

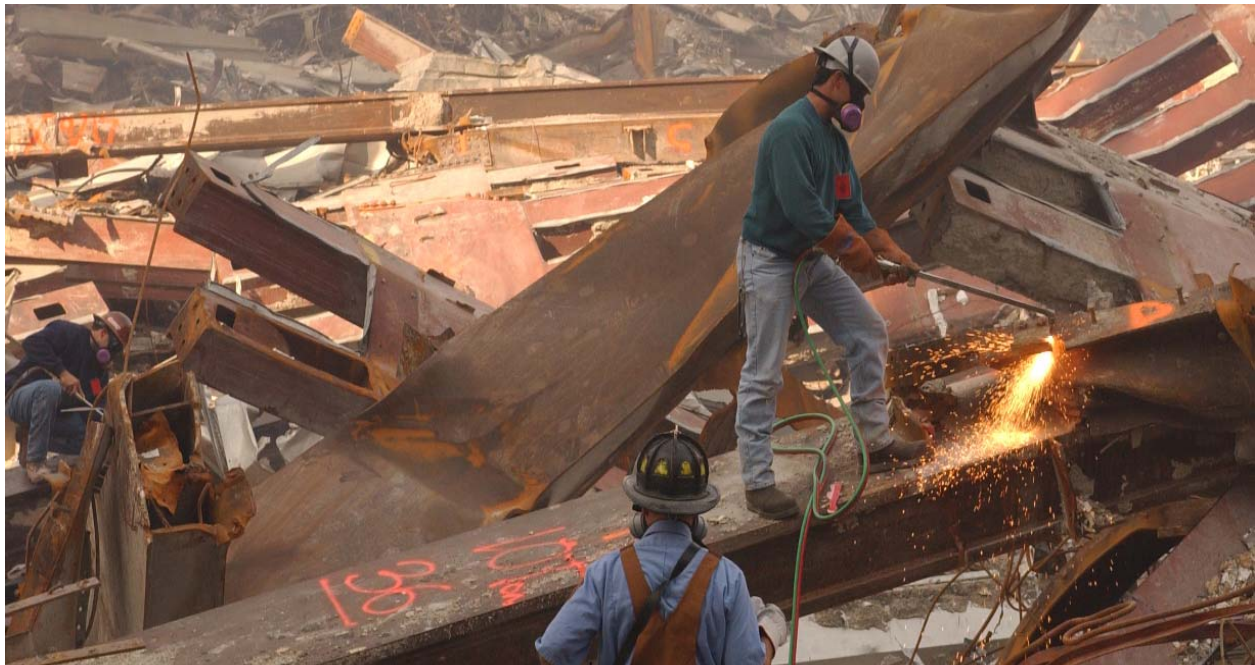
# World Trade Center Cases in the New York Workers' Compensation System

New York State  
Workers' Compensation Board

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September 2009

David A. Paterson, Governor  
Robert E. Beloten, Chair



# **New York State Workers' Compensation Board**

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## Table of Contents

List of Tables and Charts.....	3
Acknowledgements .....	5
Executive Summary.....	6
Introduction.....	8
Context and Methodology.....	9
Overview of Workers' Compensation .....	9
Overview of NYS Workers' Compensation Law (WCL).....	9
Scope of the Study: Who Is Not Covered by the NYS WCL.....	9
Legislative and Regulatory Changes Affecting Processing of WTC Claims.....	10
Executive Orders of the Governor: Suspend Notice Requirement.....	10
Workers' Compensation Board Resolution: Expedite Death Claims.....	10
Statutory Change: Death Benefits for Domestic Partners.....	10
Statutory Change: Filing Deadline (Article 8-A).....	10
Scope of the Study: Other Groups Excluded from the Study.....	11
Occupational Injury and Illness Classification.....	11
Limitations of this Study.....	12
Properly Identifying WTC Claims.....	12
Findings: Overall Distribution of WTC Claims, by Claim Type and by Group Type.....	13
Group Type.....	13
Claim Type.....	14
Non-compensatory Claims.....	15
Denied Claims.....	16
Claim Type, by Group Type.....	19
Findings: Injury and Exposure Characteristics of Non-death WTC Claims.....	20
Part of Body Affected.....	20
Nature of Injury.....	21
Event or Exposure (Accident Type).....	21
Findings: Demographic and Other Characteristics of Non-death & Death WTC Claims.....	22
Gender.....	22
Female.....	22
Male.....	22
Age.....	23
Domestic Partners.....	24
Coverage.....	24
Medical Treatment/Evaluation Forms.....	24
Findings: Workers' Compensation Monetary Awards for Non-death & Death WTC Claims.....	27
Findings: Process Measures for Non-death & Death WTC Claims.....	29
Case Assembly.....	29
Resolving Claims.....	29
Pending Claims.....	30
Establishing Claims.....	32
Controverted Claims.....	33
Administrative Review (Appeals).....	36
Representation.....	38
Length of Time.....	40
Injury Date.....	40
Case Assembly.....	40
ANCR Established (ANCR or ODNCR).....	40
First Indemnity Benefit Award.....	41
Permanency Classification.....	41
Indemnity Claims.....	42
Conclusion.....	44
Appendix A. Context and Methodology.....	45

Eligibility Criteria under the Law.....	45
WTC Volunteers.....	45
Alternative Dispute Resolution Claims.....	46
Appendix B. Glossary.....	47

## List of Tables and Charts

Chart 1. Distribution of WTC Workers' Compensation Claims, by Group Type.....	14
Table 1. Frequency Distribution of WTC Workers' Compensation Claims, by Claim Type and by Index Year.....	18
Table 2. Frequency Distribution of WTC Workers' Compensation Claims, a Cross-Tabulation by Claim Type and by Group Type.....	19
Table 3. Frequency Distribution of WTC Workers' Compensation Non-Death Claims, a Cross-Tabulation by Part of Body Affected and by Group Type.....	20
Table 4. Frequency Distribution of WTC Workers' Compensation Non-Death Claims, a Cross-Tabulation by Nature of Injury and by Group Type.....	21
Table 5. Frequency Distribution of WTC Workers' Compensation Claims, by Gender and by Group Type.....	22
Table 6. Average and Median Ages of WTC Claimants at Time of Accident or Onset of Disability, by Claim Type.....	23
Table 7. Cash Awards: Frequency and Dollar Amount of the Total Amount Awarded, by WTC Claim Type.....	27
Table 8. Cash Awards: Frequency and Dollar Amount of the Total Amount Awarded, by WTC Group Type.....	28
Table 9. Frequency Distribution of WTC Workers' Compensation Claims, by "No Further Action Status" and by Index Year.....	30
Table 10. Frequency Distribution of WTC Workers' Compensation Claims, by Pending Status and by Index Year.....	31
Table 11. Frequency Distribution of WTC Workers' Compensation Claims, by Pending Status and by Group Type.....	31
Table 12. Frequency Distribution of WTC Workers' Compensation Claims, by Pending Status and by Group Type.....	32
Table 13. Frequency Distribution of WTC Workers' Compensation Indemnity Claims, by Type of Resolution and by Group Type.....	33
Table 14. Frequency Distribution of WTC Workers' Compensation Indemnity Claims that were Controverted, by Group Type.....	34
Table 15. Frequency Distribution of WTC Workers' Compensation Indemnity Claims that were Controverted, by Insurer Type.....	34

Table 16. Frequency Distribution of WTC Workers' Compensation Indemnity Claims that were Controverted and that were Established, by Index Year .....	35
Table 17. Median Days to Establish a WTC Workers' Compensation Claim, by Controversion Status and by Group Type.....	36
Table 18. Frequency Distribution of WTC Workers' Compensation Claims that were Appealed, by Outcome of the Appeal.....	37
Table 19. Frequency Distribution of WTC Workers' Compensation Claims that were Appealed, by Group Type.....	37
Table 20. Frequency Distribution of WTC Workers' Compensation Claims that were Appealed, by Claim Type .....	38
Table 21. Attorney Fees, by Claim Type: Section 32 Claims Only .....	39
Table 22. Attorney Fees, by Claim Type: Non-Section 32 Claims .....	40
Table 23. Days from Assembly to Classification, by Claim Type .....	41
Table 24. Days from Accident to Classification, by Claim Type.....	42
Table 25. Days from Assembly to ANCR establishment, by Claim Type.....	42
Table 26. Days from Assembly to First Indemnity Money, by Claim Type.....	43

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## Executive Summary

The consequences of the September 11, 2001, attacks on the World Trade Center (WTC) are still felt in New York today. Workers who performed rescue, recovery and clean-up duties continue to file and pursue workers' compensation claims. While the New York State Workers' Compensation Board has 13,676 cases in its systems, this study contains data on the 11,627 cases where the Board has meaningful detail on case outcomes (see *Appendix A*). Claims from groups such as federal employees and New York City uniformed police, firefighters and sanitation workers, are also not included because they are covered outside the state workers' compensation system.

As a result of the World Trade Center disaster, 11,627 workers' compensation claims were filed with the New York State Workers' Compensation Board.

More than half the claims (6,427) were for deaths and injuries suffered as a direct result of the attacks. There were a total of 2,058 death cases for victims, 3 death cases for rescue, recovery and clean-up workers, and 3 other consequential death cases.

About 40% of the claims were for rescue, recovery and clean-up workers.

There were 4,596 claims from workers at the World Trade Center site, and 74 claims from workers located at Fresh Kills Landfill and other sites. Approximately 18% of these workers' cases were for medical care only, without a claim for time lost from work.

Over half (55%) of all injury (non-death) claims were for respiratory system diseases and 25% were for psychological disorders.

Among rescue, recovery and clean-up workers, however, nearly 90% of non-death claims involved respiratory system diseases such as asthma and reactive airways dysfunction syndrome (RADS). Among victims, psychological claims for diagnoses such as post-traumatic stress disorder accounted for 50% of non-death injury claims. Of all 170,614 non-death non-WTC claims first established with indemnity benefits in 2006 and 2007, only 1,275 (or 0.7%) were for respiratory system diseases.

A total of 4,414 WTC claims received wage replacement benefits.

Of the claims that received wage-replacement benefits, almost 97% (4,260) were for accidents, and about 3% (154) were for occupational diseases.

The average death benefit was \$177,769. (Fatalities may have received additional benefits from sources outside the workers' compensation system.) The 43 people determined to be permanently and totally disabled had an average benefit of \$268,474. The 546 people with permanent partial disability non-scheduled loss claims had an average benefit of \$222,565. The average benefit for the 226 people with permanent partial disability scheduled loss claims was \$27,719.

The law makes special provision to award death benefits to domestic partners of WTC victims.

There were 52 survivors who received a benefit after the death of their domestic partner. Domestic partners are eligible for benefits only in World Trade Center claims.

Nearly a quarter of all WTC claims have been filed since January 1, 2004.

While people continue to file claims, nearly 96% of all claims have no issues under active consideration, while only 4% of claims are pending before the Board.

Workers have filed but not pursued 5,220 cases with the Workers' Compensation Board. In 5,220 cases, the Board received an initial filing but no medical evidence supporting the claim, or the worker did not pursue the claim (by filing information or attending a hearing). There is insufficient information at this time to conclude why there are so many of these claims. The Board is currently reaching out to workers who filed these claims, to determine why they did not pursue their claim.

The Board also has received 39,151 registrations from rescue, recovery and clean-up workers who have filed a designated form to preserve their right to future benefits, should they fall ill. A 2006 law gives rescue, recovery and clean-up workers this unique protection.

More than 40% of all WTC claims were controverted by the insurer or employer. This is more than twice the typical rate of controversy. For example, of 986,849 non-WTC claims assembled in 2001 through 2007, 161,744 (or 16.3%) were controverted. Insurers and employers disputed more than 22% (1,000 of 4,443) of WTC claims that were ultimately established and for which indemnity benefits were paid. Controverted claims took more than three times as long as non-controverted claims to establish.

Nearly 16% of WTC claims in which indemnity (cash) benefits were awarded were subject to administrative review (appeal) of the judge's decision. The administrative review process did not overturn a judge's finding with respect to the establishment or denial of a claim in 87% of appeals.



## Introduction

The unprecedented nature and scope of the September 11, 2001, terrorist attacks on the World Trade Center (WTC) have been well-documented.<sup>1</sup> Over 2,700 people were killed in the WTC attacks.<sup>2</sup> Rescue, recovery, and clean-up (RRC) efforts involved up to an estimated 90,000 volunteers, public sector workers, and private sector workers,<sup>3</sup> and resulted in additional occupational injuries or illnesses.<sup>4</sup>

The WTC attacks have raised numerous public policy issues and ongoing requests for information related to workers' compensation. These include:

- How does a workers' compensation system ensure that appropriate medical treatment and indemnity benefits are promptly provided despite the unprecedented number of claims arising from a catastrophic event?<sup>5</sup>
- How many affected workers or their survivors sought financial compensation from the workers' compensation system or from other sources?<sup>6</sup>
- How many actually received compensation?<sup>7</sup>
- Should workers' compensation benefits be extended to volunteers or domestic partners who are typically not eligible for workers' compensation?
- What are the occupational safety ramifications of the events of 9/11 and their aftermath?<sup>8</sup>
- What are the occupational health ramifications of the events of 9/11 and their aftermath, such as:
  - the causal link between RRC efforts and occupational diseases;<sup>9</sup>
  - the appropriate statute of limitation (if any) for filing a workers' compensation claim, particularly in light of a potentially long latency period after workplace exposure?<sup>10</sup>

To address these and other questions, the New York State Workers' Compensation Board decided to publish its data findings regarding workers' compensation cases resulting from the World Trade Center disaster. These findings include injury, demographic, and other characteristics of workers' compensation claims; workers' compensation indemnity benefit awards; and information about the administrative processing of claims.

The goal of this study is to help inform public policy makers, other members of the workers' compensation community, and the general public about salient aspects of workers' compensation claims resulting from the World Trade Center disaster.

## Context and Methodology

Various aspects of the New York workers' compensation system are summarized in this section to provide a context for the findings reported in this study. Data limitations are also noted. A more detailed context and methodology section is featured in *Appendix A*; a glossary is provided in *Appendix B*.

### ***Overview of Workers' Compensation***

Workers' compensation is a state-specific, usually mandatory, social insurance program that provides indemnity benefits and medical care to workers who sustain work-related injuries or occupational diseases.<sup>11</sup> To qualify for workers' compensation benefits, a worker must have sustained an injury by accident arising out of and in the course of employment. Alternatively, a worker may qualify for benefits if one has developed an occupational disease that has a distinct relationship to the worker's occupation.

### ***Overview of NYS Workers' Compensation Law (WCL)***

To establish an accident-based claim for compensation under New York Workers' Compensation Law (WCL), the injured worker must establish that 1) there was a workplace accident, 2) the worker provided notice of the accident to the employer within 30 days, and 3) the injury suffered was causally related to the accident. The requirements are known by the acronym ANCR (Accident, Notice, & Causal Relationship). For disease-based claims, the existence of an occupational disease is required instead of a workplace accident, and the worker must notify the employer within two years of becoming disabled. The acronym is ODNCR (Occupational Disease, Notice, & Causal Relationship).

One must file a claim for compensation within two years of the date of accident, or in the case of an occupational disease, the date of disablement.

In the remainder of this report, established claims – that is, those where ANCR or ODNCR is established – are referred to as “ANCR-established claims.”

### ***Scope of the Study: Who Is Not Covered by the NYS WCL***

This report presents findings on salient characteristics of WTC workers' compensation claims. Claim-specific data were compiled electronically from the Board's primary data systems. For selected measures, data were compiled by a manual review of claim forms, hearing records, accident reports, medical reports and other documents in the Board's claims system.

Of necessity, the findings reported here are limited to those claims that are covered under the New York State Workers' Compensation Law.

Groups that are not covered by the WCL and therefore are excluded from this study include:

- uniformed officers in the New York City police, fire and sanitation departments,<sup>12</sup>
- federal government employees,
- out-of-state employees on temporary assignment at the WTC who filed elsewhere for workers' compensation benefits,<sup>13</sup> and
- New York City area residents not at work on September 11, 2001, and others not engaged in work-related activities.

## ***Legislative and Regulatory Changes Affecting Processing of WTC Claims***

### **Executive Orders of the Governor: Suspend Notice Requirement**

As a result of the terrorist attacks of September 11, 2001, on the World Trade Center, New York Governor George E. Pataki stipulated that the top priority of state agencies was the provision of service and support to World Trade Center victims and their families.<sup>14</sup> More than 100 executive orders were issued in furtherance of this goal. Executive Order No. 113.35 temporarily suspended the requirement of WCL §18 that notice to an employer of a workplace accident or death must be in writing, signed by the claimant (injured worker or beneficiary of the deceased), and provided to the employer within 30 days of the accident or death.<sup>15</sup> Those affected by the attacks of September 11, 2001, could thus address immediate concerns without risking ineligibility for workers' compensation benefits by failure to comply with the requirements of WCL § 18.

### **Workers' Compensation Board Resolution: Expedite Death Claims**

The Board formally endeavored to resolve the large number of WTC death claims on an expedited basis.<sup>16</sup> The requirement that a death certificate be provided in workers' compensation death benefit claims was suspended for WTC claims. This regulatory change may account for the fact that the mean processing time of WTC death claims was shortest among the various claim types (see *infra* at page 37).

### **Statutory Change: Death Benefits for Domestic Partners**

New York lawmakers amended the WCL to provide workers' compensation death benefits to the domestic partner of those killed in the World Trade Center attacks (WCL § 4).<sup>17</sup> The WCL does not accord death benefits to domestic partners of other decedents.<sup>18</sup>

This statutory change did not result in a large increase in the number of workers' compensation claims. Fewer than 90 domestic partner claims were identified in the Board's WTC data set, and not all of these claimants were found to be domestic partners and awarded benefits. The change did, however, extend workers' compensation death benefits eligibility to a group that had never previously or subsequently been entitled to them.

### **Statutory Change: Filing Deadline (Article 8-A)**

In 2006, New York adopted Article 8-A of the WCL to address complications caused by the two-year statutory filing deadline for those involved in rescue, recovery and clean-up efforts. The vast majority of these workers were constrained to file accident, as opposed to occupational disease, claims. As a result, if they did not file their claim within two years from September 11, 2001, or their last date of exposure, they could be ineligible for benefits.

Article 8-A extends the filing deadline for RRC workers by creating a hybrid approach to their exposure claims. It incorporates occupational disease-like notice and filing requirements for those who developed a "latent" disease or condition as a result of their exposure, allowing two years from the date of disablement to file and give notice. To qualify under Article 8-A, one must have performed rescue, recovery, or cleanup work at the World Trade Center site between September 11, 2001 and September 12, 2002, and must register with the Board by filing a form setting forth information regarding one's participation in the RRC efforts (*Registration of Participation in World Trade Center Rescue, Recovery and/or Clean-Up Operations*, the WTC-12 form) before August 14, 2007. Those whose claims were disallowed previously were entitled to reopen them.

In 2007, lawmakers extended the deadline for filing a WTC-12 form with the Board by one year, to August 14, 2008. Gov. David A. Paterson extended the deadline again in August 2008 – the current registration deadline is September 11, 2010.

With the August 2008 legislation, Gov. Paterson also broadened the coverage of Article 8-A. It filled a previously unforeseen gap of RRC workers who did not benefit from 8-A because they had become disabled after September 2003 (when the two-year statute of limitations for accidents had run) but before August 2004 (more than two years before the adoption of Article 8-A). To fill this gap and to avoid any further unforeseen gaps in coverage, the legislation eliminated the statute of limitations and notice requirements altogether for 8-A claims in which the date of disablement falls between September 11, 2003 and September 11, 2008, provided that such claims are filed by September 11, 2010. The statute also codified the common law rule that the Board must choose the date of disablement that is most beneficial to the claimant.

The Board reached out nationally to elicit registration by people who performed RRC work. One piece was the Tell Us You Were There campaign, in English and Spanish, encouraging RRC workers to file the eight-question WTC-12 form. The Board also partnered with the “9/11 Health” initiative of the New York City Department of Health to send WTC-12 forms to all of the RRC workers in its database. The Board also sent forms to employers encouraging them to inform their staff who volunteered at the WTC in the aftermath of September 11, 2001, about this filing requirement.

Other governmental entities have assisted in public outreach, including the New York State Department of Labor, the New York State Department of Motor Vehicles, the counties of Suffolk, Rockland, Westchester and Nassau, and the City of New York. Several state and national firefighter and emergency services groups as well as unions, labor and civic groups have also contributed to these ongoing outreach efforts.

As of June 11, 2009, workers filed 39,151 WTC-12 forms with the Board.

### ***Scope of the Study: Other Groups Excluded from the Study***

Two groups – WTC volunteers and claimants subject to alternative dispute resolution (ADR) – are excluded from this study because the Board lacks adequate data regarding their claims. Furthermore, the WTC volunteer claims warrant separate treatment regardless of data limitations because they are quite different from other workers' compensation claims. See *Appendix A* for more information.

### ***Occupational Injury and Illness Classification***

Board digesters manually coded WTC claims for part of body affected, the nature of injury, event or exposure, and selected other categories. Board digesters took information from forms contained in the Board's electronic claims folders and classified the information according to the Occupational Injury and Illness Classification System (OIICS) that is issued by the U.S. Department of Labor, Bureau of Labor Statistics (BLS).<sup>19</sup>

Board digesters do not typically digest medical-only or “non-compensatory” claims because they are less likely to contain sufficient documentary information for coding. For this report, the Board undertook OIICS coding for all claim types (including medical-only and non-compensatory). This required significant time and effort, and may also have resulted in a higher rate of claims that could not be classified.

### ***Limitations of this Study***

In addition to the aforementioned data limitations regarding the scope of the study, several additional caveats are in order.

The aftermath of the WTC attacks continues to be monitored by the medical community and others. Many of these public health matters are beyond the scope of this paper, as they:

- are subject to ongoing, longitudinal medical monitoring and additional research;
- include residential populations outside the scope of the New York workers' compensation system; and
- encompass areas for which entities other than the Board have the requisite administrative responsibility and/or data.

### **Properly Identifying WTC Claims**

Shortly after the attacks of September 11<sup>th</sup>, the Board drafted plans for outreach to constituents, for identifying and processing WTC claims, and for ongoing monitoring of WTC developments.<sup>20</sup>

As detailed above, certain administrative procedures and requirements were altered or suspended in an effort to “ensure that these claims receive the speediest and most efficient resolution possible, recognizing that many claimants will be unable to provide some of the documentation normally required.”<sup>21</sup> In furtherance of this goal, the Board created teams of specialists: a WTC workgroup of claims examiners as well as WTC hearings teams of judges.

The Board drafted very detailed procedures for processing WTC claims.<sup>22</sup> However, written documentation regarding the threshold criteria for identifying a workers' compensation claim as a WTC claim was, at best, relatively sparse. The Board determined whether a claim was WTC-related on a case-by-case basis, drawing upon the experience and expertise of various individuals within the Board. The Board attempted to be as inclusive as possible in designating claims as WTC to ensure that all potential WTC claims were identified and addressed.

The Board's policy of erring on the side of over-including WTC claims impacts the data set used for this study in various ways, including the following:

- Some claims that would have had the WTC designation removed (canceled), upon further review by Board claims examiners, remain as WTC claims.<sup>23</sup>
- If an individual had a workers' compensation claim that was truly WTC-related and another that was not WTC-related, it is conceivable that both claims had a WTC designation.<sup>24</sup>
- Some workers' compensation claims stemming from recent reconstruction work at the WTC site may have a WTC designation.<sup>25</sup>

Unless otherwise noted, all results reported in this study pertain to WTC claims assembled by the Board through June 11, 2009.<sup>26</sup>

Board computer programmers, researchers, and others performed numerous edit checks as part of the quality assurance process for this research project. Some data elements that were deemed not sufficiently credible were dropped from this study. Nonetheless, the findings presented here must be viewed within the context of the aforementioned limitations.

## Findings: Overall Distribution of WTC Claims, by Claim Type and by Group Type

The study evaluates 11,627 workers' compensation claims: 2,064 death claims and 9,563 for injury or illness (non-death) claims assembled by the Board as a result of the events of September 11, 2001. Findings regarding demographic and other characteristics of WTC workers' compensation claims, WTC workers' compensation indemnity benefits awards, and the administrative processing of WTC claims are presented in the remainder of this report. Findings will initially be presented regarding "who" (group type classification) was injured, disabled, or killed, and the current status of the claim (claim type classification). Information regarding the demographics of the injured and the nature of the injuries are also provided.

### Group Type

The universe of World Trade Center-related claims includes several distinct groups of injured workers.<sup>27</sup> The group type categorizes the injury event according to its location (e.g. WTC site vs. the Staten Island landfill/Fresh Kills facility<sup>28</sup>) and the timing or type of work being done (the WTC attack vs. post-attack RRC work). This report uses five distinct group type categories:

- Victim at the WTC site
- Rescue, Recovery or Clean-up worker at the WTC site
- Rescue, Recovery or Clean-up worker not at the WTC site
- Other
- Group type status could not be determined<sup>29</sup>

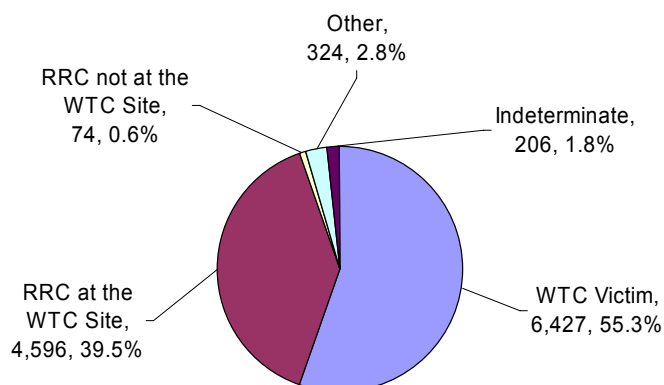
The injured worker group type categories used in this study were generated by the Board's Management and Policy Services Division. The categories draw on the work functions and work locations required to qualify for extended filing timeframes under Article 8-A.<sup>30</sup> Group type coding was generated automatically, where possible,<sup>31</sup> or performed manually by digesters (clerks) based on documentation in the electronic case folders.<sup>32</sup>

Specifically, the distribution of WTC claims by group type was as follows:

- |                                  |       |                |
|----------------------------------|-------|----------------|
| • Victim at the WTC site         | 55.3% | (6,427 claims) |
| • RRC worker at the WTC site     | 39.5% | (4,596 claims) |
| • RRC worker not at the WTC site | 0.6%  | (74 claims)    |
| • Other                          | 2.8%  | (324 claims)   |
| • Indeterminate                  | 1.8%  | (206 claims)   |

More than 55% of WTC claims pertained to workers who were victims of the attack. Nearly 40% involved the rescue recovery or clean-up (RRC) workers at the WTC site (See Chart 1).

**Chart 1. Distribution of WTC Workers' Compensation Claims, by Group Type**



### **Claim Type**

The claim type is classified according to whether indemnity benefits were awarded and, if so, the type of benefits awarded. Many of these claim types are common to other workers' compensation systems in North America. The report uses the following claim type categories:

- Death
- Permanent total disability
- Permanent partial disability-nonscheduled loss
- Permanent partial disability-scheduled loss
- Temporary (total or partial) disability
- Medical-only
- Denied
- Non-compensatory

Claims that satisfy the legal requirement of ANCR or ODNCR<sup>33</sup> are eligible for medical and indemnity benefits. Indemnity benefits are provided to claimants with temporary or permanent disabilities (defined as loss of wage-earning capacity) or to the survivors (spouse, and dependent children) of workers fatally injured at work.

Temporary benefits are payable at either a total or partial disability level during one's recovery from the work-related injury.<sup>34</sup> Permanent disability awards are made after a medical determination that the work-related injury has stabilized and the permanent effects of the injury can thus be assessed.<sup>35</sup> Permanent disability benefits too can be either total or partial. Two principal categories of permanent partial disability awards for workers' compensation are scheduled and nonscheduled (or unscheduled).<sup>36</sup>

In death claims, cash benefits are awarded to survivors. Medical benefits pay for medical treatment of work-related injuries or disabilities. Medical-only claims pay for medical care but do not pay an indemnity benefit because the claimant was out of work less than the statutorily-specified waiting period of seven days and has not received permanent disability or death benefits.

Denied claims are workers' compensation claims that do not satisfy the statutory criteria for eligibility for benefits, per a ruling of a Board administrative law judge and, if appealed, by a Board panel of commissioners or, potentially, the judiciary.

Lastly, for purposes of this study, "non-compensatory claims" are claims that have not been established but also have not been denied. They consist in large part of claims filed by the worker but for which the claimant did not produce prima facie medical evidence, and/or did not actively pursue the claim. In New York, the law places primary responsibility for pursuing and establishing a claim on the worker.

Over time, many claims will move between different claim types. For purposes of establishing claim type in this report, the most recent classification is used.<sup>37</sup> For instance, one might have a temporary, total disability at first, which after some healing becomes a temporary, partial disability, and eventually is classified as a permanent partial disability-scheduled loss. Such a claim would be classified permanent partial disability-scheduled loss in this study.

The current claim types of the 11,627 WTC claims are as follows:

• Death	17.8%	(2,064 claims)
• Permanent total disability	0.4%	(43 claims)
• Permanent partial disability-nonscheduled loss	4.8%	(563 claims)
• Permanent partial disability-scheduled loss	1.9%	(226 claims)
• Temporary (total or partial) disability	13.3%	(1,547 claims)
• Medical-only	12.9%	(1,503 claims)
• Denied	4.0%	(461 claims)
• Non-compensatory	44.9%	(5,220 claims)

The Board assembled 2,064 claims for death benefits. This is many more claims than the Board typically receives. From 2002 through 2007, the Board assembled, on average, 235 non-WTC death claims each year.

Non-compensatory claims constituted nearly half (44.9%) of the assembled WTC claims. This is also much higher than usual. By way of comparison, non-compensatory claims constituted 19% of non-WTC claims assembled for the years 2001 through 2007.

### **Non-compensatory Claims**

The September 11<sup>th</sup> Worker Protection Task Force, which was created by New York State legislation enacted in 2005, similarly concluded in its latest (June 2009) report that a high percentage of WTC claims were non-compensatory. In particular, it found that nearly 50% of RRC claims (as of September 11, 2008) were not pursued due to a lack of medical reports (prima facie medical evidence or "PFME" – a medical report containing a history of work-related injury and causally related diagnosis) or a failure on the part of the claimant to pursue the claim. The Task Force posited three possible explanations for the high number of claims that were not pursued:

One possibility is that many RRCU workers filed protective claims in case they later became ill, even though they were not experiencing any symptoms at the time. In the aftermath of 9/11, there was confusion about what would be covered by workers' compensation and the Board made outreach efforts to encourage those affected to file claims. If the claimant has an exposure but has not yet developed an illness, he or she will not be able to establish PFME and may also fail to show up at hearings to pursue the claim. A second possibility is that many who became ill as a



result of their RRCU efforts did not know how to pursue their workers' compensation claim. Many were treated by their regular primary care physicians who, in contrast to occupational medicine physicians and orthopedists, are less familiar or hesitant to interact with the workers' compensation system. As a result, these doctors may be more likely to bill traditional health insurance for care instead of submitting medical records to carriers and the Board. Similarly, workers may have received treatment through the federally funded 9/11 medical programs. If the worker did not miss time from work, he or she may have little incentive to pursue the workers' compensation claim because his or her medical care is being paid already. A third possibility is that the Board rigorously applied the prima facie medical evidence standard to deny claims where the doctor did not clearly state a causal relationship between the exposure and the illness. The evidence suggests that the third explanation is unlikely to account for the bulk of NPFME [no prima facie medical evidence] claims....Unfortunately, there is insufficient evidence at this point to determine whether the first two explanations or another one account for the very high rate of non-pursued claims. The Committee believes this is an area in need of further research.<sup>38</sup>

In addition to claim type, another major categorization of workers' compensation claims is distinguishing claims for accidents (one-time events) and claims for occupation diseases (exposure over a period of time). An accident is defined as an event, arising out of and in the course of employment that results in personal injury to a worker. Occupational disease is defined in New York as a disease arising as a natural incident of employment conditions for particular occupations. To be considered an occupational disease, there must be a recognizable link between the disease and some distinctive feature of the workers' job.

Of the 11,627 WTC claims assembled, 4,414 claims received indemnity benefits. Of these, there were 4,260 (96.5%) accident claims and 154 (3.5%) occupational disease claims. By comparison, of 494,611 non-WTC claims established by the Board from 2002 through 2007, 469,155 (94.9%) were accident claims and 25,456 (5.1%) were occupational disease claims.

### **Denied Claims**

The September 11<sup>th</sup> Worker Protection Task Force also looked at denied WTC claims. The Task Force found that 1.9% of RRC workers' compensation claims (that is, 94 out a total of 4,984 claims) were denied (disallowed), based on its examination of RRC claims "on a snapshot basis as of September 11, 2008."<sup>39</sup> When the analysis was limited to "pursued claims" (that is, excluding what are referred to here as "non-compensatory claims," as well as excluding Alternative Dispute Resolution claims that the Task Force included for some evaluations), 4.5% of RRC workers' compensation claims (94 out a total of 2,085 claims) were disallowed.

The primary reason that RRC claims were denied was because the claims were filed with the New York State Workers' Compensation Board, instead of in another jurisdiction. According to the Task Force, nearly 60% of the 94 denied RRC claims should have been filed "in another state (e.g. New Jersey) or another system (e.g., federal system, state disability line of duty)."<sup>40</sup>

Slightly more than 20% of the 94 RRC claims were denied because the claim was untimely filed. The remaining 20% of claims were denied because of findings regarding causal relationship, course of employment, the employer/employee relationship, or for other reasons.

The pattern regarding reasons for denying WTC claims was different for non-RRC claims. Though the largest category of denied claims still consisted of improper jurisdiction, this accounted for only slightly more than 40% of the denied, non-RRC WTC claims. The next largest categories were: course of employment (26% of the denied, non-RRC WTC claims were denied for this reason); the employer/employee relationship (14% of the denied, non-RRC WTC claims); and timeliness of filing (12%).

Of the 461 denied claims (in the present report), 165 claims (35%) were denied because of inappropriate jurisdiction. There were 102 claims (22%) denied because the accident did not arise out of and in the course of employment. From the available data, only 9 claims (approximately 1%) were disallowed due to an issue with the timely filing of the claim. Board law judges denied 183 claims (40%) after hearings.

An analysis of claim type by index year produces some interesting results.<sup>41</sup> (See Table 1.) The percentage of denied claims in an individual year increased from 2.8% (index year 2001) to 8.9% (index year 2005) and then fluctuated thereafter. The percentage of non-compensatory claims increased (from 24.6% in index year 2001 to 68.3% in index year 2003), decreased (index years 2004 and 2005), and then increased again. The frequency distribution for medical-only claims and for each of the indemnity benefit categories fluctuated, though the difference between the extreme values were, except in death claims, not nearly as great as that of denied and non-compensatory claims.

The claim type reflects the outcome of the claim as of a particular point in time. Over time, this outcome may change. As a result, year-to-year comparisons must take into account the lack of claim development in the most recent index years.

**Table 1. Frequency Distribution of WTC Workers' Compensation Claims, by Claim Type and Index Year**

Year	Denied		Non-comp*		Med Only		Temp		PPD-SL		PPD-NSL		PTD		Death		Total
	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%	
2001	137	2.8	1186	24.6	429	8.9	699	14.5	133	2.8	211	4.4	20	0.4	2008	41.6	4823
2002	59	3.9	615	40.8	229	15.2	347	23.0	66	4.4	142	9.4	7	0.5	41	2.7	1506
2003	94	3.7	1742	68.3	344	13.5	229	9.0	19	0.7	112	4.4	4	0.2	8	0.3	2552
2004	27	5.2	317	60.6	71	13.6	68	13.0	4	0.8	34	6.5	1	0.2	1	0.2	523
2005	23	8.9	109	42.2	59	22.9	43	16.7	2	0.8	18	7.0	2	0.8	2	0.8	258
2006	25	4.4	286	50.3	159	27.9	66	11.6	1	0.2	26	4.6	5	0.9	1	0.2	569
2007	64	7.2	557	63.0	162	18.3	78	8.8	1	0.1	18	2.0	3	0.3	1	0.1	884
2008	32	7.5	329	76.9	46	10.7	16	3.7	0	0.0	2	0.5	1	0.2	2	0.5	428
2009	0	0.0	79	94.0	4	4.8	1	1.2	0	0.0	0	0.0	0	0.0	0	0.0	84
<b>Total</b>	<b>461</b>	<b>4.0</b>	<b>5220</b>	<b>44.9</b>	<b>1503</b>	<b>12.9</b>	<b>1547</b>	<b>13.3</b>	<b>226</b>	<b>1.9</b>	<b>563</b>	<b>4.8</b>	<b>43</b>	<b>0.4</b>	<b>2064</b>	<b>17.8</b>	<b>11627</b>

\* Non-comp claims are workers' compensation claims that have neither been established (ANCR or ODNCR) nor denied by the Board.

The 5,220 non-compensatory claims include:

- 2,792 claims in which the Board has no medical documentation of treatment for the claim.
- 1,748 claims in which the claimant failed to pursue the claim further after initially filing it.
- 243 claims that are still pending before the Board, and for which none of the other categories were appropriate.
- 9 claims that are undergoing appeals (administrative review).

**Claim Type, by Group Type**

Nearly one-third of claims in the WTC victims group type were death claims, and fewer than one-third were non-compensatory claims. More than 16% of victim claims involved temporary disabilities and nearly 10% were medical-only claims. Among claims for RRC workers at the WTC site, 63% were non-compensatory, more than 18% were medical-only claims, and nearly 4% were denied (See Table 2).

**Table 2. Frequency Distribution of WTC Workers' Compensation Claims, a Cross-Tabulation by Claim Type and by Group Type**

	Percent, by Injured Worker Group Type					Total
	<u>WTC Victim</u>	<u>RRC at WTC site</u>	<u>RRC Not at WTC site</u>	<u>Other</u>	<u>Indeterminate</u>	
Medical only	9.5	18.5	9.5	6.8	5.8	12.9
Temporary disability	16.3	9.3	8.1	16.0	6.3	13.3
Permanent partial disability-scheduled loss	2.5	1.2	2.7	1.2	2.4	1.9
Permanent partial disability- nonscheduled loss	5.5	4.2	6.8	3.4	1.0	4.9
Permanent total disability	0.5	0.3	0.0	0.0	0.0	0.4
Death	32.0	0.1	0.0	0.3	1.0	17.8
Denied	4.2	3.5	4.1	5.9	3.4	4.0
Non-compensatory	29.5	62.9	68.9	66.4	80.1	44.9
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Total number of claims</b>	<b>6,427</b>	<b>4,596</b>	<b>74</b>	<b>324</b>	<b>206</b>	<b>11,627</b>

In addition to the 2,058 WTC victim death claims, there were three RRC at the WTC site death claims, one "Other" group type death claim, and two death claims for which the group type was indeterminate. Also, of the 2,058 WTC death claims, eleven had a date of death later than September 11, 2001. These claims involved burns, fractures, other respiratory diseases, or stress as the nature of injury.

## Findings: Injury and Exposure Characteristics of Non-death WTC Claims

This section includes findings regarding injury and exposure characteristics of the WTC claims. Specifically, the data includes the part of body affected, the nature of the injury, and the event or exposure (accident type).<sup>42</sup>

### Part of Body Affected

The frequency distribution of the part-of-body injured or disabled among all WTC non-death claims is presented in Table 3. The preponderance of RRC injuries or disabilities pertained to the trunk of the body. Approximately one-half of injuries or disabilities for WTC victims who did not die affected body systems.

**Table 3. Frequency Distribution of WTC Workers' Compensation Non-Death Claims, a Cross-Tabulation by Part of Body Affected and by Group Type**

	Percent, by Injured Worker Group Type					Total
	<u>WTC Victim</u>	<u>RRC at WTC site</u>	<u>RRC Not at WTC site</u>	<u>Other</u>	<u>Indeterminate</u>	
Head	1.9	0.8	6.8	0.9	3.4	1.5
Neck	0.2	0.0	1.4	0.3	1.5	0.2
Trunk	32.1	89.9	73.0	61.6	42.2	56.2
Upper Extremities	1.1	0.8	2.7	0.6	5.4	1.1
Lower Extremities	5.1	1.5	0.0	2.8	2.0	3.5
Body Systems	50.2	2.9	8.1	26.0	14.2	29.9
Multiple Body Parts	4.6	1.1	0.0	3.4	3.9	3.1
Other Body Parts	4.9	3.0	8.1	4.3	27.5	4.6
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Total Number of Claims</b>	<b>4,369</b>	<b>4,593</b>	<b>74</b>	<b>323</b>	<b>204</b>	<b>9,563</b>

The WCB uses the OIICS classification system to categorize the part of body injured or disabled. The frequency distribution of the part-of-body injured or disabled among all WTC non-death claims is listed in Table 3.

Several findings regarding nature-of-injury are particularly noteworthy, as they relate to part of body affected:

- Injuries or occupational illnesses regarding the trunk are the largest set of part-of-body affected findings at 5,124 claims. *Respiratory system diseases* was the nature-of-injury category in 95% (4,870) of these claims.

- *Body systems* as part-of-body are the second largest set of findings at 2,394 claims. The nature of injury designation for 98.6% (2,361) of these claims was *other diseases, conditions, and disorders: mental disorders or syndromes such as anxiety, stress, neurotic disorders*.<sup>43</sup>

### **Nature of Injury**

Most WTC non-death claims involved respiratory system diseases or mental stress. *Systemic diseases and disorders* and *other diseases, conditions, and disorders* accounted for 85% of the 9,563 non-death claims. Specifically, 59.8% (5,719) of non-death claims involved *systemic diseases and disorders* as the nature of injury. *Other diseases, conditions, and disorders* made up 25.2% (2,410) of non-death claims.

Nearly all of the *systemic diseases and disorders* claims involved *respiratory system diseases* (5,641 of 5,719 or 98.6%). Similarly, nearly all of the *other diseases, conditions, and disorders* claims involved *mental disorders or syndromes: anxiety, stress, neurotic disorders* (2,406 of 2,410 or 99.8%).

**Table 4. Frequency Distribution of WTC Workers' Compensation Non-Death Claims, a Cross-Tabulation by Nature of Injury and by Group Type**

	Percent, by Injured Worker Group Type					Total
	<u>WTC Victim</u>	<u>RRC at WTC site</u>	<u>RRC not at WTC site</u>	<u>Other</u>	<u>Indeterminate</u>	
Traumatic Injuries	14.7	5.1	14.3	11.1	17.2	10.8
Systemic Diseases	29.9	89.1	77.1	57.6	39.7	54.5
Other Diseases	50.1	2.7	0.0	31.3	15.2	29.9
Not Classifiable	5.3	3.1	8.6	0.0	27.9	4.7
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Total Number of Claims</b>	<b>4,369</b>	<b>4,593</b>	<b>74</b>	<b>323</b>	<b>204</b>	<b>9,563</b>

### **Event or Exposure (Accident Type)**

The event or exposure describes the manner the injury or illness was produced or inflicted. The two event or exposure categories accounting for the largest number of claims were *exposure to harmful substances or environments* and *assaults and violent acts*. Specifically, *exposure to harmful substances or environments* constituted 49.4% (4,720 of 9,563) of non-death claims. Ninety-five percent of claims in this category (4,485 of 4,720) had *exposure to caustic, noxious, or allergenic substances* as the more disaggregated event code. Nearly 46% of the non-death claims had *assaults and violent acts* as the event or exposure code (4,370 of 9,563).

## Findings: Demographic and Other Characteristics of Non-death & Death WTC Claims

This section reports findings regarding demographic and other characteristics of WTC claims, including the gender and age of claimants; the types of workers' compensation coverage; and the volume of medical treatment/evaluation forms.

### Gender

Men filed 69% of all WTC claims (8,043 of 11,627) and women filed 31% of all claims (3,565 of 11,627). Gender data was unavailable in 19 claims. The gender disparity is less pronounced among WTC victim claims, in which men filed 59% of claims (3,813 of 6,424). Women made up only 16% of all RRC claims (756 of 4,657).

### Female

Of 3,565 claims filed by females, the largest percentages by claim type were:

- Non-compensatory claims 42.6% (1,517 claims)
- Temporary disability 19.7% (701 claims)
- Death claims 15.0% (536 claims)

### Male

Of 8,043 claims filed by males, the largest percentages by claim type were:

- Non-compensatory claims 45.9% (3,691 claims)
- Death claims 19.0% (1,528 claims)
- Medical-only claims 13.9% (1,118 claims)

Females had 3.7% of their claims denied. The percentage denied for male's claims was comparable at 4.1%.

Females were victims of the direct attacks in slightly more than 73% of their claims. WTC claims for males were split nearly evenly between WTC Victim and RRC claims. (See Table 5.)

**Table 5. Frequency Distribution of WTC Workers' Compensation Claims, by Gender and by Group Type**

	Female		Male		Total
	Number	Percent	Number	Percent	
WTC Victim	2,611	73.2	3,813	47.4	6,424
RRC at the WTC site	749	21.0	3,834	47.7	4,583
RRC not at the WTC site	7	0.2	67	0.8	74
Other	131	3.7	193	2.4	324
Indeterminate	67	1.9	136	1.7	203
<b>Total</b>	<b>3,565</b>	<b>100.0</b>	<b>8,043</b>	<b>100.0</b>	<b>11,608'</b>

\* Note: Gender information was not available for 19 claims.

## Age

For the most part, the age of WTC claimants – irrespective of which measure is used – varies little by claim type or group type, and tends to be in the early 40s. This is illustrated in Table 6, which reports average and median ages, by claim type, for claims with available information on age.

**Table 6. Average and Median Ages of WTC Claimants at Time of Accident or Onset of Disability, by Claim Type**

	<u>Mean</u>	<u>Median</u>	<u>Total Number of Claims</u>
All claims	41.4 years	41.0 years	11,180
Medical only	42.5 years	42.0 years	1,503
Temporary (total or partial) disability	42.1 years	42.0 years	1,547
Permanent partial disability-scheduled loss	42.5 years	42.0 years	226
Permanent partial disability-nonscheduled loss	46.4 years	47.0 years	563
Permanent total disability	45.8 years	46.0 years	42
Death	39.7 years	39.0 years	2,058
Denied	42.0 years	42.0 years	411
Non-compensatory claims	40.7 years	40.0 years	4,830

Note: Claimant age was not available in 447 claims.

The average and median ages of WTC claimants, when categorized by injured worker group type, were also in the early 40s. For example, the average age of WTC victims was 40.9 years and the median was 40 years. The average of RRC at WTC site was 41.8 years and the median was 41 years.

The age distribution of WTC claimants, measured at the time of the accident, onset of disability, or death, is as follows.

- 95% were age 58 or younger
- 90% were age 55 or younger
- 75% were age 48 or younger
- 50% were age 41 or younger
- 25% were age 34 or younger
- 10% were age 28 or younger
- 5% were age 25 or younger



When measured in ten-year age ranges, the two largest groups are 30-to-39 years (31.4%, or 3,343 out of 11,180 WTC claims with age information) and 40-to-49 years (31.8%, or 3,558 out of 11,180 WTC claims with age information).

### **Domestic Partners**

New York lawmakers authorized the provision of workers' compensation death benefits to the domestic partner of those killed in the World Trade Center attacks (WCL § 4). This was the only instance of according workers' compensation benefits to domestic partners in New York.

More than two-thirds of the domestic partner claims (52 of 77) were awarded death benefits. The remainder were not further pursued by the claimant, were still pending, or did not meet the threshold eligibility criteria presented earlier in this report.<sup>44</sup>

### **Coverage**

Workers' compensation coverage in New York is mandatory. There are several potential sources of workers' compensation insurance coverage. One source is a competitive state fund, the New York State Insurance Fund. The State Insurance Fund is a "not-for-profit agency of the State of New York that was established in 1914 to provide a guaranteed source of workers' compensation insurance coverage at the lowest possible cost to employers within New York State."<sup>45</sup>

Private insurance carriers are another possible source of workers' compensation insurance coverage in New York State.

Employers may also self-insure, either individually or as part of a group self-insurance trust. To qualify for self-insurance, "a non-public employer must furnish satisfactory proof to the Chair of the Workers' Compensation Board of its financial ability to pay compensation.... A political subdivision which does not purchase a workers' compensation insurance policy is thereby deemed to be a self insurer, but it is not required to give proof of financial ability or make a deposit of securities or file a surety bond."<sup>46</sup>

Among the 5,946 WTC claims with ANCR established,<sup>47</sup> the frequency distribution regarding workers' compensation coverage is as follows:

• private insurance carriers	67.3%	(4,001 claims)
• self-insured in the public sector	17.2%	(1,024 claims)
• self-insured in the private sector	6.1%	(361 claims)
• the State Insurance Fund	5.6%	(334 claims)
• New York State	3.3%	(196 claims)
• Special Fund-unknown	0.5%	(30 claims) <sup>48</sup>

A small number of entities provided coverage for a preponderance of WTC workers' compensation claims. Ten organizations – the State Insurance Fund (excluding NYS claims), six private insurance carriers, and three self-insured employers in the public sector – covered more than 50% of the claims with ANCR established.

### **Medical Treatment/Evaluation Forms**

Like most states (other than those with an exclusive state fund), the Board does not electronically compile data on medical billing or on medical services such as the frequency of services and the types of providers or specialists used.

As a very rough proxy measure for the extent and type of medical services utilized, the average and median number of medical/treatment forms were tabulated for WTC claims that had at least one form in the file. Findings regarding 34 different medical examination or treatment forms were tabulated.<sup>49</sup>

There is a potential problem in drawing conclusions from any average, because a few, very large or small values may skew the average figure. The trimmed average and the median are alternative measures that avoid the problem of outliers.

The “5% trimmed average” used here computes the average number of forms after excluding the largest 5% of observations (number of forms) and the smallest 5% of observations in the data set. That is, this trimmed average is based on 90% of the claims in the data set, excluding the extreme values or outliers.<sup>50</sup>

These finding pertain to WTC claims from a one-year period (9/11/01 to 9/10/02 accident dates):

- Attending Doctor’s Report (Form C-4): temporary disability
  - Number of Claims with One or More Forms 944
  - Average Number of Forms per Claim 29.6
  - Trimmed Average Number of Forms per Claim 22.7
  - Median Number of Forms per Claim 13.0
- Attending Doctor’s Report (Form C-4): permanent disability
  - Number of Claims with One or More Forms 668
  - Average Number of Forms per Claim 46.6
  - Trimmed Average Number of Forms per Claim 36.6
  - Median Number of Forms per Claim 22.0
- Attending Psychologist’s Report (Form PS-4): temporary disability
  - Number of Claims with One or More Forms 133
  - Average Number of Forms per Claim 14.6
  - Trimmed Average Number of Forms per Claim 9.4
  - Median Number of Forms per Claim 5.0
- Attending Psychologist’s Report (Form PS-4): permanent disability
  - Number of Claims with One or More Forms 102
  - Average Number of Forms per Claim 18.3
  - Trimmed Average Number of Forms per Claim 15.1
  - Median Number of Forms per Claim 8.0
- Total Number of Medical Treatment and Evaluation Forms: temporary disability (among 34 possible forms)
  - Number of Claims with One or More Forms among Total 1,322
  - Average Number of Forms per Claim 38.2
  - Trimmed Average Number of Forms per Claim 30.4
  - Median Number of Forms per Claim 17.5
- Total Number of Medical Treatment and Evaluation Forms: permanent disability (among 34 possible forms)
  - Number of Claims with One or More Forms among Total 745
  - Average Number of Forms per Claim 69.3
  - Trimmed Average Number of Forms per Claim 58.8
  - Median Number of Forms per Claim 44.0

The fact that some of the median numbers reported above differ greatly from the trimmed average, let alone from the average, suggest that the average figures have been skewed upward (inflated) because of the existence of claims with a very large number of forms.

## Findings: Workers' Compensation Monetary Awards for Non-death & Death WTC Claims

This section reports findings on WTC indemnity claims, which includes claims with a claim type of temporary disability, permanent partial disability-scheduled loss, permanent partial disability-nonscheduled loss, permanent total disability, or death. Within each claim type a small number of claims have no monetary award in the WCB data systems and are not included in these findings. Cases with a claim type of medical-only, denied, or non-compensatory are also not included.<sup>51</sup>

The average amount of indemnity benefits for WTC claims was \$125,865 per claim, and the median was \$71,654.<sup>52</sup> The amount awarded was highest for the 43 permanent total disability claims. The amount awarded was lowest for temporary disability claims (on a median basis) and for permanent partial disability-scheduled loss claims (on an average basis).<sup>53</sup>

Table 7 presents findings on the frequency and dollar amounts of WTC indemnity awards, by claim type. The award amounts are the total of all awards (that is, the sum of indemnity benefits paid to date and – if there are continuing payments – the present value of future payments).

**Table 7. Cash Awards: Frequency and Dollar Amount of the Total Amount Awarded, by WTC Claim Type**

	<u>Total Amount</u>		<u>Total Number of Claims</u>
	<u>Mean</u>	<u>Median</u>	
<b>All claims</b>	\$125,865	\$71,654	4,414
<b>Temporary disability</b>	\$32,607	\$10,160	1,540
<b>Permanent partial disability-scheduled loss</b>	\$27,719	\$20,160	226
<b>Permanent partial disability-nonscheduled loss</b>	\$222,565	\$235,402	546
<b>Permanent total disability</b>	\$268,474	\$287,469	43
<b>Death</b>	\$177,769	\$199,204	2,059

Notes: The total amount is a combination of the current amount paid and, where applicable, of an estimate of the present value of continuing payments. The mean and median computations are restricted to claims with actual awards (that is, claims in the data set with a total award amount of \$0 are excluded from this analysis). The sum of the total amount awarded, across all claims, was \$555 million. The sum of the current amount paid was \$220 million and the sum of the estimated present value of future payments was \$335 million.

There were 4,443 indemnity claims, but for 29 the award amount was not available in the WCB data systems. For example, there were 2,064 total death claims, but only 2,059 have award data available. The other 5 claims were excluded from the average and median total award calculations. Similarly, 17 permanent partial disability – nonscheduled loss and 7 temporary disability claims were excluded. Hence, we report on only the 4,414 claims that have award data available.

Comparable figures for group type are reported in Table 8.

**Table 8. Cash Awards: Frequency and Dollar Amount of the Total Amount Awarded, by WTC Group Type**

	<u>Total Amount</u>		<u>Total Number of Claims</u>
	<u>Mean</u>	<u>Median</u>	
<b>All claims</b>	\$125,865	\$71,654	4,414
<b>WTC victim</b>	\$135,178	\$100,405	3,641
<b>RRC at the WTC site</b>	\$85,608	\$29,503	676
<b>RRC not at the WTC site</b>	\$71,148	\$12,855	12
<b>Other</b>	\$52,913	\$9,120	63
<b>Indeterminate</b>	\$60,387	\$14,260	22

Notes:

- (1) The total amount is a combination of the current amount paid and, where applicable, of an estimate of the present value of continuing payments.
- (2) The mean and median computations are restricted to claims with actual awards (that is, claims in the data set with a total award amount of \$0 are excluded from this analysis).
- (3) Indeterminate claims have insufficient or conflicting source material to determine worker group type.

### **Waiver Agreements (Section 32 Awards)**

Section 32 of the workers' compensation law permits parties to settle any or all issues in a claim, subject to approval of the Board.<sup>54</sup> The Section 32 (waiver agreement) awards are included in the "total amount" reported in Tables 6 and 7. However, these lump-sum settlements are of sufficient interest to warrant separate mention here.

There were 635 WTC cases with Section 32 awards. The average value of the award was \$104,100 (all cases); \$67,895 (temporary disability claims); \$94,764 (PPD-NSL claims); and \$172,704 (death claims). It appears that a higher percentage of Section 32 awards in WTC claims were completed without an attorney, compared to non-WTC claims. In 224 WTC claims (35%), the waiver agreement was completed without an attorney fee. The Board electronic case folder shows a claimant attorney in 34 of these claims but the data cannot readily identify pro bono representation in other settlements. Between 2004 and 2008, the Board approved 44,077 non-WTC settlements. Of these, 2,392 (5.4%) were completed without an attorney fee.

In the 411 claims resolved by waiver agreement for which an attorney fee was assessed, the average gross settlement was \$75,962, with an average attorney fee of \$12,341.

## Findings: Process Measures for Non-death & Death WTC Claims

This section examines various aspects of claims administration for WTC cases. Findings are presented with respect to claims resolution, controverting and appealing claims, claimant attorney representation and legal fees, and the length of time between key dates in claim administration.

Of necessity, the focus in this section differs from that in preceding sections of this report. Background information and findings are presented regarding Board metrics for evaluating various aspects of claims resolution. In some instances, the analyses pertain to all WTC claims. In other instances, the analyses pertain solely to WTC claims with ANCR-established and for which cash benefits have been awarded (hereafter referred to as indemnity claims).<sup>55</sup>

### Case Assembly

The Board received, on average, 16.4 million documents in the mail each year from 2002 through 2007. Arriving documents are converted into electronic images and handled by an electronic workflow system, which stores and routes these documents for retrieval and review. Documents can arrive at the Board with or without a Board claim number. When documents arrive without a claim number, the image is routed to staff in Claims Operations called indexers. The indexer is responsible for reading this incoming mail and for identifying whether another workers' compensation claim for the same injured worker has already been assembled. If not, the indexer must determine if a new claim should be assembled and if special handling is indicated (including the identification of a WTC claim).<sup>56</sup> The indexer gathers any other incoming mail previously received about this injury and "assembles" an Electronic Case Folder (claim record) using the Board's Claims Information System. Case assembly is the starting point the Board uses to determine if a claim should be established. Assembling a case does not mean that an injured worker is entitled to benefits.

### Resolving Claims

When a claim is assembled, the Board works to ensure that injured workers receive the benefits to which they are entitled, to ensure system stakeholders act appropriately and to resolve issues in dispute between parties. If a duplicate claim is assembled in error for the same workplace event, it is cancelled. If a claim is covered under an Alternate Dispute Resolution program, the claim is closed when the parties report resolution. All other claims are considered pending until the Board determines that there are no issues in dispute and makes a finding of No Further Action (NFA). A finding of NFA means that the Board does not, at the present time, contemplate taking any further action on the claim.<sup>57</sup> All rulings made regarding the claim stand until the claim is either appealed or reopened.

The Board can resolve issues through an **informal** administrative determination<sup>58</sup> or conciliation agreement.<sup>59</sup> Many claims receive **formal** intervention by the Board, either by pre-hearing conference (if the claim has been controverted) or hearings before an administrative law judge, with the possibility of administrative review by the Board. For claims handled by the Board's formal resolution processes, all issues will be resolved by a decision of an Administrative Law Judge or the Board.

Overall, 11,142 (or 96%) of 11,627 WTC claims are currently resolved with a status of NFA. The Board was able to informally resolve 4,205 (or 38%) claims, and used a formal resolution process to fully resolve 6,937 (or 62%) claims.

A finding of NFA does not necessarily mean that the claim is permanently closed. Claims are readily reopened for reasons such as a change in the injured worker's disability, or a request for approval of additional medical treatment. Most WTC claims, however, have remained with an NFA finding for years. Nearly 65% of closed WTC claims (7,177 of 11,142) were resolved by one NFA finding by the Board and

remain closed. Table 9 reports on the number of WTC claims closed for at least 24 months after the Board's NFA finding.

**Table 9. Frequency Distribution of Closed WTC-Related Workers' Compensation Claims, by Index Date**

<u>Index Period</u>	<u>Number of Claims</u>	<u>Number of Claims Closed</u>	<u>Percent of Claims Closed</u>	<u>Percent of Claims Closed More Than 24 Months</u>
9/11/01 to 9/10/02	6,064	5,994	98.8	91.2
9/11/02 to 9/10/03	1,010	970	96.0	85.4
9/11/03 to 9/10/04	2,228	2,167	97.3	88.0
9/11/04 to 9/10/05	285	262	91.9	59.9
9/11/05 to 9/10/06	396	357	90.2	53.8
9/11/06 to 9/10/07	873	800	91.6	NA
9/11/07 to 9/10/08	599	525	87.6	NA
9/11/08 to 6/3/09	172	67	39.0	NA
<b>Total</b>	<b>11,627</b>	<b>11,142</b>	<b>95.8</b>	

The data shows that nearly 96% of all WTC claims have no issues pending before the Board. Of the claims filed within a year of the event, 98.8% are closed, and 91.2% of these claims have been closed for more than 24 months.

### ***Pending Claims***

As of June 11, 2009, there were 485 WTC claims pending before the Board. Many of these WTC claims were still pending because they were recently filed by the injured worker or had recently been re-opened.<sup>60</sup>

The distribution of pending claims, by index year, is indicated in Table 10. Nearly 37% of all pending claims (179 of 485) were indexed recently – since 9/11/07.

The 485 pending WTC claims included claims from all groups of injured workers. As indicated by the table below, pending claims as a percentage of each injured worker group type did not vary much: pending claims constituted 1.3% of WTC victim claims. At the other end of the spectrum, 15.5% of claims were undetermined (with insufficient or conflicting information in the claim folder to accurately determine the worker group type).

**Table 10. Frequency Distribution of Pending WTC Workers' Compensation Claims, by Index Date**

<u>Index Period</u>	<u>Number of Claims</u>	<u>Number Pending</u>	<u>Percentage of Claims</u>
9/11/01 to 9/10/02	6,064	70	1.2
9/11/02 to 9/10/03	1,010	40	4.0
9/11/03 to 9/10/04	2,228	61	2.7
9/11/04 to 9/10/05	285	23	8.1
9/11/05 to 9/10/06	396	39	9.8
9/11/06 to 9/10/07	873	73	8.4
9/11/07 to 9/10/08	599	74	12.4
9/11/08 to 6/3/09 <sup>61</sup>	172	105	61.0
<b>Total</b>	<b>11,627</b>	<b>485</b>	<b>4.2</b>

However, when measured as a percentage of the total number of pending claims, one group type dominated. RRC at the WTC site constituted 72% (349 out of 485) of all pending claims, as indicated in Table 11.

**Table 11. Frequency Distribution of WTC Workers' Compensation Claims, by Pending Status and by Group Type**

<u>Injured Worker Group Type</u>	<u>Number of Claims</u>	<u>Number Pending</u>	<u>Percentage of Claims</u>
WTC victim	6,427	86	1.3
RRC at the WTC site	4,596	349	7.6
RRC not at the WTC site	74	2	2.7
Other	324	16	4.9
Indeterminate	206	32	15.5
<b>Total</b>	<b>11,627</b>	<b>485</b>	<b>4.2</b>



More than 82% of the pending claims had been pending for less than six months. The largest groups of pending claims were those pending sixty days or fewer (50% of all pending claims) and those pending more than 180 days (18% of all pending claims). On average, claims had been pending 112 days. The median was 63 days, suggesting that particularly high values skewed the average upward.

In measuring the length of time that a claim had been pending, computations were based on the NFA status of the claim. If the WTC claim never had an NFA finding, the case assembly (index) date was used as the starting point. Of the 485 pending WTC claims, 115 never had a NFA. They had been pending an average of 171 days; the median was 126 days.

If the WTC claim had an NFA finding, the date the WTC claim was reopened was used as the starting point. Three hundred seventy of the 485 pending WTC claims had been reopened. They had been pending an average of 94 days; the median was 50 days.

**Table 12. Frequency Distribution of WTC Workers' Compensation Claims, by Days Pending and by Group Type**

<u>Injured Worker Group Type</u>	<u>Days Pending</u>						<u>Total</u>
	<u>1 to 60</u>	<u>61 to 90</u>	<u>91 to 120</u>	<u>121 to 150</u>	<u>151 to 180</u>	<u>&gt;180</u>	
WTC victim	55	11	9	4	1	6	86
RRC at the WTC site	164	41	34	29	18	63	349
RRC not at the WTC site	1	0	1	0	0	0	2
Other	5	0	0	3	0	8	16
Indeterminate	17	1	1	3	2	8	32
<b>Total</b>	<b>242</b>	<b>53</b>	<b>45</b>	<b>39</b>	<b>21</b>	<b>85</b>	<b>485</b>
<b>Percent</b>	<b>49.9</b>	<b>10.9</b>	<b>9.3</b>	<b>8.0</b>	<b>4.3</b>	<b>17.5</b>	<b>100.0</b>

### ***Establishing Claims***

In New York, the worker has the initial responsibility to produce medical evidence to support a workers' compensation claim. When no medical reports are received by the Board, a claim will be resolved without compensation, noting the lack of medical evidence and advising the worker that the claim can be reopened upon receipt of a medical report. As indicated earlier, 5,220 claims with a claim type of non-compensatory were indexed but never had ANCR established. In 3,677 of these claims, no medical report of any type was received by the Board.

The Board established 1,503 WTC medical-only benefit claims and 4,443 WTC claims for indemnity benefits. Of the 4,443 indemnity claims, the Board resolved approximately one-third informally and two-thirds through formal resolution processes (See Table 13).

**Table 13. Frequency Distribution of WTC Workers' Compensation Indemnity Claims, by Type of Resolution and by Group Type**

<u>Injured Worker Group Type</u>	<u>Informal</u>	<u>Formal</u>	<u>Total</u>
WTC victim	1,515	2,135	3,650
RRC at the WTC site	16	674	690
RRC not at the WTC site	0	13	13
Other	6	62	68
Indeterminate	3	19	22
Total	1,540	2,903	4,443
Percent	34.7	65.3	100.0

### **Controverted Claims**

The definition of a controverted claim is: “A claim challenged by the insurer on stated grounds. The Board sets a pre-hearing [conference] for the determination of the grounds and directs the parties to appear and present their case.”<sup>62</sup> When an insurer controverts a claim, a worker receives no benefits pending the resolution of the controversion. The insurer must notify the Board using the form *C-7 Notice That Right To Compensation Is Controverted* and the Board handles the claim through its controverted claim process, ultimately determining whether the carrier is obligated to provide benefits.

One problem in evaluating the performance of workers' compensation programs over time is that important fundamentals may change due to statutory, regulatory, or administrative reforms. WTC claims, albeit a relatively small number of claims, have been affected by one such change regarding controversion.

Prior to enacting the Workers' Compensation Reform Act of 2007, the Board was required to hold a pre-hearing conference in a controverted claim within 60 days of indexing. Today, the Board holds a pre-hearing conference within 30 days of receiving both the C-7 and a qualifying medical report. Controverted claims are handled under an adjudication process that operates with the goal of resolving controverted issues within 90 days of the filing of the C-7 and a qualifying medical report. These changes will have a direct bearing on the validity of various controversion indices that include claims with accident dates that precede and follow the statutory and regulatory reforms. However, since relatively few WTC claims thus far have been affected by these changes, findings for various controversion measures are presented below.

The extent of controversion, by injured worker group type, varied substantially. While only 12% of WTC victim claims (428 out of 3,650 WTC Victim indemnity claims) were controverted, more than three-fourths of indemnity claims for rescue, recovery, or clean-up were controverted (76% or 535 out of 703 RRC indemnity claims). The frequency distribution of controversion among WTC indemnity claims, by injured worker group type, is indicated in Table 14.

**Table 14. Frequency Distribution of WTC Workers' Compensation Indemnity Claims that were Controverted, by Group Type**

<u>Injured Worker Group Type</u>	<u>Total Claims</u>	<u>Controverted</u>	<u>Percent Controverted</u>
WTC victim	3,650	428	11.7%
RRC at the WTC site	690	524	75.9%
RRC not at the WTC site	13	11	84.6%
Other	68	30	44.1%
Indeterminate	22	7	31.8%
<b>Total</b>	<b>4,443</b>	<b>1,000</b>	<b>22.5%</b>

Nearly 23% (1,000 of 4,443) of WTC indemnity claims were controverted. By way of comparison, the controversion rate for non-WTC claims indexed between 2001 and 2007 with ANCR-established was less than 10% (9.9%, or 59,066 out of 593,047 non-WTC claims).

The September 11th Worker Protection Task Force report of June 2009 found that more than half of all RRC claims (whether or not ANCR was ultimately established) were controverted. It also found that the controversion rate for RRC claims filed between August 14, 2007 and May 1, 2008 was as high as for earlier RRC claims and actually higher for some categories of private carriers and self-insured employers.<sup>63</sup>

The frequency distribution of controversion among WTC indemnity claims, by insurer type, is presented in Table 15:

**Table 15. Frequency Distribution of WTC Workers' Compensation Indemnity Claims that were Controverted, by Insurer Type**

<u>Insurer Type</u>	<u>Total Claims</u>	<u>Controverted</u>	<u>Controverted Claim Rate</u>
Private Insurance Carriers	3,311	585	17.7%
Self-insureds in the Public Sector	523	172	32.9%
Self-insureds in the Private Sector	242	69	28.5%
The State Insurance Fund	239	144	60.3%
New York State	109	22	20.2%
Special Fund – Unknown	19	8	42.1%
<b>Total</b>	<b>4,443</b>	<b>1,000</b>	<b>22.5%</b>

The insurer types who covered the vast majority of WTC claims (private carriers, and self-insured employers in the public sector) controverted relatively fewer of the WTC indemnity claims. The controversion rate for the State Insurance Fund (60.3%) is particularly notable, since it was two to three-and-a-half times the controversion rate for private carriers, self-insured employers, or New York State.

Table 16 reports by index year the total number of indexed claims, the number and percentage of indexed claims that were controverted, and the number and percentage of controverted claims that were established (that is, were medical-only or indemnity benefit claims). This table – unlike the tables before and after it – is not limited to indemnity-only claims.

The percentage of controverted claims increased from 13.5% in index year 2001 to 78.8% in index year 2004 and remained relatively constant for several years thereafter (index years 2005-2007). Some caution is warranted in interpreting any of these numbers, in particular the rates of controversy and outcomes from index year 2008 and 2009, because insufficient time may have passed to provide a comparable perspective on controverted claim rates.

Overall, fewer than 35% of the WTC controverted claims were established. For non-WTC claims indexed between 2001 and 2007, there were 161,744 controverted claims. Of these, 74,655 (or 46%) have had ANCR established.

**Table 16. Frequency Distribution of WTC Workers' Compensation Claims that were Controverted and that were Established, by Index Year**

<u>Index Year</u>	<u>Total Number of Indexed Claims</u>	<u>Controverted Claims Indexed</u>		<u>Controverted Claims Established</u>	
		<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
2001	4,823	653	13.5	207	31.7
2002	1,506	611	40.6	275	45.0
2003	2,552	1,601	62.7	433	27.0
2004	523	412	78.8	135	32.8
2005	258	209	81.0	106	50.7
2006	569	418	73.5	198	47.4
2007	884	537	60.7	217	40.4
2008	428	210	49.1	52	24.8
2009	84	19	22.6	4	21.1
Total	11,627	4,670	40.2	1,627	34.8

There can be substantial delay in awarding benefits when a claim is controverted. This delay can be assessed by comparing the median times required to establish a claim after assembly.<sup>64</sup>

As indicated above, the Board has developed a *Streamlined Adjudication Process* to address the root causes of delay in many controverted claims. It includes redesigned forms and process changes that will enable the resolution of controverted claims within 90 days. Complex occupational disease cases, such as those from dust diseases, are not handled in that *Streamlined Adjudication Process*, but they are counted in the timeframes above, which can push these spans of time upward.

**Table 17. Median Days to Establish a WTC Workers' Compensation, by Controversion Status and by Group Type**

<u>Injured Worker Group Type</u>	<u>Median Days to ANCR-Establish Non-Controverted Claims</u>	<u>Median Days to ANCR-Establish Controverted Claims</u>	<u>Difference in Days</u>
WTC Victim	133	251	118
RRC at the WTC site	115	532	417
RRC not at the WTC site	98	403	305
Other	182	346	164
Indeterminate	113	401	288
All Injured Worker Group Types	132	426	294

When the interval measured is from re-opening date to the date the claim is established, the median number of days required by the WCB to resolve the controversy is 214 days. Of the 1,627 controverted claims that were ultimately established, 46% had at least one re-opening (while only 8% of non-controverted claims had a re-opening).

### ***Administrative Review (Appeals)***

Parties have the right under WCL § 23 to challenge findings rendered by a Board administrative law judge by filing a request for administrative review (or appeal). These administrative reviews are conducted by a panel of three Board commissioners with the assistance of the Board's Administrative Review Division's writers, who draft a memorandum of decision (MOD) for the commissioners' consideration. The MOD may affirm, modify, reverse, or remand the judge's decision. If one of the three commissioners dissents from the MOD, a party may request Full Board Review by all of the commissioners.<sup>65</sup>

As of June 11, 2009, the Board's Administrative Review Division completed action on 1,482 appeals (involving 1,111 WTC claims). Three of the appealed claims were restored to the calendar for further development of the record. The Board's data systems do not currently enable reporting on which party filed a request for Administrative Review, the reasons for the appeal, or the results of the appeal.

Despite the incomplete data, selected characteristics of appealed claims are nonetheless notable and credible. For example, on the threshold issue of establishing the claim, there is no change to the outcome of the claim in nearly 88% of appealed claims (969 of 1,111), as indicated in Table 18.

**Table 18. Frequency Distribution of WTC Workers' Compensation Claims that Were Appealed, by Outcome of the Appeal (All WTC Claims)**

<u>Outcome of Issue: Changes in Establishment</u>	<u>Number of Appeals</u>	<u>Percentage of Appeals</u>
No ANCR before, No ANCR after appeal	180	16.2
Yes ANCR before, Yes ANCR after appeal	789	71.0
No ANCR before, Yes ANCR after appeal	123	11.1
Yes ANCR before, No ANCR after appeal	16	1.4
Require further development of case / unknown	3	0.3
<b>Total</b>	<b>1,111</b>	<b>100.0</b>

Of the 4,443 WTC indemnity claims, nearly 16% (707 of 4,443) were appealed. Among the four injured worker group types, appeals occurred least frequently among WTC victims (11.3%, or 413 out of 3,650 WTC victim claims were appealed) and most frequently among the RRC at the WTC Site claims (39.3%, or 271 out of 690 RRC at the WTC site claims were appealed).

All of these appeal rates exceed the statewide average: among the 592,836 non-WTC indemnity claims indexed from 2001 through 2007 with ANCR-established, 5.0% (29,874 out of 592,836) were appealed.

The distribution of claims having a request for Administrative Review by injured worker group type is presented in Table 19.

**Table 19. Frequency Distribution of WTC Workers' Compensation Indemnity Claims that were Appealed, by Group Type (Indemnity Claims only)**

<u>Injured Worker Group Type</u>	<u>Number of Claims</u>	<u>Appeals</u>	<u>Percentage of Claims</u>
WTC Victim	3,650	413	11.3
RRC at the WTC site	690	271	39.3
RRC not at the WTC site	13	2	15.4
Other	68	19	27.9
Indeterminate	22	2	9.1
<b>Total</b>	<b>4,443</b>	<b>707</b>	<b>15.9</b>

Similarly, the appeal rate for certain claim types is substantially higher than for others. For example, less than 5% (93 of 2,064) of WTC death claims were appealed while more than 58% (25 of 43) of claims awarded permanent total disability benefits and more than 37% (210 of 563) of claims awarded non-scheduled permanent partial disability benefits were appealed.

The distribution of claims with a request for administrative review by claim type is listed in Table 20.

**Table 20. Frequency Distribution of WTC Workers' Compensation Claims that Were Appealed, by Claim Type**

<u>Claim Type</u>	<u>Number of Claims</u>	<u>Appeals</u>	<u>Percentage of Claims</u>
Temporary disability	1,547	339	21.9
Permanent partial disability-scheduled	226	40	17.7
Permanent partial disability-nonscheduled	563	210	37.3
Permanent total disability	43	25	58.1
Death	2,064	93	4.5
<b>Total</b>	<b>4,443</b>	<b>707</b>	<b>15.9</b>

Awards to an injured worker are stayed until the conclusion of an appeal. Accordingly, the duration of an appeal may adversely impact the injured worker. As a result, some injured workers may settle their claim for a lower award rather than risk a lengthy appeal over a higher award.

The duration of appeals in WTC claims was measured.<sup>66</sup> The average length of time for an appeal to be resolved was 133 days; the median was 97 days.

Out of concern for the potential impact of appeals in any workers' compensation claims (non-WTC claims as well as WTC claims), the Board reorganized the Administrative Review Division to accelerate the handling of appeals handling and to reduce the time required to complete all requests for Administrative Review.

### **Representation**

Claimant attorney usage is a frequently suggested measure of a workers' compensation system's litigiousness, though there is a dearth of comprehensive, interjurisdictional data on this issue.<sup>67</sup> In New York State, only an attorney or licensed representative may represent an injured worker at a Board hearing.

An attorney represented the claimant in more than 80% of all non-death WTC workers' compensation indemnity claims.<sup>68</sup> For non-WTC claims indexed between 2001 and 2007, there were 591,397 non-death claims with indemnity benefits. Of these claims, 325,473 (or 55%) had attorney representation.

Attorney representation was substantially less common in WTC death claims, as fewer than one in five claims used attorneys. By way of comparison, claimant attorney representation for non-WTC death claims indexed between 2001 and 2007 occurred in 1,446 out of 1,650 (or 87.6%) claims.

The frequency distribution of attorney representation in WTC indemnity claims is as follows:

- All indemnity claims:  
51.6% (2,291 of 4,443)
- Temporary (total or partial) disability:  
71.9% (1,113 of 1,547)
- Permanent partial disability-scheduled loss:  
92.9% (210 of 226)

- Permanent partial disability-nonscheduled loss:  
98.0% (552 of 563)
- Permanent total disability:  
97.7% (42 of 43)
- Death:  
18.1% (374 of 2,064)

Claimant attorneys may not directly charge their clients. The claimant attorney's fee comes from a lien on the Board's award of compensation to the claimant, and must be approved by the Board.

Attorney representation is common in claims that are permanently settled through a Section 32 Waiver Agreement. An attorney represented the claimant in 445 of these 635 WTC claims (70%). The average legal fee paid by the claimant in WTC indemnity claims with claimant attorney representation, a legal fee awarded, and a Section 32 (waiver agreement) award was \$12,341 (411 claims). The median legal fee was \$10,840. As a comparison, from 2005 to 2008 the Board approved 37,411 non-WTC related Section 32 Waiver Agreements. Of these claims, 33,930 (or 90.7%) had attorney representation.

For indemnity claims having claimant attorney representation and a legal fee awarded but no Section 32 Waiver Agreement, the average legal fee was \$3,653. The median legal fee in these claims was \$2,500.

Thus, the average legal fee for a WTC claim with a Section 32 award was nearly 3.8 times the average legal fee for a WTC claim without a Section 32 award. The median legal fee for Section 32 claims was 4.3 times that of non-Section 32 claims.

The large disparity between legal fees for WTC claims involving Section 32 awards and those without Section 32 awards holds across each of the claim types listed below. As such, attributing the fee disparity to relative differences in the distribution of claim types or to the requisite time required of attorneys in representing a claimant does not appear, on its face, to be plausible.

The mean and median attorney fees paid by claimants in WTC claims with Section 32 awards for the indemnity claim type categories are shown in Table 21.

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**Table 21. Attorney Fees, by Claim Type: Section 32 Claims Only**

<u>Claim Type</u>	<u>Mean</u>	<u>Median</u>	<u>Total</u>
Temporary (total or partial) disability	\$10,993	\$9,038	316 claims
Permanent partial disability-scheduled loss	\$15,729	\$16,575	6 claims
Permanent partial disability-nonscheduled loss	\$16,823	\$15,031	68 claims
Permanent total disability	\$18,870	\$23,800	3 claims
Death	\$16,847	\$14,500	18 claims

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The mean and median attorney fees paid by claimants in WTC claims without a Section 32 award are listed in Table 22.

**Table 22. Attorney Fees, by Claim Type: Non-Section 32 Claims**

	<u>Mean</u>	<u>Median</u>	<u>Total</u>
Temporary (total or partial) disability	\$1,804	\$855	674 claims
Permanent partial disability-scheduled loss	\$2,582	\$1,700	196 claims
Permanent partial disability-nonscheduled loss	\$6,013	\$5,158	452 claims
Permanent total disability	\$7,443	\$6,075	38 claims
Death	\$6,580	\$5,000	84 claims

### ***Length of Time***

In the preceding section, findings were presented regarding the use of selected administrative procedures for resolving WTC cases. That is, these summary measures of the claims resolution process pertain to “what” was done. Another summary measure of the claims resolution process is “how long” it takes to do things. Specifically, this section examines the length of time between key dates in the claims resolution process.<sup>69</sup> Several sentinel dates in claims administration from the Board’s data systems are used in this section:

- Injury (accident or exposure)
- Case assembly
- ANCR-established (ANCR or ODNCR)
- First indemnity benefit award
- Permanency classification

### **Injury Date**

The date the worker reports being injured is the first date from where the claims resolution process may be measured. Although occupational disease claims do not have a discernible accident date, the findings in this section use the date of disablement instead. There are distinctive features of occupational disease cases (such as a potentially long latency period, as well as when and how the date of the onset of the occupational illness is determined) that warrant caution in using any duration-of-time computations for which the date of injury is the “start date.”

### **Case Assembly**

In New York State, assembling a claim, involves creating an electronic claim folder and assigning a case number. Case assembly occurs in claims with more than seven days of lost work, the prospect of permanent disability, or a request for indemnity benefits.<sup>70</sup>

### **ANCR Established (ANCR or ODNCR)**

Eligibility for workers’ compensation medical and cash benefits is contingent upon the establishment of ANCR or ODNCR. The existence of ANCR or ODNCR is determined by the Board, either through informal or formal claim resolution processes.

### **First Indemnity Benefit Award**

The first indemnity benefit date used for the WTC length-of-time computations is the date the Board first determines that the injured worker is entitled to an indemnity benefit. In a death claim, the first indemnity benefit award date is the date any monetary award is made.

In some instances, this date may actually be later than the date the injured worker actually received benefits. Insurers may make indemnity payments to the injured worker before the Board issues an award for benefits. Indeed, the length of time for the insurer to make the first payment to an injured worker is one of the most frequently used workers' compensation performance measures in other jurisdictions.<sup>71</sup> However, at present data for this metric is not available to the Board.

### **Permanency Classification**

This is the date on which the Board finds that the injured worker has sustained a total or partial permanent disability. The classification date can be set no earlier than the date the injured worker has reached maximum medical improvement (MMI).

The Board defines MMI as: "An assessed condition of a claimant based on medical judgment that (a) the claimant has recovered from the work injury to the greatest extent that is expected and (b) no further change in his/her condition is expected."<sup>72</sup>

Eight hundred thirty-two of 11,627 WTC claims involved a permanent disability. The intervals from case assembly to permanency classification in these claims are listed in Table 23.

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**Table 23. Days from Assembly to Classification, by Claim Type**

<u>Claim Type</u>	<u>Assembly to Classification</u>		<u>Reopened</u>	<u>Days Closed</u>	
	<u>Mean</u>	<u>Median</u>	<u>Percent</u>	<u>Mean</u>	<u>Median</u>
Permanent partial disability-scheduled loss	841	673	85.0	439	249
Permanent partial disability-nonscheduled loss	1,212	1,148	89.7	749	658
Permanent total disability	1,304	1,212	93.0	653	463

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The intervals from accident to permanency classification for the 825 permanent disability claims with available information on dates are listed in Table 24. The accident date was not available in seven claims.

**Table 24. Days from Accident to Classification, by Claim Type**

<u>Claim Type</u>	<u>Assembly to Classification</u>		<u>Reopened</u>	<u>Days Closed</u>	
	<u>Mean</u>	<u>Median</u>	<u>Percent</u>	<u>Mean</u>	<u>Median</u>
Permanent partial disability-scheduled loss	968	821	85.0	439	249
Permanent partial disability-nonscheduled loss	1,562	1,484	89.9	754	660
Permanent total disability	1,881	1,889	93.0	653	463

**Indemnity Claims**

The Board awarded indemnity benefits in 4,443 of 11,627 WTC claims. The intervals from case assembly to establishing ANCR are listed in Table 25.

**Table 25. Days from Assembly to ANCR establishment, by Claim Type**

<u>Claim Type</u>	<u>Days</u>	
	<u>Mean to ANCR</u>	<u>Median to ANCR</u>
Temporary (total or partial) disability	361	199
Permanent partial disability-scheduled loss	242	174
Permanent partial disability-nonscheduled loss	365	224
Permanent total disability	379	196
Death	180	129

The intervals from case assembly to first indemnity benefits award are listed in Table 26.

**Table 26. Days from Assembly to First Indemnity Money, by Claim Type**

	Days	
	Mean to First Award	Median to First Award
Temporary (total or partial) disability	474	257
Permanent partial disability–scheduled loss	509	362
Permanent partial disability–nonscheduled loss	493	309
Permanent total disability	472	226
Death	199	130

In the 11,627 WTC claims assembled, the average time between accident date and case assembly for claims with data available is 513 days. The median is 135 days. The high average time is likely due to the fact that the exposure claims subject to Article 8-A use the last date of RRC work as the accident date, rather than the date of disablement.

These findings indicate general patterns, on a systemic basis, without ascertaining the impact (if any) of different entities on the length of time between benchmark dates. It is extremely difficult to attribute responsibility to any single entity for the length-of-time findings reported here because of:

- the multiplicity of parties involved with workers' compensation claims including but not limited to insurers; employers; the Workers' Compensation Board; and myriad types of health care providers, attorneys, and claimants;
- the paucity of data on external parties' impact (if any) in causing both warranted and unwarranted delays in the process aside from data compiled to monitor compliance with deadlines mandated by statute or regulation; or
- the number of potential causal factors (such as the length of time to reach maximum medical improvement).<sup>73</sup>

## Conclusion

The effect of September 11, 2001, reverberates today in New York. Workers continue to open cases, and those claims go to dedicated work groups in place since September 2001. Judges and staff who've received special training for handling these claims regularly hear additional facts in existing cases, on an expedited basis. There is a significant number of cases that lack the basic information to consider for benefits, so the Board is actively contacting those claimants to ensure their cases are inactive because they have not suffered any illnesses or lost time.

The Workers' Compensation Board has received 13,676 cases from victims of the attacks, and from the workers who performed rescue, recovery and clean-up work. These people are separate from the thousands of federal and New York City workers who also served at the site, but are part of another workers' compensation system.

New York's governors issued more than 120 executive orders relating to state operations in World Trade Center matters, including a direction "to assist in every way all persons killed or injured and their families."<sup>74</sup> The Workers' Compensation Board immediately implemented new procedures to handle the thousands of cases it processed on a priority basis in 2001 and 2002.

While focused in lower Manhattan, the response to the disaster was national, so the Board is actively reaching out to workers across the country to advise them that they can file an eight-question form and preserve their right to future benefits, should they ever need them.

When workers require treatment for their workplace injuries and illnesses, and benefits for lost wages, it is the duty of the Workers' Compensation Board to ensure they receive them. Whether they were injured or not, the people who worked at the World Trade Center are remembered in New York.

## Appendix A. Context and Methodology

### *Eligibility Criteria under the Law*

Per New York State Workers' Compensation Law, the threshold eligibility criterion for an award of indemnity benefits is the establishment of ANCR. The criteria for workplace accidents are summarized as follows:

Minimal conditions that must be met before financial responsibility can be assigned to a claim for workers' compensation. Specifically, it must be established that (a) a work-connected accident covered by the Workers' Compensation Law occurred, (b) following the accident, the claimant notified his/her employer within the time limit required by the Workers' Compensation Law and (c) a causal relationship exists between the accident and a resulting injury or disability.<sup>75</sup>

For diseases, there is a similar eligibility criterion. One must establish ODNCR.

Minimal conditions that must be met before financial responsibility can be assigned to a claim for workers' compensation based on occupational disease. Specifically, it must be established that (a) the claimant has an occupational disease recognized by the WCL, (b) the claimant has, after the onset of the disease, notified his/her employer within the statutory time limit (two years from [the] date of disablement or from [the] date [the] claimant knew or should have known that the disease was due to the nature of the employment, whichever is greater), and (c) a causal relationship exists between work-related activities and exposure, the development of the occupational disease, and a subsequent disability.<sup>76</sup>

The types of disability for which indemnity benefits are paid in New York State include: temporary total disability, temporary partial disability, permanent partial disability, and permanent total disability. The computation rate for indemnity benefits is two-thirds of the claimant's average weekly wage in the prior year, subject to a statutorily-specified minimum and maximum weekly benefit. Most disability types have a seven-day waiting period before indemnity benefits are payable.<sup>77</sup>

### **WTC Volunteers**

Under normal circumstances, volunteers are not eligible for workers' compensation benefits. The WCL requires that an injured worker be the employee of an employer that is subject to the workers' compensation law in order to qualify for benefits. A volunteer does not satisfy the WCL's definition of employee.

Because of the special circumstances of the World Trade Center attacks, federal and state lawmakers have afforded certain workers' compensation rights to volunteers who participated in RRC efforts, and subsequently became ill. In 2002, Congress authorized \$25 million to pay for workers' compensation benefits for WTC volunteers.<sup>78</sup> Article 8-A (WCL § 167) authorizes payment of benefits to volunteers out of the Uninsured Employers Fund (UEF), as long as federal funds are available to reimburse the UEF for such claims. It also confers the same relaxed notice and filing requirements as RRC employees.

To date, the Board has processed the claims of 1,148 WTC volunteers. These claims are not included in this study because the Board does not maintain the same electronic data regarding these claims and because they have been processed differently than traditional workers' compensation claims.

### **Alternative Dispute Resolution Claims**

The WCL authorizes an employer and its recognized union to establish an alternative dispute resolution (ADR) system for the resolution of workers' compensation claims.<sup>79</sup>

Alternative Dispute Resolution programs differ in several ways from the traditional workers' compensation system in New York. For example, the claims resolution process may use an ombudsperson, mediator, or arbitrator, rather than a Board administrative law judge who conducts hearings and issues decisions. Medical treatment for workers' compensation claims may be furnished by health care providers mutually agreed upon by the parties.<sup>80</sup>

The ADR programs must adhere to New York State workers' compensation law and are still accountable to regulatory authorities. However, important aspects of ADR programs are largely self-administered by the employer and its employees (as represented by a labor union). The parties do not have an obligation to report at the individual claim level to the Board and as a result, less data is available on ADR claims.

Because of these and other differences between ADR programs and the traditional workers' compensation system, ADR claims were not included in the analysis in this report.

The 901 WTC workers' compensation claims handled under ADR programs were excluded from this study.

## Appendix B. Glossary

Definitions of selected terms used in this report are listed below.

For additional definitions, see: New York State Workers' Compensation Board, "About Us: Glossary of Workers' Compensation Terms" (no date).

<http://www.wcb.ny.gov/content/main/TheBoard/glossary.jsp>

For additional background information about the Workers' Compensation Board and the workers' compensation system in New York, see various references in the endnotes to this World Trade Center report, including: Workers' Compensation Board, *2006 Annual Report* (no date),

[http://www.wcb.ny.gov/content/main/TheBoard/2006AnnualReport\\_Web.pdf](http://www.wcb.ny.gov/content/main/TheBoard/2006AnnualReport_Web.pdf);

Workers' Compensation Board, *Employers' Handbook[:] A Guide to the Workers' Compensation and the Disability Benefits System for the New York State Business Owner* (June 2008),

<http://www.wcb.ny.gov/content/main/Employers/EmployerHandbook.pdf>.

The following definitions are taken from the Glossary cited above.

### **Accident, Notice and Causal Relationship (ANCR)**

Minimal conditions that must be met before financial responsibility can be assigned to a claim for workers' compensation. Specifically, it must be established that

- a work-connected accident covered by the workers' compensation law occurred;
- following the accident, the claimant notified his/her employer within the time limit required by the workers' compensation law; and
- a causal relationship exists between the accident and a resulting injury or disability.

### **Board Panel**

A panel, comprising three Workers' Compensation Board members (at least one of whom is usually a lawyer), that reviews requests to amend decisions made by law judges, reopens closed cases and considers applications for lump sum non-schedule adjustment awards.

### **Case**

A reported work injury or illness which has been assembled and assigned a case number (indexed) by an indexing unit of the Workers' Compensation Board.

### **Claim**

A request, on a prescribed Form C-3, for workers' compensation for work-connected injury, occupational disease, disablement, or death. A claimant must file a claim within a two-year period from the occurrence of the accidental injury, knowledge of occupational disablement, or death. Failure to file a claim may bar an award for compensation unless the employer has made advance benefit payment or fails to raise the issue, in which event the claim filing requirement is deemed waived.

### **Claims Information Systems (CIS)**

A data system used by the Board's Claims Unit to record basic case information, such as parties of interest, current issues and scheduled hearings. CIS has also historically been utilized in calendaring of cases (i.e., establishing hearing schedules) and in case identification.

### **Controverted Claim**

A claim challenged by the insurer on stated grounds. The Board sets a pre-hearing for the determination of the grounds and directs the parties to appear and present their cases.



### **Decision**

A determination arrived at after consideration of all submitted documents, evidence and medical testimony. A report of a conclusion, typically rendered by a law judge or Board panel.

### **Examiner**

Incumbent in the workers' compensation examiner job title series who performs examining work, applying knowledge of law and of Board rules, regulations, policies and procedures to compensation and disability cases. Examiners may perform the following actions regarding workers' compensation cases:

- determining whether a case should be indexed;
- evaluating claim forms and developing information required by judges for case decisions;
- requesting information (by phone, letter, etc.) needed for case development;
- evaluating whether a compensation case may be processed on an informal calendar;
- referring appropriate cases to the conciliation process; and
- preparing formal notices of decision based on judge's directions.

### **Hearing**

The WCL provides that no case may be closed without notice to all interested parties, with all such parties having an opportunity to be heard. Board hearings are held before workers' compensation law judges who hear and determine claims for compensation, for the purpose of ascertaining the rights of the parties. The Board, upon receipt of an application for review of a judge's decision, may also hold hearings.

### **Indemnity Benefits**

Compensation paid to the workers' compensation claimants for non-medical loss resulting from an injury or illness. Six types of award are permitted by the WCL:

- temporary total disability benefits (for periods of total wage loss);
- temporary partial disability benefits (for periods of partial wage loss);
- facial disfigurement awards (at judge's discretion but subject to a maximum of \$20,000, for cosmetic facial disfigurement resulting from the accident or exposure);
- permanent partial disability benefits (for loss of physical function or for periods of partial wage loss after a claimant has been classified as having a permanent partial disability);
- permanent total disability benefits (for loss of wage earning capacity after a claimant has been classified as having a permanent total disability); and
- death benefits (compensation benefits awarded to spouse, children or under certain circumstances, other family members following a work-related death).

### **Indexed Claim**

A claim case folder assembled and assigned a case number by the Board's Claims Unit.

### **Non-Schedule Permanent Partial Disability**

Non-fatal injuries that do not involve schedule permanent partial disabilities or cosmetic facial disfigurement and where the claimant retains some earning capacity are assigned permanent disability benefits based on the claimant's actual or presumed wage loss. Benefits continue for the duration of the wage loss disability.

### **Occupational Disease (OD)**

A disease arising from employment conditions for a class of workers, with the disease occurring as a natural incident for particular occupations, distinct from and exceeding the ordinary hazards and risks of employment. To be considered an occupational disease, there must be some recognizable link between the disease and some distinctive feature of the workers' job.

### **Occupational Disease, Notice and Causal Relationship (ODNCR)**

Minimal conditions that must be met before financial responsibility can be assigned to a claim for workers' compensation based on occupational disease. Specifically, it must be established that (a) the claimant has an occupational disease recognized by the WCL, (b) the claimant has, after the onset of the disease, notified his/her employer within the statutory time limit (two years from date of disablement or from date when claimant knew or should have known that the disease was due to the nature of the employment, whichever is greater), and (c) a causal relationship exists between work-related activities and exposure, the development of the occupational disease, and a subsequent disability.

**Occupational Illness**

Any abnormal condition or disorder, other than one resulting from an occupational injury, caused by exposure to environmental factors associated with employment; it includes acute and chronic illnesses or diseases that may be caused by inhalation, absorption, ingestion or direct contact.

**Occupational Injury**

Any injury, such as a fracture, sprain, or amputation, that results from a work accident or other exposure involving a single accident in the work environment.

**Schedule Permanent Partial Disability**

Maximum benefit week schedules in the WCL are generally used in determining lifetime benefits for injuries to major body parts. Injuries amounting to less than a 100 percent functional loss are awarded a percentage of the scheduled weeks, and there are also provisions for additional weeks required for a protracted healing period.

**Workers' Compensation Board, New York State (Board)**

(a) The agency charged with administering the Workers' Compensation Law, the Volunteer Ambulance Workers' Benefit Law and the Volunteer Firefighters' Benefit Law and the Disability Benefits Law. (b) The thirteen member Board responsible (directly or through review of delegated authority) for determining all issues involving claims under the WCL. Members are appointed to seven-year terms by the Governor, by and with the advice and consent of the Senate. The governor designates the chair and vice-chair.

**Workers' Compensation Law (WCL)**

Chapter 67 of the Consolidated Laws, governing the workers' compensation system; separate laws cover compensation benefits for volunteer firefighters and volunteer ambulance workers.

**Workers' Compensation Law Judge (WCLJ; Compensation Claims Referee)**

An officer appointed by the Chair of the Workers' Compensation Board from a Civil Service competitive process to hear and determine claims and to conduct hearings and investigations and make orders, decisions and determinations as may be required in the adjudication of the claims. A judge's decision is deemed the decision of the Board unless the Board modifies or rescinds such decision.

## ENDNOTES

<sup>1</sup> “The WTC [complex] actually consisted of seven buildings, including one hotel, spread across 16 acres of land. The buildings were connected by an underground mall (the concourse). The Twin Towers (1 WTC, or the North Tower, and 2 WTC, or the South Tower) were the signature structures, containing 10.4 million square feet of office space. Both towers had 110 stories.... On any given workday, up to 50,000 office workers occupied the towers, and 40,000 people passed through the complex [footnote omitted].” National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report* (Washington, D.C., 2004), p. 278.

<sup>2</sup> As of February 2009, 2,752 death certificates had been issued. New York City, Department of Health and Mental Hygiene, Office of the Chief Medical Examiner, “Update on the Results of DNA Testing of Remains Recovered at the World Trade Center Site and Surrounding Area” (February 1, 2009). [http://www.nyc.gov/html/ocme/downloads/pdf/public\\_affairs\\_ocme\\_pr\\_february\\_2009.pdf](http://www.nyc.gov/html/ocme/downloads/pdf/public_affairs_ocme_pr_february_2009.pdf)

<sup>3</sup> “It is estimated that between 40,000 and 92,000 men and women were involved in the rescue, recovery and cleanup operations that followed the September 11, 2001 terrorist attacks on the World Trade Center (WTC), depending on the criteria used for cohort eligibility [citations omitted].” Jeanne Mager Stellman et al., “Enduring Mental Health Morbidity and Social Function Impairment in World Trade Center Rescue, Recovery and Clean-up Workers: The Psychological Dimension of an Environmental Health Disaster.” *Environmental Health Perspectives*, Vol. 116, No. 9 (September 2008), p. 1248. <http://www.ehponline.org/members/2008/11164/11164.pdf>

<sup>4</sup> No fatalities were attributed to events after September 11<sup>th</sup> [as of the time of this GAO report of September 2004]: “... thousands of responders were treated for injuries, a small proportion of which were classified as serious, during the 10-month cleanup period. The disaster site was considered to be extremely dangerous, yet no additional life was lost after September 11.... According to OSHA, despite logging more than 3.7 million work hours over the 10-month cleanup period, WTC site workers reported only 57 injuries that OSHA classified as serious because they resulted in lost workdays, yielding a lost workday injury rate of 3.1 injuries per 100 workers per year. This rate is lower than that seen in the type of construction deemed by OSHA to be the most similar to the WTC cleanup, specialty construction, which has a lost workday injury rate of 4.3.” U.S. Government Accountability Office. *Health Effects in the Aftermath of the World Trade Center Attack*. Testimony Before the Subcommittee on National Security, Emerging Threats, and International Relations, Committee on Government Reform, House of Representatives. Statement of Janet Heinrich, Director, Health Care—Public Health Issues. GAO-04-1068T (September 8, 2004).

<sup>5</sup> See, for example: International Association of Accident Boards and Commissions Task Force on Catastrophe Preparedness, *Catastrophe Preparedness[.] The New York State Workers' Compensation Board Experience*. (October 2002). [members-only access]: [http://www.iaabc.org/files/members/PUB\\_Catastrophe\\_Preparedness\\_IAIABC\\_Task\\_Force\\_2002-10-00.pdf](http://www.iaabc.org/files/members/PUB_Catastrophe_Preparedness_IAIABC_Task_Force_2002-10-00.pdf)

See also, for example: Sewell Chan, “City Workers' 9/11 Claims Meet Obstacles,” *New York Times* (May, 22, 2006); Sewell Chan, “9/11 Compensation Claims Continue to Trickle in Late,” *New York Times* (May 23, 2006); Sewell Chan, “Compensation Extension for 9/11 Clean-up Workers,” *New York Times* (May 31, 2006); Sewell Chan, “Line-of-Duty Death Benefits for Officer's Work After 9/11,” *New York Times* (March 21, 2007); Ridgely Ochs, “9/11 Responders Health Woes. Sick and tired of fighting for workers' comp,” *Newsday* (June 1, 2006); Ridgely Ochs, “WTC responders' illness worse than expected[.] Almost five years after terror attacks, new critical health cases are surfacing,” *Newsday* (June 1, 2006) and Anthony DePalma, “Air Masks at Issue in Claims of 9/11 Illnesses,” *New York Times* (June 5, 2006).

<sup>6</sup>As of June 11, 2009, over 39,000 WTC-12 forms had been filed with the Board. The WTC-12 form is for “Registration of Participation in World Trade Center Rescue, Recovery and/or Clean-Up Operations.”

Participation levels regarding another potential source of compensation, the September 11<sup>th</sup> Victim Compensation Fund of 2001, were as follows: “Over 98% of eligible families who lost a loved one voluntarily decided to participate and submitted claims to the [September 11<sup>th</sup> Victim Compensation] Fund [of 2001]. At the same time, over 4,400 physical injury applications were processed to the Fund.” This fund provided compensation as well to those in the Pentagon and on the four affected airplanes of September 11<sup>th</sup>. “Closing Statement from the Special Master, Mr. Kenneth R. Feinberg, on the Shutdown of the September 11<sup>th</sup> Victim Compensation Fund.” U.S. Department of Justice, September 11<sup>th</sup> Victim Compensation Fund (no date).

<sup>7</sup> The September 11<sup>th</sup> Victim Compensation Fund “distributed over \$7.049 billion to survivors of 2,880 persons killed in the September 11<sup>th</sup> attacks [citation omitted] and to 2,680 individuals who were injured in the attacks or in the rescue efforts conducted thereafter. The average award for families of victims killed in the attacks

exceeded \$2 million. The average award for injured workers was nearly \$400,000." U.S. Department of Justice, *Final Report of the Special Master for the September 11<sup>th</sup> Victim Compensation Fund of 2001*. Volume I. (no date), p. 1. See also: Benjamin Weiser, "Value of Suing Over 9/11 Deaths Is Still Unsettled," *New York Times* (March 13, 2009).

A Rand Corporation study provided a comprehensive estimate of the monies expended to provide September 11<sup>th</sup>-related compensation or assistance. Total "quantified benefits" from the government, insurers, and charity were an estimated \$38.1 billion, of which \$8.7 billion went to "civilians killed or seriously injured"; \$1.9 billion went to "emergency responders killed or seriously injured"; \$1.7 billion went to "workers," and \$23.3 billion went to "businesses." The remainder went to three other categories. Lloyd Dixon and Rachel Kaganoff Stern, *Compensation for Losses from the 9/11 Attacks* (Santa Monica, CA: Institute for Civil Justice, Rand Corporation, 2004), xviii, xix.

These figures, for the most part, are not limited to the World Trade Center, as they include "benefits provided to those killed in the attacks at the World Trade Center (WTC), the Pentagon, and the Pennsylvania crash site and to businesses and individuals in New York City affected by the attack on the WTC" (*Ibid.*, xviii); furthermore, the expenditure categories are not mutually exclusive: "individuals can be in more than one victim group. For each group, we focus on the benefits for an individual in his or her capacity as a member of that group" (*Ibid.*, xix). The "worker" category pertains only to New York City, as it included "workers in New York City who lost their jobs or who suffered a substantial decline in income due to the attack on the World Trade Center" (*Ibid.*, p. 85).

<sup>8</sup> See, for example: U.S. Congress. House Committee on Homeland Security. *Protecting the Protectors: Ensuring the Health and Safety of our First Responders in the Wake of Catastrophic Disasters: Hearing before the Committee on Homeland Security*. 110<sup>th</sup> Cong., 1<sup>st</sup> sess., 20 September 2007; and Brian Jackson et al., *Protecting Emergency Responders: Lessons Learned from Terrorist Attacks* (Santa Monica, CA: RAND, 2002).

<sup>9</sup> See, for example: Cornelia Dean, "Congress Is Again Weighing Aid for Ground Zero Rescuers," *New York Times* (April 1, 2009); Mireya Navarro, "Ground Zero Lawsuits Are to Begin in 2010," *New York Times* (December 11, 2008); Jennifer Kahn, "A Cloud of Smoke: The Complicated Death of a 9/11 Hero," *The New Yorker* (September 15, 2008); Sewell Chan, "New Doubts That Dust Killed a 9/11 Rescuer," *New York Times* (September 7, 2008); Anthony DePalma, "Study Finds High Ground Zero Stress," *New York Times* (May 21, 2008); Anthony DePalma, "Survey Shows a High Rate of Asthma at Ground Zero," *New York Times* (August 28, 2007); Anthony DePalma and Serge F. Kovalski, "Accuracy of 9/11 Health Reports Is Questioned," *New York Times* (September 7, 2007); Anthony DePalma, "Big Cost Increase Is Predicted to Treat Ground Zero Workers," *New York Times* (July 18, 2007); Anthony DePalma, "A Death Tied to 9/11 Dust Is Not Cause for Alarm to Others, Experts Say," *New York Times* (May 25, 2007); Anthony DePalma, "Study Links Rescuers' Lung Ailment to Trade Center Collapse," *New York Times* (May 8, 2007); and Anthony DePalma, "Illness Persisting in 9/11 Workers, Big Study Finds," *New York Times* (September 6, 2006).

See also: Jacqueline Moline, Director, World Trade Center Medical Monitoring and Treatment Program at Mount Sinai, "Testimony." U.S. House of Representatives, Committee on Energy and Commerce, Subcommittee on Health. Hearing on HR 847 "James Zadroga 9/11 Health and Compensation Act of 2009." (April 22, 2009) [http://energycommerce.house.gov/Press\\_111/20090422/testimony\\_moline.pdf](http://energycommerce.house.gov/Press_111/20090422/testimony_moline.pdf); World Trade Center Medical Working Group of New York City, *2008 Annual Report on 9/11 Health* (September 2008) [http://www.nyc.gov/html/om/pdf/2008/2008\\_mwg\\_annual\\_report.pdf](http://www.nyc.gov/html/om/pdf/2008/2008_mwg_annual_report.pdf); and recent articles in the *American Journal of Epidemiology*, the *American Journal of Respiratory and Critical Care Medicine*, *Chest*, *Critical Care Medicine*, *Environmental Health Perspectives*, *Journal of Occupational and Environmental Medicine*, *Morbidity and Mortality Weekly Report*, and *The New England Journal of Medicine* (citations available upon request).

The WTC Medical Working Group was appointed by New York City Mayor Bloomberg in 2007. For its first annual evaluation, it reviewed over 100 scientific articles published subsequent to the attack of 9/11 and concluded (at page 2): "Both clinical studies and population-based surveillance indicate that symptoms of posttraumatic stress disorder are highly prevalent among rescue and recovery workers and Lower Manhattan residents, two directly affected populations. Studies of rescue and recovery workers also indicate that respiratory problems, asthma and gastroesophageal reflux disease are common among this group, particularly those who arrived early at the WTC site and those who worked there for long periods of time. Similarly, Lower Manhattan residents and area workers—including those who worked in Lower Manhattan, though they may live elsewhere—have reported elevated levels of respiratory problems and new onset asthma. Studies are ongoing to characterize the kinds of exposures that may have contributed to this illness and to determine its persistence."

In addition to noting the strength of WTC-related research published thus far, it also listed (at page 8) the following "limitations that characterize most published studies: [1] The exact size and composition of the population affected by the disaster remains unknown, although estimates have been developed and published[;

2] It is difficult to measure how much and what type of exposure different people had to traumatic or environmental impacts of 9/11. More is known about exposure among some groups (rescue and recovery workers) than among others (residents and area workers), but all exposure measurements remain imprecise[; 3] Many studies are conducted on volunteer or clinic-based samples, which may not be representative of the true population of exposed people and may over-represent those who are ill[; 4] Many studies rely on self-reports of symptoms and conditions, some of which can be difficult to verify[; and 5.] Studies are laborious to conduct, analyze and publish, leaving policy makers with limited up-to-date information, particularly regarding persistence of conditions over time.”

<sup>10</sup> See, for example: New York State Office of the Governor. “Governor Paterson Signs Bill to Expand Disability Benefit Eligibility to Additional Participants in World Trade Center Rescue and Recovery.” Press Release. (August 7, 2008) [http://www.ny.gov/governor/press/press\\_0807082.html](http://www.ny.gov/governor/press/press_0807082.html); and New York State Workers' Compensation Board. “Extension of Filing Time in World Trade Center Rescue, Recovery and Clean-up Cases.” Subject Number 046-519. (August 21, 2006). [http://www.wcb.ny.gov/content/main/SubjectNos/sn046\\_159.jsp](http://www.wcb.ny.gov/content/main/SubjectNos/sn046_159.jsp).

For a critique of the coverage of work-related diseases in New York State (including but not limited to comments on the extension of the WTC-specific filing deadline), see: John F. Burton, Jr., “The Coverage of Work-Related Diseases in New York,” *Workers' Compensation Policy Review* Vol. 7, Issue 1 (January/February 2007).

<sup>11</sup> Indemnity (death) benefits to the dependents of a worker who died as a result of a work-related injury or disease; funeral expenses; vocational rehabilitation benefits; and reimbursement for travel or other expenses are examples of additional benefits provided under workers' compensation.

<sup>12</sup> Those who died on September 11<sup>th</sup> included “341 NYC firefighters (FDNY), 60 police officers (NYPD and NY/NJ Port Authority) and 2 EMS workers (FDNY).” Furthermore, “in the first 24 hours after the attack, 240 FDNY rescue workers (158 firefighters and 82 EMS workers) received emergency department (ED) treat and release (eye irritation, respiratory tract irritation, exhaustion, dehydration and/or chest pain) and 28 FDNY rescue workers were hospitalized (17 long bone fractures, 4 back injuries, 2 knee meniscus tears, 1 facial burn, 1 cervical spine fracture requiring surgery for stabilization and 3 life-threatening inhalation injuries requiring intubation). In the first 2 days of the attack (9/11/01 to 9/13/01), medical records from the 5 nearest hospitals (including the nearest trauma and burn centers), revealed 1,103 emergency department visits that could be linked to the attack, of which 320 (29%) were rescue workers (e.g., firefighters, police officers, and emergency medical services personnel). 810 were treated and released, mostly with mild inhalation and/or ocular irritant injuries. Diagnoses responsible for hospitalization included: fractures, burns, closed head injuries, crush injuries, and/or inhalation injuries.” (Citations omitted.) September 11<sup>th</sup> Workers' Protection Task Force, *Interim Report* (March 4, 2008): Appendix B: Health Consequences of the Collapse of the World Trade Center: A Report of the New York State September 11<sup>th</sup> Workers' Protection Task Force (November 6, 2007), p. 5.

<sup>13</sup> International Association of Accident Boards and Commissions Task Force on Catastrophe Preparedness, *Catastrophe Preparedness[:] The New York State Workers' Compensation Board Experience*. (October 2002), p. 4.

<sup>14</sup> This summary draws heavily upon: International Association of Accident Boards and Commissions Task Force on Catastrophe Preparedness, *Catastrophe Preparedness[:] The New York State Workers' Compensation Board Experience*. (October 2002), which was initially drafted by the Board for Task Force & Board Chair Robert Snashall. [members-only access]: [http://www.iaabc.org/files/members/PUB\\_Catastrophe\\_Preparedness\\_IAIABC\\_Task\\_Force\\_2002-10-00.pdf](http://www.iaabc.org/files/members/PUB_Catastrophe_Preparedness_IAIABC_Task_Force_2002-10-00.pdf) . See also: New York State Workers' Compensation Board, *2001 Annual Report*, pp. 2-4.

<sup>15</sup> The time period of the temporary suspension was not specified in the executive order.

<sup>16</sup> This summary draws heavily upon: International Association of Accident Boards and Commissions Task Force on Catastrophe Preparedness, *Catastrophe Preparedness[:] The New York State Workers' Compensation Board Experience*. (October 2002), which was initially drafted by the Board for Task Force & Board Chair Robert Snashall. [members-only access]: [http://www.iaabc.org/files/members/PUB\\_Catastrophe\\_Preparedness\\_IAIABC\\_Task\\_Force\\_2002-10-00.pdf](http://www.iaabc.org/files/members/PUB_Catastrophe_Preparedness_IAIABC_Task_Force_2002-10-00.pdf) . See also: New York State Workers' Compensation Board, *2001 Annual Report*, pp. 2-4.

<sup>17</sup> The constitutionality of WCL §4 was upheld in *Novara v. Cantor Fitzgerald, LP, et. al.*, 20 A.D.3d 103; 795 N.Y.S.2d 133 (3rd Dept., 2005).

<sup>18</sup> A discussion of this public policy issue (domestic partnership benefits for, and only for, WTC-related workers' compensation claims) is beyond the scope of this report.

<sup>19</sup> U.S. Department of Labor, Bureau of Labor Statistics, "Injuries, Illnesses, and Fatalities: Occupational Injury and Illness Classification Manual." <http://www.bls.gov/iif/oshohics.htm>

<sup>20</sup> International Association of Accident Boards and Commissions Task Force on Catastrophe Preparedness, *Catastrophe Preparedness[:] The New York State Workers' Compensation Board Experience*. (October 2002), p. 6.

<sup>21</sup> Board Internal Document: "Claims Processing: Claims Intake: WTC Call Center Telephone Script: Guide to Processing Claims Related to the World Trade Center Disaster" (Release Date: 7/18/06), p. 1.

<sup>22</sup> For purposes of this report, the term "index" and "case assembly" are used interchangeably. Case assembly is explained in detail in the process measures section of this report.

<sup>23</sup> Six hundred seventy-five cancelled WTC claims were excluded from this study.

<sup>24</sup> Over 900 "associated" WTC claims were identified.

<sup>25</sup> This possibility was explored by examining documentation regarding WTC claims with traumatic injuries and accident dates of 2004 or later. There was a relatively small number (approximately 50) of such claims. For purposes of this study, the decision of the WTC work group that all of these were WTC-related claims was not questioned.

<sup>26</sup> In New York State, indexing by the Board is one of the initial steps in the claims administration process, and involves the assembling of a claim case folder and the assignment of a case number by the Board Claims Unit. Indexing is done for claims with over seven days of lost-work time, the prospect of permanent disability, or a request for indemnity (cash benefits); indexing may be initiated by the Board's receipt of one of approximately twenty Workers' Compensation Board forms. The data set used for this report was updated on June 11, 2009. The data set was initially compiled to provide requested data to the September 11th Workers' Protection Task Force, and then subsequently updated.

<sup>27</sup> The group type categories were also drafted in the event that different public policy lessons regarding occupational health and safety may potentially be drawn, depending upon work activity, work locale, and accident date.

<sup>28</sup> "This was the off-site location of the WTC recovery operation...." U.S. Government Accountability Office, Testimony. *September 11[:] Health Effects in the Aftermath of the World Trade Center Attack*. GAO-04-1068T. (Tuesday, February 28, 2006), p. 1.

<sup>29</sup> The group type categories that were used are defined as follows, per documentation furnished to the digesters:

"(Group Type 1) WTC site. Claimant is a victim of 9/11 terrorist attack – this would include anyone injured or killed as a direct result of the WTC attacks, either in the Twin Towers or one of the surrounding areas and buildings. Injury or death would have occurred up to and including the collapse of the buildings. Injured workers will have been coded in large part using the Occupational Injury and Illness (OICC) manual's "Event or Exposure" code of 619 ("assaults and violent acts by person(s), n.e.c")."

"(Group Type 2) Rescue, Recovery, or Clean-up Worker – WTC site. Claimant is a Rescue, Recovery, and Clean-up worker at the WTC Plaza or the surrounding area and buildings (time of the injury will most likely will be after the buildings fell)."

"(Group Type 3) Rescue, Recovery, or Clean-up (RRC) Worker – not at the WTC site. Claimant is a Rescue, Recovery, and Clean-up worker who was injured or killed at a site other than the WTC plaza or the surrounding area and buildings. Examples of this include the Fresh Kills landfill, barges running to the landfill, or the city morgue."

"(Group Type 4) "Other" – The claimant was injured or killed during a later timeframe or date, is not a RRC worker, and was not injured or killed as a result of "Event or Exposure" code of 619 ("assaults and violent acts by person(s), n.e.c")."

(Indeterminate Group Type). Sufficient documentation/information was not available to categorize the claimant in one of the Group types listed above.

<sup>30</sup> Among other things, legislation signed into law by Governor Paterson in August 2008 (S. 8676/ A. 11730) extended a filing deadline for WTC-related workers' compensation claims, until September 11, 2010.

See: "Governor Paterson Signs Bill To Expand Disability Benefit Eligibility To Additional Participants In World Trade Center Rescue And Recovery." Press Release, Office of the Governor (August 7, 2008)  
[http://www.ny.gov/governor/press/press\\_0807082.html](http://www.ny.gov/governor/press/press_0807082.html)

Legislation signed into law by Governor Pataki on August 14, 2006 (S. 0838, Article 8-A of the Workers' Compensation Law, Chapter 446 of the Laws of 2006) had extended the filing period for individuals who "participated in the rescue, recovery, or cleanup operations at the World Trade Center site" between 9/11/01 and 9/12/02 and who had a "qualifying condition," which was defined as "any latent disease or condition resulting from a hazardous exposure during participation in World Trade Center rescue, recovery or clean-up operations." The legislation also pertains to individuals who worked during this time period at the Fresh Kills land fill; at the New York City morgue or a temporary morgue; and on the barges traveling to the Fresh Kill land fill.

Several caveats are in order. First, the Group type coding was initiated before WCL Article 8-A was enacted. Furthermore, for this coding no geographic limitations were set regarding what constituted a WTC-related claim, whereas WCL Article 8-A explicitly defined the "World Trade Center site" as follows: "anywhere below a line starting from the Hudson River and Canal Street; east on Canal Street to Pike Street; south on Pike Street to the East River; and extending to the lower tip of Manhattan."

The decision not to set geographic limitations was in keeping with the intent of the report to be as comprehensive as possible; it also stemmed in part from the difficulty in sometimes determining (from information provided on claims forms) the exact locale of the injury, and from the need to do the Group type coding accurately but also in a timely manner (e.g., without spending an inordinate amount of time poring over street maps).

<sup>31</sup> Claims were automatically assigned to the injured worker Group type of WTC Victim if they were manually coded (as part of the injury and exposure coding process) with an event code of 619: "assaults and violent acts: assaults and violent acts by person(s): assaults and violent acts by person(s), n.e.c." U. S. Department of Labor, Bureau of Labor Statistics, *Occupational Injury and Illness Classification Manual* (December 1992), p. DE-18.

<sup>32</sup> The Group type coding was subjected to numerous edit checks and quality reviews and underwent several data revisions. It was also routinized and documented to the extent possible, for purposes of consistency. Nonetheless, Group type coding may have involved various judgment calls for which universal agreement could not be expected. For example, Group type coders were confronted on occasion with a dearth of information about accident location or accident time. The Board had to weigh the relative merits of coding Group type as "nonclassifiable" or as best as possible given the available information.

<sup>33</sup> Eligibility for workers' compensation medical and cash benefits is contingent upon the establishment of accident, notice, and causal relationship (ANCR) or occupational disease, notice and causal relationship (ODNCR). The existence of ANCR or ODNCR is determined by the Board (typically, by a Board administrative law judge, through the hearing process).

<sup>34</sup> "Temporary total (although the majority of [indemnity benefit] claims ...) and temporary partial occasion relatively little controversy, since they are ordinarily established by direct evidence of actual wage loss. In the usual industrial injury situation, there is a period of healing and complete wage loss, during which, subject to any applicable waiting period, temporary total is payable. This is followed by a recovery, or [medical] stabilization of the condition [which is referred to as maximum medical improvement], and probably resumption of work, and no complex questions ordinarily arise." Lex Larson, *4-80 Larson's Workers' Compensation – Desk Edition* § 80.03. Footnote citations omitted.

<sup>35</sup> "Occasionally, the term 'permanent' has to be construed, although usually permanence is fairly obvious, as in the case of loss of limbs or other incurable conditions. Permanent means lasting the rest of [the] claimant's life. A condition that, according to medical opinion, will not improve during the claimant's lifetime is deemed a permanent one." Larson, *4-80 Larson's Workers' Compensation – Desk Edition* § 80.04.

<sup>36</sup> Permanent partial disability scheduled loss benefits are available for permanent disability to a statutorily specified list of selected members of the body and are calculated according to a statutorily prescribed fixed number of weeks of indemnity benefits for loss or loss of use. Larson, *4-80 Larson's Workers' Compensation – Desk Edition* § 80.05. The specified (or fixed) amount of indemnity benefits compensation for a schedule loss is paid even if the workers' compensation claimant has not experienced actual wage loss. Permanent partial disability non-scheduled benefits pertain to injuries to the internal organs, trunk, nervous system, and other body systems not typically included on the statutory schedule. Monroe Berkowitz and John F. Burton, Jr., *Permanent Disability Benefits in Workers' Compensation* (Kalamazoo, MI: W.E. Upjohn Institute for Employment Research, 1987), p. 99.

<sup>37</sup> Claims with serious facial disfigurement awards were categorized as PPD-SL awards. For some claims, the disfigurement award was the sole award; for others, the disfigurement award was in addition to indemnity benefits awarded for another disability type.

<sup>38</sup> September 11<sup>th</sup> Worker Protection Task Force, *Annual Report* (June 1, 2009), p. Ex-B-24 to Ex-B-26. [http://www.labor.ny.gov/agencyinfo/PDFs/9-11\\_WPTF\\_Annual\\_Report\\_2009\\_0601.pdf](http://www.labor.ny.gov/agencyinfo/PDFs/9-11_WPTF_Annual_Report_2009_0601.pdf)

<sup>39</sup> September 11<sup>th</sup> Worker Protection Task Force, *Annual Report* (June 1, 2009), p. Ex-B-23. [http://www.labor.ny.gov/agencyinfo/PDFs/9-11\\_WPTF\\_Annual\\_Report\\_2009\\_0601.pdf](http://www.labor.ny.gov/agencyinfo/PDFs/9-11_WPTF_Annual_Report_2009_0601.pdf)

<sup>40</sup> September 11<sup>th</sup> Worker Protection Task Force, *Annual Report* (June 1, 2009), p. Ex-B-27. [http://www.labor.ny.gov/agencyinfo/PDFs/9-11\\_WPTF\\_Annual\\_Report\\_2009\\_0601.pdf](http://www.labor.ny.gov/agencyinfo/PDFs/9-11_WPTF_Annual_Report_2009_0601.pdf)

<sup>41</sup> For purposes of this report, the term "index" and "case assembly" are used interchangeably. Case assembly is explained in detail in the process measures section of this report.

<sup>42</sup> This section utilizes the same data set that was used in the previous section (that is, all indexed cases, including claims with ANCR established and claims without ANCR established).

The findings reported in this section are based on Board digesters' manual coding from information reported in employers' report of accidents, employees' request for compensation, medical reports, and other documentation in the electronic case folder. The coding was based on the U.S. Bureau of Labor Statistics' OIICS system.

Per the following description, it should be self-evident that other medical-related information (such as ICD-10 diagnosis codes) are not encompassed by OIICS: "The Occupational Injury and Illness Classification System (OIICS) was developed by the BLS to provide a consistent set of procedures for recording the characteristics associated with workplace injuries, illnesses, and fatalities. The circumstances of each case are classified based on the BLS OIICS manual.... These characteristics include:

- Nature – the physical characteristics of the disabling injury or illness, such as cuts/lacerations, fractures, sprains/strains, or electrocution;
- Part of body affected – the part of body directly linked to the nature of injury or illness cited, such as finger, arm, back, or body systems;
- Event or exposure – the manner in which the injury or illness was produced or inflicted, such as caught in running equipment; slips, trips, or falls; overexertion; or contact with electric current;
- Source – the object, substance, exposure, or bodily motion that directly produced or inflicted the disabling condition, such as machinery, ground, patient, or electrical wiring;
- Secondary source – identifies the object, substance, or person that generated the source of injury or illness or that contributed to the event or exposure, such as ice or water."

U.S. Bureau of Labor Statistics, *BLS Handbook of Methods*, "Chapter 9. Occupational Safety and Health Statistics," pages 7-8. <http://www.bls.gov/opub/hom/pdf/homch9.pdf>

<sup>43</sup> If a claim involved both a respiratory system disease and a mental disorder (stress) issue, it was coded as a respiratory system disease.

<sup>44</sup> In some of the domestic partner claims for which monetary awards were made, a Board administrative law judge: (1) initially awarded the decedent's parent(s) or the estate a "no dependency" award per WCL § 16(4-b), and, (2) upon a subsequent finding of the existence of a domestic partner (who thus had the same legal rights as a surviving spouse), rescinded the "no dependency award" and awarded money to the domestic partner. A determination was also made that carriers should seek reimbursement from an administrative fund for the "no dependency" award, as the parents or estate were not required to return the "no dependency" award (in at least one case, a parent signed her award check over to the decedent's domestic partner, with no objection on the parent's part). "No dependency" awards, even if rescinded, are still included as part of the awards data used for this report.

Because the domestic partnership component is but one feature of a WTC-related claim that had already and otherwise been classified by claim type, no findings will be reported here as to whether the domestic partnership component of the WTC-related claim might be categorized as denied or non-compensatory for the WTC-related, domestic partnership claims for which the domestic partnership status could be determined and for which domestic partnership benefits were not awarded.



<sup>45</sup> Board, *Employers' Handbook*, p. 47. The State Insurance Fund is also a third-party administrator for New York State. Beginning with the *2006 Annual Report*, the Board listed New York State as a separate category under workers' compensation coverage which reduced the reported SIF coverage. As stated in Appendix XV of that report, "Claims by employees of New York State were previously reported under the State Insurance Fund as the NYSIF administers these claims on behalf of New York State."

<sup>46</sup> Board, *Digest of Laws Administered by the Workers' Compensation Board* (December 1994, Revised Edition), p. 23.

<sup>47</sup> That is, this is a claim type of medical-only; temporary disability; PPD-SL; PPD-NSL; PT-D; or death, and thus excludes the remaining, indexed cases that had a Claim type of denied or non-compensatory.

<sup>48</sup> By way of contrast, the relative distribution of workers' compensation coverage across all claims with ANCR-established is as follows: private insurer carriers (38%); self-insured in the public sector (16%); self-insured in the private sector (19%); the State Insurance Fund (19%); New York State (7%); and Special Fund-unknown (1%). See: Board, *2006 Annual Report*, Appendix XV, "Claim Liability for Claims Accepted in 2006." [http://www.wcb.ny.gov/content/main/TheBoard/2006AnnualReport\\_Web.pdf](http://www.wcb.ny.gov/content/main/TheBoard/2006AnnualReport_Web.pdf).

<sup>49</sup> The form numbers or labels were as follows: C-4, C-4/C-48, EC-4, MED-NARR, OT/PT-3, OT/PT-4, OT-4, PT-4, A-3, IME, IME-3, IME-4, IME-5, HCFA-1450, HCFA-1500, C-4C, C-4P, C-4VR, C-5, C-5/C-48, C-24, C-27, C-48, C-48C, C-48P, C-64, C-72.1, IS-418, IS-419, PS-4, MR-54, MD-1, FCE, and FCE-4.

<sup>50</sup> Marija J. Norusis, *SPSS@ 10.0 Guide to Data Analysis* (Upper Saddle River, NJ: Prentice-Hall, Inc., no date), p. 93.

<sup>51</sup> The findings reported in this section do not include medical cost data because the Board presently does not electronically compile information on medical treatment (i.e., utilization and mix of services, type of provider) or on medical benefit payments. The importance of gathering such information was underscored by a recent report to the governor by the New York State superintendent of insurance: "Section II showed that total medical costs for PPD claims were growing significantly; certain classifications of medical costs, such as prescriptions, were growing faster than others; and NCCI has identified growing severity of injury and increased utilization as primary drivers behind increased medical costs. However, New York State cannot isolate the cost drivers in its system due to a lack of detailed medical information. Collecting detailed medical payment information will allow New York State to research what is driving costs in our state. It will also provide the information needed to evaluate the impact of medical treatment guidelines." New York State Insurance Department, Report to the Governor From the Superintendent of Insurance Summarizing Workers' Compensation Data and Recommending Improvements in Data Collection and Development of a Research Structure for Public Policy (March 2008), p. 117.

<sup>52</sup> These figures pertain to 4,414 claims for which the total amount of indemnity benefits was greater than \$0. These figures include temporary disabilities, all permanency categories (PPD-scheduled loss; PPD-nonscheduled loss; permanent total disability); and death claims.

The current amount of indemnity benefits paid, for 4,414 claims for which the current amount paid was greater than \$0, had an average value of \$49,964 and a median value of \$31,233. These figures also include temporary disabilities, all permanency categories (PPD-scheduled loss; PPD-nonscheduled loss; permanent total disability); and death claims.

The present value estimate of future payments for claims with continuing payments (that is, for the 1,630 claims for which the present value estimate was greater than \$0) had an average value of \$205,539 and a median value of \$233,257. These figures exclude all temporary disability and PPD-SL claims, and include only those claims in the remaining categories for which continuing payments are awarded in the decision of the Board law judge and/or Board Office of Appeals panel.

<sup>53</sup> For 7 of the Section 32 Waiver Agreement claims, the insurance company purchased an annuity from a third party to continue payments to the claimants. The purchase price of the annuity was available for 4 of these 7 claims and was used as the Section 32 amount. For the other 3 claims, the insurance company's price for the annuity was not available in the agreement. The annuities for the first 4 claims were on average 23.6 percent higher than what the Board would have expected the insurance company to reserve. This 23.6 percent was added to the amount the Board would have expected the carrier to reserve for the other 3 claims. This calculated amount was used as the Section 32 amount for the 3 claims.

<sup>54</sup> Board, Office of the Chairman, WCL §32 Waiver Agreements, Subject No. 046-119, September 3, 2003.

<sup>55</sup> As previously noted, another category of ANCR-established claims consists of Medical Only claims.

<sup>56</sup> Indexers have access to over 20 pages of standard procedures developed with business analysts that provide “how to” guidance on mail handling and case assembly. These procedures are available to every Indexer from the Board’s enterprise content management system called “the Zone”. In every District Office, Indexers have mentors and team leaders who provide supervisory oversight and subject matter expertise. Training, mentoring and access to standard statewide procedures help ensure consistent processing of incoming mail.

<sup>57</sup> “No Further Action (NFA) - (Board) - To remove a case from further consideration on the calendar unless action is taken by Parties of Interest (POI). The decision to change the status of a case to No Further Action (NFA) is based upon the determination that no further rulings by the Board can be made unless action is taken by Parties of Interest (POI). This case status is indicated by a statement on a Board decision (e.g., ‘No further action is planned by the Board at this time’).” Board, Internal Document. “Glossary of Common Terminology”

<sup>58</sup> Administrative Determination is designed “to provide a fair, timely, and efficient mechanism for processing uncontroverted claims involving minor injuries, uncontested issues within a claim, and certain penalties.... If the [B]oard determines that a case is suitable for administrative determination processing, a proposed decision shall be prepared... Any party in interest may object to the proposed decision within 30 days of the date of the proposed decision.... If an objection is received by the [B]oard within such 30-day period, the proposed decision will not be made final and the case will be scheduled for conciliation processing or a hearing before a Workers’ Compensation Law Judge, or may be modified, as may be appropriate.” Board, “Administrative Determination Processing,” [Regulatory Rule] NYCRR 313.

<sup>59</sup> Conciliation has been defined as “a Workers’ Compensation Board process established to resolve, in an expeditious and informal manner (e.g. through meetings or telephone conferences), issues involving non-controverted claims in which the expected duration of benefits is fifty-two weeks or less. Failure to reach agreement through the conciliation process results in the case being scheduled for a hearing.” Board, *Employers’ Handbook*, p. 93. See also: Board, “Conciliation Processing,” [Regulatory Rule] NYCRR 312.

<sup>60</sup> To ensure consistency in claims handling, the Board’s statewide work group of Claims Examiners is responsible for all WTC claims – including those that are pending.

<sup>61</sup> The study includes data with index dates through June 3, 2009.

<sup>62</sup> Board, *Employers’ Handbook*, p 101.

<sup>63</sup> September 11<sup>th</sup> Worker Protection Task Force, *Annual Report* (June 1, 2009), p. Ex-B-18.  
[http://www.labor.ny.gov/agencyinfo/PDFs/9-11\\_WPTF\\_Annual\\_Report\\_2009\\_0601.pdf](http://www.labor.ny.gov/agencyinfo/PDFs/9-11_WPTF_Annual_Report_2009_0601.pdf)

<sup>64</sup> Caution should be exercised in generalizing from the findings in this table, particularly since there are relatively few claims in some of the categories in this table.

<sup>65</sup> Appeals can be made in turn to the Appellate Division of New York State’s Supreme Court and to the state’s highest court (Court of Appeals). The Board does not have data on the frequency or outcomes of appeals to the judiciary.

<sup>66</sup> For purposes of calculating the duration of an appeal, the filing of Board Form RB-89 (“Application for Review”) or its proxy was the starting date and the date that the Board issued a Memorandum of Decision on the appeal was the end date.

<sup>67</sup> The Workers Compensation Research Institute’s CompScope™ series, for example, reports only on defense attorneys. See: Carol A. Telles et al., *CompScope™ Benchmarks: Technical Appendix*, 8<sup>th</sup> Edition. (Cambridge, MA: WCRI, January 2008).

<sup>68</sup> The term “claimant attorney representation” is used in this section even though the findings also include licensed representatives. The Board’s data element for representation does not differentiate between attorneys and licensed representatives. Anecdotal evidence suggests that the vast preponderance of representation is accounted for by claimant attorneys. Data on employer or self-insured employer representation are not available.

<sup>69</sup> The findings reported here are subject to several data limitations that, for purposes of report brevity, were not addressed. First, the length-of-time measures include occupational disease claims for which ascertaining the “starting date” (date of disability) can be problematic from a medical perspective. Second, though the vast majority of WTC claims pertain to accident year 2001, the length-of-time findings “commingle” claims from different accident years. Obviously, a claim from an “earlier” accident date has far longer for claims development than does a claim from a “later” accident date.

<sup>70</sup> The Case Assembly rules are documented in the Board's standard statewide procedure system (called "the Zone") and remained substantially unchanged even through the Board's Systems Modernization reengineering project of the mid-1990s. Case assembly may be initiated by the Board's receipt of one of approximately twenty Workers' Compensation Board forms. Board, *Baseline Procedures on-line, Indexing/No Claims, I. Indexing Cases, B. Determine Whether Case Should Be Indexed* (last updated 10/1/03); and Duncan S. Ballantyne, *Revisiting Workers' Compensation in New York: Administrative Inventory*, p. 43.

<sup>71</sup> Board, Office of MIS/Research. *Workers' Compensation Performance-Related Measures: A National Compilation*. Internal document. (July 2008).

<sup>72</sup> Board, "About Us: Glossary of Workers' Compensations Terms."  
<http://www.wcb.ny.gov/content/main/TheBoard/glossary.jsp>

<sup>73</sup> Through its internal tracking system, the Board does monitor (on a regional and Board job title basis) the size of its workers' compensation case load and the speed with which various Board administrative functions occur during the processing of those cases. The length-of-time measures used in this report are more global indicators.

<sup>74</sup> *Executive Order 113, Declaring a Disaster Emergency in the State of New York, September 11, 2001*.

<sup>75</sup> New York State Workers' Compensation Board (Board), *Women and Workers' Compensation in New York State* (April 1997), p. 147. See also: Board, *Employers' Handbook[:] A Guide to the Workers' Compensation and the Disability Benefits System for the New York State Business Owner* (June 2008), p. 91.

<sup>76</sup> Board, *Women and Workers' Compensation in New York State*, p. 156. See also: Board, *Employers' Handbook*, p. 99.

<sup>77</sup> Board, *Injured on the Job? An Employee's Guide to NYS Workers' Compensation Benefits* (no date), pp. 5, 8. If the disability lasts over fourteen calendar days from the date of disability, compensation is payable for the seven-day waiting period. The waiting period does not apply for disfigurement awards, or for one type of permanent partial disability (schedule loss awards). The seven-day waiting period also does not apply to volunteer firefighters or volunteer ambulance workers, who are covered by a New York State workers' compensation statute specific to them.

In addition to temporary partial disability, temporary total disability, permanent partial disability, and permanent total disability, WCL provides indemnity benefits for serious facial disfigurements and for death claims.

<sup>78</sup> U.S. General Accountability Office. *September 11: Federal Assistance for New York Workers' Compensation Cost*. Testimony before the Subcommittee on National Security, Emerging Threats, and International Relations, Committee on Government Reform, House of Representatives. Testimony of Robert E. Robertson, Director, Education, Workforce and Income Security Issues (September 8, 2004), p. 10.

<sup>79</sup> "An employer and a recognized or certified exclusive bargaining representative of its employees may include within their collective bargaining agreement provisions to establish an alternative dispute resolution system to resolve claims arising under this chapter." WCL § 25(2-c).

<sup>80</sup> "New York's Workers' Compensation Alternative Dispute Resolution (ADR) program, available to the unionized construction industry, was originally added by Chapter 491 of the Laws of 1995, with an original sunset date of December 21, 2000. The ADR program was extended for another five years by Chapter 464 of the Laws of 1999, and then again until December 31, 2010, by Chapter 649 of the Laws of 2005." Board, *2006 Annual Report* (no date), p. 14. [http://www.wcb.ny.gov/content/main/TheBoard/2006AnnualReport\\_Web.pdf](http://www.wcb.ny.gov/content/main/TheBoard/2006AnnualReport_Web.pdf).

For additional information about the ADR program, including the only formal evaluation to date, see: Ronald L. Seeber et al. *An evaluation of the New York State workers' compensation pilot program for alternative dispute resolution*. Cornell University. Institute on Conflict Resolution (2001).  
<http://digitalcommons.ilr.cornell.edu/icrpubs/5/>