

STATE OF FLORIDA

Division of Administrative Hearings



Annual Report of the Office of the Judges of Compensation Claims

Table of Contents and Summary:

This annual report of the Office of the Judges of Compensation Claims (“OJCC”) is promulgated pursuant to statutory requirement, Fla. Stat. §440.45(5),¹ which requires the Deputy Chief Judge of Compensation Claims to report on the following parameters:

Number of litigated cases.	6
Petitions filed:	90,948 (15.21 % decrease from last year)
New Cases filed:	36,909 (4.25% decrease from last year)
Amount of litigation resolved.	11
Petitions closed:	79,768 (15% increase from last year)
Cost of litigation resolved.	13
OJCC Budget	\$17,022,942 (1.37% increase from last year)
Per Petition Closed:	\$213.41 (57.7% decrease from last year)
Number of mediation conferences held.	16
Mediations held:	25,522 (3.36% decrease from last year)
Disposition of mediation conferences.	17
Some resolution:	70.37% (decrease from 71.02% last year)
Settled case:	25.26% (increase from 24.21% last year)
Number of continuances granted for mediations.	19
Continuances:	4,756 (increase from 3,333 last year)
Number of continuances granted for final hearings.	21
Trial Continuances:	5,011 (decrease from 5,094 last year)
Outcome of litigated cases.	21
Resolved before trial	11,565 (decrease from 12,504 last year)
Amount of attorney's fees paid in each case according to order year.	27
Claimant Fees App.	\$261,058,816 (17.39% increase from last year)
Defense Fees Reported	\$299,412,570 (13.39% increase from last year)
Amount of attorney's fees paid in each case according to accident year.	30
Number of final orders not issued within 30 days after the final hearing	31
Not within 30 days:	42.4%
Recommended changes or improvements to the dispute resolution elements of the Workers' Compensation Law and regulations.	31
Ability to Meet Statutory Requirements	32

Overview of Florida Workers' Compensation:

Florida Workers' Compensation is a self-executing system defined by [Chapter 440, F.S.](#) The purpose of workers' compensation is to provide individuals injured at work with certain defined benefits for the treatment of the resulting medical condition(s) and for replacement of a portion of the wages lost as a result of the accident. Chapter 440, F.S. defines who participates in the workers' compensation system, and delineates the rights and responsibilities which participants have. The primary participants in this system are Florida's employers and their employees. Some employers purchase workers' compensation insurance from a "carrier." These are therefore often collectively referred to as the "employer/carrier" or the "E/C."

Regulation of the Florida workers' compensation *system* is the responsibility of the [Division of Workers' Compensation](#) (DWC), which is part of the [Department of Financial Services](#) (DFS). Many workers' compensation accidents occur each year. Each of these must be reported to the DWC, and in most cases the injured worker is provided with workers' compensation benefits by her/his employer, or the employer's insurance company. Most workers' compensation claims are not reported to the Office of the Judges of Compensation Claims ("OJCC"). However, there are occasions when an injured worker believes she/he should be provided some description of benefits that the employer or their carrier refuses to voluntarily provide. When these disputes arise between system participants, the OJCC is statutorily charged with the adjudication of those disputes. Because the OJCC role is limited to workers' compensation cases that become litigated, this OJCC Annual Report is limited in scope to reporting volumes and trends of litigated workers' compensation cases. The Division of Workers' Compensation publishes a broader report regarding trends of the Florida workers' compensation system as a whole.

The OJCC mission is the efficient and effective adjudication of those disputes. The OJCC employs thirty-three (33)² Judges of Compensation Claims ("JCC"), operating in seventeen (17) [District Offices](#) ("DO") throughout Florida. These JCCs are responsible for processing the pleadings that define these disputes, for scheduling mediations and trials, conducting trials, and deciding the disputes. These seventeen (17) District Offices vary in size between one (1) Judge and five (5) Judges.³ Each multi-Judge District Office is divided into "divisions," and workload is distributed between these divisions by assigning responsibility for cases alphabetically, based upon the last name of each particular injured worker.⁴

OJCC Historical Background:

In 1965, the Florida Legislature created the Florida Industrial Commission, in which there was also created a division of workmen's compensation. The Commission was statutorily empowered to appoint as many full-time "deputy commissioners" as "may be necessary to effectually perform" the duties set forth in the statute.

The Division and the deputy commissioners later became a part of the Department of Labor and Employment Security (DLES). Deputy Commissioners later became known as Judges of Compensation Claims ("JCC"), and referred to collectively as the Office of the Judges of Compensation Claims ("OJCC"). On October 1, 2001, the OJCC was transferred from the DLES to the [Division of Administrative Hearings](#) ("DOAH").

This historical background is important in recognizing the OJCC has been part of the DOAH for a relatively short time, approximately five (5) years. When the OJCC moved to the DOAH, the OJCC District Offices were equipped with first-generation Pentium computers that were utilizing Windows version 3.1, and a commercial case management software (Client Profiles) primarily designed for operation of a law office. Client Profiles did not operate in the Windows environment, but instead ran in the background operating system, MS-DOS, and interacted with WordPerfect version 6.1.

Thus, on October 1, 2001 the OJCC was using eight (8) year old computer hardware technology, with a nine (9) year old operating system, to operate commercial case management software that was not designed for a Judicial setting, and generating documents with a seven (7) year old word processor program.⁵ The only semblance of a computer network between the District Offices was provided by "dial-up" modem connections which required human action at each connecting terminal. Also of note, private and commercial access to the internet, had been commonplace since approximately 1995. However, as of October 1, 2001 the OJCC had no presence on the internet. For all intents and purposes, the OJCC had no computer "network" in 2001, and was struggling with antiquated or obsolete computer hardware and software. OJCC employees, having not been provided updated software by DLES for an extended period, were understandably unfamiliar with, under-trained in, and apprehensive about use of contemporary software such as Microsoft Windows, Microsoft Word, and tools such as electronic mail.

The DOAH ended 2001 with an evaluation of the computer hardware and software status of the OJCC. An [OJCC internet website](#) was rapidly established and a proprietary case management software development project was instigated. In 2002, the DOAH replaced each OJCC employee's computer workstation with updated computer hardware, capable of running the contemporary Windows operating system, and equipped with the Microsoft Office suite of software. With the replacement of the computer hardware, the DOAH also introduced the District Offices and Staff to the original version of the OJCC proprietary case management software (referred to as the "JCC Application"). This JCC Application program has undergone constant upgrading and expansion. Today, the JCC Application is part of an integrated software platform that provides OJCC district staff with scheduling and case management applications while it provides the public with internet access to [case dockets](#), scheduling, and [electronic filing](#).

The data in this report is dependent for accuracy on the efforts of district staff. The same is true for the preceding annual reports issued by the OJCC since October 2001. Because DLES devoted minimal resources to technology, and staff technology training, the OJCC district staff members have been faced with a steep learning curve

since October 2001. Since then, district staff has learned how to communicate using electronic mail and how to use Microsoft Word for generation of orders and notices. The district staff has also been trained to use the JCC Application to maintain the schedules of the Judges and state mediators. To a large extent, however, the district staff and individual Judges have been allowed to make their own decisions regarding the manner in which information has been loaded into the JCC Application program. This has resulted in extensive variance in data-entry process between the many Districts and divisions. Variances have resulted in the quality, quantity and timing of data input.

As an example only, assume a trial is scheduled to occur on a particular date. When any appointment is scheduled, the JCC Application characterizes that appointment, mediation, or trial as "set." If the parties contact the Judge's office and advise that the hearing is no longer required, various district staff have characterized that hearing as "cancelled," or "resolved prior," or "settled," or "dismissed," or otherwise. Therefore, the same circumstance of a hearing not occurring might be characterized in various ways by various districts or divisions. In other instances, some district staff did not alter the JCC Application "status" of scheduled hearings once they were no longer "set." Therefore, as of May 2006 many earlier hearings scheduled in the JCC Application still reflected a "status" of "set," for events that were in the past and therefore either were "held" or somehow resolved. We know that those events in the past are not "set," and it is impossible to hold a hearing yesterday or before. The JCC Application, in generating the information for this report, depends upon the district staff correctly characterizing the outcome of these scheduled events. If a trial occurred, the staff must then change the "status" of that hearing from "set" to "held." If this does not occur, then that trial is not counted in the number of trials "held" by that particular JCC individually or by the OJCC collectively during the year. The integrity of the information in this report is wholly dependent upon various district staff correctly and consistently entering information into the JCC Application. In light of the steep learning curve that district staff has struggled with over the last three (3) years, some flaws in the data are virtually inevitable. The degree of inaccuracy or inattention that has been found is regrettable. The OJCC is committed to minimize such errors, and efforts are already underway to promote consistency and timeliness of data entry.

Similarly, the data in this report (and all of the [OJCC Annual Reports](#) issued since 2001) is affected by the timeliness of data entry. The timeliness is an issue with data such as the aggregate attorney's fees approved in a given time period, i.e. a fiscal year. Parties submit attorney fees for approval in stipulations and motions.⁶ When the order is entered approving such fees, district staff is responsible for two (2) interrelated tasks regarding the order. First, the order itself must be uploaded to the internet docket for that case. Also, district staff must enter the amount of fees, amount of costs, and amount of child support and settlement into the OJCC database. When this information is entered, the district staff assigns a "docket date" to the order being uploaded. This "docket date" corresponds to the date the assigned JCC entered the order. Unfortunately, some district staff has not entered the financial information into the OJCC database on the day the order was entered, or even that week. Therefore, when the database is queried on any given day, i.e. for the "fees approved during fiscal year xx," the resulting figure includes

only the fees that were both approved during that period and for which the resulting order has been uploaded to the database. On the day following this particular query of the database, district staff in any one of the thirty-one divisions within the seventeen District Offices may upload an order that was entered weeks or months prior. If this is done during August or September, the order being uploaded that day may nonetheless have been entered during June (during the prior fiscal year). Therefore, the day after the query is made, the database information generated on a particular day regarding aggregate attorney's fees may become inaccurate the next day. Therefore, the timely entry of data is of the utmost importance to the OJCC.

In support of the OJCC goal of accurate and timely data entry, a [user manual](#) for the JCC Application has been written and provided to each district staff member. This manual provides all district personnel with standardized definitions for characterizing the status of various cases. Efforts are also underway to provide district personnel with training and resources in support of that manual. Ultimately, the Deputy District Clerk from each OJCC Division will attend a training seminar in Tallahassee in January 2007. This will mark the first time in the OJCC/DOAH era that district staff has gathered for comprehensive group training.

NUMBER OF LITIGATED CASES:

It is difficult to ascertain with absolute certainty how many "cases" are in litigation at a given moment in time. The difficulty results in part from the data entry compliance issues discussed above, and also in part from difficulty in concisely defining "cases." Even considering both of these caveats, clearly the number of litigated cases filed has decreased in recent years. In measuring the number of "litigated cases," the OJCC has elected to utilize the most common pleading that instigates litigation, the petition for benefits, referred to throughout this report as "[Petitions](#)." The rate of Petition filing decrease has been remarkably consistent since passage of Bill 50A in 2003.

Most OJCC disputes involve a person that believes they are entitled to some benefit that is not being voluntarily provided. Disputes regarding entitlement to workers' compensation benefits are brought to the attention of the Office of the Judges of Compensation Claims when a Petition is filed. These disputes include such issues as whether that person was an employee of the alleged employer, whether that person was or was not in the "course and scope" of that employment when the alleged accident/illness occurred, whether requested medical care is "medically necessary" for the accident/illness, and whether requested indemnity benefits are due. A particular Petition may contain a single "claim," e.g. for a specific singular benefit, or may contain multiple claims for several benefits.⁷

The OJCC is also responsible for adjudicating claims for contribution between multiple carriers and/or employers. These disputes may come to the OJCC in the form of a Petition, but might just as likely be plead by filing a motion with the assigned Judge.⁸ Many times, these contribution claims are made in cases in which Petition issues are, or

have been, litigated. It is possible, however, that such a reimbursement motion could be filed in a case in which the injured worker has either not filed any Petitions, or perhaps has not filed any recent Petitions. Employers, or their carrier, might also invoke the jurisdiction of the OJCC for determination of their entitlement to reimbursement from Special Disability Trust Fund. These ancillary reimbursement or contribution claims are “litigated cases” but are more difficult to quantify than the more common benefits disputes that invoke the OJCC jurisdiction through a Petition. Therefore, although contribution and reimbursement claims exist that may not be instigated with a Petition filing, the OJCC has elected to use the volume of Petitions as the measure of “litigated cases.”

The overall number of Petitions filed annually or the number of “new case” Petitions filed annually are each arguably valid methods by which litigated cases volume may be measured. Because there are merits regarding the efficacy of each of these measures, the OJCC calculates both.

The gross, or “overall,” number of petitions filed during a given period is one valid volume measure. In considering the significance of this measurement, the serial nature of Florida Workers’ Compensation litigation must be considered. Once an accident occurs, an injured worker may immediately begin filing Petitions and could theoretically file a Petition for each and every benefit that is ultimately received by that injured worker. In such a case, a particular accident might generate tens of Petitions filed over many years before the claim is ultimately resolved and closed. Conversely, an injured worker may receive benefits administratively from the employer or carrier for many years and then ultimately file a solitary Petition seeking a singular benefit. The potential volume of Petitions in any particular case may fall anywhere on the spectrum between these two potential extremes. Therefore, measuring the total volume of Petitions necessarily includes instances in which more than one Petition is filed in one particular claim.⁹ The total volume of Petitions filed during any particular year therefore measures Petitions that relate to dates of accident during that fiscal year, and certainly also include Petitions related to dates of accident occurring years or even decades in the past.

Equally valid for defining “litigated cases” is the measure of “new cases” Petitions. This measure considers only the Petitions filed in cases in which no Petition had previously been filed. This measure isolates the volume of “new” litigation being filed during any particular period. This measure may be a more accurate indicator of the effects of statutory changes on litigation volume. However, this measure may not fairly represent the volume of new work being assigned to a particular JCC because each petition must be processed and potentially mediated and heard, regardless of whether it is filed in a new case or an existing case.

Overall Petition Volume:

The Florida Legislature enacted significant amendments to the Florida Workers’ Compensation Law in 1994 and again in 2003. Since the 2003 reforms were enacted, the volume of Petitions filed with the Office of the Judges of Compensation Claims has

decreased at a reasonably consistent rate. Petition filing volume continued to decline in 2005-06, decreasing approximately fifteen percent (15.21%) for that year, as described in this chart.

Fiscal Year	Petitions Filed	% Change
02-03	150,801	
03-04	127,458	-15.48%
04-05	107,268	-15.84%
05-06	90,948	-15.21%

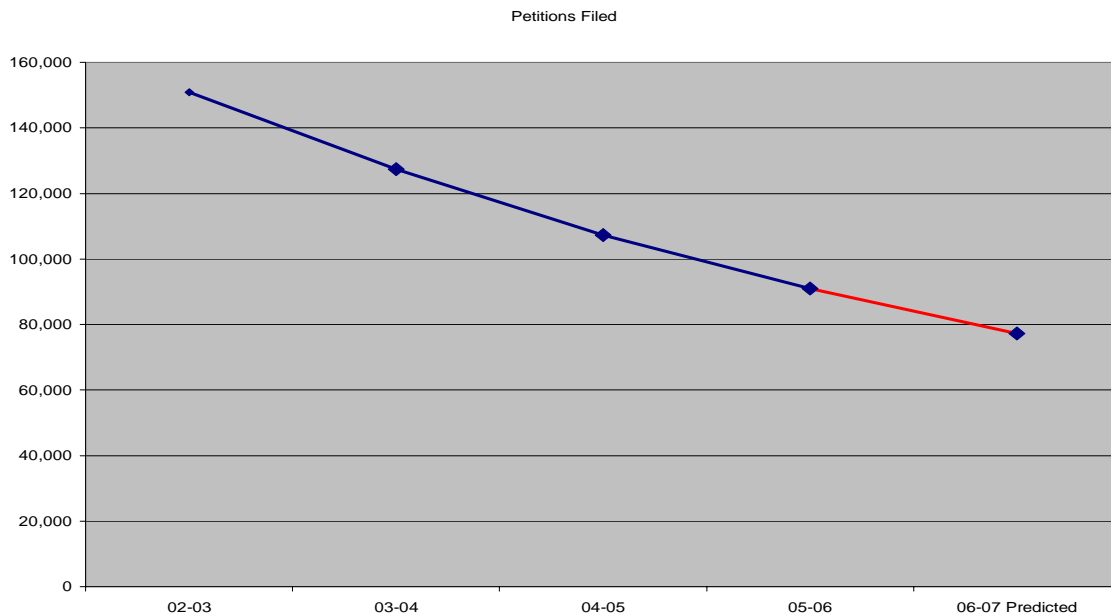
The overall decrease in overall Petition filings between fiscal 2003 and fiscal 2006 has been approximately forty percent (39.69%), as illustrated here.

Fiscal Year	Petitions Filed	% Change
02-03	150,801	
05-06	90,948	-39.69%

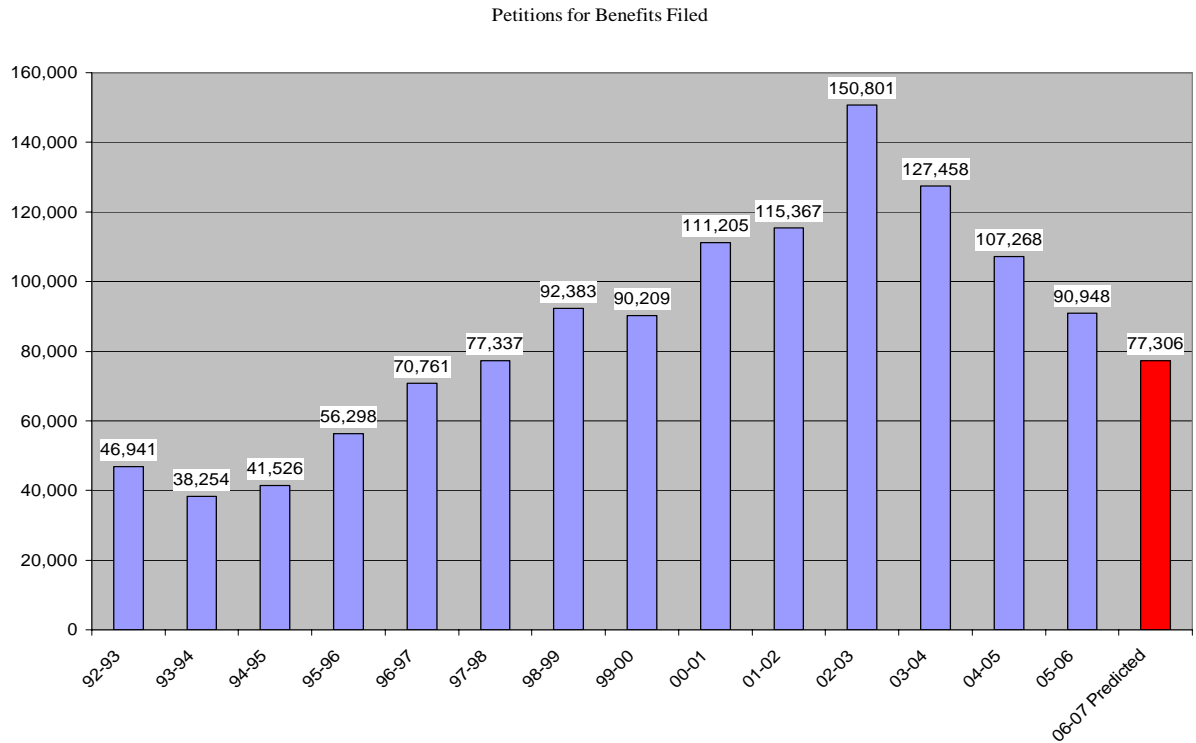
If the current trend of declining (approximately 15%) overall Petition filing continues in fiscal 2006-07, the overall Petition filing volume would be projected to decrease to approximately seventy-seven thousand (77,306) Petitions in fiscal 2006-07.

Fiscal Year	Petitions Filed	% Change
02-03	150,801	
03-04	127,458	-15.48%
04-05	107,268	-15.84%
05-06	90,948	-15.21%
06-07 Projected	77,306	-15.00%

The consistency of decrease in overall Petition filing since the passage of Bill 50A in 2003 is further illustrated in the following graph.



Prior to the transfer of the OJCC from the DLES to the DOAH, data was compiled by the DLES regarding Petition filing. The reliability of these statistics cannot be independently verified.¹⁰ Some question of the validity of these figures is raised by the fact that the Petition for Benefit process was not added to Chapter 440, F.S. until the 1994 amendments, and the DLES figures nonetheless reflect Petition filing prior to that time. This may be indicative of an actual flaw in the data, or the figures prior to 1994 may represent the filing of claims for benefits, which were the operative pleading used prior to the Petition process being enacted. As reported by the DLES, the following graph illustrates the volume of Petition filing since 1992.



Presuming the accuracy of these numbers, the 2005-06 Petition filing rate (90,948) is only slightly higher than the 1999-00 Petition filing rate (90,209). Similarly, the projected (see above) Petition filing rate for 2006-07 (77,306) is very similar to the 1997-98 Petition filing rate (77,337).

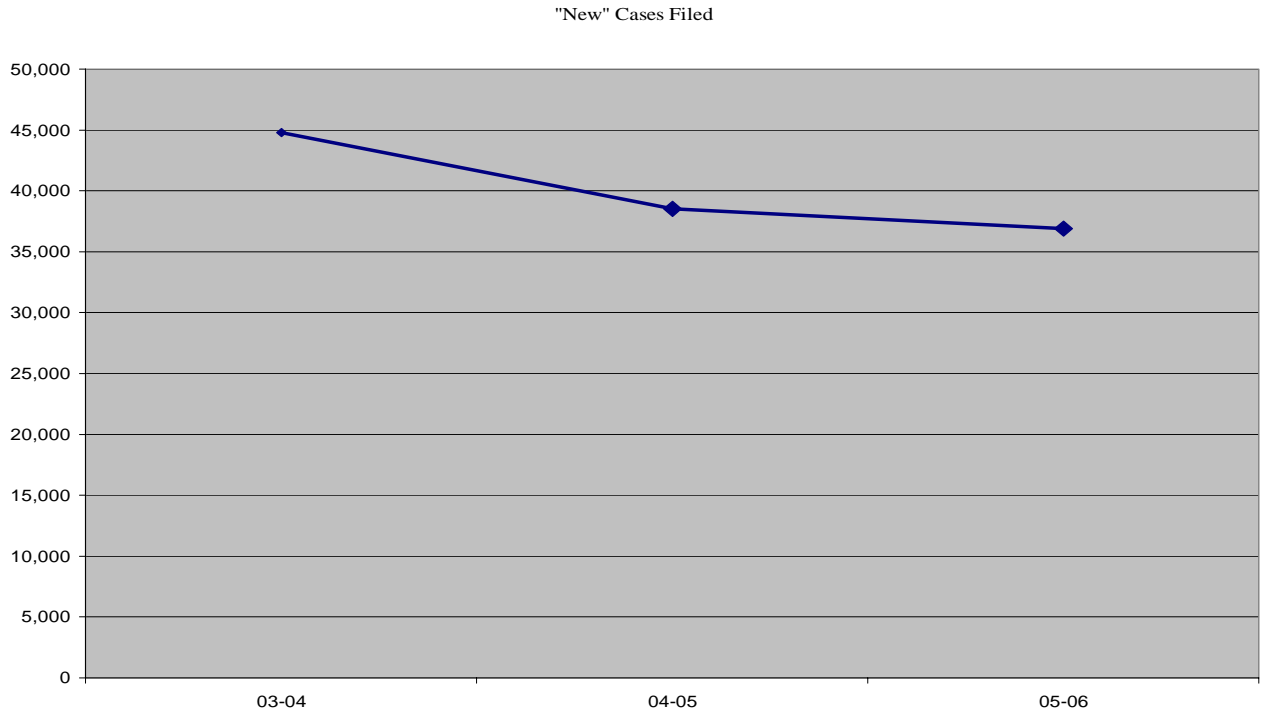
In a 1993 special session, the Florida Legislature enacted significant reforms to the workers' compensation system (effective January 1, 1994). Notably, according to the data in the above graph, the volume of Petitions increased every year thereafter (with the exception of slight decrease, -2.4%, from 1998-99 to 1999-2000). Overall Petition filing increased an average of approximately seventeen percent (17.1%) annually in the nine (9) years between 1994-95 and 2002-03. On the basis of overall Petition filing rates, one could conclude that the 1994 reforms resulted in more litigation being filed. This graph could also support the conclusion that the statutory amendments in 2003 have conversely resulted in significant decreases in the filing of litigated cases.

New Case Filing:

The volume of "new cases filed" has been monitored only since the OJCC became part of the DOAH in October 2001. The term "new cases filed" refers to the volume of Petitions filed for the first time in a particular case. Workers' Compensation cases often involve the litigation of multiple, serial petitions over the course of years. The rate at which "new cases" are filed, however, is indicative of the rate at which new cases are entering the OJCC litigation process, and may arguably more accurately represent the effect of legislative changes to the substantive benefits provided to Florida employees through Chapter 440. F.S. The volume of new cases filed has also declined since the 2003 statutory amendments, but at a slower rate than the decrease in Petition filings generally.

Fiscal Year	New Cases Filed	% Change
02-03	n/a	
03-04	44,785	
04-05	38,546	-13.93%
05-06	36,909	-4.25%

The filing of "new cases" is declining, but is declining slower than the filing of Petitions overall. This supports that a greater proportion of the petitions received in 2005-06 were "new cases" than the proportion in 2004-05. The following graph depicts the declining rate of "new case" filings with the OJCC.



The volume of "new cases filed" can also be expressed as a percentage of the overall volume of Petitions filed during the same time period. This comparison demonstrates

that the percentage of all petitions that were “new cases filed” remained notably consistent in fiscal 2004 and 2005, but has notably increased in 2006. Approximately forty-one percent (40.6%) of the 2005-06 overall petition volume are "new cases." This information suggests that a greater portion of the decrease in overall Petition filing was caused in 2005-06 more by decreases in litigation on existing cases than by decreases in the filing of “new cases.” The following table represents these comparisons for the previous three (3) fiscal years.

Fiscal Year	Petitions Filed	New Cases Filed	% of Petitions are “new”
02-03	150,801	n/a	
03-04	127,458	44,785	35.1%
04-05	107,268	38,546	35.9%
05-06	90,948	36,909	40.6%

In summary, the available data supports several conclusions. First, the overall volume of petitions for benefits filed continues to decrease at a steady rate of approximately fifteen percent (15%) annually since 2003. The volume of “new cases filed” is also decreasing, but at a lower rate. As a result, currently a greater proportion of the Petitions being filed are “new cases.”

AMOUNT OF LITIGATION RESOLVED:

As of June 30, 2006 one hundred eighty-six thousand seven hundred sixty-five (186,765) petitions were “open” according to the JCC Application program. This equates to an average of six thousand twenty-five (6,025 = 186,765/31)¹¹ open petitions per JCC. The Judges listed in the following chart had less than the average number of petitions pending as of the end of Fiscal 2005-06 (06.30.06).

District	Judge:	Open as of 6/30/06	% of total
PMC	Roesch	300	0.2%
TAL	Lazzara	464	0.2%
TPA	Lorenzen	518	0.3%
MEL	Terlizzese	657	0.4%
SAR	Beck	733	0.4%
STP	Hafner	1,061	0.6%
STP	Remsnyder	1,096	0.6%
ORL	Condry	1,212	0.6%
ORL	Thurman	1,263	0.7%
TPA	Jenkins	1,329	0.7%
ORL	Sculco	1,349	0.7%
PNS	Langham	1,524	0.8%
TPA	Murphy	1,750	0.9%
PSL	McAliley	3,169	1.7%
JAX	Dane	3,262	1.7%
JAX	Harris	3,679	2.0%
DAY	Portuallo	4,796	2.6%
LKL	Hofstad	5,934	3.2%

Most Petitions filed must be mediated. After a Petition is filed, issues claimed therein may be resolved among the parties before mediation, at mediation, or thereafter any time until a final order is issued. There are instances in which the parties proceed to trial on the petition issue(s), but then nonetheless resolve the Petition issues before the assigned Judge enters an order adjudicating the issues.¹² When all of the issues in a particular petition are resolved either by agreement of the parties or adjudication, that particular Petition is then “closed,” and the district staff is responsible for entering this information into the JCC Application. The available information supports that staff in some Districts have been more diligent than others in documenting the closure of Petitions. The OJCC has documented the volume of Petition that have been designated as “closed” in the last three (3) fiscal years. Over that period, three hundred twenty-five thousand six hundred seventy-four (325,674) Petitions have been filed and one hundred ninety-four thousand five hundred forty-two (194,542) Petitions have been closed. This equates to an approximate overall closure rate of sixty percent (59.7%), as summarized in this chart.

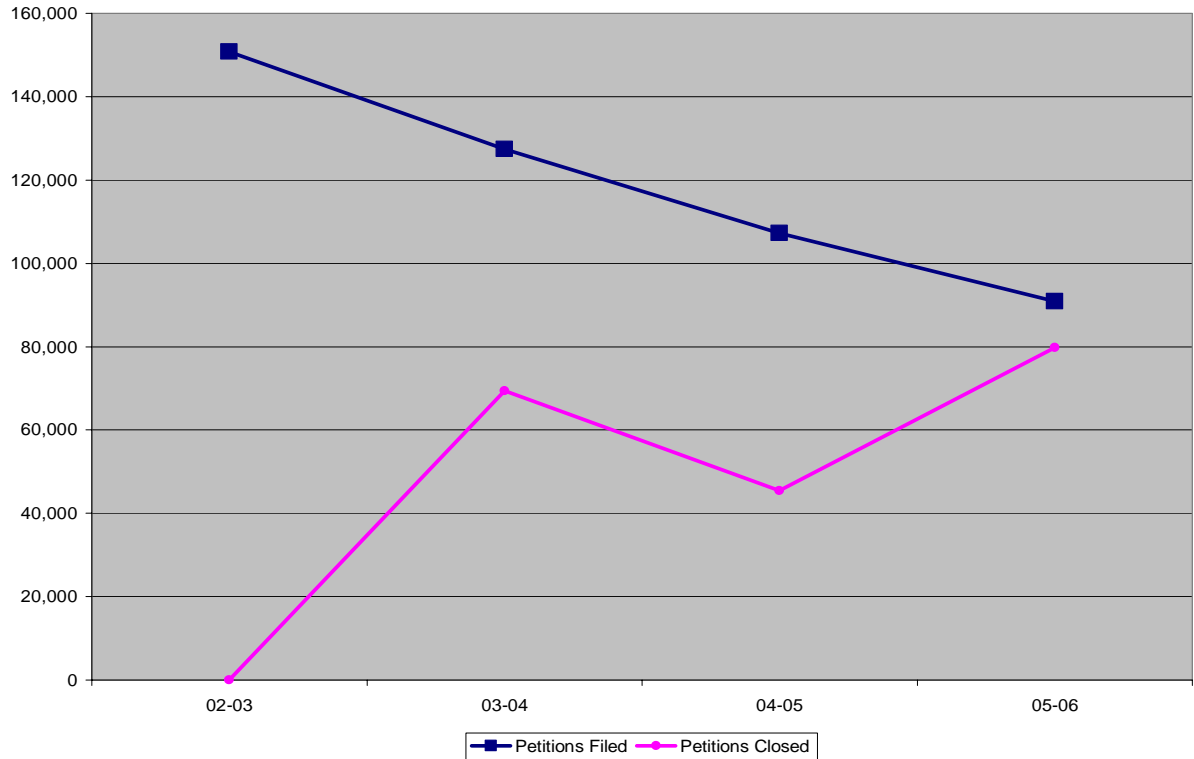
Fiscal Year	Petitions Filed	Petitions Closed	% Closed
03-04	127,458	69,349	
04-05	107,268	45,425	
05-06	90,948	79,768	
3 yr Total	325,674	194,542	59.7%

It is not known, however, what volume of the Petitions closed in a particular fiscal year, i.e. 2003-04 (69,349), were also filed during that year, as compared to what volume of those Petitions had been filed in the years prior to that particular fiscal year, i.e. 2003-04. Likewise, of the Petitions closed during fiscal 2004-05, it is not known how many were filed that year as compared to those that were filed in prior years. Anecdotal evidence supports that a significant number of Petitions filed each year are dismissed within weeks of filing either as a result of the employer voluntarily providing the petitioned benefits or some compromise thereof that is acceptable to the injured worker. It is notable that the volume of Petitions closed, as a percentage of Petitions filed in fiscal 2005-06 increased significantly to approximately eighty-eight percent (87.7%).

Fiscal Year	Petitions Filed	Petitions Closed	% Closed
02-03	150,801	n/a	
03-04	127,458	69,349	54.4%
04-05	107,268	45,425	42.3%
05-06	90,948	79,768	87.7%

This closure increase is likely attributable at least in part to the decrease in overall Petition filing, and the resulting ability of district staff to focus resources on the closure of Petitions and generally more accurate record keeping in the JCC Application. The OJCC will endeavor during fiscal 2006-07 to review the population of “open” Petitions and to correct any inaccuracies within the JCC Application as regards “open” Petitions that should appropriately be designated “closed.”

As of June 30, 2006, the OJCC case management software reflects that one hundred eighty-six thousand seven hundred sixty-five (186,765) Petitions were “open.” In any year that the volume of Petition filing exceeds the volume of Petition closure, the overall volume of Petitions pending in the system will increase. The comparison of Petitions filed to Petitions closed during the last four (4) fiscal years is illustrated in the following graph.



This comparison illustrates the significant increase in the volume of Petitions closed in fiscal 2006, which is approaching the volume of Petitions filed. Obviously, when the volume of Petitions closed during a year equals the number of Petitions filed during the same period, the OJCC litigation system would be in equilibrium. It is highly likely that the efforts directed at data entry consistency in coming months will result in some volume of Petitions being “closed” which have been inactive for some period, but remain “open” due only to data entry errors and clerical oversight. It is predicted that the volume of Petitions closed in fiscal 2007 (July 1, 2006 through June 30, 2007) will significantly exceed the volume of Petitions filed during that period.

COST OF LITIGATION RESOLVED:

The OJCC budget has increased an average of one percent (1%) annually over the last three (3) fiscal years. The annual budget for each of the last four (4) fiscal years and the respective annual rates of change are reflected in the following table.

Fiscal Year	OJCC Budget	% Change
02-03	\$16,522,910	
03-04	\$16,225,513	-1.80%
04-05	\$16,792,731	3.50%
05-06	\$17,022,942	1.37%

Thus, with ever-expanding opportunities to serve the OJCC's specific constituencies and the general public, through greater access afforded by the internet and other technological advances, the overall budget of the OJCC has not kept pace with the inflation rate.

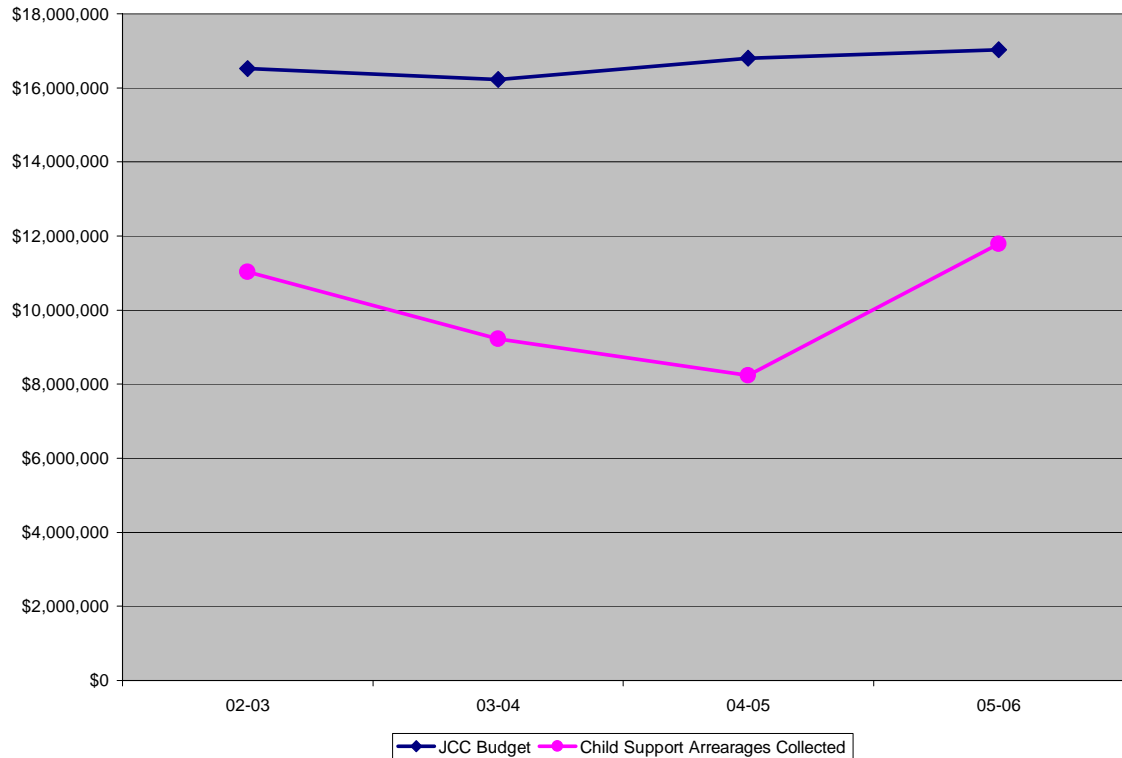
The OJCC budget divided by the number of Petitions closed by the OJCC reflects that the overall cost per Petition closed is decreasing. This results from the minimal growth in the OJCC annual budget and the marked increase in the closure of petitions.

Annual Budget	Petitions Closed	Cost per Closed Petition
\$16,225,513	69,349	\$234.00
\$16,792,731	45,425	\$369.70
\$17,022,942	79768	\$213.40

The Judges of Compensation Claims are statutorily required to ensure that the rights of child support recipients are considered when a support payor reaches settlement of their workers' compensation case. The JCCs therefore devote considerable time and effort to the investigation and verification of child support arrearages. The significant amounts of child support collected through these efforts for the last four (4) fiscal years is represented in this table.

Fiscal Year	Child Support Recovered	% Change
02-03	\$11,031,544	
03-04	\$9,219,096	-16.43%
04-05	\$8,238,113	-10.64%
05-06	\$11,779,081	42.98%

The amount of child support arrearages collected is particularly interesting when considered in light of the overall OJCC budget discussed above. In fiscal 2005-06, the OJCC collected child support arrearages in an amount equal to approximately sixty-nine percent (69.2%) of the entire OJCC budget, as expressed in the following graph.



Many services have been instigated by the OJCC in recent years, including internet based case information regarding [scheduling and orders](#) in every case as well as internet dissemination of District information and disaster closure notification. In fiscal 2005-06 the OJCC initiated an internet-based [e-filing system](#) for use by attorneys. The OJCC is currently developing additional web-based services including expanded opportunities for the filing of electronic petitions, electronic settlement motions, electronic fee stipulations, and electronic pre-trial compliance questionnaires. In fiscal 2007-08, the OJCC long range plan includes the implementation of e-service, which will allow the OJCC to serve orders on counsel and some parties via e-mail. The development and implementation of these initiatives, as well as the recruitment and retention of valuable personnel, would be enhanced by additional budget dollars. Critical examples, included in the [DOAH Long Range Program Plan](#), of the need for additional budget dollars include:

The conversion of thirty-two (32) career service Executive Secretary positions to Select Exempt status. Each JCC has an assigned Executive Secretary, who is privy to confidential claims information. These individuals should be provided with the enhanced benefits package that is afforded Select Exempt employees.

Until 1993, the JCC salaries were tied to Article V. Judges' salaries. Since 1994, the JCC salary has decreased proportionally compared to Article V. Judges. Restoring some association between JCC salaries and Article V. judicial salaries would enhance OJCC retention of experience Judges.¹³ Retention of these individuals would likewise promote the efficiency of OJCC operations.

NUMBER OF MEDIATION CONFERENCES HELD:

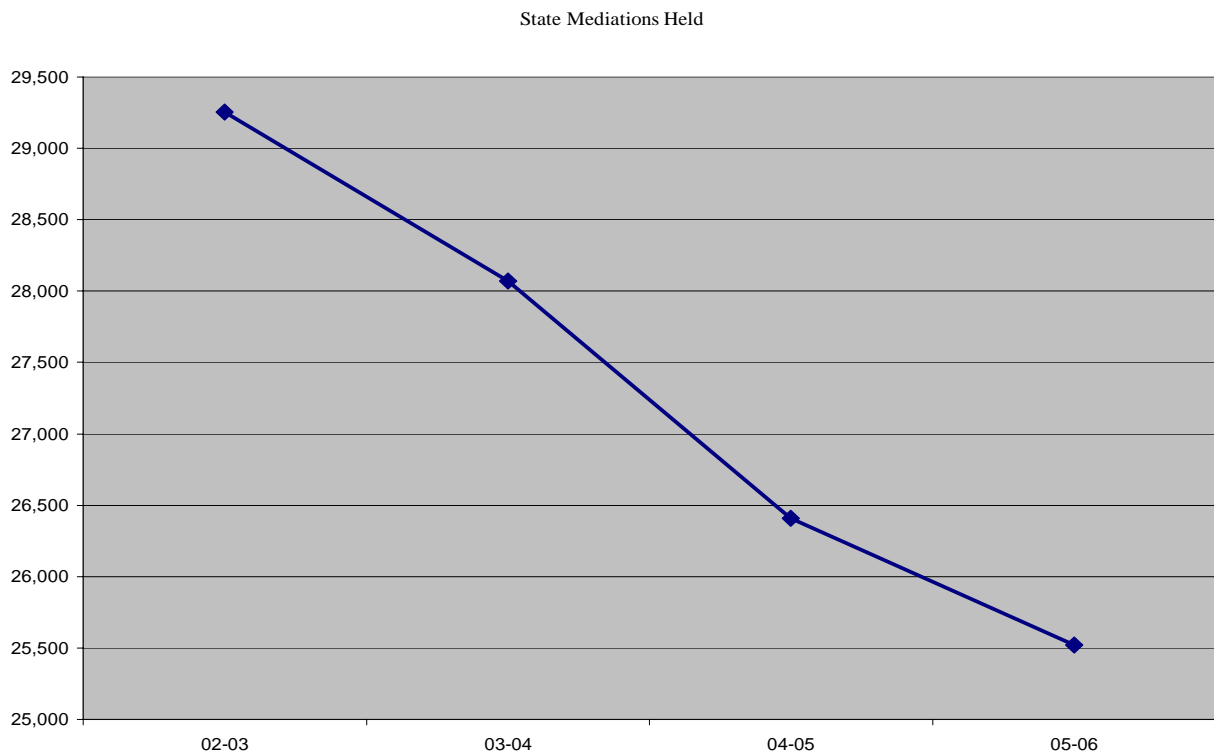
The volume of mediations held each year has decreased in each of the last four (4) fiscal years. However, the rate of decrease in mediations “held” has not matched the rate of decrease in Petition filings, as represented in this chart.

Fiscal Year	Petitions Filed	% Change	Mediations Held	% Change
02-03	150,801		29,253	
03-04	127,458	-15.48%	28,072	-4.04%
04-05	107,268	-15.84%	26,410	-5.92%
05-06	90,948	-15.21%	25,522	-3.36%

Over the four (4) year period, overall, Petition filings have decreased approximately forty percent (39.69%) while mediations "held" have decreased only approximately thirteen percent (12.75%).

Fiscal Year	Petitions Filed	% Change	Mediations Held	% Change
02-03	150,801		29,253	
05-06	90,948	-39.69%	25,522	-12.75%

The rate of decrease in state mediations held is represented in the following graph.



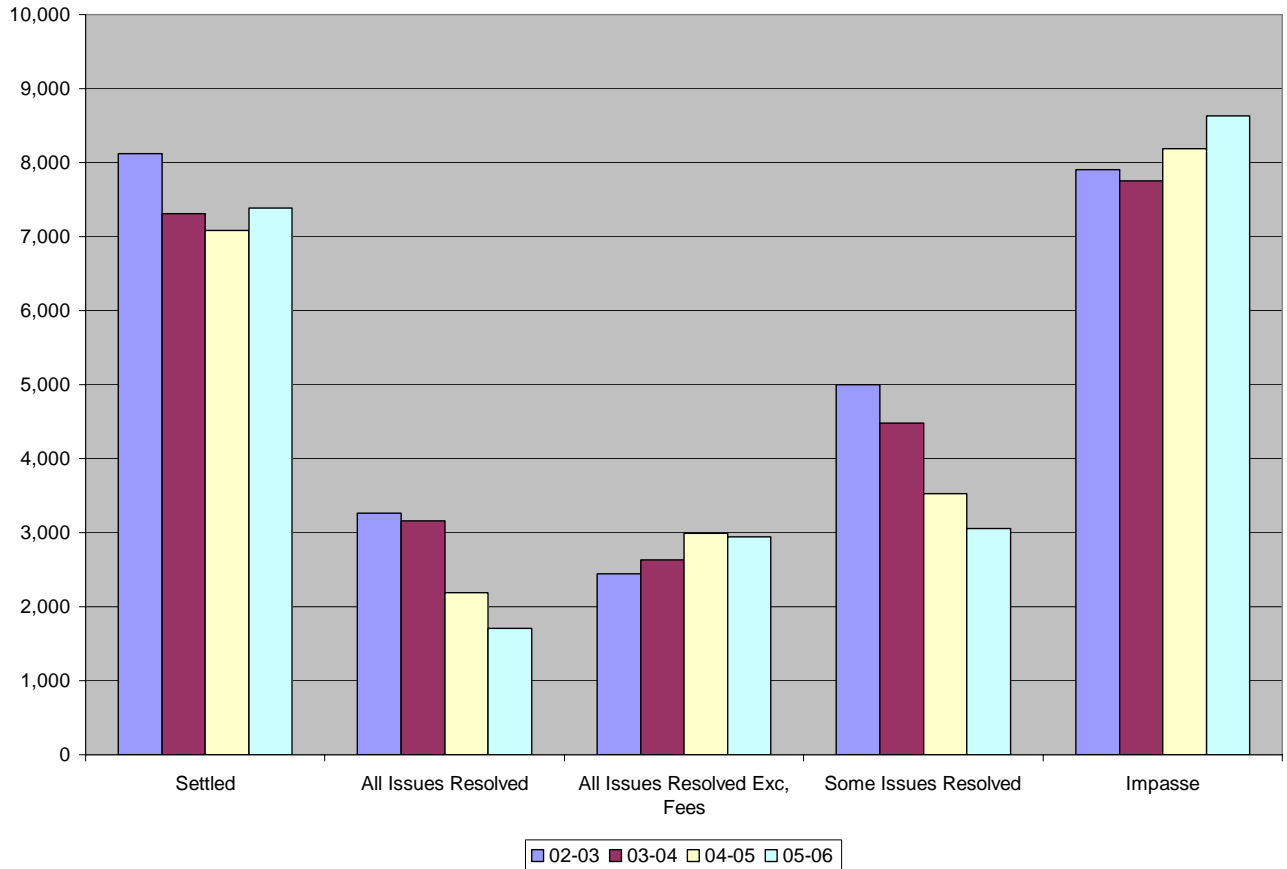
There are multiple possible explanations for the marked difference in the rate of decrease. The most likely explanation for this difference is the probability that private mediations

are experiencing greater rates of decrease. Most petitions must be mediated before they may proceed to final hearing,¹⁴ and mediation must be held within one hundred thirty (130) days of the particular Petition filing date. If this is not possible with a state mediator, who is paid by the OJCC and therefore does not charge the parties anything, the assigned JCC must order the E/C to pay for private mediation. This process assures the timely mediation of all petitions, but also represents a significant cost to the particular E/C ordered to private mediation. Therefore, it is to be expected that as Petition volume falls, the rate of ordered private mediation should decrease as E/Cs are not ordered to private mediation as often as was necessitated by higher Petition filing volumes in prior years.

DISPOSITION OF MEDIATION CONFERENCES:

A Petition may contain only one substantive benefit (i.e. authorization of an orthopedic surgeon), or could contain many issues (i.e. orthopedic authorization, neurological authorization, diagnostic testing authorization, correction of the average weekly wage, payment of temporary total, temporary partial, supplemental benefits, and/or permanent total disability benefits, etc.). Virtually all Petitions also include claims for ancillary benefits related to one or more of these substantive benefits. These include penalties and/or interest on late paid indemnity benefits, and attorney's fees and costs for the prosecution of all claimed benefits in the Petition.

Therefore, the outcome of mediations is expressed in terms of what was resolved at mediation. The characterization "impasse" is used to reflect that no issues were resolved at mediation. The characterization "settled" reflects that the entire case, including the pending issues in the Petition and all future benefits as yet undue and unclaimed, were resolved. Between these two extremes of "impasse" (nothing) and "settled" (all) are a number of "partial" resolution characterizations used by the OJCC. The term "some issues resolved" reflects that some subset of the claimed substantive issues has been resolved. The term "all issues resolved except attorney's fees" reflects that all of the substantive issues and any ancillary penalty and/or interest issues were resolved, but fee/cost entitlement and/or amount issues remain. The term "all issues resolved" reflects that all claimed Petition issues, including all ancillary issues such as attorney's fees and costs, were resolved. These potential outcomes can be expressed in a continuum ranging from the least resolution ("impasse") to the most resolution ("settled"). The overall results of mediation are reflected in the following chart, illustrating this continuum from "all," or "settled" on the left side to the least "none" or "impasse" on the right side of the graph. This illustration reflects the last four (4) fiscal years for each of these outcome characterizations.



Notably, the volume of mediations that result in no resolution of any issues, “impasse,” is steadily increasing, while the volume of mediations in which “some issues” and “all issues” are resolved are conversely steadily decreasing. These results are somewhat counterintuitive when considered in conjunction with the decreasing volume of mediations being held. The following chart summarizes the percentage of cases in each category as compared to the mediations held during that year. For example, in 2002-03 approximately twenty-eight percent (27.76%) of cases mediated resulted in a settlement. In 2005-06, this increased to approximately twenty-nine percent (28.96%) of the mediated cases resulting in settlement. The respective rates of the potential outcomes are set forth in this chart, illustrating the success rates of state mediation.

Fiscal Year	Mediation Held	Settled	All Iss. Res.	All Iss. Res exc. Fees	Some Iss. Res	Impasse
2002-03	29,253	27.76%	11.17%	8.35%	17.10%	27.02%
2003-04	28,072	26.04%	11.27%	9.38%	15.97%	27.63%
2004-05	26,410	26.81%	8.28%	11.31%	13.35%	31.00%
2005-06	25,522	28.96%	6.67%	11.52%	11.99%	33.81%

It is noteworthy that in 2005-06, as an example, approximately sixty percent (59.14% = 28.96% + 6.67% + 11.52% + 11.99%) of state mediations resulted in resolution of at least "some issues." The total in 2005-06 of these resolutions (59.14%) and "impasse" (33.81%) is approximately ninety-three percent (92.95%). The remaining approximate seven (7.05%) represent instances in which district staff did not record an outcome for the mediation. This again illustrates the absolute necessity for timely and consistent data entry by district staff. It is expected that the OJCC efforts at timely and consistent data entry will alleviate that anomaly for fiscal year 2006-07.

CONTINUANCES GRANTED FOR MEDIATIONS:

Mediation continuances have increased markedly in the last two (2) fiscal years. In 2002-03 only two thousand seven hundred fifty-five (2,755) mediations were continued. In 2005-06 four thousand seven hundred fifty-six (4,756) mediations were continued. The comparison of mediations granted during the last four (4) fiscal years is reflected in this chart.

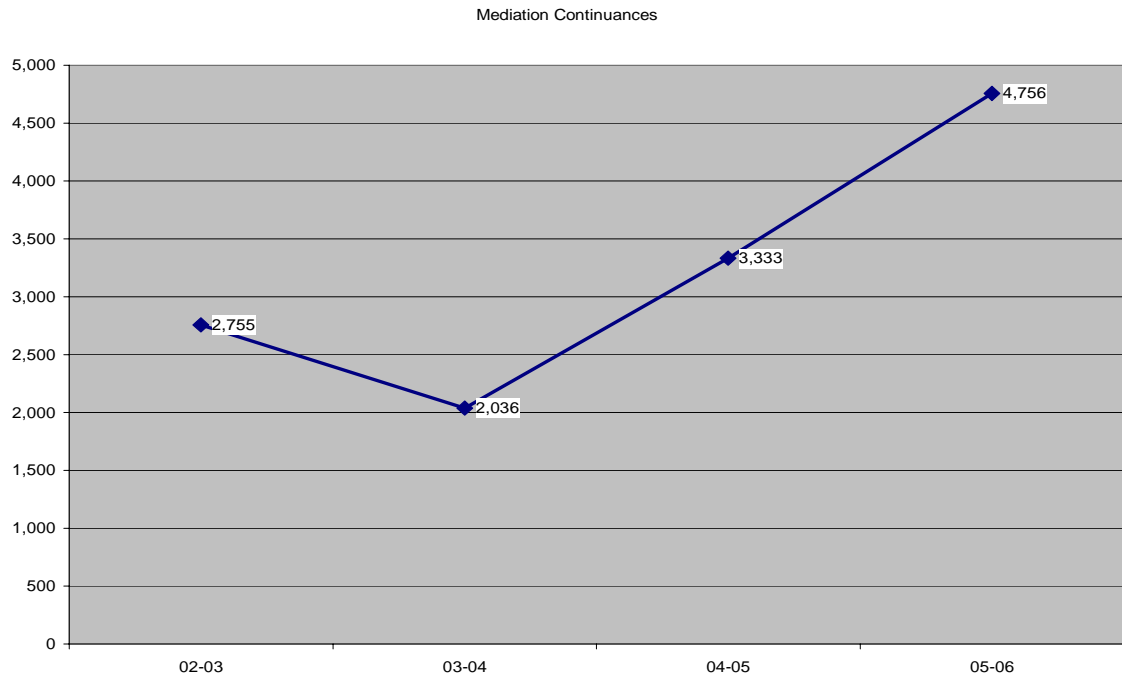
Fiscal Year	Total Number	Annual Per JCC	Monthly Per JCC
02-03	2,755	89	7.4
03-04	2,036	66	5.5
04-05	3,333	108	9.0
05-06	4,756	153	12.8

The cause of this continual and marked increase is not known with any certainty. The trend to continuing ever greater volumes of mediation is somewhat curious in light of the converse decrease in petition volume over the same period, illustrated in the following chart. It is also notable that fiscal year 2005-06 did not evidence the volume of weather related district office closures, and resulting continuances of trials and mediations that were experienced in prior years (see endnote 16).

Fiscal Year	Petitions Filed	Mediations Continued	Med. Cont. v. PFB Filed
02-03	150,801	2,755	1.83%
03-04	127,458	2,036	1.60%
04-05	107,268	3,333	3.11%
05-06	90,948	4,756	5.23%

The implementation of the "auto-scheduling" of mediations by the Central OJCC Clerk likewise coincides generally with the beginning of the upward trend in mediation continuances in fiscal 2003-04. Prior to the implementation of that "auto-scheduling" process, some districts did not schedule mediation when a Petition was received. Instead, those divisions left the litigants responsible to coordinate and schedule a mediation appointment. This resulted in significant delay in the mediation of a significant volume of Petitions. The implementation of "auto-scheduling" by the OJCC Central Clerk assures that all Petitions are set for timely state mediation or appropriately ordered to private mediation. That process may also be influencing the volume of continuances, as Petitions are more promptly scheduled for mediation, and unprepared or overcommitted

parties move for continuance to alleviate pressure on their respective caseload. The overall rate of mediation continuances is illustrated in the following graph.



Some portion of the increase in mediation “continuances” may be unrelated to any issue beyond the lack of consistency in the District Office entry of data. Until fiscal 2006-07, with the publication of the [JCCA User Manual](#), the terms “continued” and “rescheduled” were both available choices for district staff to use, but were not defined. Therefore, how a delay in a mediation was characterized by the District Office, and as a result how that delay was reflected in the overall OJCC year-end statistics, was an amalgamation of thirty-one (31) Deputy District Clerks making individual and often subjective decisions about how to characterize any particular delay. It is noteworthy that the number of mediations “rescheduled” dramatically decreased in 2005-06 at the same time the number of mediations “continued” conversely increased, as illustrated in the following chart. This anecdotally supports that the current statistics may be related more to the characterization of the delay by district staff than to any real increase in mediation continuances.

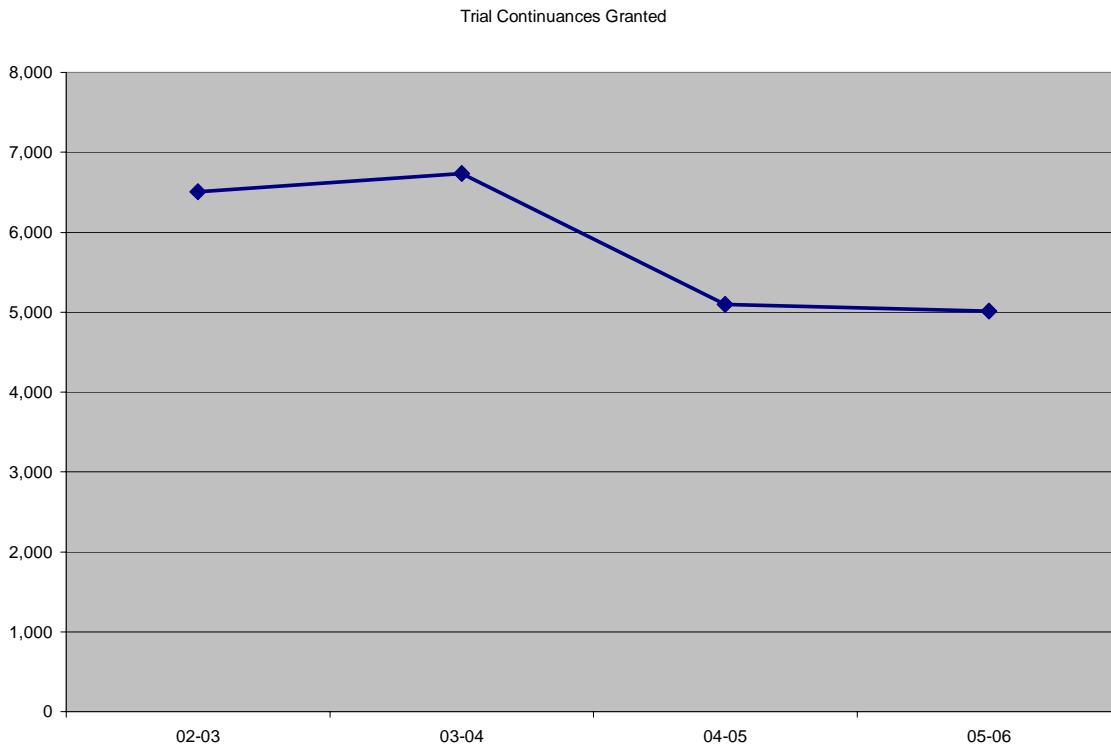
Fiscal Year	Mediations Rescheduled	Mediations Continued	Med. Cont. v. Med. Resched.
02-03	15,972	2,755	17.25%
03-04	15,876	2,036	12.82%
04-05	16,150	3,333	20.64%
05-06	12,172	4,756	39.07%

CONTINUANCES GRANTED FOR FINAL HEARINGS:

The volume of trial continuances system-wide decreased markedly from fiscal year 2003-04. Because accurate data¹⁵ is only known to exist since the OJCC was transferred to the DOAH, it is impractical to accurately determine whether the continuance data for fiscal 2003-04 represented any marked increase. Prior OJCC Annual Reports have concluded that the 2003-04 data regarding continuances reflected an increase related, at least in part, to the very active tropical cyclone season Florida suffered in 2004.¹⁶ The available data supports that trial continuances per JCC have declined from seventeen and one-half (17.5) per month in fiscal 2002-03 to thirteen and one-half (13.5) per month in fiscal 2005-06, as set forth in this table.

Fiscal Year	Total Number	Annual Per JCC	Monthly Per JCC
02-03	6,507	210	17.5
03-04	6,734	217	18.1
04-05	5,094	164	13.7
05-06	5,011	162	13.5

This graph illustrates the system-wide trial continuance figures and demonstrates the marked decrease in trial continuances over the last two (2) fiscal years.



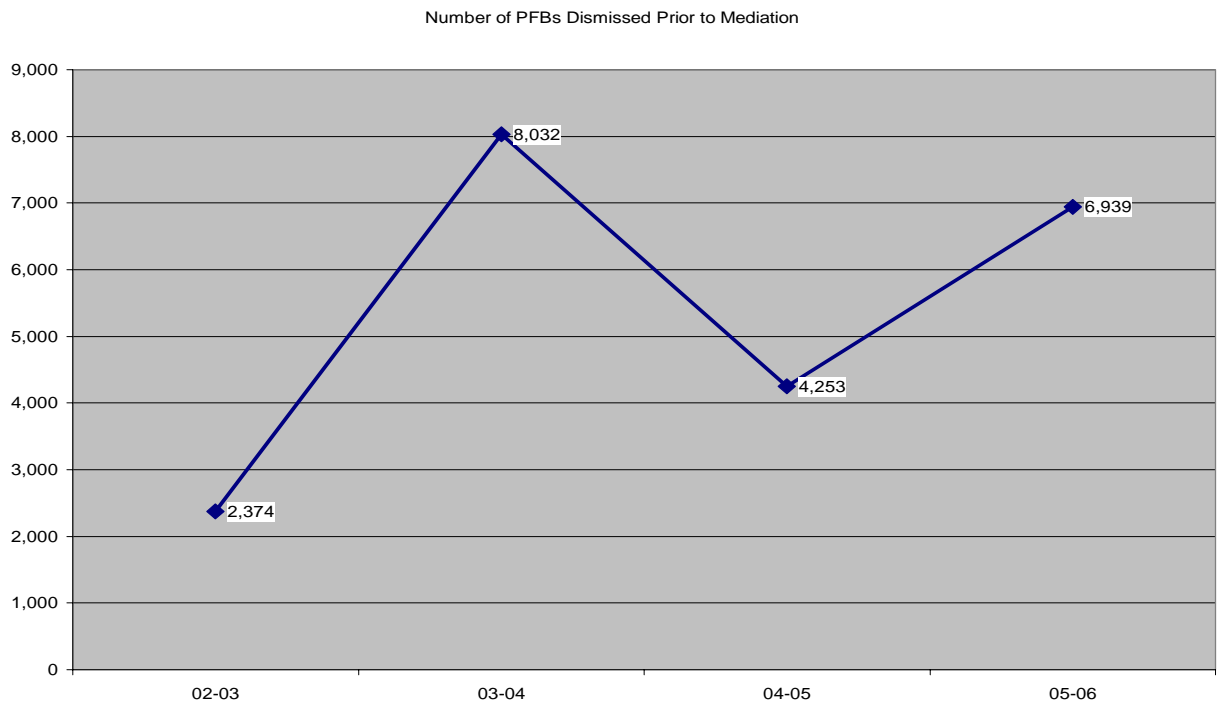
OUTCOME OF LITIGATED CASES:

Petitions for benefits are filed with the OJCC Central Clerk in Tallahassee. The demographic information (i.e. names, addresses, counsel) are entered into the OJCC case

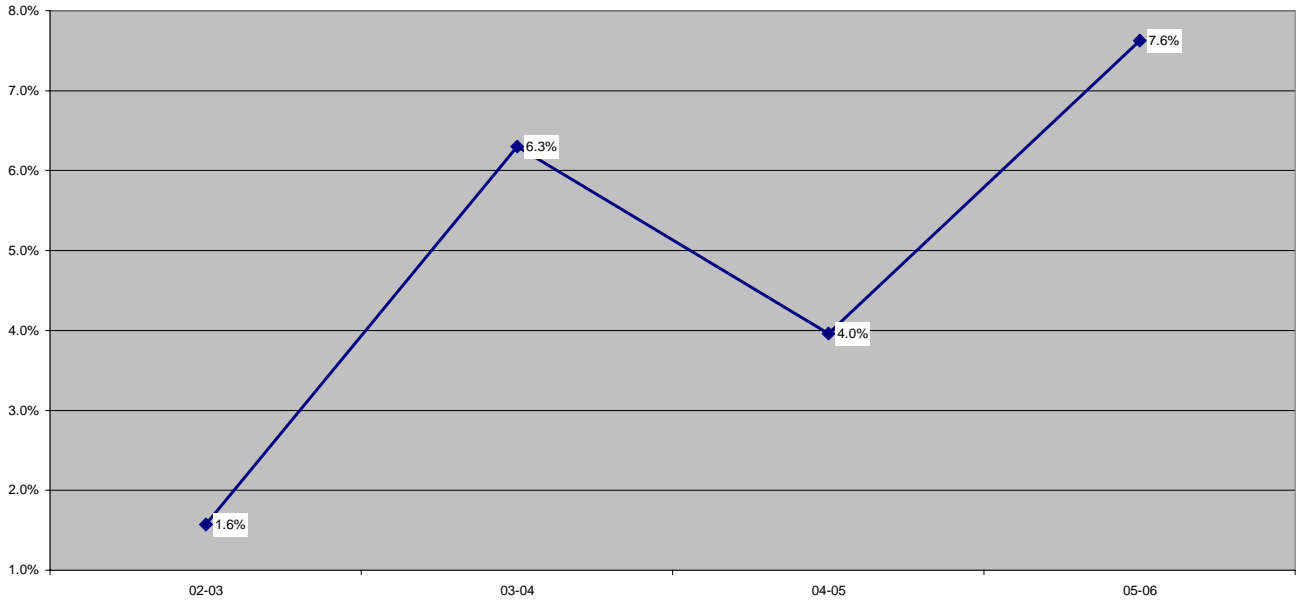
management computer Application (JCCA), as are the various issues plead in the Petition. All Petitions are assigned to a specific Judge of Compensation Claims. The JCC Application then “auto-schedules” a State mediation appointment. The Central Clerk forwards each Petition to the assigned District, and Division in multiple JCC Districts.

Some Judges utilize the provisions of Fla. Stat. §440.25(4)(j) and schedule “expedited” final hearings on some portion of the Petitions assigned to them. Mediation is not required on claims that are suitable for expedited final hearing. However, all Petitions have already been “auto-scheduled” for mediation by the JCC Central Clerk prior to arrival in the respective District Office. The process in the various districts, upon receipt of the Petition, may be to reschedule mediation, to notice the “auto-scheduled” mediation, or to cancel the mediation process completely if expedited final hearing is to be noticed instead. This decision is entirely within the discretion of the assigned JCC.

Many Petitions filed are resolved prior to mediation occurring. The following diagram represents the number of mediations (which may have been scheduled on one or more than one discreet Petition) that resolved prior to the scheduled mediation appointment time in each of the last four (4) fiscal years.



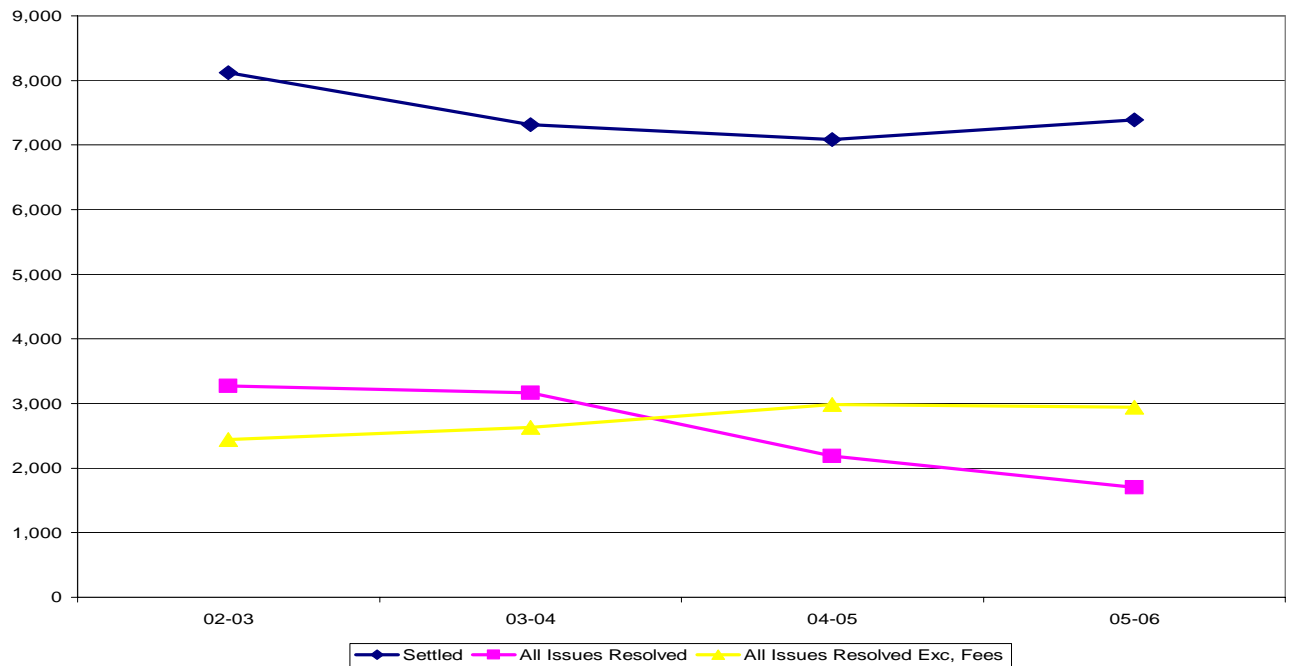
When the decreasing volume of Petition filings is considered, the percentage of Petitions that are resolved prior to mediation more effectively illustrates the frequency of such resolutions, as illustrated in this graph.



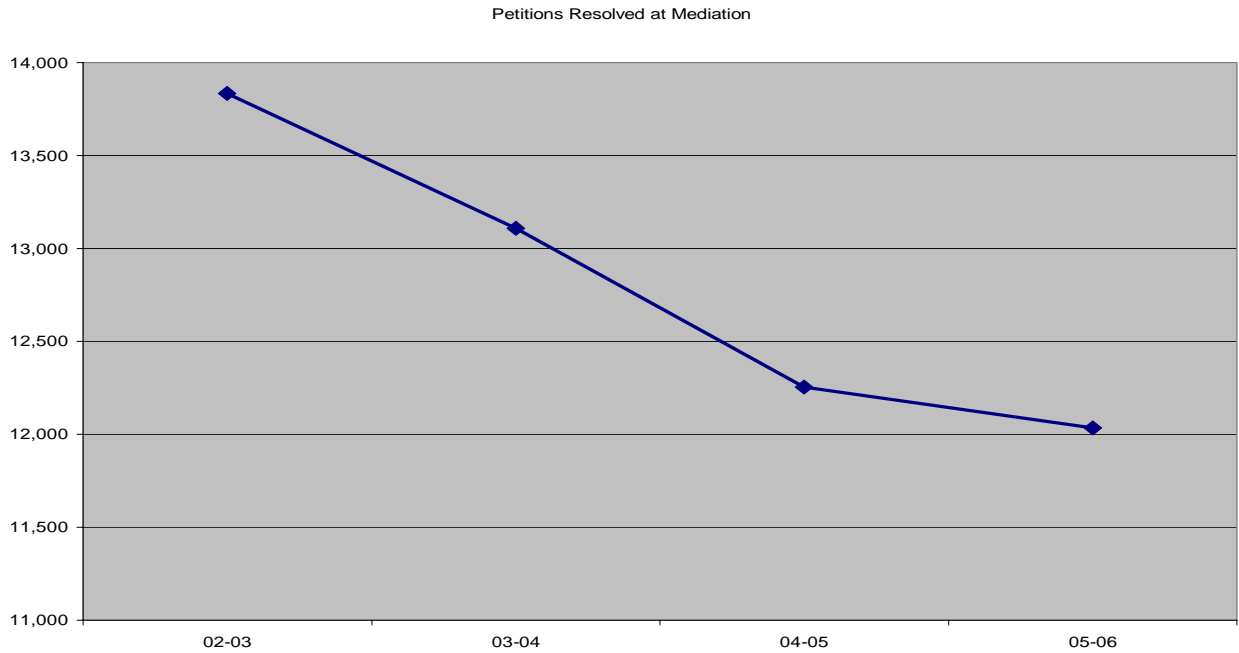
Any of the following mediation outcome characterizations would reflect that the pending Petition(s) for benefits has been resolved, and no final hearing would be required (although an attorney fee entitlement and/or amount hearing may be necessary):

- Settled
- All Issues Resolved
- All Issues Resolved Except for Fees

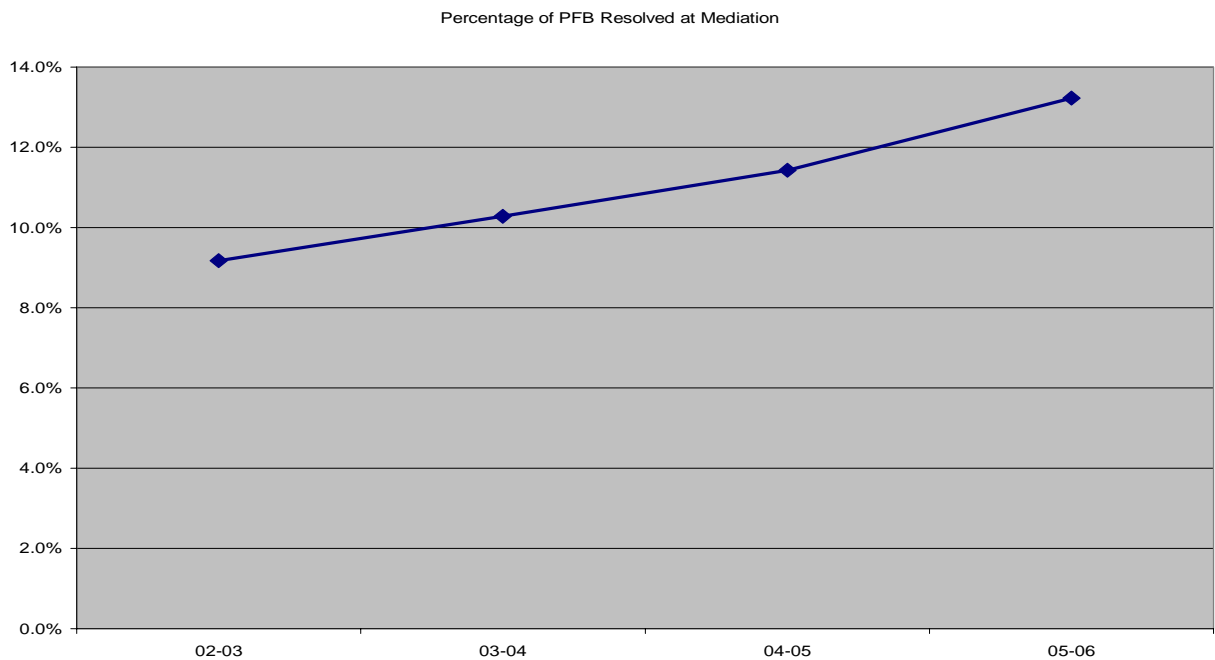
The following graph illustrates the frequency of each of these outcomes at mediation.



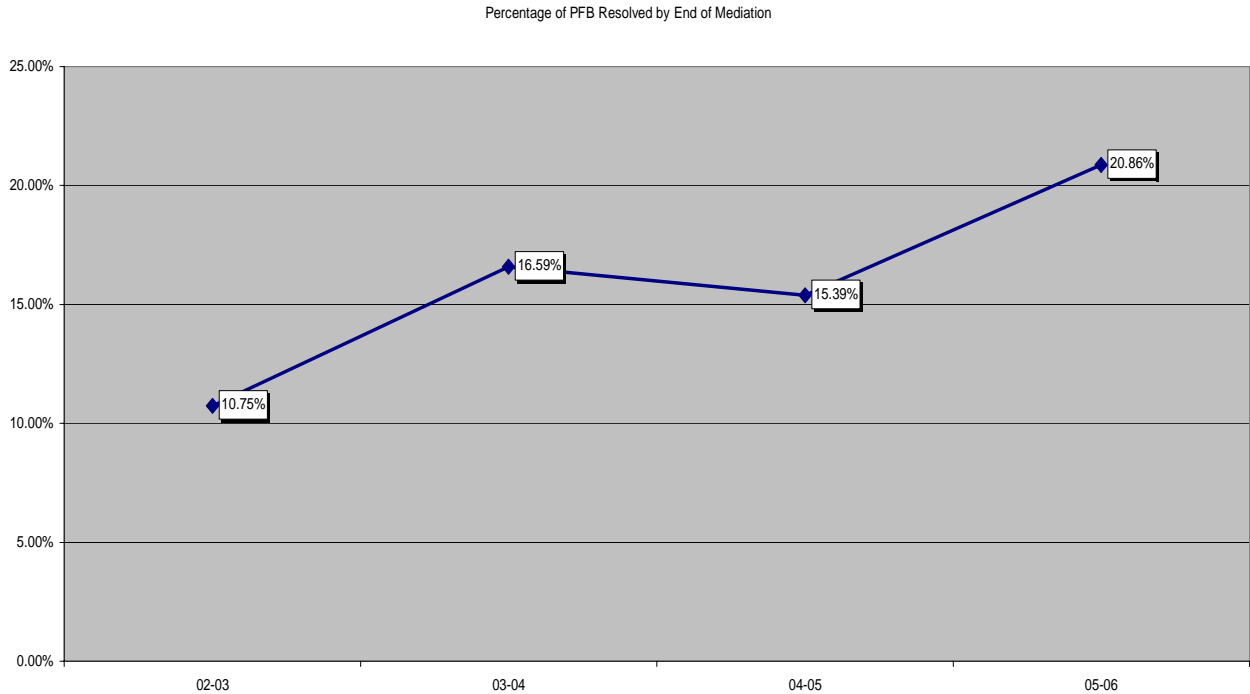
When these three (3) mediation outcomes are combined, the total reflects the frequency at which the pending Petition(s) is resolved at mediation. The JCCA does not, however, capture data which reflects whether, in such mediation, one or multiple discreet petitions were resolved. The following diagram illustrates the combination of these three (3) outcomes in each of the last four (4) fiscal years.



Thus, the total number of such resolutions is decreasing each year. When this total is expressed as a percentage of the petitions “filed” during the same fiscal year, the following diagram illustrates the overall percentage frequency of resolution at mediation.



An important issues is the volume of Petitions that remain for resolution or adjudication after mediation has occurred. If the volume of Petitions dismissed prior to mediation is combined with the volume of Petitions that were resolved at mediation, the following diagram illustrates the percentage of Petitions filed that were resolved either before or at mediation during the last four (4) fiscal years.



This illustrates that following mediation, approximately seventy-nine percent (79.14%) of filed Petitions remain unresolved at the conclusion of mediation.

In some Districts/Divisions Petitions received from the Central Clerk are scheduled only for mediation. In those Districts/Divisions a final hearing will only be scheduled in the event that mediation is not successful. In some of these Divisions, the district staffs have been somewhat passive regarding final hearing scheduling and as such a final hearing would only be scheduled when and if the parties take the initiative to contact the Judge’s office seeking to schedule a trial. In other Districts/Divisions, Petitions are immediately scheduled for mediation, pretrial and final hearing or expedited final hearing. When a final hearing or other appointment or event is currently scheduled to occur, it is reflected in the JCC Application as “set.”

Whether a particular Judge will be proactive (initiating scheduling) or reactive (waiting for the parties to initiate scheduling) is completely within the discretion of that particular Judge of Compensation Claims. If a final hearing, a pretrial and a mediation are all scheduled initially, and the issues then resolve before mediation, each of these “events” (mediation, pretrial and final hearing) will be labeled in the JCC Application with the “status” of “resolved issues prior.” Because there is a population of cases in the database in which both a mediation and a final hearing are designated as “issues resolved

prior” by one resolution (e.g. before mediation), it is not possible to accurately measure how many petitions resolve after mediation and yet prior to trial. Some portion of the final hearings that do not ultimately proceed to trial are caused by resolution between mediation and final hearing, but some other portion do not proceed because the issues were resolved prior to mediation in a case in which the pretrial and final hearing were already on the calendar before mediation ever occurred. This same potential exists for various “status” characterizations.

Additionally, the JCC Application contains a “status” characterization choice of “cancelled.” The available statistics for the last four (4) fiscal years support the conclusion that this “status” is used frequently, when other more specific descriptions are more appropriate. This characterization, “cancelled,” does not provide any edification or explanation as to why a particular event was “cancelled.” With the publication of the [JCC Application User Manual](#) in 2006, it is hoped that district staff will better understand the importance of using the most accurate and descriptive “status” whenever a final hearing or other event is changed from the status of scheduled to occur, or “set.” It is hoped that with this understanding and with published definitions for the various characterizations in the Application, that consistency among the Districts and Divisions will increase markedly.

With these caveats in mind, the following chart illustrates the frequency of various “status” characterizations used by district staff to describe why final hearings did not proceed, in each of the last four (4) fiscal years.

Final Hearings:	02-03	03-04	04-05	05-06
Type of Resolution Recorded:				
Cancelled	6447	5984	4248	3918
Issues resolved except atty fees	385	451	391	156
Pending issues resolved	2406	2311	1590	1089
Resolved issues prior	103	1499	2204	2299
Settled	3218	2415	2590	2302
Settled prior	1	1	0	5
Voluntary dismissal	71	1436	1481	1796
Total Resolved Before Trial	12631	14097	12504	11565

The publication of the [OJCC Application User Manual](#) and the planned efforts for staff training are expected to provide far greater consistency in the entry of data into the OJCC Application database. Likewise, diligent supervision of district staff clerical efforts by the Deputy Chief Judge is expected to result in more accurate and consistent statistics in future annual reports.

**AMOUNT OF ATTORNEY'S FEES PAID IN EACH CASE
ACCORDING TO ORDER YEAR AND ACCIDENT YEAR:**

The Office of the Judges of Compensation Claims is required by law to approve all attorney fees paid by or on behalf of an injured worker. Fla. Stat. §440.34¹⁷ There is no such specific requirement for the approval of fees paid by employer/carriers for their defense counsel representation. Despite the absence of such specific requirement for defense fee approval, the broad language of Fla. Stat. §440.105(3)(b)¹⁸ arguably could require OJCC approval of defense attorney’s fees. However, this statutory authority has not been interpreted to require approval of defense attorney fees.

Therefore, the OJCC has required insurance carriers to [report](#) their respective total annual expenditures for defense fees.¹⁹ This information, when all of the carriers’ information has been combined, provides an aggregate expended by employer/carriers for defense fees in 2005-06. This information regarding defense fees expended during the fiscal year does not provide any edification regarding the respective dates of accident involved in the cases in which fees were approved during fiscal year 2005-06.

Previous [OJCC annual reports](#) detailed payment of claimant attorney fees based upon the best information available when those reports were prepared. The OJCC gathers claimant attorney fee data through a computer program (part of the system that includes the JCC Application, electronic filing, and internet publication of data) that simultaneously uploads fee approval orders to the internet docket and captures the data regarding fee and cost amounts. The district staff is responsible for the input of the fee and cost amount data for each individual fee approval order entered. Because the database currently produces different total annual figures for claimant attorney fees figures, approved in prior fiscal years, than was reported in prior OJCC Annual Reports, it is believed that subsequent to the issuance of those prior OJCC Annual Reports, additional information was entered by district staff, e.g. additional approved orders for a particular fiscal year were input and uploaded after the query for that particular fiscal year was initially run. The following chart represents the most current information for the amount of claimant’s attorney fees approved in recent fiscal years.

Fiscal Year	Claimant Attorney Fees
02-03	\$210,731,215 ²⁰
03-04	\$217,519,710 ²¹
04-05	\$222,392,400 ²²
05-06	\$261,058,816 ²³

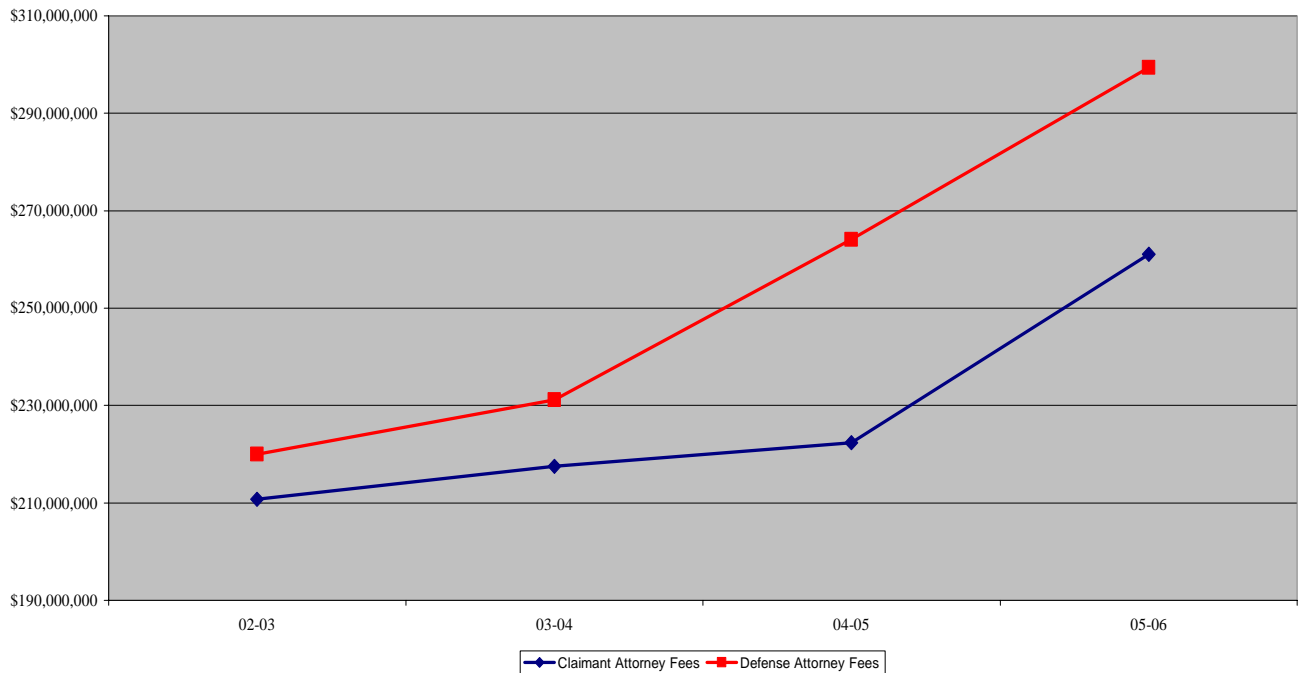
During 2005-06, a total of five hundred sixty million four hundred seventy-one thousand three hundred eighty-six dollars (\$560,471,386 = \$261,058,816 + \$299,412,570), over one-half billion dollars, was expended on claimant and defense attorney’s fees in the Florida worker’s compensation system. The last four fiscal years of claimant and defense attorney’s fees and the annual rates of change are set forth in the following table.

Fiscal Year	Claimant Attorney Fees	% Change	Defense Attorney Fees	% Change
02-03	\$210,731,216		\$220,044,685	
03-04	\$217,519,710	3.22%	\$231,150,559	5.05%
04-05	\$222,392,401	2.24%	\$264,058,532	14.24%
05-06	\$261,058,816	17.39%	\$299,412,570	13.39%

A comparison of the 2005-06 attorney fees and the 2002-03 attorney fees for both claimant and defense is set forth in the following table to illustrate the cumulative change over four (4) years.

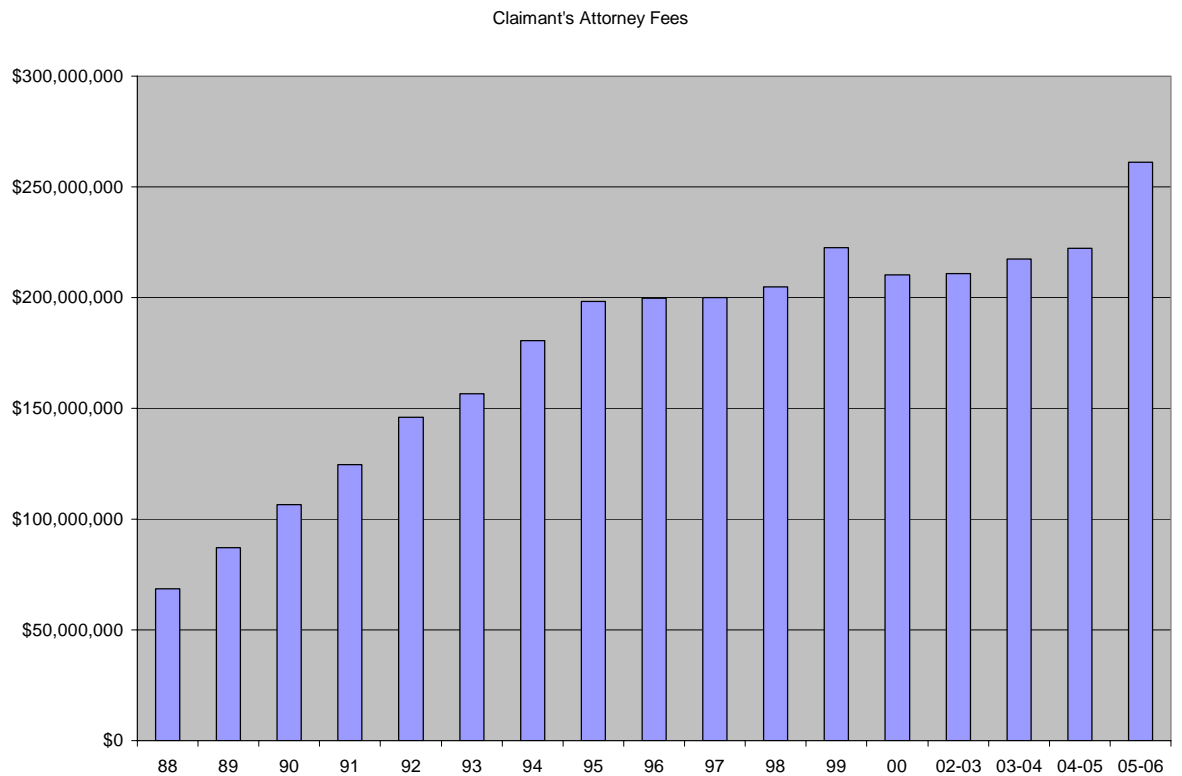
Fiscal Year	Claimant Attorney Fees	% Change	Defense Attorney Fees	% Change
02-03	\$210,731,216		\$220,044,685	
05-06	\$261,058,816	23.88%	\$299,412,570	36.07%

This illustrates that both claimant and defense attorney fees have continued to increase since the 2003 amendments to Chapter 440, and that defense attorney fees have increased at a significantly greater rate (approximately 36%) than the claimant attorney fee increase rate (approximately 24%). The trends and levels of both claimant and defense attorney fees is illustrated in this graph.



These figures demonstrate only the gross amount of attorney's fees paid during the period July 1, 2005 through June 30, 2006. This analysis does not consider, nor delineate, the age of the cases in which these fees were paid.

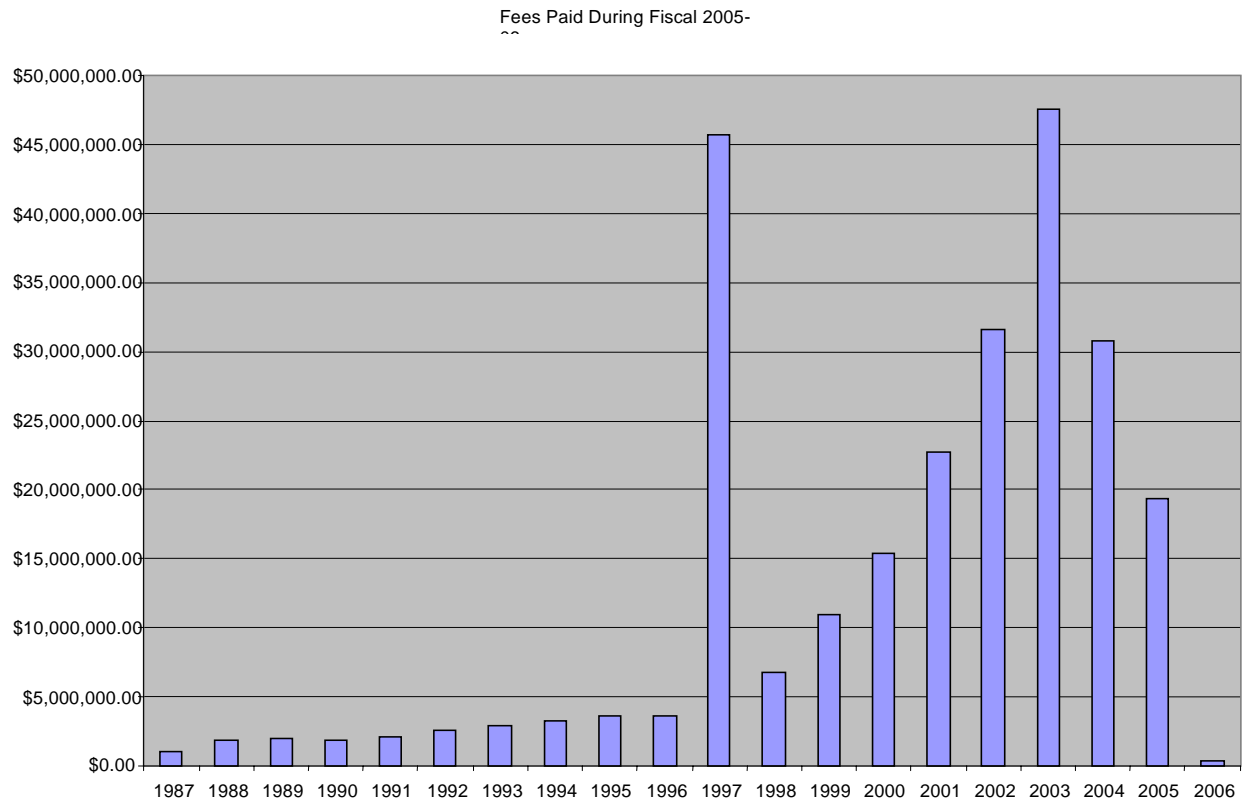
The DLES compiled data regarding the attorneys fees paid to claimant's counsels for a number of years. In the [DLES 2001 Dispute Resolution Report](#), fees for calendar years 1988 through 2000 were reported. These figures are useful for broad comparisons with current fees and trends. However, it is important to note that the DLES figures are for calendar year, not fiscal year. It is further instructive to note that the DLES figures for attorneys' fees paid for claimant's counsel include costs. The figures compiled and reported by the OJCC, since October 2001, do not include costs. With those two caveats, the following graph represents the claimant fees (fees plus costs) paid from 1988 through 2000 and the claimant fees paid from fiscal 2002-03 through 2005-06.



These figures each represent only the amount of fees approved during each respective fiscal year. During any particular fiscal year, fees might be approved on cases for which the date of accident was also during that particular fiscal year. Likewise, the approved fee might be related to a date of accident prior to that fiscal year, perhaps many years prior. Most fees approved during any particular fiscal year will be associated with accidents that occurred prior to that particular fiscal year. Logically, most litigated cases within the responsibility of the OJCC involve dates of accident prior to any current fiscal year. In 2005-06, fees were paid in cases that involved forty-three different accident years, as depicted in the following table.

Accident year	Clmt. Fees 2005-06	Accident year	Clmt. Fees 2005-06	Accident year	Clmt. Fees 2005-06
1952	\$2,923	1979	\$272,983	1994	\$3,208,392
1955	\$10,000	1980	\$174,169	1995	\$3,577,573
1961	\$600	1981	\$523,269	1996	\$3,622,043
1963	\$20,000	1982	\$379,440	1997	\$45,701,609
1966	\$33,064	1983	\$492,126	1998	\$6,781,344
1968	\$1,135	1984	\$870,185	1999	\$10,949,086
1970	\$20,455	1985	\$609,595	2000	\$15,366,433
1971	\$5,430	1986	\$1,313,177	2001	\$22,763,127
1972	\$1,749	1987	\$1,013,005	2002	\$31,641,993
1973	\$29,683	1988	\$1,857,592	2003	\$47,582,532
1974	\$183,940	1989	\$1,971,910	2004	\$30,753,574
1975	\$32,895	1990	\$1,884,543	2005	\$19,285,354
1976	\$37,282	1991	\$2,059,928	2006	\$281,776
1977	\$129,350	1992	\$2,596,852		
1978	\$67,450	1993	\$2,949,251	Total	\$261,058,816

All of the claimant attorney fees approved during fiscal 2005-06, for accident dates in 1986 and before total a small portion (approximately 2%), approximately five million two hundred ten thousand dollars (\$5,210,899.40), of the overall total (\$261,058,816.19). The claimant attorney fees approved in fiscal 2005-06 for accidents in the last twenty (20) years, 1987 to present, are depicted in the following graph.



**NUMBER OF FINAL ORDERS NOT ISSUED WITHIN 30 DAYS
AFTER THE FINAL HEARING OR CLOSURE OF THE HEARING
RECORD:**

Review of all of the final merits orders entered during fiscal 2005-06 indicates that many final orders were entered on the day of the final hearing. The individual Judges' compliance with the statutory requirement for timely (within thirty days of the trial) final order entry during 2005-06 ranged from one hundred percent (100%) to zero percent (0%). Overall, the Judges of Compensation Claims entered timely (within thirty days of trial) final orders approximately fifty-eight percent (57.6%) of the time in fiscal 2005-06. As represented in the following table, final orders were entered in under one hundred (100) days in approximately eighty-six (85.5%) of all cases.

Days	Percentage Entered
30	57.6%
40	66.7%
50	71.9%
60	74.6%
70	78.6%
80	81.6%
90	84.0%
100	85.5%

For final orders entered during fiscal 2005-06, the shortest period between final hearing and final order was zero (0) days and the longest period was one thousand three hundred twenty-three (1,323) days or approximately three and one-half years.

**RECOMMENDING CHANGES OR IMPROVEMENTS TO THE
DISPUTE RESOLUTION ELEMENTS OF THE WORKERS'
COMPENSATION LAW AND REGULATIONS:**

The Florida Supreme Court adopted the Rules of Workers' Compensation Procedure in 1973.²⁴ In 1994, the Florida Legislature mandated that the OJCC would propound procedural rules. Thereafter, the OJCC elected instead to publish uniform local rules, titled the Uniform Practices and Procedures ("UPP"). Following the integration of the OJCC into the DOAH in 2001, the DOAH prepared, published and adopted the DOAH Rules of Procedure ("DOAHRP"), effective February 23, 2003. In 2004, the Florida Supreme Court held that the DOAH action promulgating rules pursuant to the mandate of Chapter 440 F.S. was appropriate.²⁵ In 2005, Director and Chief Judge Cohen undertook the first amendment process for those DOAHRP. The amendment process included input from many constituents of the Florida workers compensation system, multiple meetings around the state, and ample opportunity for public discourse and comment.

The DOAHRP as amended (effective November 1, 2006) generally address “costs” incurred by litigants. Because issues involving costs are generally within the discretion of the assigned Judge, additional clarification of “costs” would alleviate much litigation and would relieve district staff of significant paperwork created by communications to and from litigants regarding “costs.” Two broad general categories of costs are of interest to the OJCC. Claimant’s attorney’s often charge injured workers for “costs” associated with their prosecution of a claim for benefits. The DOAHRP only generally address this category. The consideration of, and ultimately approval of, such costs has been held by the Court to be within the jurisdiction of the Judges of Compensation Claims.²⁶ When a prevailing party is awarded costs, e.g. “taxable costs,” the DOAHRP require the presiding JCC to consider the provisions of the Statewide Uniform Guidelines for the Taxation of Costs, adopted by the Florida Supreme Court, in deciding what costs should appropriately be paid by the non-prevailing party. The Judges are not bound, however, by the provisions of these Guidelines.

In both of these contexts, the consideration of what does and does not represent an appropriate “cost” is ultimately left largely within the discretion of the presiding Judge. Some public comment on the 2006 Rule amendments supported that the use of the Statewide Uniform Guidelines should be mandatory rather than discretionary, and should apply to all cost considerations. Other comments suggested that these Guidelines should never be considered. The consistency of results statewide would be markedly enhanced with the development and adoption of a DOAH rule defining more specifically costs that definitively are and are not acceptable costs in workers compensation proceedings, in “taxable” and “non-taxable” contexts. Such a rule would necessarily be detailed and complex. There would therefore be considerable difficulty in reaching consensus among all system participants regarding what is and what is not a “cost.” Once all of these positions were considered, however, and a rule implemented, the benefits to all concerned in terms of consistency and predictability would be appreciable.

JUDGES GENERALLY ARE UNABLE TO MEET A PARTICULAR STATUTORY REQUIREMENT FOR REASONS BEYOND THEIR CONTROL, THE DEPUTY CHIEF JUDGE SHALL SUBMIT SUCH FINDINGS AND ANY RECOMMENDATIONS TO THE LEGISLATURE:

Each statutory requirement can clearly be accomplished in the vast majority of cases. This fact is indisputable and has been proven on more than one occasion and in various Districts throughout Florida. It is therefore disingenuous for some to claim that cases “cannot” be tried within two hundred ten (210) days of petition filing. Likewise, there is no support that entry of a final order within thirty (30) days after the trial is impossible or even impractical. In Fiscal 2005-06 one hundred percent (100%) compliance with this requirement was individually achieved on an individual JCC basis, although overall the OJCC did not meet this requirement.

Because these statutory requirements clearly can be met, the OJCC analysis must examine why these parameters are not being met in some Districts/Divisions. Certainly, there are examples in each District/Division in which trial did not occur within two hundred ten (210) days. At least some of the cases that fail to reach trial within this time are delayed by the appointment of an expert medical advisor(s). The provisions of Fla. Stat. §440.13(9)(c) (see text box below) require (“shall”) that an expert medical advisor or “EMA” is appointed any time that there is a disagreement between medical providers. In many cases, injured workers file a petition for benefits based only upon their belief that some form of additional medical care would be efficacious for alleviation of their complaints. This process of pleading without proof has been limited somewhat in recent years with the Legislature’s amendment to Fla. Stat. §440.192 requiring that a medical recommendation or referral accompany such claims. Employer/Carriers may deny claimed medical benefits without currently possessing admissible (an opinion of a non-authorized provider may be in the claimant’s possession, but may also not be admissible as evidence) substantive medical evidence upon which to conclude that such care is not necessary or appropriate.

Fla. Stat. §440.13(9)(c): “If there is disagreement in the opinions of the health care providers, if two health care providers disagree on medical evidence supporting the employee's complaints or the need for additional medical treatment, or if two health care providers disagree that the employee is able to return to work, the division may, and the judge of compensation claims **shall**, upon his own motion or within 15 days after receipt of a written request by either the injured employee, the employer, or the carrier, order the injured employee to be evaluated by an expert medical advisor. The opinion of the expert medical advisor is presumed to be correct unless there is clear and convincing evidence to the contrary as determined by the judge of compensation claims. The expert medical advisor appointed to conduct the evaluation shall have free and complete access to the medical records of the employee. An employee who fails to report to and cooperate with such evaluation forfeits entitlement to compensation during the period of failure to report or cooperate.

Therefore, it is common for a petition to be filed seeking a medical procedure, followed by the injured worker seeking and undergoing an independent medical examination (“IME”), to obtain the admissible proof necessary to prove entitlement to that procedure, followed by the injured worker then undergoing the employer/carrier’s IME. It is often some conflict between the Employer IME and some other physician (the treating physician whose opinion/recommendation was appended to the Petition) that forms the “conflict” upon which a motion to appoint EMA is predicated. In many cases,

this does not occur immediately after the Petition is filed. In some cases, employers make no effort to even schedule their IME until after mediation of the Petition has occurred (within 130 days of Petition filing). It is therefore not uncommon for EMA motions to be made in the weeks or even days prior to final hearing. The Court has concluded that such motions must be made with reasonable timeliness after the conflict becomes known. Because the deposition or report from these IME providers logically occur only after the examination(s), and because the examinations are not performed or in some cases requested until 130 days after the Petition is filed, a substantial portion of these last-minute EMA motions are timely after the conflict is confirmed, occurring within days of one of the physician depositions. Despite being “timely” as defined by the Court, these motions may nonetheless be close enough to the final hearing so as to require a continuance.

The EMA process is further frustrated by the lack of medical providers willing to participate in the program. The overall low volume of providers results in significant delays between appointment of EMA and the performance of the evaluation. The Division of Workers’ Compensation accredits EMA providers in broad categories, i.e. orthopedic surgery. It is rare to find an orthopedic surgeon in Florida that holds themselves out as an expert in all orthopedic issues. For example, some orthopedic surgeons focus their practice on shoulder injuries while others focus their practice on knee injuries. The Division categorizes providers only by the Board of Medical Specialization (by which physicians become certified to refer to themselves as “Board Certified”) that has provided certification. There is no “knee surgeon” certification. Therefore, the EMA list maintained by the Division does not identify “knee surgery EMA providers,” but instead only identifies “orthopedic EMA” providers. Therefore, when an EMA must (“shall”) be appointed, it is the Judge’s office that is burdened with the responsibility of contacting medical providers to ascertain whether the particular situation presented (i.e. a disagreement over the medical necessity of a total knee replacement) is or is not within the purview and expertise of particular EMA providers on the DWC EMA list. This issue becomes more difficult still in the arena of occupational disease cases such as chemical exposure and hearing loss. In such cases as hearing loss claims, there are a multitude of otolaryngologists that are qualified to diagnose and even quantify hearing loss. The population of such experts that profess expertise in determining the cause of such hearing loss is far smaller.

Thus, the EMA process in general causes many continuances, and causes failure to meet the 210 day statutory parameter. This could be alleviated in many cases if the mandatory language (“shall”) of Fla. Stat. §440.13(9)(c) was replaced with permissive language (“may”). Such language would return some degree of discretion to the Judges of Compensation Claims. It is respectfully submitted that a legislative change rendering such EMAs discretionary (“may”) with the JCC rather than mandatory (“shall”) would significantly increase the Judges' respective ability to manage an efficient docket.

Appendix “A” Mediation Statistics Detail:

IMPASSE:

Eight thousand six hundred sixty-eight (8,668) mediated cases resulted in no resolution of any issues. Dividing this figure (8,668) by the thirty-one (31) mediators in the Districts yields an average “impasse” per mediator rate of approximately two hundred eighty ($279.6 = 8,668/31$). The twenty-two (22) mediators who reached “impasse” outcomes less than the statewide average are set forth in the following chart:

Woolley	0	Langer	180
Johnsen	11	Suskin	187
Oramas	81	Bisbee	199
Gordon	89	Hill	205
Marshall	119	Hires	211
Day	130	Brea	219
Hardy	134	DiGennaro	219
Allison	150	Harwood	222
Sturgis	152	Claussen	256
Kim	159	Ronnenberg	257
Young	174	Arthur	275

The four state mediators reporting the highest frequency of “impasse” during fiscal 2005-06 reported impasse frequency of more than double the statewide “impasse” average (279.6).

SETTLED:

Seven thousand three hundred ninety (7,390) settlements resulted from mediations in fiscal 2005-06. Divided by the thirty-one (31) state mediators, this yields a statewide average of “settled” cases from mediation of approximately two hundred thirty-eight ($238.4 = 7,390/31$). Fourteen (14) state mediators documented “settled” mediation outcomes more often than the statewide average (238). Those with higher averages are set forth in the following chart.

Sturgis	245	Day	303
Langer	250	Witlin	305
Murphy, P	254	Friedman	330
Arthur	258	Hill	353
Claussen	282	Young	396
DiGennaro	300	Lapin	414
Harwood	302	Suskin	473

ALL ISSUES RESOLVED EXCEPT FEES:

Two thousand nine hundred forty-one (2,941) mediations were documented as resulting in resolution of all issues except attorney’s fees in 2005-06. This equates to an average of approximately ninety-five ($94.9 = 2,941/31$) per state mediator. The following

mediators recorded the outcome of “all issues resolved except fees” more frequently than the statewide average.

Arthur	96	Williams	127
Bisbee	99	Claussen	140
Smith	99	Hill	148
Oramas	100	Young	231
Harwood	104	Suskin	453
Witlin	112		

ALL ISSUES RESOLVED:

One thousand seven hundred three (1,703) instances of mediation resulting in “all issues resolved” were documented in fiscal year 2005-06. The statewide average of “all issues resolved” per mediator was approximately fifty-five ($54.9 = 1,703/31$) mediations. The following mediators documented the “all issues resolved” status at a greater frequency than the statewide average:

Hires	54	Oramas	100
Kim	54	Gordon	103
Marshall	55	Arthur	108
Friedman	70	Witlin	109
Hardy	72	Young	127
Sturgis	73	Suskin	243

SOME ISSUES RESOLVED:

Three thousand fifty-nine (3,059) mediations in 2005-06 were documented as resulting in “some issues resolved.” This equates to a statewide average of approximately ninety-nine ($98.7 = 3,059/31$) per mediator. The following mediators achieved the outcome of “some issues resolved” more frequently than the statewide average:

Friedman	101	Claussen	137
Arthur	105	Witlin	140
Bisbee	105	Williams	143
Marshall	108	Hodges	145
Gordon	109	Lapin	146
Hires	119	Schnepper	147
Allison	127	Young	152
Harwood	136	Suskin	153

¹ Fla. Stat. §440.45(5): “Not later than December 1 of each year, the Office of the Judges of Compensation Claims shall issue a written report to the Governor, the House of Representatives, the Senate, The Florida Bar, and the statewide nominating commission summarizing the amount, cost, and outcome of all litigation resolved in the previous fiscal year; summarizing the disposition of mediation conferences, the number of mediation conferences held, the number of continuances granted for mediations and final hearings, the number and outcome of litigated cases, the amount of attorney's fees paid in each case according to order year and accident year, and the number of final orders not issued within 30 days after the final hearing or closure of the hearing record; and recommending changes or improvements to the dispute resolution elements of the Workers' Compensation Law and regulations. If the Deputy Chief Judge finds that judges generally are unable to meet a particular statutory requirement for reasons beyond their control, the Deputy Chief Judge shall submit such findings and any recommendations to the Legislature.”

² During the 2006 Florida legislative session, one Judge of Compensation Claims was added to the OJCC, effective July 1, 2006. Therefore, as this Annual Report was prepared there are thirty-three (33) JCC positions in Florida. On November 16, 2006, Governor JEB Bush appointed the Honorable Kathy Sturgis to the position created in 2006. That position only became "vacant" in fiscal 2006-07. Therefore, the statistics in this annual report reflect the performance of the thirty-two (32) JCC positions that existed during fiscal 2005-06. The thirty-two (32) includes the Deputy Chief Judge of Compensation Claims.

³ Miami District is assigned five (5) Judges. Orlando, Tampa, Ft. Lauderdale, and West Palm Beach Districts are each assigned three (3) Judges. Jacksonville, St. Petersburg, and Ft. Myers (currently, although this was a one Judge office during fiscal 2005-06) are each assigned two (2) Judges. Sarasota, Lakeland, Melbourne, Pt. St. Lucie, Gainesville, Daytona, Tallahassee, Panama City and Pensacola each are assigned one (1) Judge.

⁴ Five Judges divided "a" through "c", "d" through "h", "i" through "m", "n" through "r," and "s" through "z." Three Judges divided "a" through "f", "g" through "o," and "p" through "z." Two Judges divided "a" through "k" and "l" through "z."

⁵ In 1981 Microsoft Corp. introduced a computer operating system, MS DOS. In 1985, Microsoft began distributing a graphic user interface program called Windows. In 1992, Microsoft introduced Windows 3.1. In 1993 Intel Corp. introduced the Pentium computer processor. In 1994, WordPerfect released a revision, titled WordPerfect 6.1 for Windows. Microsoft introduced enhanced Windows versions in 1995 and 1998. Also in 1998, Intel introduced the Pentium II processor. In January 2000, the Pentium III processor was released. Also in 2000, Microsoft introduced Windows 2000. In July 2001 Intel released the Pentium IV processor.

⁶ Claims involving unrepresented injured workers are settled by way of a *Joint Petition in Support of Lump Sum Settlement*, commonly referred to as a “JP.” These agreements require significant fact-finding, usually involve a hearing, and may involve inquiry by the assigned Judge. Settlements involving represented injured workers generally do not require the same degree of inquiry and judicial approval of the settlement itself. In these cases, the JCC generally only considers and approves attorney’s fees, costs, and allocation of any child support arrearage collected. Therefore, these settlements generally come to the assigned Judge in the form of a *Motion for Approval of Attorney’s Fees and Child Support Arrearage*.

⁷ For example, it is common for a petition to contain a claim for past medical care (payment for care by a medical provider or providers) and a claim for future medical care (authorization of a particular medical provider or specialty, i.e. orthopedic surgeon) and a claim for some form of lost-wage (“indemnity”) benefit such as temporary total or temporary partial disability benefits. Many petitions seek payment of attorney’s fees and costs, and penalties and interest are commonly claimed when any form of indemnity is sought.

⁸ These claims are referred to as claims for “contribution, indemnification, or exoneration.” Fla. Stat. §440.42. Under the former Rules of Workers’ Compensation Procedure, see endnotes 24 and 25, claims for contribution were specifically excluded from the type of claim that must be included in a petition for benefits. See former Rule 4.025.

⁹ Anecdotally, there is evidence that some attorneys file multiple petitions in the same OJCC case on the same date. The logic or reason for this practice is not known. What is clear, however, is that this practice artificially increases the overall Petition volume because in those instances two (2) or even three (3) Petitions are filed to seek a group of benefits that could more logically (and inexpensively as petitions are served by certified mail) have all been sought in a single Petition. There is also some anecdotal support for the conclusion that this practice is more prevalent in some geographic regions of the state than in others.

¹⁰ The conclusions reached by the DLES have previously been published. These conclusions are available for analysis. However, none of the raw source data used for those analyses was provided to the DOAH when the OJCC was transferred in 2001. The statistics published by the DLES are therefore expressed in this report for illustrative comparison only.

¹¹ During 2006 there were thirty-one (31) Judges of Compensation Claims in the OJCC system. The legislature authorized the addition of one (1) JCC in the 2006 session. Throughout the year some of these positions were

vacant for some period. Despite any judicial vacancy, the petitions pending remained in their respective divisions or districts pending the appointment of a new JCC to fill such vacancy. Therefore, it is appropriate that the average of pending backlogged include all authorized positions, e.g. 31.

There is anecdotal evidence that some Divisions exhibit significant delays in the entry of final orders following trials. A 2006 audit of final orders entered by all Judges of Compensation Claims demonstrated average delays of over one year between trial and entry of a corresponding final order in some Divisions. Such delays may inappropriately result in parties reaching settlement or resolution after trial through frustration with the Judge's unwillingness to enter a timely order. In other instances, the outcome of evidentiary rulings during trial may be sufficiently illuminating to the parties to allow meaningful analysis of the probable outcome of a given case and may result in a negotiated resolution before even a prompt and timely order may be entered.

In the last fiscal year, the talents of Deputy Chief Judge Scott Stephens and Judge Mily Rodriguez-Powell were lost to the Circuit Court bench. In fiscal 2004-05, the OJCC lost the service of Judge Maria Ortiz to the Circuit Bench. In recent fiscal years, the OJCC also has recently lost the talents of Judge Wilbur Anderson and Judge Richard Thompson to the private sector.

Some percentage of petitions may be excused from the mediation process by the assigned JCC if the issues are instead scheduled for expedited final hearing pursuant to Fla. Stat. §440.25. A very small percentage of mediations are waived by order of the Deputy Chief Judge of Compensation Claims.

This report is replete with examples that cast some doubt on the accuracy of the statistics maintained by the OJCC even since the transfer to the DOAH. However, the raw data for conclusions since 2001 remains available and can be re-verified and corrected, see endnotes *). Therefore, while the statistics are not above any suspicion, they are more trustworthy than summary information available for prior years.

During the 2004 tropical cyclone season, Florida was effected by Hurricanes Charlie, Frances, Ivan, and Jeanne. Almost every District Office was affected by at least one tropical cyclone in 2004 and therefore the increase in continuances that year has been blamed to some extent on these unavoidable natural phenomena. Fla. Stat. §440.34(1) provides in part: "A fee, gratuity, or other consideration may not be paid for services rendered for a claimant in connection with any proceedings arising under this chapter, unless approved as reasonable by the judge of compensation claims or court having jurisdiction over such proceedings."

Fla. Stat. §440.105(3)(b) provides: "It shall be unlawful for any attorney or other person, in his individual capacity or in his capacity as a public or private employee, or for any firm, corporation, partnership, or association to receive any fee or other consideration or any gratuity from a person on account of services rendered for a person in connection with any proceedings arising under this chapter, unless such fee, consideration, or gratuity is approved by a judge of compensation claims or by the Chief Judge of Compensation Claims."

Rule 6.124(4): "No later than October 1 of each year, all self-insurers, third-party administrators, and carriers shall report by electronic transmission to the OJCC the amount of all attorney's fees paid to their defense attorneys in connection with workers' compensation claims during the prior July 1 through June 30 fiscal year."

This figure was previously reported as \$205,406,907. That figure is believed to have been accurate at the time the OJCC database was queried in preparation of the fiscal 2002-03 OJCC Annual Report. Thereafter, however, additional orders that were entered during 2002-03 were uploaded to the OJCC database by district staff. See page five of this report for further explanation of the data entry process.

This figure was previously reported as \$146,747,328. That figure is believed to have been accurate at the time the OJCC database was queried in preparation of the fiscal 2003-04 OJCC Annual Report. Thereafter, however, additional orders that were entered during 2003-04 were uploaded to the OJCC database by district staff. See page five of this report for further explanation of the data entry process.

This figure was previously reported as \$181,145,233. That figure is believed to have been accurate at the time the OJCC database was queried in preparation of the fiscal 2004-05 OJCC Annual Report. Thereafter, however, additional orders that were entered during 2004-05 were uploaded to the OJCC database by district staff. See page five of this report for further explanation of the data entry process.

This figure is deemed accurate as of the date the database was queried, November 20, 2006. Any orders entered during fiscal 2005-06 should have been uploaded to the OJCC database by that date. It is possible that orders entered by some Judges during fiscal 2005-06 remain to be uploaded. If that occurs, this figure will change, similarly as described in endnotes 20, 21, and 22.

See, In re Florida Workmen's Compensation Rules of Procedure, 285 So. 2d 601 (Fla. 1973).

See, Amendments to the Fla. Rules of Workers' Comp. Procedure, 891 So. 2d 474, 475 (Fla. 2004).

See, Samaha v. State, 389 So.2d 639, 640 (Fla. 1980); Forrest Bostick v. Noah's Place, Case 1D05-2243 (Fla. 1st DCA January 4, 2006).