

**REPRESENTATION OF CLAIMANTS IN NEW YORK WORKERS'
COMPENSATION CLAIMS 2000 TO 2005**

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Recently obtained data from the WCB demonstrates the level and rate that injured workers secure representation in claims before the WCB. Not all claimants are represented by attorneys as the WCB provides a list of the names of 80+ licensed representatives to claimants who often appear at hearings without counsel and are advised to consult counsel. As it turns out, the list of licensed representatives includes a significant number who are employed by claimant firms, thereby, providing an advantage to those firms. However, the data from the WCB has been tested by a survey of IWBA firms to determine the reliability and credibility of the information. The survey sample involved ten (10) firms that had either the computer capacity to identify claimant representation by year of accident or maintained a "count" by file number within the firm.

While the WCB data do not permit analysis by WCB district or region, the overall results and analysis clearly support what has been a long-held belief by practitioners that the size of the injured worker population or cohort represented by counsel is substantial. In this regard, the data table below confirms this belief.

<u>ACCIDENT YEAR</u>	<u>TOTAL # CLAIMS FILED</u>	<u>#REPRESENTED MEDICAL & INDEMNITY</u>	<u>PER CENT TOTAL</u>
2000	173,397	63,701	36.74
2001	172,098	61,616	35.80
2002	164,402	58,349	35.49
2003	157,811	55,583	35.22
2004	149,034	51,528	34.57
2005	142,611	46,900	32.89
TOTALS	959,353	337,667	35.20

Even discounting for multiple claims by some claimants, the total of represented claimants for the six year period is substantial.

Moreover, review of other detailed WCB data for this period demonstrates that the gross number of represented claimants in Medical & Indemnity (M&I) increases dramatically for M&I claims in total with respect to representation. The table below demonstrates this factor.

<u>ACCIDENT YEAR</u>	<u>TOTAL # M&I</u>	<u>#M&I REPR'D</u>	<u>PER CENT M&I REP'D</u>
2000	131,679	63,701	48.38
2001	127,734	61,616	48.24
2002	119,537	58,349	48.81
2003	113,899	55,583	48.80
2004	107,490	51,528	47.94
2005	100,578	46,900	43.63
TOTALS	700,719	337,677	48.18

The number and per cent of represented claimants of the total of claims filed increases with M&I claims from 35.20% of the total of claims filed to 48.18% of those claimants with M&I claims.

As might be expected, the number and per cent of represented claimants increase where the claim involves permanency and/or indemnity award (including death) claims. While the available data reflects this factor only for dates of accident in 2004, it remains revealing. N.B. this table data reflects only M&I claims with a fee award. Thus, of the total of 51,528 total M&I claims represented in 2004 only 34,885 involved a fee award or in 67.7% of those claims. Conversely, 16,643 M&I represented claims involved no fee.

<u>CLAIM TYPE</u>	<u>#OF CLAIMS 2004</u>	<u>REP'D WITH FEE</u>	<u>PER CENT</u>
TEMP TOTAL	59,826	20,149	33.66
SLU	17,067	12,958	75.92
PPD-NOT SLU	1,718	1,604	93.36
PTD	34	34	100.00
DEATH	188	140	74.47
TOTALS	78,833	34,885	44.25

The represented number and per cent in TEMP TOTAL claims is significantly lower at 33.66% than the gross representation rate of 35.20% and that of represented claimants in M&I with fee claims of 44.25% as shown above. This may be due to the effect of Administrative Decisions issued by the WCB "resolving" a claim and failure of those claimants to appreciate the additional benefits to which they may be entitled. Another unknown factor includes those claimants with representation for which no fee was awarded.

In claims of permanency (including death) and factoring out the TEMP TOTAL data, the information yields a representation rate in permanency claims of a total of 19,007 claims with 14,736 represented for a per cent rate of 77.53% in claims involving permanency.

While not detailed in the latest WCB data, the number and per cent of claimants in the nine districts (eight in the table as Hempstead and Hauppague are combined into LI) of the WCB for which indexed claims data is provided, a reasonable inference as to district representation data can be made. The table below displays this information.

<u>DIST OFF</u>	<u>2004 INDEXED</u>	<u>2004 PER CENT M & I REPR'D</u>	<u># REP'D</u>
<u>ALB</u>	16,736	47.94	8,023
<u>SYR</u>	11,663	47.94	5,591
<u>NYC</u>	59,695	47.94	28,618
<u>PKS</u>	10,076	47.94	4,830
<u>LI</u>	17,885	47.94	8,574
<u>BING</u>	7,166	47.94	3,435
<u>BUFF</u>	15,586	47.94	7,472
<u>ROCH</u>	10,227	47.94	4,903
<u>TOTALS</u>	<u>149,034</u>	<u>47.94</u>	<u>71,445</u>

The projected 71,445 is greater than the 51,528 reported by the WCB for 2004 because the table above calculates the per cent M&I represented against the number of claims indexed as the M&I data for each district is not know.

The total of Medical and Indemnity claims reported for 2000 to 2005 is 700,719 or 73.19% of the total of indexed claims of 957,353. At an M&I representation rate of 47.94%, a total of represented claims for 2000 to 2005 is 335,925, or an average of 55,987 for each year. This figure compares favorably with the detailed data from 2004 and the detailed data for represented M&I claims for all years.

However, the actual representation rate is likely higher due to claims filed and indexed for reasons related to preserving the Statute of Limitations (hearing loss and/or exposure); claims not prosecuted; claims disallowed (e.g.No Fault), among others.