

OMBUDSPERSON OFFICE

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**2006**  
**ANNUAL REPORT**



A SERVICE OF OHIO'S WORKERS' COMP SYSTEM

Columbus Office  
30 West Spring St., L-4  
Columbus, OH 43215-2256  
800-335-0996  
Fax 614-644-1998



Cleveland Office  
615 W Superior Avenue, L-6  
Cleveland, OH 44113-1889  
800-335-0996  
Fax 216-787-4454

Industrial Commission  
Nominating Council

Council Members:

The Ombudsperson (Ombuds) Office for the Ohio workers' compensation system is pleased to present their 2006 annual report. In accordance with section 4121.45 of the Ohio Revised Code, the report provides statistical information on the office's activities for the year and makes recommendations for improving Ohio's workers' compensation system.

In 2006 the Ombuds staff fielded 11,944 inquiries from customers of the workers' compensation system. Approximately 2,400 of these inquiries were classified as complaints due to the customer expressing dissatisfaction with either the Bureau of Workers' Compensation (BWC) or the Industrial Commission (IC). The Ombuds Office analyzes these complaints to assist in making recommendations for improving the system.

This office remains seriously concerned about the accuracy of some of the private state fund premium base rates at the NCCI manual classification level as noted in the 2005 annual report. BWC continues to code claims at an accuracy level less than this office considers acceptable. Additionally, as noted in this year's annual report, this office feels the BWC is lacking in their efforts to identify non-complying employers to bring them into compliance and keeping the employers BWC has a record of in compliance. This not only puts an unfair financial burden on those employers that are in compliance, but also creates an unfair economic advantage for those employers not in compliance with the law.

Sincerely,



David M. Bush  
Chief Ombudsperson

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# Executive Summary

## Background

Ohio law (ORC 4121.45) creates a workers' compensation ombudsperson system. It is the responsibility of the Ombuds Office to assist employers, injured workers (IWs), and their representatives in dealings with the Ohio workers' compensation system. The Ombuds Office answers inquiries and investigates complaints about the workers' compensation system, mainly as it relates to IWs claims and employers policies, facilitating resolution of issues when possible. All inquiry and complaint data is captured and categorized. The data is then analyzed in order to identify potential opportunities for improvement in the workers' compensation system. Both the inquiry/complaint data and those areas identified as opportunities for improvement are published annually in this report.

## 2006 Statistical Information

Total inquiries received in 2006 totaled 11,944. The table below segregates these inquiries between general inquiries and complaints, and compares the statistics to the prior year. Inquiries are classified as complaints when dissatisfaction is expressed with the Ohio workers' compensation system.

The office incurred an 18 percent decrease in the number of complaints over the prior year. The office incurred a 42 percent increase in the number of inquiries over the prior year. This is directly related to the staff assisting BWC with inquiries related to the "Santos" class action lawsuit settlement which involved the repayment of funds to IWs previously subrogated against.

	2005	2006	% Change
<b>Complaints</b>	2,924	2,395	-18% Decrease
<b>General Inquiries</b>	6,746	9,549	42% Increase
<b>Total</b>	9,670	11,944	24% Increase

The top complaint continues to revolve around delays in the payments of indemnity benefits.

## Opportunities for Improvement (See pages 18-30 for details)

- BWC Administration needs to declare employer compliance a permanent priority, developing proactive processes to identify employers subject to workers' compensation law that are not in compliance, bring them into compliance and develop additional processes to keep employers in compliance.
- BWC needs to develop and implement a permanent operational quality control/review process.

- Out of state employers commencing new operations in Ohio can request their out of state experience modification apply in Ohio. BWC should make them aware of this.
- The C-86 motion form, which is a widely used claim form, should be revised to include explicit instructions.
- Better customer service could be provided to IWs if objections/appeals to permanent partial tentative orders were filed with the IC only.
- BWC should implement a control to assure that permanent partial awards are processed in a more timely fashion.
- IC needs to develop and implement a permanent operational quality control/review process.
- IC could provide better customer service and improve transparency by recording hearings.

**Status of recommendations from prior years worth noting**

- BWC could improve the accuracy of the premium rate calculations at the NCCI manual classification level if they would assign the correct NCCI to claims more precisely.
  - The Ombuds Office has seen no improvement in this area. At the urging of the Ombuds Office BWC is again revisiting how they perform this basic insurance function in order to identify a way to improve it. Accuracy in this process is instrumental in developing the correct premium rates/premium equity. The Ombuds Office will continue to monitor this concern and urge BWC to take corrective action.
- BWC could provide better customer service by monitoring the service provided by claims representatives and holding them accountable for providing timely, accurate service.
  - While the Ombuds Office has seen improvement in this area, 31.8 percent of the complaints in 2006 were related to claims representatives. The Ombuds Office will continue to monitor this concern and keep urging BWC to take corrective action.
- BWC could have a fairer employer appeals process by not having those individuals responsible for the employer programs making the adjudicatory decisions.
  - BWC took corrective action and properly addressed this issue.
- BWC could provide better customer service to employers if they let all of them use the 50/50 payment program, not just those who file payroll and pay through BWC's Web site.
  - While BWC did not agree in whole with the Ombuds Office, they did take steps to successfully alleviate this concern by allowing employers to also enter this program via the telephone.
- The IC could provide better customer service to IWs if they took a more broad-minded approach to "telephone hearings" especially for those residing out of state.
  - Due to lack of complaints in 2006 the Ombuds Office no longer considers this an issue.

- BWC could provide better customer service to IWs receiving non-working wage loss if they were clearer on the expectations of a job search and better monitor the results.
  - Due to lack of complaints in 2006 the Ombuds Office no longer considers this an issue.
- In the area of BWC's erroneous allowance of claims on certain business owners whose claims are not compensable because they have not elected supplemental coverage on themselves:
  - While some improvement has been seen, this practice continues. The Ombuds Office will continue to monitor this concern and keep urging BWC to take corrective action.
- In the area of BWC inappropriately disallowing IW's claims when a policy number could not be identified:
  - While some improvement has been seen this practice continues. The BWC inappropriately places the burden of employer compliance upon an IW. The Ombuds Office will continue to monitor this concern and keep urging BWC to take corrective action.
- BWC could improve on the accuracy of claims determination wherein the question of interstate jurisdiction arises.
  - In 2006 BWC had a work group review this issue and make recommendations to BWC Administration. BWC had advised that the majority of the recommendations have been approved and BWC will move forward with implementation in 2007. Confusion remains with customers when the questions of interstate jurisdiction comes into play. The Ombuds Office will continue to monitor this concern.

### **2006 Initiatives**

The Ombuds Office began publishing annual reports on the internet at both BWC's and IC's Web sites.

In a continued attempt to market the Ombuds Office services to employers, the Ohio National Federation of Independent Business placed a link to our Web page on their Web site.

### **Administrative update**

Expenditures to operate the Ombuds Office in calendar year 2006 totaled \$606,859. An increase in expenses of approximately \$81,456 or 15.5 percent over calendar year 2005 was realized. The increase in expenditures is directly related to building rent. This item increased \$87,031 in 2006. The increase is directly related to the methodology BWC uses to finance the William Green building.

**Ohio Bureau of Workers' Compensation  
Year End Statistics**

	FY 2006	FY 2005	FY 2004
<b>State Fund Claims Filed</b>			
Lost Time	20,363	21,248	24,042
Medical Only	144,828	154,419	162,105
Occupational Disease	1,666	2,125	2,602
Death	196	223	297
Disallowed or Dismissed	18,179	19,068	18,801
<b>Total</b>	<b>185,232</b>	<b>197,083</b>	<b>207,847</b>
Net Allowed Injuries	167,053	178,015	189,046

**Note: Every claim is evaluated at 60 days after filing for purposes of claim type, State Fund versus Self-Insured, combine status, and allowance status. Values exclude combined and Self-Insured claims.**

**Open Claims (Per statute)**

Lost Time	571,532	613,699	654,115
Medical Only	1,092,836	1,179,245	1,276,435
<b>Total</b>	<b>1,664,368</b>	<b>1,792,944</b>	<b>1,930,550</b>

**Benefits Paid**

Medical Benefits Paid	\$ 848,717,070	\$ 898,350,192	\$ 870,409,716
Compensation Paid			
Wage Loss	\$ 21,690,232	\$ 21,639,172	\$ 20,099,703
Temporary Total	271,084,602	286,371,403	283,359,716
Temporary Partial	123,555	143,363	245,318
Permanent Partial	26,643,923	25,560,913	23,082,194
% Permanent Partial	88,319,097	79,299,435	76,011,098
Lump Sum Settlement	162,274,435	140,628,262	125,451,296
Lump Sum Advancement	15,006,552	16,259,985	12,132,828
Permanent Total & DWRF	379,433,788	392,374,540	379,478,849
Death	79,317,019	81,586,662	87,785,803
Rehabilitation	37,817,759	36,080,038	37,313,221
Other	4,372,939	4,213,041	4,382,817
<b>Total Compensation Paid</b>	<b>\$ 1,086,083,901</b>	<b>\$ 1,084,156,814</b>	<b>\$ 1,049,342,843</b>
<b>Total Benefits Paid</b>	<b>\$ 1,934,800,971</b>	<b>\$ 1,982,507,006</b>	<b>\$ 1,919,752,559</b>

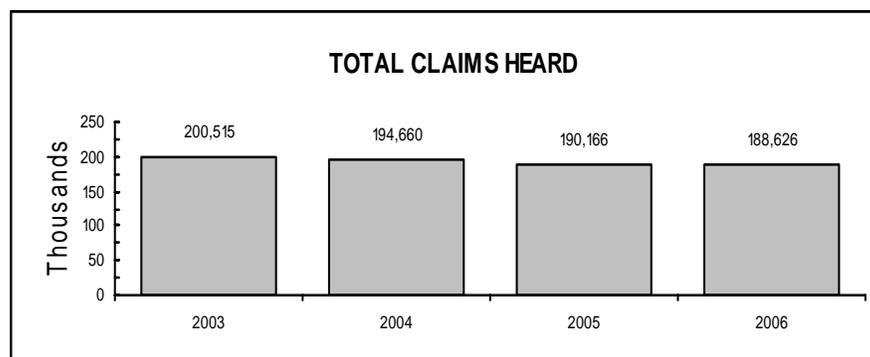
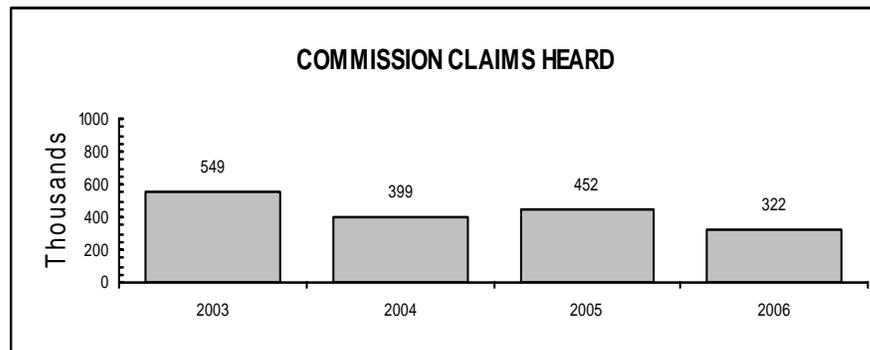
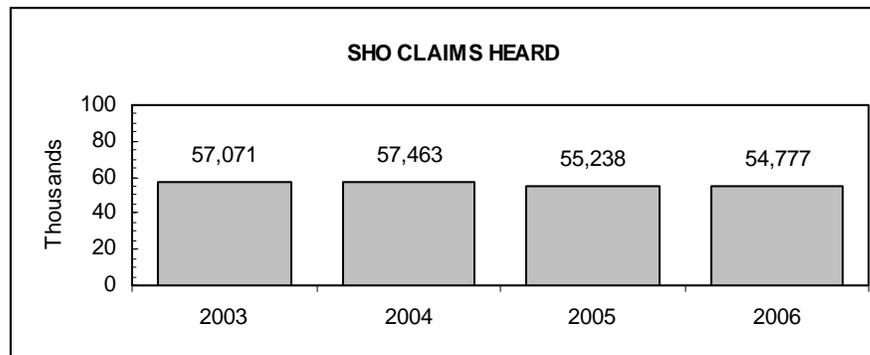
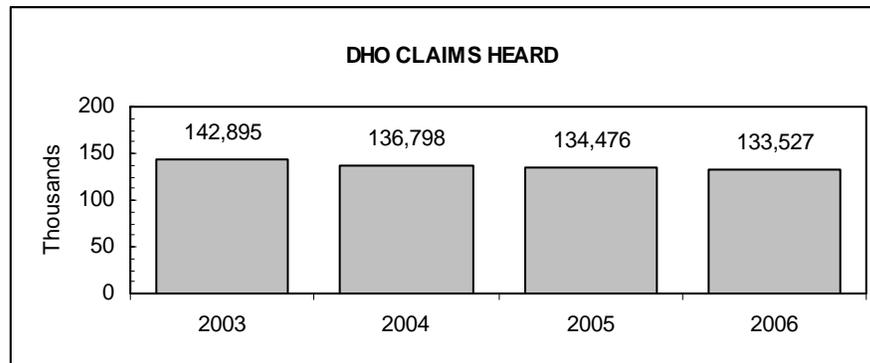
NOTE: Due to improvements in BWC data capture and reporting systems, prior year data may not agree with amounts previously reported.

	FY 2006	FY 2005	FY 2004
<b>Fraud Statistics</b>			
Fraud Dollars Identified	\$ 90,654,585	\$ 135,742,896	\$ 126,247,450
\$\$\$ Spent to \$\$\$ saved Ratio	1 to 7.80	1 to 12.41	1 to 11.86
<b>Active Employers By Type</b>			
Private	283,038	283,733	283,620
Public (Local)	3,771	3,765	3,733
Public (State)	126	129	126
Self-Insured	1,136	1,127	1,104
Black Lung	36	37	36
Marine Fund	91	82	90
Total	<u>288,198</u>	<u>288,873</u>	<u>288,709</u>
<b>BWC Personnel</b>	2,578	2,659	2,663
<b>MCO Fees Paid</b>	\$ 172,822,429	\$ 170,988,713	\$ 173,699,428
<b>FINANCIAL DATA (000s omitted)</b>			
	FY 2006	FY 2005	FY 2004
<b>Operating Revenues</b>			
Net Premium & Assessment Income	\$ 2,128,845	\$ 2,126,503	\$ 2,126,782
Other Income	15,325	11,987	11,852
Total Operating Revenues	<u>\$ 2,144,170</u>	<u>\$ 2,138,490</u>	<u>\$ 2,138,634</u>
<b>Non-Operating Revenues</b>			
Net Investment Earnings	\$ 658,867	\$ 500,327	\$ 458,584
Increase (Decrease) in Fair Value	124,163	488,113	791,305
Net Investment Income (Loss)	<u>\$ 783,030</u>	<u>\$ 988,440</u>	<u>\$ 1,249,889</u>
<b>Dividends, Rebates and Credits</b>			
Dividends & Credits	\$ (8,229)	\$ 232,836	\$ 415,523
<b>Total BWC Assets</b>	\$ 18,853,454	\$ 21,969,117	\$ 21,331,936

NOTE: Financial data for FY 2004 has been audited. Fiscal year 2006 and 2005 data is unaudited.

NOTE: Due to improvements in BWC data capture and reporting systems, prior year data may not agree with amounts previously reported.

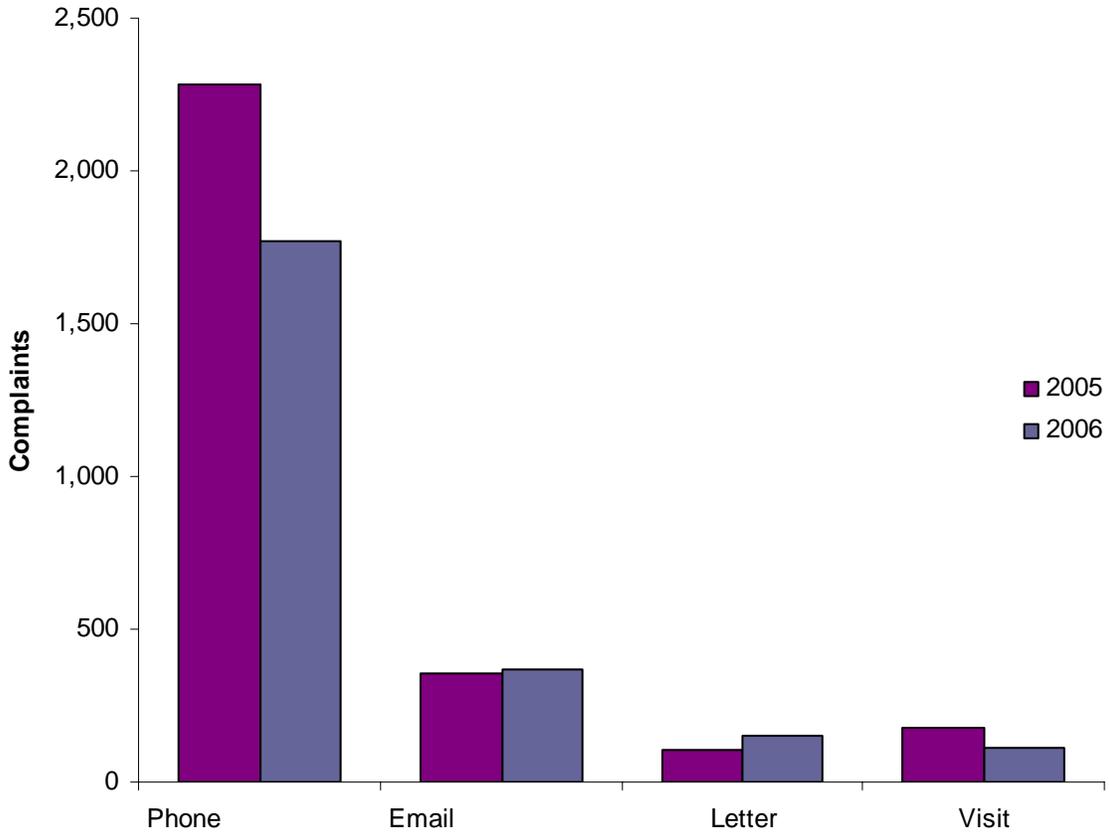
## Industrial Commission 2006 Year End Statistics



# Statistical Information

## Inquiry Type

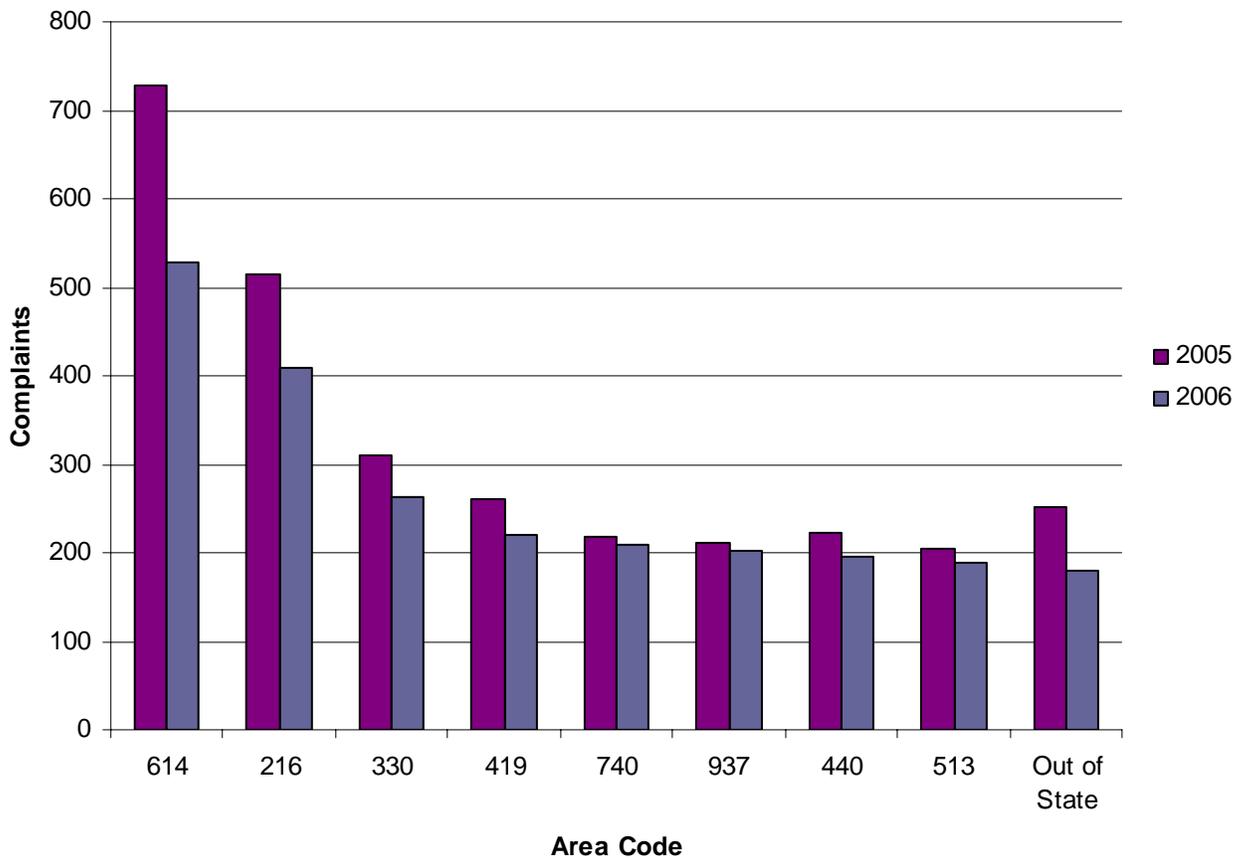
The Ombuds Office resolved 2,395 complaints during 2006. The complaints were received by the following methods:



	2005	2006
Phone	2,284 / 78.11%	1,770 / 73.90%
Email	354 / 12.11%	366 / 15.28%
Letter	106 / 3.63%	150 / 6.26%
Visit	180 / 6.16%	109 / 4.55%
<b>Total</b>	<b>2,924 / 100%</b>	<b>2,395 / 100%</b>

## Geographic Report

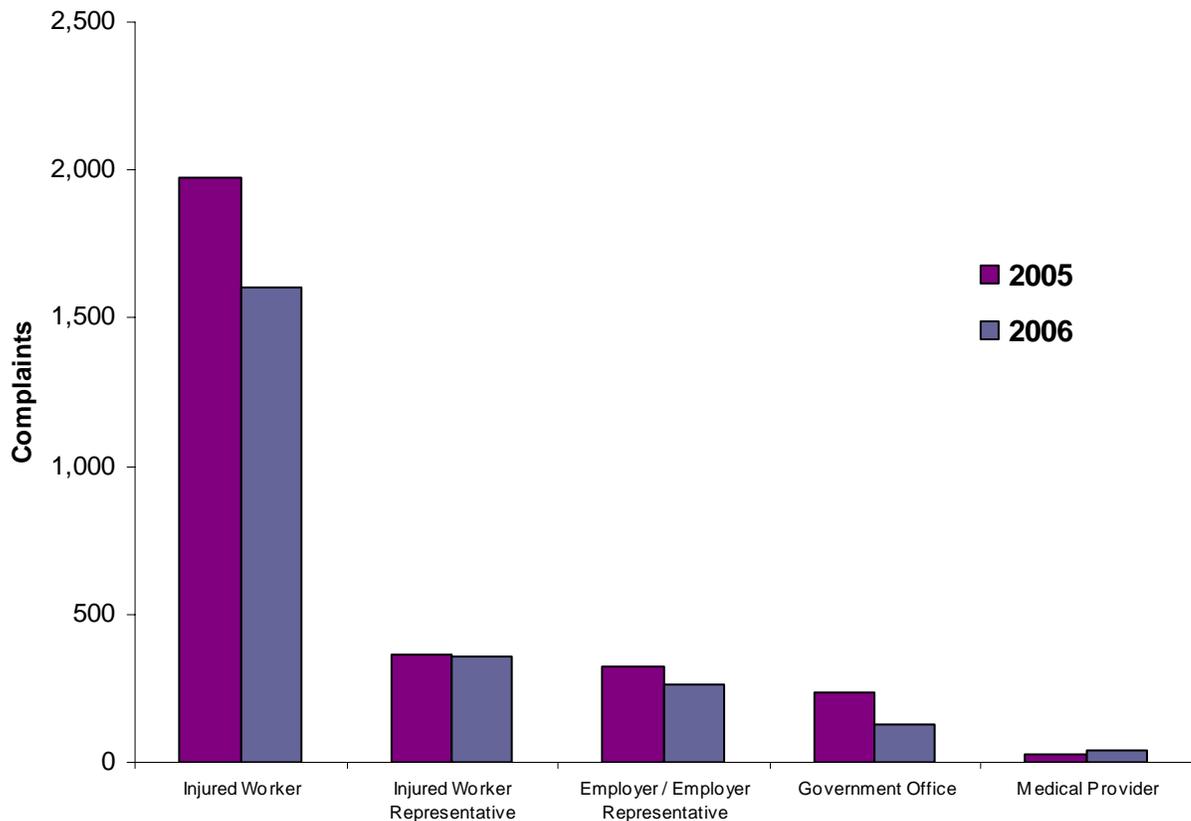
Complaints by area code:



Area Code	2005	2006
614 - Franklin County	729 / 24.93%	527 / 22.00%
216 - Cuyahoga County	515 / 17.61%	409 / 17.08%
330 - Akron, Canton, Youngstown & Vicinity	309 / 10.57%	264 / 11.02%
419 - Northwestern Ohio	260 / 8.89%	220 / 9.19%
740 - Southeastern & South-Central Ohio	219 / 7.49%	210 / 8.77%
937 - Dayton, Springfield & Vicinity	212 / 7.25%	202 / 8.43%
440 - Northeastern Ohio	223 / 7.63%	196 / 8.18%
513 - Hamilton County & Vicinity	205 / 7.01%	188 / 7.85%
Out of State	252 / 8.62%	179 / 7.47%
<b>Total</b>	<b>2,924 / 100%</b>	<b>2,395 / 100%</b>

## Originator Report

Complaints are also recorded for the purpose of identifying which group of individuals use the Ombuds Office services. Injured workers and injured worker representatives were accountable for more than 80 percent of our business in 2006.



Originator Type	2005	2006
Injured Worker	1,973 / 67.48%	1,601 / 66.85%
Injured Worker Representative	365 / 12.48%	360 / 15.03%
Employer / Employer Representative	325 / 11.11%	266 / 11.11%
Government Office	237 / 8.11%	130 / 5.43%
Medical Provider	24 / 0.82%	38 / 1.59%
<b>Total</b>	<b>2,924 / 100%</b>	<b>2,395 / 100%</b>

## Initial Complaint Report

The codes below are used to describe what the Ombuds staff construed to be the problem when the complaint was initially received.

<b>Complaint Type</b>	<b>2005</b>	<b>2006</b>
Compensation	712 / 24.35%	621 / 25.93%
Processing Delay	414 / 14.16%	364 / 15.20%
Industrial Commission—Hearing Issues	285 / 9.75%	218 / 9.10%
Employer Policy Issues	221 / 7.56%	181 / 7.56%
General Status of Claim	215 / 7.35%	180 / 7.52%
Bureau of Workers' Compensation	246 / 8.41%	160 / 6.68%
Employer Delay of Claim Processing	132 / 4.51%	117 / 4.89%
Santos - Subrogation Refund	NA / NA	99 / 3.84%
Authorization of Medical Treatment	123 / 4.21%	92 / 3.84%
Forms Required	163 / 5.57%	85 / 3.55%
Medical Bills	130 / 4.45%	71 / 2.96%
Injured Worker	120 / 4.10%	68 / 2.84%
Attorney Delay	61 / 2.09%	42 / 1.75%
Managed Care Organization	29 / 0.99%	34 / 1.42%
Medical Provider	35 / 1.20%	30 / 1.25%
Pharmacy Benefits Manager	29 / 0.99%	30 / 1.25%
Lost file / Cannot Locate	7 / 0.24%	2 / 0.08%
Claim Destroyed in Error	2 / 0.07%	1 / 0.04%
<b>Total</b>	<b>2,924 / 100%</b>	<b>2,395 / 100%</b>

\*Class action lawsuit settled in 2006

## Accountability Report

Identifies the area or individual the Ombuds staff found to be responsible for the problem.

<b>Accountability</b>	<b>2005</b>	<b>2006</b>
Injured Worker	1089 / 37.24%	937 / 39.12%
Bureau of Workers' Compensation	697 / 23.84%	596 / 24.89%
Employer	495 / 16.93%	348 / 14.53%
Industrial Commission	195 / 6.67%	164 / 6.85%
Medical Provider	181 / 6.19%	135 / 5.64%
Injured Worker Representative	85 / 2.91%	78 / 3.26%
Employer Representative	34 / 1.16%	43 / 1.80%
Managed Care Organization	62 / 2.12%	42 / 1.75%
U. S. Post Office	19 / 0.65%	30 / 1.25%
Government Office	18 / 0.62%	11 / 0.46%
Financial Institution	23 / 0.79%	5 / 0.21%
Pharmacy Benefits Manager	21 / 0.72%	3 / 0.13%
Fraud	5 / 0.17%	3 / 0.13%
<b>Total</b>	<b>2,924 / 100%</b>	<b>2,395 / 100%</b>

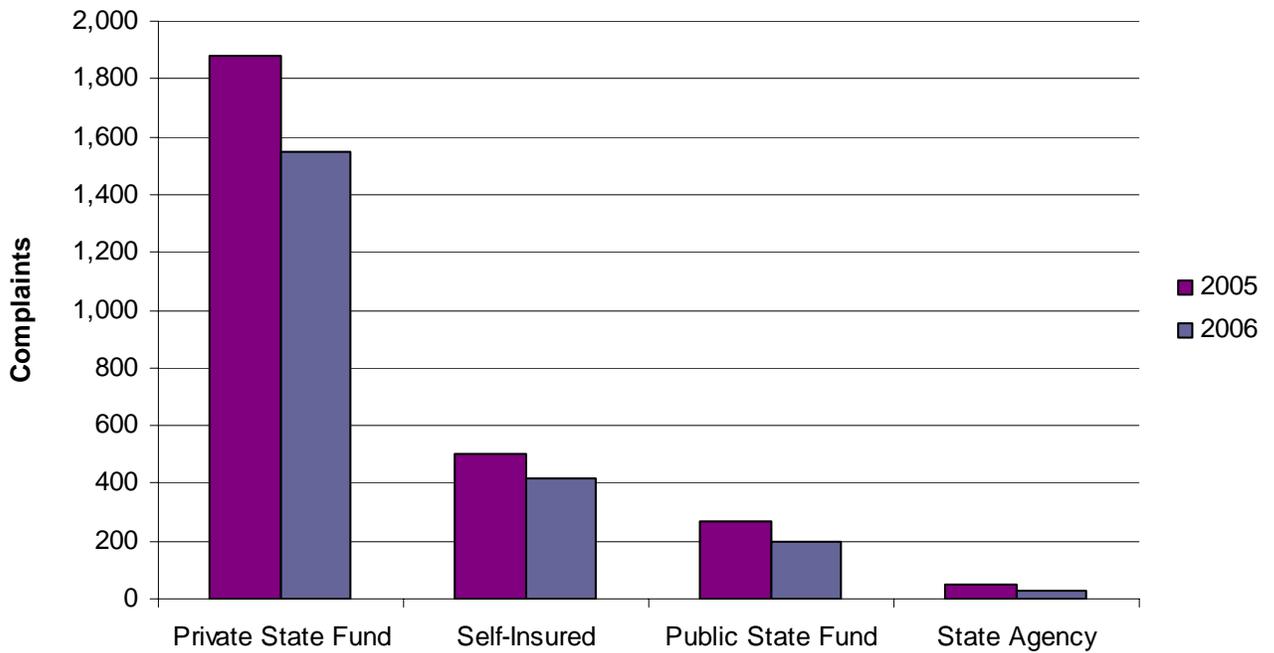
## Complaint Resolution Report

Denotes what the Ombuds staff found to be the problem after investigating the complaint.

<b>Resolution</b>	<b>2005</b>	<b>2006</b>
Claims Representative / Information	635 / 21.72%	438 / 18.29%
Claims Representative / Clerical Error	518 / 17.72%	326 / 13.61%
Requires Hearing	317 / 10.84%	262 / 10.94%
Information Missing	215 / 7.35%	199 / 8.31%
Unjustified Complaint	79 / 2.70%	186 / 7.77%
Employer Error	133 / 4.55%	148 / 6.18%
Injured Worker	172 / 5.88%	140 / 5.85%
Wanted Claim Expedited	152 / 5.20%	105 / 4.38%
Coding Error	85 / 2.91%	100 / 4.18%
Denied	270 / 9.23%	93 / 3.88%
Appeals	77 / 2.63%	85 / 3.55%
Processing Delay	47 / 1.61%	79 / 3.30%
Medical Exam / Review Required	65 / 2.22%	66 / 2.76%
Claim Disallowed	48 / 1.64%	38 / 1.59%
Warrant Returned / Reissued	18 / 0.62%	25 / 1.04%
Employer Representative Error	3 / 0.10%	22 / 0.92%
Warrant Lost or Stolen	9 / 0.31%	19 / 0.79%
Hearing Problems	22 / 0.75%	18 / 0.75%
Claim Inactive	8 / 0.27%	10 / 0.42%
Error - Policy Services	NA* / NA	8 / 0.33%
Overpaid	6 / 0.21%	8 / 0.33%
New Claim Status	5 / 0.17%	5 / 0.21%
Not Covered	3 / 0.10%	5 / 0.21%
Statute of Limitations	5 / 0.17%	4 / 0.17%
Claim Settled	11 / 0.38%	3 / 0.13%
Prior Authorization Required	12 / 0.41%	3 / 0.13%
Possible Fraud	9 / 0.31%	0 / 0.00%
<b>Total</b>	<b>2,924 / 100%</b>	<b>2,395 / 100%</b>

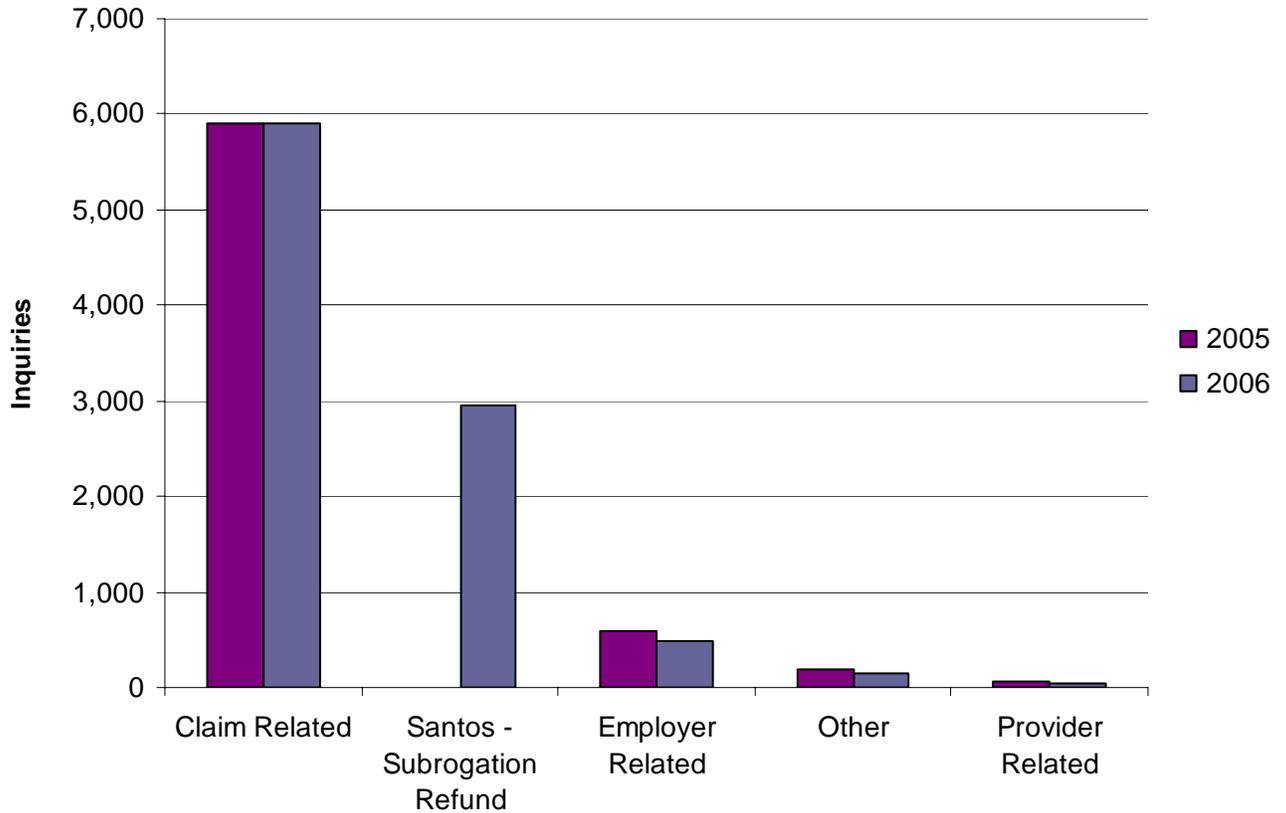
\*NA - New Category in 2006

## Complaint by Claim Type



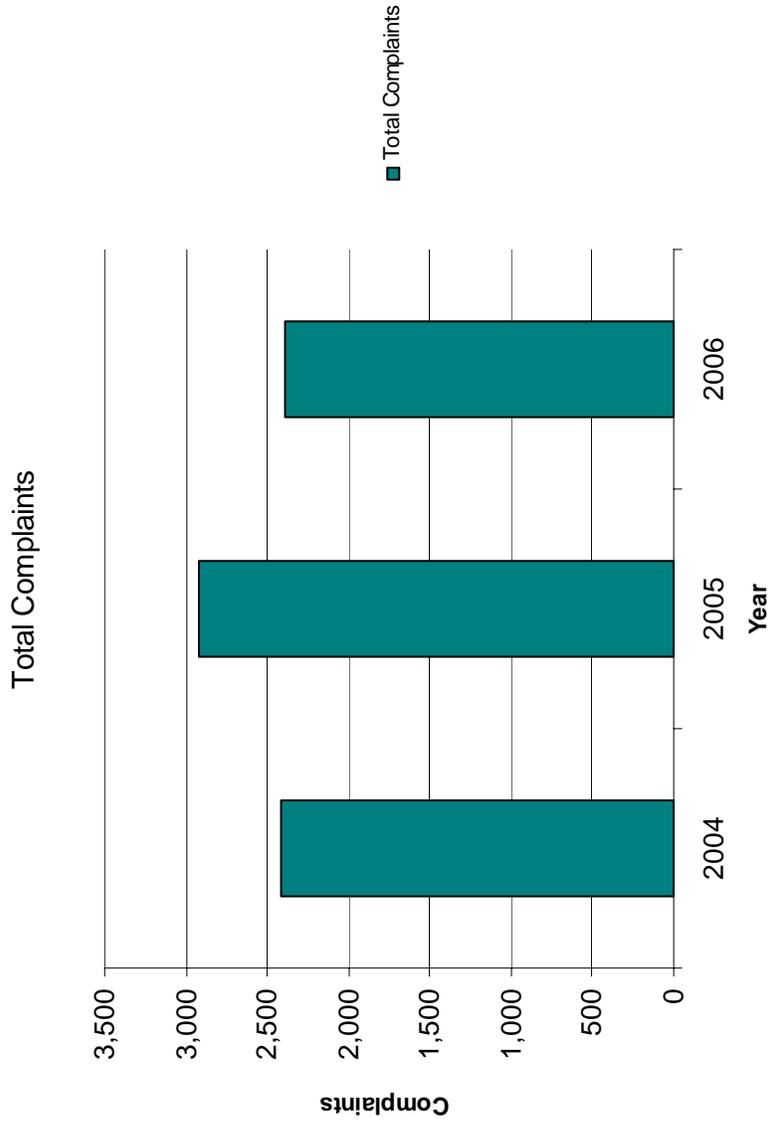
<b>Claim Type</b>	<b>2005</b>	<b>2006</b>
Private State-Fund		
Lost Time	1,448	1,272
Medical Only	431	277
<b>Total</b>	<b>1,879</b>	<b>1,549</b>
Self-Insured		
Lost Time	354	268
Medical Only	149	146
<b>Total</b>	<b>503</b>	<b>414</b>
Public State-Fund		
Lost Time	182	135
Medical Only	85	62
<b>Total</b>	<b>267</b>	<b>197</b>
State Agency		
Lost Time	38	21
Medical Only	8	4
<b>Total</b>	<b>46</b>	<b>25</b>
<b>Grand Total</b>	<b>2,695</b>	<b>2,185</b>

## General Inquiries



General Inquiries	2005	2006
Claim Related	5,907 / 87.56%	5,913 / 61.92%
Santos - Subrogation Refund	NA / NA	2,957 / 30.97%
Employer Related	595 / 8.82%	486 / 5.09%
Other	186 / 2.76%	145 / 1.52%
Provider Related	58 / .086%	48 / 0.50%
<b>Total</b>	<b>6,746 / 100%</b>	<b>9,549 / 100%</b>

**Ombudsperson Office 3 Year Complaint History**



	<u>2004</u>	<u>2005</u>	<u>2006</u>
<b>Total Complaints</b>	<b>2,419</b>	<b>2,924</b>	<b>2,395</b>

## Opportunities for Improvement

The following opportunities for improvement reflect concerns in the Ohio workers' compensation system that were identified either through customer complaints and/or data analysis. It is the opinion of the Ombuds Office that if either the BWC or the IC (the agencies comprising the system) took steps to improve in the area identified, the Ohio workers' compensation system would increase customer satisfaction and/or reduce costs.

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1.

Employers in the state of Ohio need to pay their fair share of premium.

**Overview:** It is BWC's responsibility to ensure that all employers with one or more full or part-time employees have active workers' compensation insurance in accordance with the Ohio Revised Code. The function is referred to as employer compliance and can be segregated into two subsets. The first is identifying employers that BWC does not have a record of and bringing them into compliance by establishing coverage. The second is keeping the BWC recognized employers in compliance. In both cases compliance is ultimately tied to the collection of premium, both by BWC and/or their legislated collection agent, the Ohio Attorney General.

**Concern:** BWC takes little proactive action to identify employers who have not applied for Ohio workers' compensation coverage to bring them into compliance with the law. The basic insurance principle of shared liability assumes shared premium responsibility. It is not fair for businesses that pay BWC premium to compete in a business environment with those that do not. In a revenue neutral system, when employers do not pay their fair share or nothing at all, they are subsidized by the remaining employers. This situation is not equitable for those employers paying into the system and hardly creates an environment for economic growth.

Regarding employers without coverage, in 2006 the Ombuds Office received complaints from employers in several industries regarding competitors not having BWC coverage and their inability to compete with them due to their non-payment of BWC premium. A review of 69 businesses for coverage listed in the Columbus, Ohio yellow pages under limousine, tree service, and painting contractors indicated 43 or 62 percent did not have an active BWC policy. Some of the employers reviewed may not need coverage due to not having employees or possibly having coverage under a different name. However, as BWC does not investigate, this will remain undetermined.

BWC information as of Feb 6, 2007, indicates there are approximately 6,000 policies in a "no coverage due to claim" coverage status with an associated total accounts receivable balance of \$33.7 million. This status occurs when BWC creates a policy so they can process a claim when no policy number exists. Clearly these IWs were employed by someone. In a review of 20 of

these policies with \$3.7 million in incurred claims costs it was found that only one of them reimbursed BWC any monies for the costs of the claim as required by law. (BWC accepted \$7,500 for a claim with incurred costs to date of \$394,000.) In three instances BWC assessed premium but nothing was paid.

In regards to employers that BWC does have a record of, BWC information as of Feb 6, 2007, indicates there are approximately 71,000 policies in a "lapse" coverage status with an associated total accounts receivable balance of almost \$230 million. While many of the employers are out of business and failed to notify BWC, many are still operating as evidenced by recent claims on employees. While BWC has greatly increased their contacts with employers who have recently become non-compliant, there remain active employers that are not forced to come into compliance. Also, after a policy is certified to the Attorney General for collection, they become less of a priority for BWC. In a review of 20 of the above mentioned policies, 9 of them appear to still be in operation as evidenced by recent claims.

**Recommendation:** The Ombuds Office recommends that BWC Administration declare employer compliance a permanent priority and that they create and implement strategies for the different subsets listed above. Additionally, it is recommended that monthly management reporting be implemented to monitor this item.

Proactive processes need to be developed to identify employers subject to workers' compensation laws who are without a policy. This process could range from electronic cross-mapping with other agency data to manual look-ups out of the phone book. (Example: corporate charter numbers associated with BWC policies could be cross-mapped with the Ohio Secretary of State's data, tax data, etc.)

Currently when a policy is created to process a claim there is a requirement for a referral to compliance staff. However, this reactive process is not being performed as evidenced by the lack of premium assessments against the employers reviewed.

Existing tools need to be used that can assist in persuading an employer to come into and stay in compliance. (Example: ORC 4123.79 allows an interested party to enjoin the further operation of a non-complying employer. As used in this section BWC and the Attorney General are listed among the interested parties. The Ombuds Office is unaware of any instances of this statute being used.)

New tools need to be identified or created that can assist in persuading an employer to come into and stay in compliance. (Example: In order to have an Ohio liquor license the license holder must be in compliance with all state laws. BWC has had some success in bringing these types of employers into compliance by working with the Department of Liquor to revoke the licenses of non-complying employers. Possibly there are other types of licenses which are subject to the same requirements.)

The Ombuds Office acknowledges that a successful initiative in employer compliance will take additional staff, new processes, systems changes, etc. However, a successful program would pay for itself in the recouping of monies legally due to Ohio's workers' compensation system.

**BWC Response:** BWC acknowledges its role in assuring employer compliance with workers' compensation laws.

Accomplishments to date

BWC has established processes designed to address employer compliance issues (e.g., Special Investigation periodic reviews, improved collection activity, Liquor cross-match, cross-match projects with Department of Taxation and Department of Job and Family Services); other new initiatives are in committee to discuss systemic changes (e.g., interagency data collaboration with Department of Taxation and the Department of Job and Family Services). In the past year, BWC made concerted efforts to take more proactive steps in addressing outstanding accounts. It should be noted that once an account is certified to the Attorney General, BWC is limited in its ability to aggressively continue action as a possible violation of laws surrounding collection of debt.

The BWC Chief Information Officer (CIO) leads the statewide subcommittee on Enterprise Data Collaboration for which the primary goal is to enable additional data sharing among State of Ohio agencies through the development of:

- Adoption of standard industry data models where applicable to enable future cross matching without the need for additional design.
- Enable Point to point and multi-point cross match facilitation among State of Ohio agencies, through standardized agreements and/or boiler-plate memorandums of understanding.
- Legislative/legal barrier removal to data sharing and identification of applicable data as a statewide, Ohio enterprise asset rather than a particular agency asset. (where possible)

Organizational Improvements

BWC recognizes the disciplines of coverage compliance and premium audit as fundamentally different. Workers' compensation coverage compliance is a regulatory matter handled in most states by a separate state insurance department. Premium audit is an insurance function conducted by an insurance company or state fund. In Ohio, BWC has responsibility for both and organizationally places responsibility for both within the same division and department. A committee will be convened to assess how best to organize these disparate functions. A report with specific recommendations is expected to be made to executive management. Target date: May 1, 2007.

Monitoring-Report Enhancements

BWC agrees a reporting format and schedule is necessary to assess progress and make changes to compliance projects, where indicated. Much of the information is currently available within BWC systems. New management reporting of compliance results will be formalized and in place. Target date: April 1, 2007.

NC-27 Referral Process

BWC will re-examine its NC-27 procedures. BWC agrees these policies, which are created to contain claims when current or historical coverage cannot be located for the employer, present unique compliance challenges. Several areas within BWC become involved in the creation, processing, and eventual follow up on these policies. The Employer Management (EM) Compliance Department, EM Policy, Claims Policy and Field Operations will work together to make recommendations for improvement of the entire process, with an emphasis on earlier intervention by compliance staff. Target start date: June 1, 2007.

Interagency Workgroup

BWC agrees more can be done to increase the level of employer compliance. The Ombuds Office recommendations point out that a greater reach is needed, that is to active employers who have not made contact with our agency. This concern reaches beyond compliance with workers' compensation laws. With approval from the Governor's office, BWC would like to explore the possibility of forming an interagency committee to work on common compliance issues with this single population base for the State of Ohio. We will relay more about this in our intermediate status reports.

2. BWC could provide a better product to their customers if they implement a proactive permanent operational quality assurance process.

**Overview:** To assure that processes are completed according to policy and procedures, most organizations have an independent quality control process in place.

**Concern:** BWC has no independent operational quality control process in place to determine if their product (management/payment of claims benefits and managing employer policies) meets specifications as determined by the Ohio Revised/Administrative Codes and BWC policy. Many times they only become aware of processing issues when advised by a third party, such as the Ombuds Office. While BWC performs limited supervisory reviews such as payment of lost time benefits and lump sum settlements, it is not an independent review. It is performed by staff with a vested interest. Most other processes have no quality review.

**Recommendation:** It is recommended that BWC create and adequately staff an independent proactive permanent quality control area that reviews for accuracy random samples of all items processed by BWC. As this would be a large and complicated endeavor it is suggested that BWC take advantage of the expertise of their internal audit department and obtain a recommendation regarding the composition of such an area that could include but not necessarily be limited to, appropriate sample sizes to be reviewed, acceptable error ratios, staffing levels of such an area, tracking results, etc. Implementing this type of quality control will assist BWC identify processing errors and take corrective action prior to them becoming major data integrity issues and requiring extensive clean up efforts. It would also be helpful in identifying training needs.

**BWC Response:** BWC agrees that an independent and continuous monitoring function is needed within the Operations Division with the strategic objective to improve the quality of services through improved operational performance. In late January 2007, we began the first steps to create an Operations Monitoring and Compliance Unit (OMCU) by assigning a full-time manager to lead the organizational efforts. These efforts will take time to develop. In the meanwhile, ad hoc requests will be completed to test process definitions, determine job duties, and create communication protocols.

The goal of the OMCU is to provide and support the management of the Operations Division with an independent and continuous monitoring function and objective analysis of operational processes, performance, outcomes, and policy compliance in order to identify and manage risk, exposure, shifting priorities, process improvement, and employee performance needs. Leveraging Six Sigma methodologies, all compliance activities will be governed by documented quality assurance measures, processes and standards; and, will provide reliable information to facilitate decision-making by parties with the responsibility to oversee or initiate corrective and responsive action. The organization structure would fit the COSO (Committee of Sponsoring Organizations of the Treadway Committee regarding Sarbanes-Oxley) Framework model. Three encompassing

areas will be created for (1) controls - documentation and scheduling, (2) operations - execution, extraction and reporting; and, (3) assessment - integrity, analysis and risk identification.

These efforts will take time to develop and mature. Barriers, such as hiring controls, will need to be negotiated. In the meanwhile, ad hoc requests will be completed to test process definitions, determine job duties, and create communication protocols. We will relay more about this in our intermediate status reports.

3.

BWC could supply better customer service by communicating to new employers based outside of Ohio that they can request their out of state experience modification be applied to their new Ohio BWC policy.

**Overview:** Section 4123-17-03.1 of the Ohio Administrative Code allows for an out of state employer commencing new operations in Ohio to request their out of state experience modification be applied to their Ohio policy. This rule was effective January 1, 2004. An experience modification, simply stated, is a percentage factor applied against a specific employer's premium to either decrease or increase their premium based on their past history of claims losses.

**Concern:** BWC does not communicate this rule to the public in any manner let alone to those employers who could financially benefit from it. Workers' compensation premium can be a deciding factor as to whether an out of state employer relocates to or opens a new facility in Ohio. Failure to advise them of the "discounts" they are entitled to does not encourage economic growth.

**Recommendation:** The Ombuds Office recommends that BWC "market" this item on their Web site and through correspondence sent to new employers based outside of Ohio as they market their employer discount programs.

**BWC Response:** BWC rule 4123-17-03.1 of the Ohio Administrative Code permits, in specified situations, the use of out of state experience modifiers for new employers coming into Ohio when requested by the employer. These out of state experience modifiers can have an immediate impact (positive or negative) on these new Ohio employers' premium as opposed to requiring them to wait a period of time before their new Ohio claims and payroll experience begins to be included in their premium rate calculations. The intent of the rule is to act as an economic development incentive for Ohio and to encourage out of state employers to establish new operations in Ohio. Previous marketing of this tool/option has been limited. Per this recent review, BWC does agree that this rule can be communicated more effectively and actively through appropriate channels. The following efforts are scheduled to be completed in 2007:

- Create a Fact Sheet regarding the out of state experience option for mass communication. Target Date: March 30, 2007.
- Include new Fact Sheet in the New Employer Kit that is provided to employers that open new BWC policies. Provide a copy of the new Fact Sheet and instructions for use to BWC EM field staff that have daily contact with individual employers and employer organizations including adding to their internal employer information Web site, EM Resources. Provide a copy of the Fact Sheet with additional usage information to the Ohio Department of Development regional economic representatives. Target Date: April 16, 2007.
- The Fact Sheet will be added to the Employer Publications page in the Library section on BWC's Web site, [ohiobwc.com](http://ohiobwc.com). Target Date: April 2007 Release date.

4.

BWC could supply better customer service by revising the C-86 Motion form to be more user friendly.

**Overview:** The C-86 Motion (Motion) is a multi-purpose form widely used by IW's, employers, and their representatives, to request a decision by BWC or the IC that can not be accomplished through the use of other forms.

**Concern:** The Motion, while being one of the most widely used forms in the Ohio workers' compensation system, has little specific instruction. The current instructions read:

- This form is to be used by the IW or employer and/or their authorized representatives to request a decision by the Bureau of Workers' Compensation or the Industrial Commission that cannot be accomplished through any other form or application.
- This form is NOT TO BE USED BY HEALTH CARE PROVIDERS OR MANAGED CARE ORGANIZATIONS. Health Care Providers or Managed Care Organizations must use form C-9, Physicians Request for Medical Service or Recommendation for Additional Conditions for Industrial Injury or Occupational Disease.
- Proof must be submitted with this form.
- The applicant must mail a copy of the Motion to the opposite party and/or their authorized representative and shall indicate that a copy has been mailed by signing Certificate of Service below.

When requesting an additional allowance for example, the IW or their legal representative must file the Motion with the necessary medical documentation concluding that the IW has said condition and explains the causal relationship between the condition and the industrial injury. However, the Motion does not clearly explain what issues the medical documentation needs to address, i.e., define what "proof" is as stated in the current instructions. This can cause unnecessary delays in medical treatment/return to work because many times the issue is referred to the IC for hearing due to lack of documented proof.

**Recommendations:** A detailed instruction sheet should be provided with the Motion form. We recommend check off boxes including, but not limited to, requests for an additional allowance (s), changes to the average weekly wage or an employers request to declare an IW at maximum medical improvement. The instructions should clearly explain or make suggestions on the correct verbiage and what specific documentation has to be attached to the Motion form. These instructions could also include when a Motion is not appropriate and what the appropriate form would be. For example when an IW is initially requesting wages loss benefits they must complete a C-140, Initial Application for Wage Loss Compensation, and not a C-86 Motion form.

**BWC Response:** The C-86 form is primarily used by the authorized representatives for IWs and employers to request actions for which no other form exists. Before changes are planned or implemented, BWC managers recommend that we canvass the authorized representative community to identify specific updates to the form that would make it more user friendly and be helpful in their processes.

BWC will take the following actions to address the concerns:

- Solicit feedback and input from the Ohio Academy of Trial Attorneys, OSBA WC Committee and TPA Association. Target date: March 30, 2007.
- Review all feedback and present recommendations back to groups. Target date: April 30, 2007.
- Make revisions to the C-86 form as recommended. Target date: June 2007 Release.

5.

BWC Percentage of Permanent Partial (C92) Tentative Orders should give specific directions on how and where to file an objection.

**Overview:** BWC C92 tentative orders simply state “Objection forms may be obtained from any BWC office.” This can cause serious confusion. Other BWC orders state “An appeal may be filed online at [www.ohioic.com](http://www.ohioic.com) or the Appeal (IC12) may be sent to the Industrial Commission of Ohio,” and then lists the address of the specific IC district office involved.

**Concern:** Objections to BWC C92 tentative orders are currently filed via BWC form C167T or IC form IC12 either in paper form or filed online at their respective Web sites. The Ombuds Office received many complaints regarding delays in scheduling the hearing when the C167T objection form was filed online at the BWC Web site. The online C167T objection appears as an imaged document in the BWC computer system and are not always forwarded timely by the BWC to the IC to schedule the hearing. It is the responsibility of BWC personnel indexing imaged documents to print a copy of the C167T and forward it to the IC. This is not being done consistently and provides a disservice to the IW.

**Recommendation:** The Ombuds Office recommends that BWC discontinue using the C167T form and that the C92 tentative order should list specific directions similar to other types of BWC orders directing the appeal to be filed directly with the IC. This would streamline the process by avoiding the confusion of multiple “input” points.

**BWC Response:** BWC and the IC have been working the past several months on making the C-167T an IC form that can be submitted online via the IC’s Web site (ICON).

BWC will take the following actions to address the concerns:

- The C-167T form will be eliminated as a BWC form and will no longer be available on [ohiobwc.com](http://ohiobwc.com). It will be added to ICON as an IC appeal form. Target date: June 2007 Release.
- BWC will update the BWC tentative orders with the appropriate appeal language. Target date: July 2007 Release.

6.

BWC Percentage of Permanent Partial Disability (C92) awards could be processed in a more timely manner.

**Overview:** BWC tentative orders granting a C92 award are often disputed to the IC. Upon the issuance of an IC order it is BWC's responsibility to take the appropriate action.

**Concern:** The Ombuds Office received 93 complaints involving delays in C92 awards in 2006, of these, 41 or 44 percent were attributed to BWC error. Two predominate causes were identified. The first was that BWC failed to take action once the appeal period had expired. The second was when BWC attempted to pay the benefits they discovered that the IW's wages were not on file nor had they been requested. These deficiencies in the process caused a serious delay in payment of the C92 awards.

**Recommendation:** The Ombuds Office recommends that BWC review the current process for C92 applications and implement a control that prevents the IC order from being deleted from the CSS diary until the award is paid. Additionally, it is recommended that BWC put language in tentative orders for C92 awards requesting wages when wages have not previously been submitted.

**BWC Response:** Claims Policy is currently reviewing the C92 policy for potential revisions. BWC will take the following actions to address the concerns:

- The policy will be updated to add instructions for gathering wage information when the C92 application is submitted. This will allow time for request and submission of wage information by the IW and/or employer well in advance of the payment of the award. Target date: May 1, 2007.
- The V3 Customer Team, Claims Policy and IT will explore the suggestion for V3 diary updates to prevent deletion of the appeal period diary prior to payment of the award as well as a Data Warehouse exception report that shows V3 payment plans in allow/appeal for greater than a specified number of days. Recommendations will be submitted to management. Target date: May 1, 2007.

7.

All organizations producing a “product” should have a quality control process in place.

**Overview:** The IC is the adjudicatory arm of Ohio’s workers’ compensation system resolving disputes through a hearing process wherein parties to the claim present evidence to a hearing officer who makes a decision. The IC conducted 188,626 hearings in 2006.

**Concern:** The Ombuds Office has received complaints from stakeholders alleging inconsistency in orders between hearing officers and IC offices/regions. While the Ombuds Office can neither prove nor disprove these anecdotal allegations, Ombuds has determined that the IC has no independent quality assurance process to maintain as much consistency as possible. Only new hearing officers have their orders reviewed during their initial probation period. The fact that a party to the claim has the recourse of appealing a decision to the next level of the IC or the courts does not make up for the absence of any quality control. Appeals can cost employers legal fees and can cause delays in treatment, etc., for IWs.

**Recommendation:** It is recommended that the IC implement an independent quality assurance area that reports directly to IC Administration. In setting up this area it is recommended that the IC take advantage of the expertise of BWC’s internal audit department or an outside consultant to obtain an opinion regarding the composition of such an area that could include but not necessarily be limited to appropriate sample sizes to be reviewed, acceptable error ratios, staffing levels of such an area, and tracking results.

**IC Response:** The Industrial Commission appreciates and is always receptive to suggestions on how to improve its hearing processes. Suggested recommendations can certainly be entertained within the financial restraints of our budget. Additionally, the Commission is willing to present these suggestions to a group of key workers’ compensation stakeholders upon which it relies for suggestions to improve Agency operations.

The observation in this suggestion presupposes a “correct” answer to the resolution of disputes between the parties. The vast majority of decisions made by hearing officers involve the weighing of evidence and evaluating credibility. Thus, different hearing officers can reasonably reach different conclusions on the matters presented. It is recognized that the resolution of a contested matter may result in the dissatisfaction of at least one of the parties. The multi-level appeal process exists to ensure that a dissatisfied customer will have a second and sometimes third opportunity to seek review of the lower level decision. Additionally, the law allows additional evidence to be presented throughout the hearing process, thereby limiting the conclusions which may be drawn when a lower level decision is administratively overturned.

The IC, through its Hearing Officer Manual, multiple training sessions, and tracking of success when decisions are appealed to court, currently takes steps to ensure that hearing officers are as consistent as possible when evaluating issues. The IC's effectiveness in this endeavor is substantiated by the rate at which the IC's determinations are affirmed by the judiciary. Quite simply, the overwhelming majority of orders therefore comport with Ohio law.

8.

The IC could provide better customer service and improve transparency by recording hearings.

**Overview:** The IC is the adjudicatory arm of Ohio's workers' compensation system resolving disputes through a hearing process wherein parties to the claim present evidence to a hearing officer who makes a decision.

**Concern:** The Ombuds Office receives complaints that hearing officers do not take arguments into account, that hearing officers have been discourteous, etc. While these complaints are forwarded to the IC for a response there is really no way to prove or disprove the allegations.

**Recommendation:** The IC should implement technology to begin capturing a recording of hearings. These recordings could have multiple uses including but not limited to a resource for hearing officers to re-review the arguments presented at a hearing prior to finalizing their order, as a quality control and training resource, as a resource for IC Administration to investigate complaints and make determinations based on what actually occurred in the hearing, and to memorialize hearing testimony providing continual electronic access to searchable evidentiary material and recorded transcripts.

**IC Response:** The Industrial Commission appreciates and is always receptive to suggestions on how to improve its hearing processes. Suggested recommendations can certainly be entertained within the financial restraints of our budget. Additionally, the Commission is willing to present these suggestions to a group of key workers' compensation stakeholders upon which it relies for suggestions to improve Agency operations.

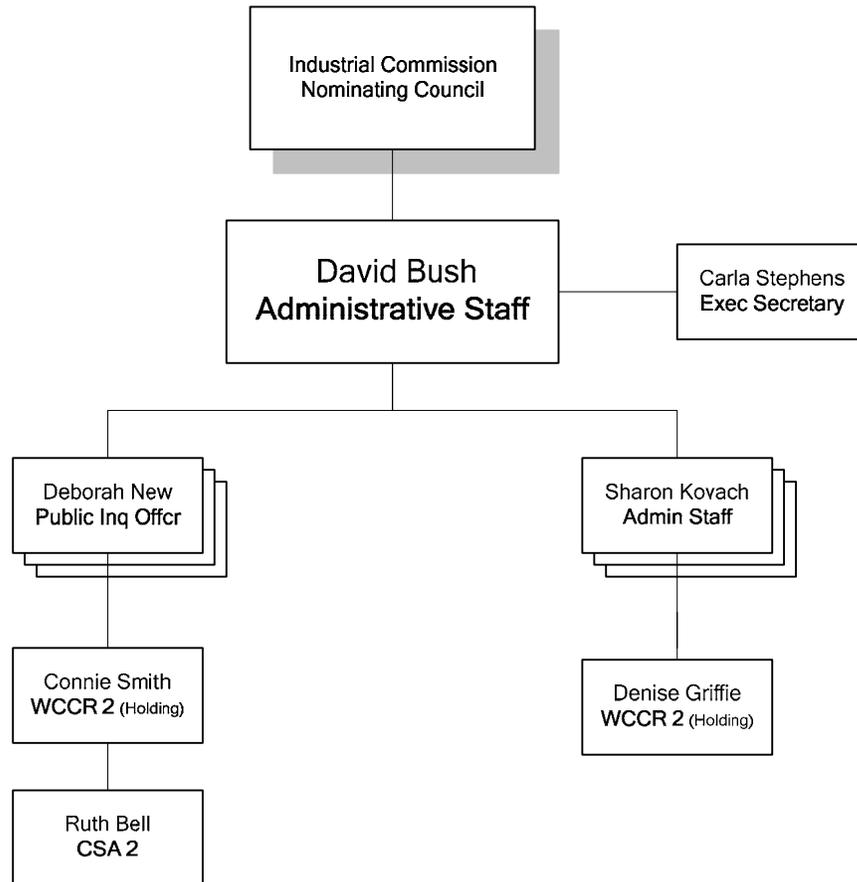
With respect to this suggestion, the system currently allows parties who wish to preserve the testimony adduced at hearing to bring a court reporter to hearing at that party's expense. While the practice is not uncommon, it occurs infrequently because it is not viewed as a necessary component of the process by most hearing participants. This "formalization" of the process runs counter to the objective of maintaining the current hearing atmosphere that was evidenced by the numerous amicus briefs filed in the *CompManagement* case.

**BWC OMBUDSPERSON OFFICE EXPENDITURE REPORT - CALENDAR YEAR 2006**

OBJECT CLASS	JAN.	FEB.	MAR.	APR.	MAY	JUN.	JUL.	AUG.	SEP.	OCT.	NOV.	DEC.	TOTAL EXPENSES
10 Payroll	53,447	35,529	36,464	34,501	32,955	34,945	51,511	33,069	34,988	34,303	37,129	36,792	455,633
10 Overtime Paid	0	0	0	0	0	0	0	0	0	0	0	0	0
13 Personal Service	0	0	0	0	0	0	0	0	0	0	0	0	0
15 Other P.S.	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total 100</b>	<b>53,447</b>	<b>35,529</b>	<b>36,464</b>	<b>34,501</b>	<b>32,955</b>	<b>34,945</b>	<b>51,511</b>	<b>33,069</b>	<b>34,988</b>	<b>34,303</b>	<b>37,129</b>	<b>36,792</b>	<b>455,633</b>
20 Edible Products	0	0	0	0	0	0	0	0	0	0	0	0	0
21 Supplies	0	0	0	0	0	29	(21)	0	0	0	0	0	8
211 INTRNL SUPPLIES	19	72	495	39	14	343	6	71	112	15	17	24	1,227
22 Vehicle Maintenance	0	0	0	12	0	(12)	0	0	0	0	0	0	0
221 INTRNL VEHICLE	0	0	0	0	0	0	0	75	0	0	0	117	192
23 Travel Fees	8	0	0	0	0	0	0	0	0	0	0	0	8
24 Communications	0	0	4	0	0	3	0	0	0	0	0	0	7
241 INTRNL COMM	798	329	1,042	482	140	725	884	464	355	374	416	1,161	7,170
25 Fuel/Utilities	0	0	3,840	0	0	738	0	0	2,127	0	0	1,743	8,448
26 Maintenance	0	0	3,418	0	0	3,515	0	0	2,357	191	185	3,047	12,713
27 Rentals	0	0	90,395	0	0	2,547	0	0	18,341	0	0	2,547	113,830
28 Printing/Advertising	0	0	0	0	0	0	0	0	0	0	0	0	0
281 INTRNL PRT/ADV	308	651	207	331	607	86	97	111	90	210	75	89	2,862
29 General/Other	333	663	600	394	356	324	332	269	415	77	685	313	4,761
291 GENERAL	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total 200</b>	<b>1,466</b>	<b>1,715</b>	<b>100,001</b>	<b>1,258</b>	<b>1,117</b>	<b>8,298</b>	<b>1,298</b>	<b>990</b>	<b>23,797</b>	<b>867</b>	<b>1,378</b>	<b>9,041</b>	<b>151,226</b>
30 Food Equip	0	0	0	0	0	0	0	0	0	0	0	0	0
31 Office Equip	0	0	0	0	0	0	0	0	0	0	0	0	0
32 Motor Vehicles	0	0	0	0	0	0	0	0	0	0	0	0	0
33 Construction	0	0	0	0	0	0	0	0	0	0	0	0	0
34 Communications Equip	0	0	0	0	0	0	0	0	0	0	0	0	0
35 Medical/Lab Equip	0	0	0	0	0	0	0	0	0	0	0	0	0
36 Educational/Rec Equip	0	0	0	0	0	0	0	0	0	0	0	0	0
37 Data Processing Equip	0	0	0	0	0	0	0	0	0	0	0	0	0
371 INTRNL DP EQP	0	0	0	0	0	0	0	0	0	0	0	0	0
38 Copy/Print Equip	0	0	0	0	0	0	0	0	0	0	0	0	0
39 Other Equip	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total 300</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Grand Total</b>	<b>54,913</b>	<b>37,244</b>	<b>136,465</b>	<b>35,759</b>	<b>34,072</b>	<b>43,243</b>	<b>52,809</b>	<b>34,059</b>	<b>58,785</b>	<b>35,170</b>	<b>38,507</b>	<b>45,833</b>	<b>606,859</b>

Note: Mass Allocations included in March, June, September, and December.

## OMBUDSPERSON OFFICE



## Industrial Commission Nominating Council

### Employer Representatives:

**Eric Burkland \***  
Ohio Manufacturers Association

**Andrew E. Doehrel**  
Ohio Chamber of Commerce

**Catherine Duhigg**  
Eaton Corporation

**John C. Mahaney, Jr.**  
Ohio Council of Retail Merchants

### Labor Representatives:

**Larry Phillips**  
Ohio State Troopers Association

**Gary DiCeglio \*\***  
Ohio AFL-CIO

**Peggy Griffith \*\*\***  
C.W.A. Local 4302

**David Prentice**  
United Steelworkers

### Public Members:

**Carol A. Caruso**  
Greater Cleveland Partnership

**Roger R. Geiger**  
National Federation  
Independent Business/Ohio

\* Chairperson

\*\* Vice Chairperson

\*\*\* Secretary