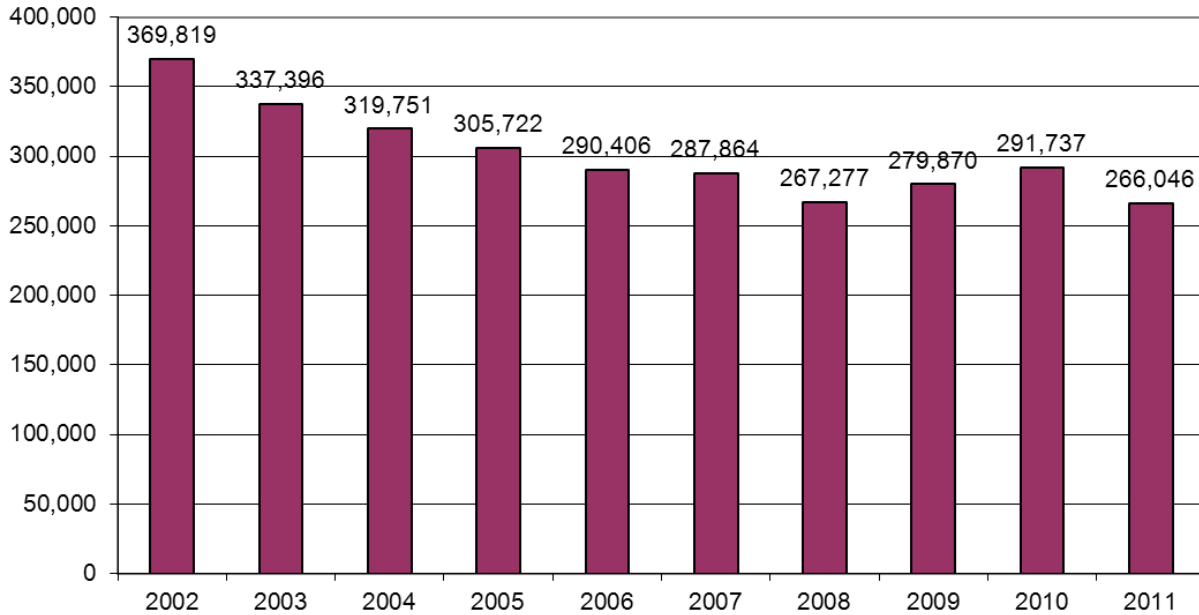


District Office	Number of Hearings
Brooklyn	33,794
Queens	28,984
Hauppauge	28,923
Manhattan	28,779
Buffalo	26,253
Peekskill	25,830
Albany	22,063
Hempstead	20,911
Rochester	20,322
Syracuse	19,070
Binghamton	11,117
Total	266,046

The number of hearings excludes commissioner hearings, board panel reviews and waiver agreements.

Source: NYS Workers' Compensation Board
Division of Policy and Program Development / Office of MIS

Number of Hearings Held from 2002 to 2011 Ten Year Trend



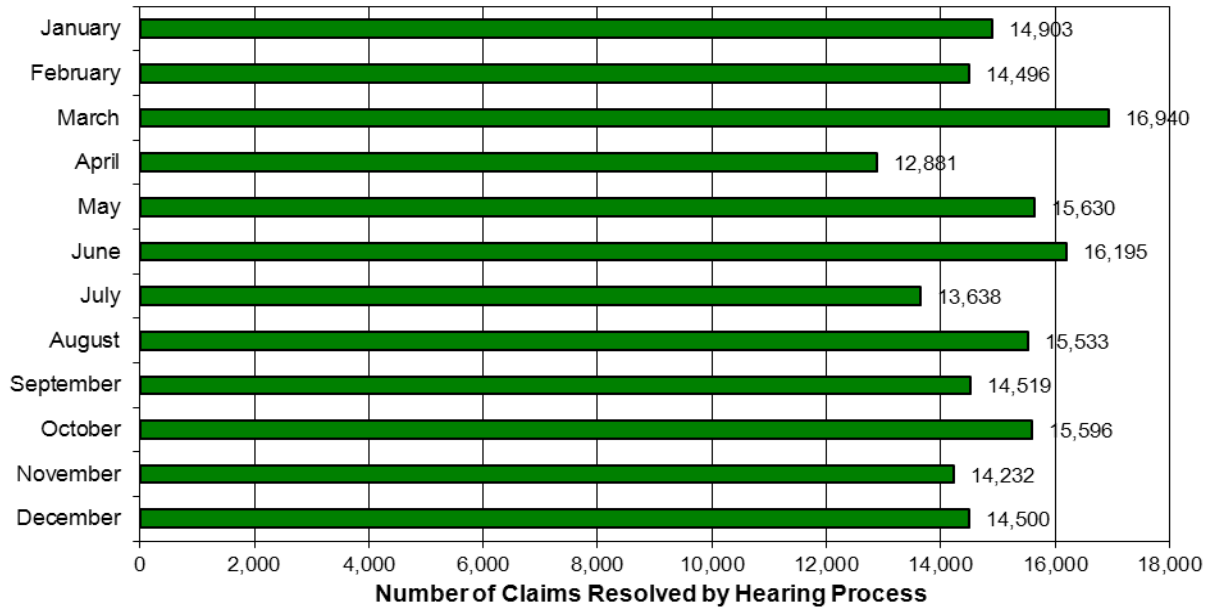
Number of Hearings Held Ten Year Trend

Year	Total Hearings Held	Claims Pending at Years End	Ratio of Hearings Held to Claims Pending
2002	369,819	160,176	2.3
2003	337,396	149,588	2.3
2004	319,751	137,735	2.3
2005	305,722	126,054	2.4
2006	290,406	122,860	2.4
2007	287,864	116,392	2.5
2008	267,277	96,058	2.8
2009	279,870	90,315	3.1
2010	291,737	85,286	3.4
2011	266,046	99,995	2.7

The number of hearings excludes commissioner hearings, board panel reviews and waiver agreements.

Source: NYS Workers' Compensation Board
Division of Policy and Program Development / Office of MIS

Number of Claims Resolved by Hearing Process in 2011 By Month



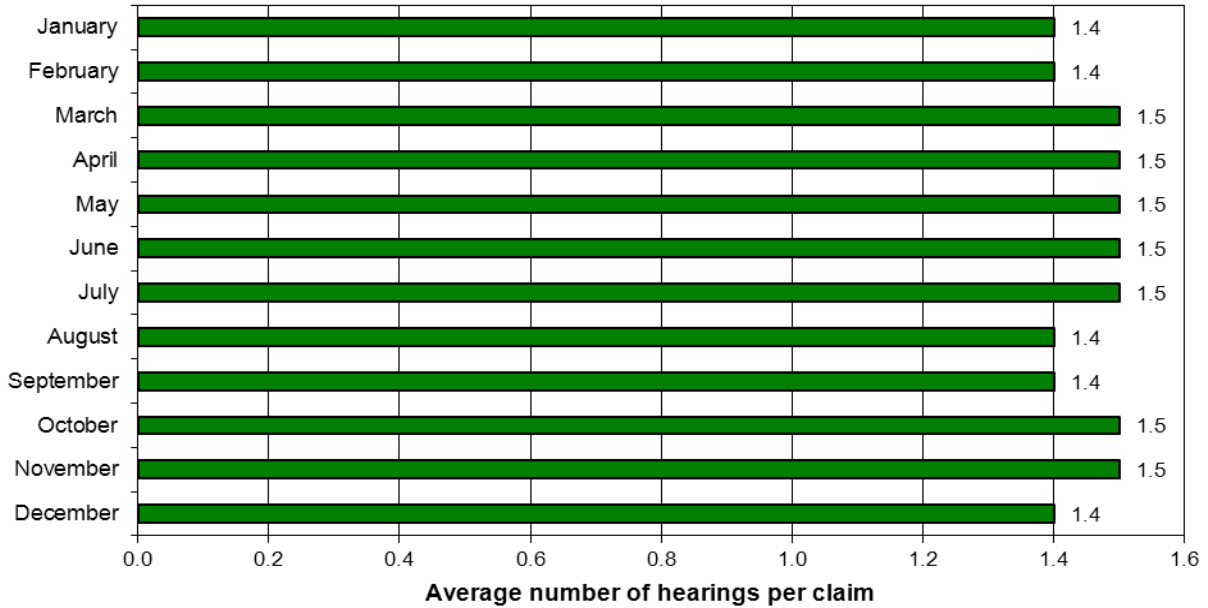
Month	Resolved by Hearing Process
January	14,903
February	14,496
March	16,940
April	12,881
May	15,630
June	16,195
July	13,638
August	15,533
September	14,519
October	15,596
November	14,232
December*	14,500
Total	179,063

* As of 1/08/2012.

A claim resolved by the Hearing process is one for which a judge had determined that no further action by the Board was necessary at the conclusion of the hearing, this includes Pre-Hearing Conferences. A Pre-Hearing Conference provides a mechanism for the identification of issues and relevant evidence and to permit parties [in interest] an opportunity to assess their case and to resolve outstanding issues prior to [trial] scheduling a hearing regarding those issues.

Source: NYS Workers' Compensation Board
Division of Policy and Program Development / Office of MIS

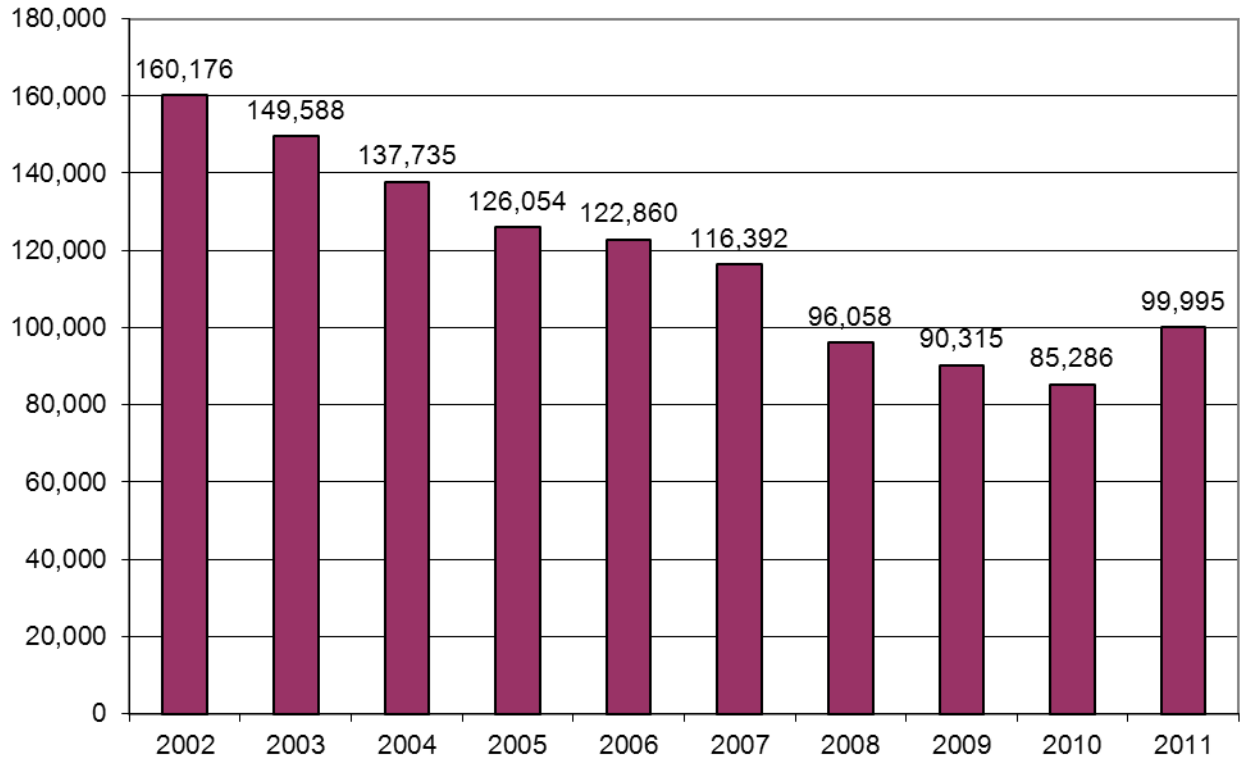
**Average Number of Hearings to First Indemnity Award
for Claims that Required Hearings in 2011
By Month**



Month	Average Hearings per Claim
January	1.4
February	1.4
March	1.5
April	1.5
May	1.5
June	1.5
July	1.5
August	1.4
September	1.4
October	1.5
November	1.5
December	1.4
Average	1.5

Accepted Claims with indemnity award: Claims for which there was a finding made by the Board that (1) the claimant sustained an injury or illness arising out of and in the course of employment; (2) timely notice thereof was given to the employer; (3) there is a causal relationship between the work injury or illness and a consequent disability; and (4) the claimant received a monetary award.

**Number of Claims Pending from 2002 to 2011
Ten Year Trend**



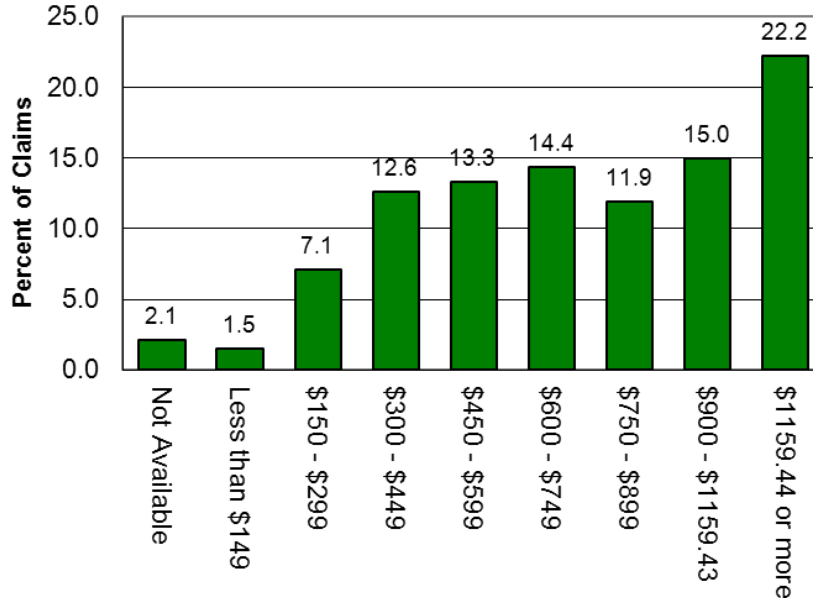
**Number of Claims Pending
Ten Year Trend**

Calendar Year	Claims Pending at End of Year	Annual Percent Change in Claims Pending
2002	160,176	N/A
2003	149,588	-7%
2004	137,735	-8%
2005	126,054	-8%
2006	122,860	-3%
2007	116,392	-5%
2008	96,058	-17%
2009	90,315	-6%
2010	85,286	-6%
2011	99,995	17%

A pending claim is one with unresolved issues.

Source: NYS Workers' Compensation Board
Division of Policy and Program Development / Office of MIS

**Average Weekly Wage
For Accepted Claims with First Indemnity Award in 2011**



Average Weekly Wage

Average Weekly Wage	Number of Claimants	Percentage of Claimants
Not Available	1,534	2.1%
Less than \$150	1,082	1.5%
\$150 - \$299	5,163	7.1%
\$300 - \$449	9,183	12.6%
\$450 - \$599	9,688	13.3%
\$600 - \$749	10,485	14.4%
\$750 - \$899	8,681	11.9%
\$900 - \$1159.43	10,908	15.0%
\$1159.44 or more	16,190	22.2%
Totals	72,914	100.0%

The maximum benefit rate effective 7/1/2011 is based upon the Statewide Average Weekly Wage of \$1159.44.

Claims Accepted: Claims for which there was a finding made by the Board that (1) the claimant sustained an injury or illness arising out of and in the course of employment; (2) timely notice thereof was given to the employer; and (3) there is a causal relationship between the work injury or illness and a consequent disability.

(The claims accepted data for 2011 includes some previously established claims for which a Board finding during calendar year 2011 amended or reaffirmed the claim's status; it is estimated that these affirmations account for less than 5% of the total.)