

# Workers' Compensation Legislative & Regulatory Update

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The Office of Judges of Compensation Claims (OJCC) has issued its latest annual report detailing the level and costs of the workers' compensation litigation system. Since the 2003 reforms, when the legislature restricted claimant legal fees to a statutory fee schedule, the number of new petitions and cases has declined. There also has been a marked decline in the amount of legal fees. The Bureau of Workers' Compensation Fraud (BWCF) and the Bureau of Compliance (BOC) have also released their annual report documenting the level of fraud and non-compliance. The report comes as the BOC institutes a new rule that allows employers to pay fines online on a periodic basis in order to have a stop work order lifted. Chief Financial Officer Alex Sink is objecting to a plan by Governor Charlie Crist to appropriate \$129.5 million from the Workers' Compensation Administration Trust Fund (WCATF) to support other state projects. A new actuarial study shows that the Special Disability Trust Fund (SDTF) is moving ever closer to seeing its liabilities drop below the \$1 billion dollar mark on a discounted basis.

## OJCC Report

By law, the OJCC is required to issue an annual report detailing the judges'

performance, which is the best measure of the current level of legal activity in the system. The latest study, which covers fiscal year 2006-2007, found that the level of litigation continues to trend downward and follow many of the expectations behind the 2003 reforms.

In fiscal year 2002-2003, claimant attorneys filed 57,000 cases. Since then, the number of new cases has continued to decline although at a slower rate with each passing year. In fiscal year 2006-2007, the number of new cases fell to 36,200.

The same pattern can be seen in the number of petitions for benefits filed with the courts. Just prior to the 2003 law changes, the number of petitions jumped by 30 percent to 151,000. For the next three years, the number of petitions fell at an average rate of around 15 percent annually. By 2006-2007, the number of petitions only reached 82,600. One fact that stands out is that the decline in the number of petitions filed with the court since 2003 equals 45.22 percent, which nearly mirrors the 40 percent drop in workers' compensation rates at the time.

In fiscal year 2006-2007, some \$478.5 million was spent on claimant attorney and defense attorney expenses. Of that money, \$191 million was reimbursed to claimant attorneys and \$287 million to defense lawyers. Those figures, however, reflect fees from cases in different years and multiple petitions for ben-

efits. The majority of the claimant attorneys fees, some 77.14 percent, reflected payments on cases where a worker suffered an injury between January 1, 2000 and December 31, 2006.

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## The Final FY 2006-2007 Numbers

### Number of litigated cases:

- Petitions filed: 82,607 – (9.21% decrease from prior year).
- New cases filed: 36,227 – (1.86% decrease from last year).

### Amount of Litigation Resolved:

- Petitions closed: 191,181 – (87% increase from last year).

### Cost of Litigation Resolved

- OJCC Budget \$18,032,059 (6% decrease from last year)
- Per Petition Closed \$9,383 (43% decrease from last year)

### Number of mediation conferences held:

- 22,258 – (13 % decrease from last year).

### Disposition of mediation conferences:

- Some resolution of issues: 58.39 % – (decrease of 59.14 %)
- Cases settled: 22.39 % – (decrease from 28.96 %)

### Number of continuances granted for mediations:

- Continuances: 2,336 – (decrease from 4,756 last year)

### Number of continuances granted for final hearings:

- Trial continuances: 4,161 – (decrease from 5,011 last year)

### Outcome of litigated cases:

- Resolved before trial: 10,153 – (decrease from 12,034 last year)

### Amount of attorneys fees paid:

- JCC approved claimant fees: \$191,108,005 – (8.28% decrease from last year)
- Reported defense fees: \$287,443,033 (4% decrease from last year)
- Total paid attorney fees: \$478,551,038

## Compliance and Fraud Report

The BWCF and BOC 2006-2007 annual report continues to show that the bureaus are taking an aggressive approach to enforcing the law. The bureaus' activities resulted in 233 arrests as the agencies opened 660 cases as compared to the 486 in the previous fiscal year. The cases resulted in a fraud dollar restitution amount of \$254 million, which is substantially higher than the \$8.7 million in evaded premiums and monies paid on false claims recorded in 2005-2006. The increase is largely the result of one case against a major employer, which involved the efforts of the two bureaus and the Federal Bureau of Investigation.

Looking at convictions, 58 individuals were convicted on charges of claimant fraud and 65 employers for working without workers' compensation insurance. Another 13 employers were convicted on charges of purposely evading paying appropriate premiums and 29 employers were found to use a false certificate of insurance to mislead their clients and state inspectors. Continuing their aggressive efforts to police the

construction industry, the BOC also issued 2,517 stop work orders, which is a slight decline from the previous year. However, the penalties increased from \$58 million to \$75 million. Additionally, the work of the compliance officers resulted in 6,700 workers being added to the workers' comp rolls which generated \$12.3 million in additional premiums.

Under a DWC rule, employers can enter into an agreement with the division to electronically pay their fines on a period basis. This allows employers to pay penalties in installments of 12, 24, 36, 48, 60 months. The service is free and can be accessed at [www.myfloridacfo.com/WC](http://www.myfloridacfo.com/WC)

The bureau also has two online track systems so employers and contractors can check the status of companies. The compliance stop work order database lists each employer's name, the date the stop work order was issued, the date it was lifted, and the type of compliance violation. The construction policy-tracking database provides information to contractors and other parties concerning the workers' compensation coverage status of sub-contractors. The system allows employers, carriers, and state and municipal officials to submit a list of sub-contractors; the parties are then automatically contacted if there is any change in the sub-contractor's status. As of June 30, 2007, a total 5,600 database registrants are tracking nearly 26,000 sub-contractors.

## WCATF and SDTF

CFO Alex Sink is objecting to a proposal by Governor Charlie Crist to appropriate \$129.5 million from the WCATF to help fund other state obligations. The move is part of Crist's budget plan to place more money toward furthering economic development. Although the trust fund is set up so that employer/carriers pay the cost of regulating the workers' compensation system, there is no law preventing the

governor or the legislature from using the trust fund monies for other projects.

As of January 30, the trust fund had a balance of \$271 million. The DWC had retained a significant surplus in the WCATF in case the state was required to reimburse carriers for potential overpayments into the fund dating back to the 1990s. The courts have since ruled in the state's favor making the money available to pay the annual cost of operating the state's system.

If Crist's proposal is approved by the legislature, it would leave the trust fund with a balance of \$142 million. The trust fund's total obligations equal \$93 million annually, of which the DWC accounts for \$25 million. The current assessment rate is .25%, which the division projects will raise \$23 million. The trust fund's remaining \$70 million liability would be drawn from the fund's current balance. Under this scenario, the current .23% assessment rate could be maintained into 2009, after which Sink maintains the WCATF assessment would have to be increased.

The WCATF assessment covers the administrative costs of the DWC and also supports the Office of Judges of Compensation Claims. The monies also cover certain programs in the Agency for Health Care Administration, the Department of Education, the BWCF, and the Department of Business and Professional Regulations.

The DWC also announced the assessment rates for the Special Disability Trust Fund. Since 1994, the SDTF assessment has been set at 4.52% on carriers' net written workers' comp premiums. Since the fund was closed to new claims as of 1997, its liabilities have steadily declined. The latest actuarial study projects that as of the end of this fiscal year, the fund will have a balance of \$1.9 billion on an undiscounted basis and \$980 million on a discounted basis. The 4.52% assessment is expected to raise \$250 million.