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Workers' Compensation Court 62nd Annual Report

Fiscal Year 2004:

July 1, 2003 through June 30, 2004



Nebraska Workers' Compensation Court 62nd Annual Report

Fiscal Year 2004:

July 1, 2003 through June 30, 2004



Michael K. High,
Presiding Judge

Michael P. Cavel,
Judge

James R. Coe,
Judge

Laureen K. Van Norman,
Judge

Ronald L. Brown,
Judge

J. Michael Fitzgerald,
Judge

John R. Hoffert,
Judge

Glenn W. Morton,
Court Administrator

Kay E. Peterson,
Clerk of the Court

Letter of Transmittal

Lincoln, Nebraska
December 1, 2004

Honorable John V. Hendry
Chief Justice of the Nebraska Supreme Court

Honorable Mike Johanns
Governor of Nebraska

Honorable Curt Bromm
Speaker of the Nebraska Legislature

Dear Sirs:

We have the privilege of submitting herewith the Sixty-Second Annual Report of the Nebraska Workers' Compensation Court, prepared in accordance with the provisions and requirements of Section 48-166, Revised Statutes of Nebraska.

Very truly yours,
NEBRASKA WORKERS' COMPENSATION COURT
By

Michael K. High
Presiding Judge

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General Information

History

The Nebraska Workers' Compensation Act was first passed in 1913 and from then until 1917 the Act was administered by the several state district courts. In 1917, the Legislature created the Compensation Division in the Department of Labor and the commissioner of labor was designated compensation commissioner. The 1935 Legislature established the Workers' Compensation Court and transferred Compensation Division functions to the court. The authority and responsibilities of the court are found in Chapter 48, Article 1, of the Revised Statutes of Nebraska. By 1988, the workers' compensation bench had grown to seven judges who hear disputed cases throughout the state.

Mission

The mission of the Nebraska Workers' Compensation Court is to administer and enforce all provisions of the Nebraska Workers' Compensation Act, except those provisions that are committed to the courts of appellate jurisdiction.

Organization

The Nebraska Workers' Compensation Court is composed of seven judges who are initially appointed by the governor and who then remain on the bench for successive six-year terms upon approval of the electorate. Every two years one of the judges is elected as presiding judge by the judges of the court. The presiding judge is responsible for the overall functioning of the court. Four judges are located in the State Capitol in Lincoln and three judges are located in the Hall of Justice in Omaha. A judge will travel to any county in the state where an accident occurred to hear a disputed case. A case is first heard by a single judge and, if appealed, the case is then heard by a review panel of three judges of the court. The review is based on the record created at the original hearing, and no new evidence may be introduced. The next level of appeal is to the Nebraska Court of Appeals and ultimately a case may go to the Nebraska Supreme Court.

The court staff is organized into seven operating sections with the court administrator holding overall administrative responsibility.

The *Adjudication Section* receives court filings, docket cases, schedules hearings and motions, corresponds with the parties, and issues opinions of the court.

The *Administration Section* is responsible for the business, financial, and personnel functions of the court, and also administers the Second Injury program. Under two federal grants the section conducts a federal survey of workrelated injuries and illnesses and a data collection program for fatal injuries.

The *Legal Section* reviews settlement applications for adequacy and compliance with the law, conducts mediation conferences to facilitate informal resolution of workers' compensation disputes, informs injured workers, employers, and others of their rights and obligations under the law, provides legal advice to court staff, and monitors legislation for potential impact on the workers' compensation system.

The *Coverage and Claims Section* has responsibilities in three distinct areas. Compliance activities include enforcing insurance coverage requirements and enforcing the claims handling and reporting obligations of insurers and self insurers. Medical services activities include certifying and monitoring managed care plans, administering the independent medical examiner program, revising and maintaining the schedule of medical and hospital fees, and responding to inquiries related to medical issues. Self-insurance activities include reviewing applications for self-insurance, monitoring the financial status and payroll records of self-insured employers, and collecting fees and assessments from self-insured employers.

The *Vocational Rehabilitation Section* is responsible for reviewing and approving proposed vocational rehabilitation plans, certifying vocational rehabilitation counselors and job placement specialists, and appointing a vocational rehabilitation counselor if the parties cannot agree on the selection. The progress of injured workers in an approved plan is monitored, and all payments from the Workers' Compensation Trust Fund for plan expenses must be approved by the section.

The *Public Information Section* receives and processes all reports of injury and benefit payments, whether filed electronically or in paper format, and responds to requests for records and information. The section also maintains a tollfree information line, prepares court publications, develops educational workshops, and maintains the court's Web site.

The *Information Technology Section* is responsible for the computer network, programs, and databases of the court. The section develops and maintains the court's client/server system, develops computer programs and applications, coordinates information technology activities with vendors and other state agencies, and assists other court sections in meeting their goals through the use of technology.

Activities in Fiscal Year 2004

Coverage and Claims

The Coverage and Claims section conducted a biennial review of the court's Schedule of Medical and Hospital Fees in FY 2004, and changes to the schedule were approved by the court effective July 1, 2004. The court also announced its intention to conduct a comprehensive review of the schedule as it relates to reimbursement for services by hospital and ambulatory surgical centers, with the intention of adopting a new approach to regulating these services in FY 2005.

Legal

The Legal section saw an increase in the number of mediation cases opened in FY 2004, although the number of cases actually mediated remained comparatively low at 39 percent of opened cases. This is due in large part to the number of cases in which one or both parties refused to mediate or failed to respond to a mediation request. Mediation under the Nebraska Workers' Compensation Act remains voluntary, absent a court order, and agreement of all parties is generally required for the process to proceed. The section also saw a significant decrease in the time required to review lump sum settlements, with the turn around time remaining consistently at or near seven days.

Public Information

The Public Information section began an extensive review and revision of the court's records retention schedule, which governs the retention and destruction of public records

maintained by the court. The existence of electronic documents and data has presented significant challenges to this effort, and has required adjustments to traditional concepts of records management that apply solely to paper documents. The first phase of this project addressed electronic first and subsequent report data as well as paper reports and information dating back to 1951.

Vocational Rehabilitation

The Vocational Rehabilitation section began meeting regularly with certified vocational rehabilitation counselors in order to improve communications and to clarify the procedures and requirements for vocational rehabilitation plans. These meetings have proved extremely successful and will be continued in the future.

Electronic Data Interchange

At time of publication, 99.9 percent of all first reports and 90 percent of all subsequent reports were being filed electronically using Electronic Data Interchange (EDI). Effective October 1, 2004 all subsequent reports filed by or on behalf of an insurer, risk management pool, or self insured employer must be filed electronically, unless an implementation plan has been approved by the court prior to that date. The court has also continued to prepare for electronic receipt of proof of insurance coverage data from insurers and their agents, which will become effective in FY 2005. This will allow the court to respond more quickly and fully to requests for coverage information and also to expand its efforts to identify uninsured employers and take corrective action.

Re-engineering

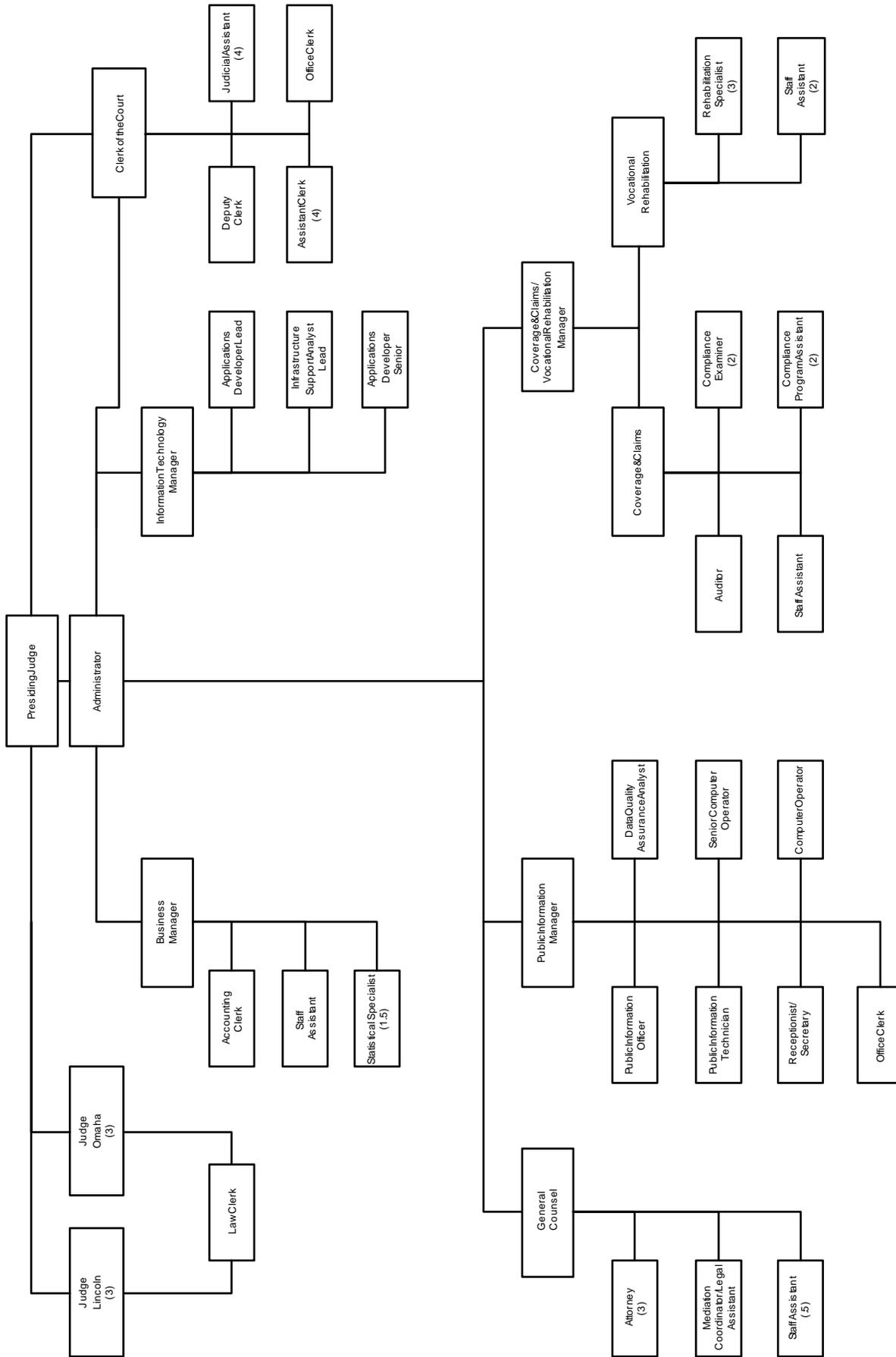
The court completed a series of analysis projects in conjunction with re-engineering efforts in the Adjudication, Vocational Rehabilitation, and Coverage and Claims sections. The goal is to improve operational efficiency and to continue moving the court toward an electronic working environment. These changes will allow the judges, court staff, and others to access court files and information more quickly and conveniently, and will position the court to accept electronic filings of litigation documents in the future. An in depth analysis of the lump sum settlement review process was also underway in FY 2004, with the goal of improving and streamlining the process while continuing to satisfy the statutory and regulatory requirements for approving settlements.

Relocation of Administrative Sections

Due to expiration of the court's lease at 525 South 13th Street in August of 2004, the administrative sections of the court were relocated to the TierOne Center, 1221 "N" Street in Lincoln. This does not affect the judges, clerk of the court, or any Adjudication section staff, as all litigation related staff and functions remain at the State Capitol Building.

In addition to the specific activities listed above for FY 2004, the court continues to perform other duties on a regular basis as noted above in the "Organization" section. The activities of the court in FY 2004 are described in greater detail in the following pages of this Annual Report, together with basic statistics regarding injuries reported in FY 2004. Additional injury statistics and statistics regarding benefit payments are available in a separate statistical report which can be accessed on the court's Web site at <http://www.nol.org/workcomp/pubs/98-03statisticalreport.pdf>.

NEBRASKA WORKERS' COMPENSATION COURT



REVISED
Nov 2004

Judges



Michael K. High, Presiding Judge

Office Address: State Capitol Building, Lincoln NE 68509-8908, phone (402) 471-3923, (800) 599-5155.

Date Appointed: January 8, 1998.

Biography: Graduate of University of Nebraska—Lincoln (B.S. in Agricultural Economics (1972); M.A. in Economics (1986)); University of Nebraska College of Law (J.D., 1986). Formerly: farmer and rancher (1972–1982); elected commissioner—Gosper County, Nebraska, Board of Commissioners (1978–1982); private law practice (1986–1998).

Judges



Michael P. Cavel, Judge

Office Address: Hall of Justice, 1701 Farnam, Omaha NE 68183-0001, phone (402) 595-3900, (800) 599-5155.

Date Appointed: October 5, 1983.

Biography: Graduate of Creighton University, Omaha, Neb. (B.A.); Creighton University School of Law (J.D.). United States Army, 1968–71; private practice, 1971–1983; Midlands Big Brother of the Year, 1988.



James R. Coe, Judge

Office Address: Hall of Justice, 1701 Farnam, Omaha NE 68183-0001, phone (402) 595-3900, (800) 599-5155.

Date Appointed: October 7, 1988.

Biography: Graduate of University of Nebraska–Lincoln (B.S. in Business Administration); University of Nebraska College of Law (J.D.). Partner of Carpenter, Rowen, Fitzgerald, and Coe, 1974–1988. Member of West Omaha (Neb.) Rotary Club; president of Dora Bingel Foundation.

Judges



Lauren K. Van Norman, Judge

Office Address: State Capitol Building, Lincoln NE 68509-8908, phone (402) 471-3924, (800) 599-5155.

Date Appointed: July 6, 1993.

Biography: Graduate of University of Nebraska–Lincoln (B.A., social work); University of Nebraska College of Law (J.D.). Former Legal Counsel to the Nebraska Department of Labor. Nebraska State Bar Association: past Chair of Government Practice Committee; past member, Executive Board of Women and the Law Section; member, Supreme Court Gender Bias Task Force.



Ronald L. Brown, Judge

Office Address: Hall of Justice, 1701 Farnam, Omaha NE 68183-0001, phone (402) 595-3900, (800) 599-5155.

Date Appointed: April 8, 1994.

Biography: Graduate of Dana College (B.S., cum laude); Creighton University School of Law (J.D.). Former occupations: Douglas County Assistant Public Defender, 1977–1978; Brown Law Offices, P.C., 1979–1989; Brown and Tripp, P.C., 1989–1994. Member of Nebraska State Bar Association, Nebraska Association of Trial Attorneys, Association of Trial Lawyers of America.

Judges



J. Michael Fitzgerald, Judge

Office Address: State Capitol Building, Lincoln NE 68509-8908, phone (402) 471-3924, (800) 599-5155.

Date Appointed: April 12, 1996.

Biography: Graduate of University of Notre Dame (B.S. Business Administration); Georgetown University Law Center (J.D.); Creighton University (Certificate of Completion, Paramedic Training Program). Admitted to practice: Nebraska Supreme Court, United States District Court for the District of Nebraska, United States Court of Appeals for the Eighth Circuit, United States Tax Court. Employee-associate and stockholder partner: Matthews, Kelly, Cannon, and Carpenter, P.C., 1969–1977. Stockholder partner: Carpenter, Fitzgerald, and Coe, P.C., 1978–1983; Miller, Carpenter, Rowen, Fitzgerald, and Coe, P.C., 1983–1987; Carpenter, Rowen, Fitzgerald, and Coe, P.C., 1987–1988; Carpenter, Rowen, and Fitzgerald, P.C., 1988–1996. Member of Nebraska State Bar Association, American Bar Association, American Trial Lawyers Association, Nebraska Trial Lawyers Association, Omaha Bar Association.



John R. Hoffert, Judge

Office Address: State Capitol Building, Lincoln NE 68509-8908, phone (402) 471-3923, (800) 599-5155.

Date Appointed: October 4, 2001

Biography: Graduate of Western Illinois University (B.A., High Honors, Political Science); University of Nebraska College of Law (J.D. with Distinction). Associate/Partner: Knudsen, Berkheimer, Richardson & Endacott, LLP (1980-2001). United States Army (1970-1972). Past member: Legal Services of Southeast Nebraska, Board of Directors; Folsom Children's Zoo and Botanical Gardens, Board of Directors; Nebraska Association of Trial Attorneys; American Judicature Society and American Trial Lawyers Association.

Compensation Court Cash Fund

Fiscal Year 2004 (July 1, 2003 to June 30, 2004)

The Compensation Court Cash Fund provides for the expense of administering the Nebraska Workers' Compensation Act and for the payment of the salaries and expenses of the personnel of the Nebraska Workers' Compensation Court. The fund was established in 1993 and replaced the use of general funds. The fund is financed by assessments against workers' compensation insurers, risk management pools, and self-insured employers. Contributions to the fund abate for one year whenever the balance of the fund equals or exceeds three times the amount expended and encumbered in the fiscal year just ending. The Nebraska Legislature appropriates a specific sum each year for operations of the Nebraska Workers' Compensation Court, to be funded from the Compensation Court Cash Fund. The appropriation for fiscal year 2004 was \$3,919,311.

BALANCE of fund on July 01, 2003:		\$5,512,229	
Revenue:			
Assessments		4,175,541	
Interest		196,818	
Accounts Receivables Invoiced		(18,483)	
Due to Vendor		(6,547)	
Bonds Payable		10,038	
Operating Transfers In		359,757	
Sale of Surplus Property		3,281	
Miscellaneous Income		39,151	
Miscellaneous Adjustment		71	
Total Revenue			<u>4,759,627</u>
Expenditures:			
	Appropriation	Not Expended	Actual Expended
Court Administration	3,410,303	194,120	3,216,183
Voc. Rehab. Administration	381,355	92,432	288,923
Second Injury Administration	3,142	2,632	510
Self-Insurance Administration	89,587	11,348	78,239
Federal Grant Administration	34,924	8,350	26,574
Totals	<u>3,919,311</u>	<u>308,882*</u>	<u>3,610,429</u>
Less Total Expenditures			<u>3,610,429</u>
BALANCE of fund on June 30, 2004:		<u><u>\$6,661,427</u></u>	
* Does not include FY 2004 expenditures of \$125,649 paid in FY 2005.			

Workers' Compensation Statistics Fund

Fiscal Year 2004 (July 1, 2003 to June 30, 2004)

The court conducts a survey of work-related injuries and illnesses and a data collection program for fatal injuries pursuant to two grants from the U.S. Department of Labor—Bureau of Labor Statistics (BLS). The Survey of Occupational Injuries and Illnesses is mandated by the Occupational Safety and Health Act of 1970 (P.L. 91-596), and the court was designated as the agency in Nebraska to conduct this work in a letter of March 25, 1971 from Governor J.J. Exon to Secretary of Labor, J.D. Hudgson. In 1991, the court contracted for the additional responsibilities of conducting the Census of Fatal Occupational Injuries as designated by BLS.

Expenses for administering these two federal grants are split 50/50 between the State of Nebraska and BLS. The state share of expenditures is charged against the Compensation Court Cash Fund, and the federal share is charged against the Workers' Compensation Statistics Fund. Federal monies are requested on a monthly basis and deposited into the Workers' Compensation Statistics Fund. The Nebraska Legislature appropriates a specific sum each year for expenditures from the Workers' Compensation Statistics Fund. The appropriation for fiscal year 2004 was \$31,852.

BALANCE of fund on July 01, 2003:				\$0
Revenue:				
Intergovernmental Revenue			31,852	
Total Revenue				<u>31,852</u>
Expenditures:				
	Appropriation	Not Expended	Actual Expended	
Federal Grant Admin.	<u>31,852</u>	0	<u>31,852</u>	
Totals	<u>31,852</u>	0	<u>31,852</u>	
Less Total Expenditures				<u>31,852</u>
BALANCE of fund on June 30, 2004:				<u>\$0</u>

Workers' Compensation Trust Fund

Fiscal Year 2004 (July 1, 2003 to June 30, 2004)

The Workers' Compensation Trust Fund was established July 1, 2000 as part of LB 1221 from the 2000 session of the Nebraska Legislature. The purpose of the fund is to make second injury benefit payments in accordance with section 48-128 and vocational rehabilitation benefit payments in accordance with section 48-162.01, and for paying administrative costs relating to the fund. Prior to July 1, 2000 second injury benefits and administrative costs were paid from the Second Injury Fund and vocational rehabilitation benefits and administrative costs were paid from the Vocational Rehabilitation Fund. These two funds were eliminated with the creation of the Workers' Compensation Trust Fund on July 1, 2000. The Workers' Compensation Trust Fund is financed by assessments against workers' compensation insurers, risk management pools, and self-insured employers. Assessments are made whenever the fund is projected to go below the statutory minimum level.

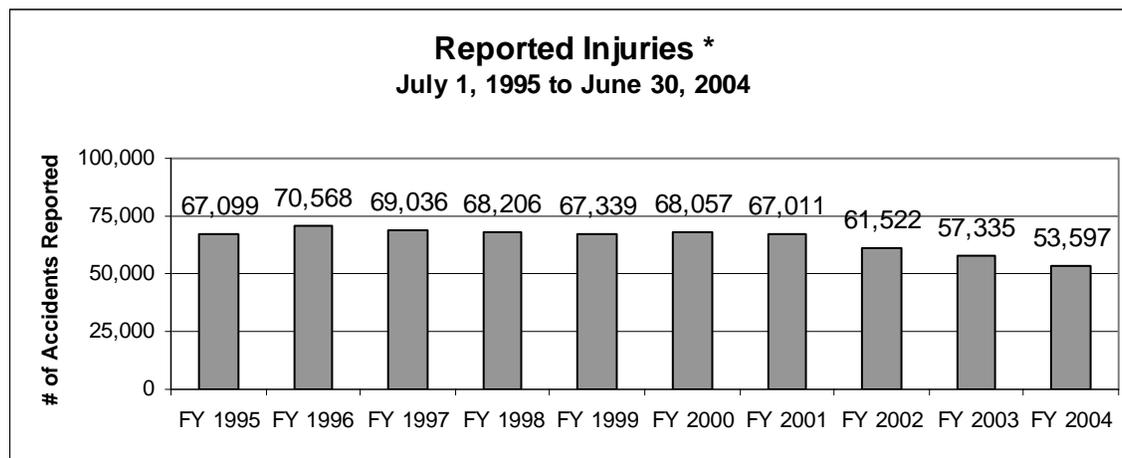
BALANCE of fund on July 01, 2003:		\$2,591,921
Revenue:		
Interest	100,396	
Reimbursements	3	
Assessments	5,593,038	
Sale of Surplus Property	970	
Total Revenue		<u>5,694,407</u>
Expenditures:		
Second Injury Benefits	521,042	
Second Injury Admin. Costs*	3,133	
Voc. Rehab. Benefits	1,104,248	
Voc. Rehab. Admin. Costs*	356,624	
Due to Vendor	8,888	
Less Total Expenditures		<u>1,993,935</u>
BALANCE of fund on June 30, 2004:		<u><u>\$6,292,393</u></u>
* Amounts transferred from the trust fund to the cash fund for estimated administrative costs for the Second Injury and Vocational Rehabilitation programs.		

***Second Injury & Vocational Rehabilitation Expenditures
(Benefit and Administrative Costs)***

Fiscal Year Ending	Second Injury	Vocational Rehabilitation
June 30, 2004	\$521,552	\$1,393,172
June 30, 2003	\$370,499	\$1,358,530
June 30, 2002	\$388,289	\$1,072,261
June 30, 2001	\$534,559	\$1,014,519
June 30, 2000	\$910,279	\$1,022,765
June 30, 1999	\$833,256	\$1,156,770
June 30, 1998	\$564,840	\$1,022,226
June 30, 1997	\$492,644	\$918,303
June 30, 1996	\$564,743	\$761,656
June 30, 1995	\$555,371	\$825,792

Reported Injuries *

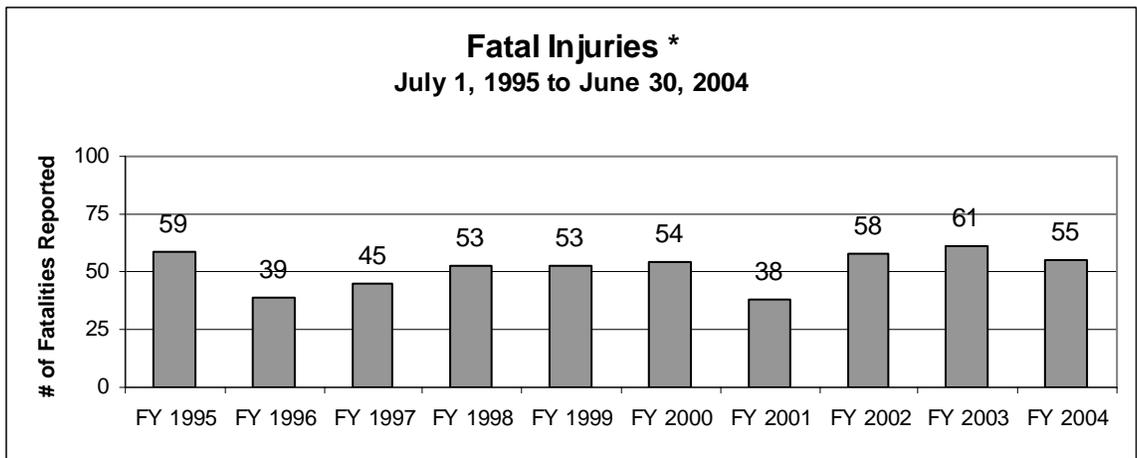
	Male	Female	Unknown	Total
July 1, 2003 to June 30, 2004	32,131	20,711	755	53,597
July 1, 2002 to June 30, 2003	32,400	21,312	3,623	57,335
July 1, 2001 to June 30, 2002	35,008	21,503	5,011	61,522
July 1, 2000 to June 30, 2001	39,238	24,100	3,673	67,011
July 1, 1999 to June 30, 2000	41,249	24,544	2,264	68,057
July 1, 1998 to June 30, 1999	41,126	24,734	1,479	67,339
July 1, 1997 to June 30, 1998	43,217	24,549	440	68,206
July 1, 1996 to June 30, 1997	44,059	24,971	6	69,036
July 1, 1995 to June 30, 1996	45,549	25,019	0	70,568
July 1, 1994 to June 30, 1995	43,667	23,424	8	67,099



* Includes fatal injuries reported in FY 2004 regardless of the year in which the injury occurred.
Includes deaths resulting from occupational disease.

Fatal Injuries *

	Male	Female	Total
July 1, 2003 to June 30, 2004	48	7	55
July 1, 2002 to June 30, 2003	50	11	61
July 1, 2001 to June 30, 2002	53	5	58
July 1, 2000 to June 30, 2001	38	0	38
July 1, 1999 to June 30, 2000	49	5	54
July 1, 1998 to June 30, 1999	48	5	53
July 1, 1997 to June 30, 1998	49	4	53
July 1, 1996 to June 30, 1997	41	4	45
July 1, 1995 to June 30, 1996	38	1	39
July 1, 1994 to June 30, 1995	56	3	59



* Includes fatal injuries reported in FY 2004 regardless of the year in which the injury occurred.
Includes deaths resulting from occupational disease.

Weekly Income Benefits and Maximum Rates

Under the Nebraska Workers' Compensation Act the basic rule regarding weekly income benefits for total disability is that the employee is entitled to two thirds of his or her average weekly wage, subject to maximum and minimum levels. Changes in the maximum or minimum rates apply to injuries occurring on or after the effective date, but not to injuries occurring before that date.

The maximum benefit level is set at 100 percent of the state average weekly wage, as determined by the Nebraska Workers' Compensation Court. The calculation excludes federal employees, and is made in accordance with section 48-121.02 of the Nebraska Revised Statutes. The court recently issued an order setting the maximum benefit level for calendar year 2005 at \$579. The minimum rate remains at \$49 as provided in section 48-121.01(2).

Injury Occurring Between:	Maximum	Minimum
1/1/2005 to 12/31/05	\$579	\$49
01/01/04 to 12/31/04	\$562	\$49
01/01/03 to 12/31/03	\$542	\$49
01/01/02 to 12/31/02	\$528	\$49
01/01/01 to 12/31/01	\$508	\$49
01/01/00 to 12/31/00	\$487	\$49
01/01/99 to 12/31/99	\$468	\$49
01/01/98 to 12/31/98	\$444	\$49
01/01/97 to 12/31/97	\$427	\$49
01/01/96 to 12/31/96	\$409	\$49
01/01/95 to 12/31/95	\$350	\$49
06/01/94 to 12/31/94	\$310	\$49
07/01/91 to 05/31/94	\$265	\$49

Litigated Case Summary ¹

Fiscal Year ²	Original Hearing Level		Review Hearing Level		Supreme Court/ Court of Appeals Level	
	2004	* 2003	2004	* 2003	2004	* 2003
Cases Pending at beginning of Fiscal Year	1,536	1,585	81	67	35	33
Petition or Appeal filed in Fiscal Year	1,384	1,425	144	153	63	52
Reopened	145	123	N/A	N/A	N/A	N/A
Total	3,065	3,133	225	220	98	85
Court Disposition						
Decisions Issued	428	461	116	106	35	40
Settlements	748	805	12	15	5	2
Other Dispositions ³	325	348	32	30	9	10
Total Dispositions	1,501	1,614	160	151	49	52
Total Pending	1,564	1,519	65	69	49	33

Fiscal Year	2004	* 2003	2002	2001	2000	1999
Number of Motions Filed	2,557	2,646	2,366	2,156	1,630	1,569
Number of Motion Dispositions	2,222	2,263	2,047	1,923	1,377	1,355
Number of Motion Hearings	1,173	1,277	1,046	911	842	589

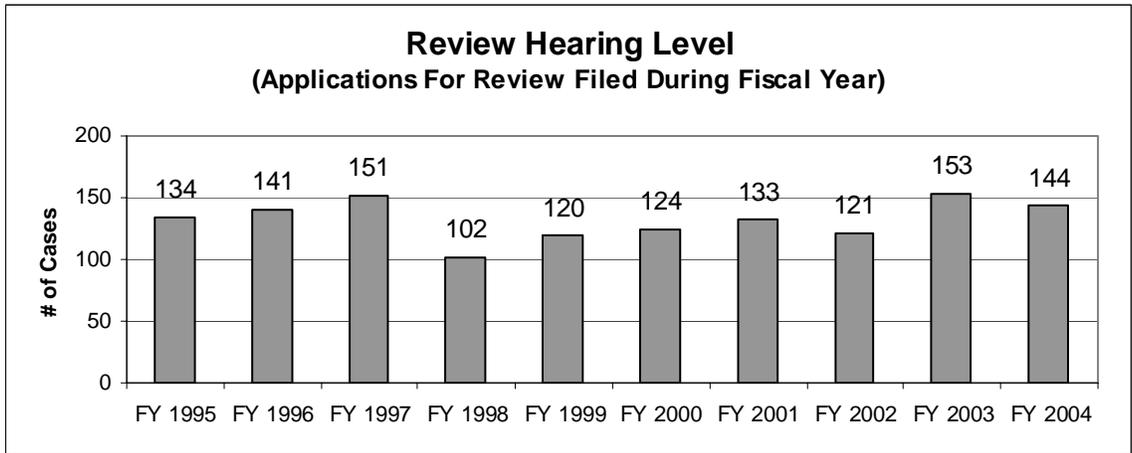
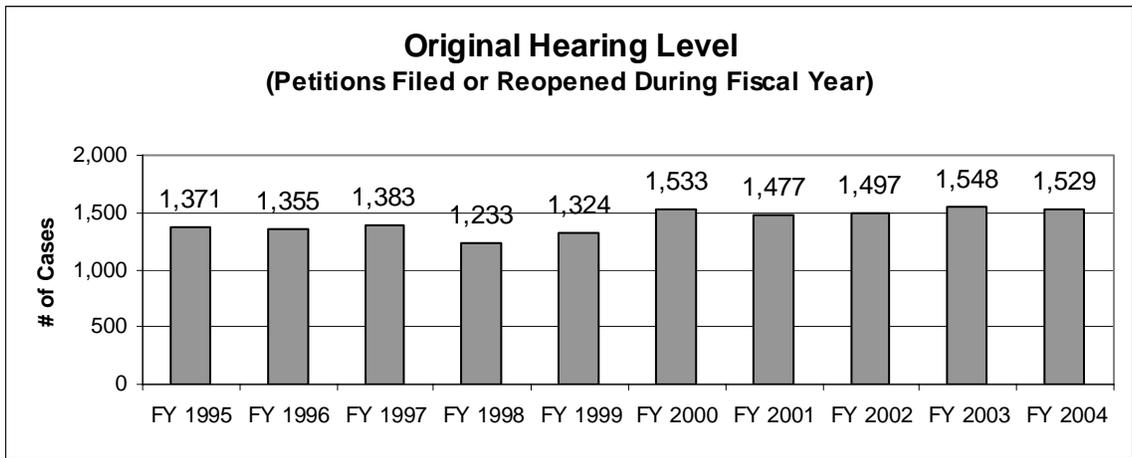
¹ Cases may appear more than once in any year if they are appealed.

² Fiscal Years run from July 1 through June 30.

³ Dismissals without hearings.

* Numbers for FY 2003 may differ from those shown in the FY 2003 Annual Report due to corrections to data.

Hearings and Review Hearings

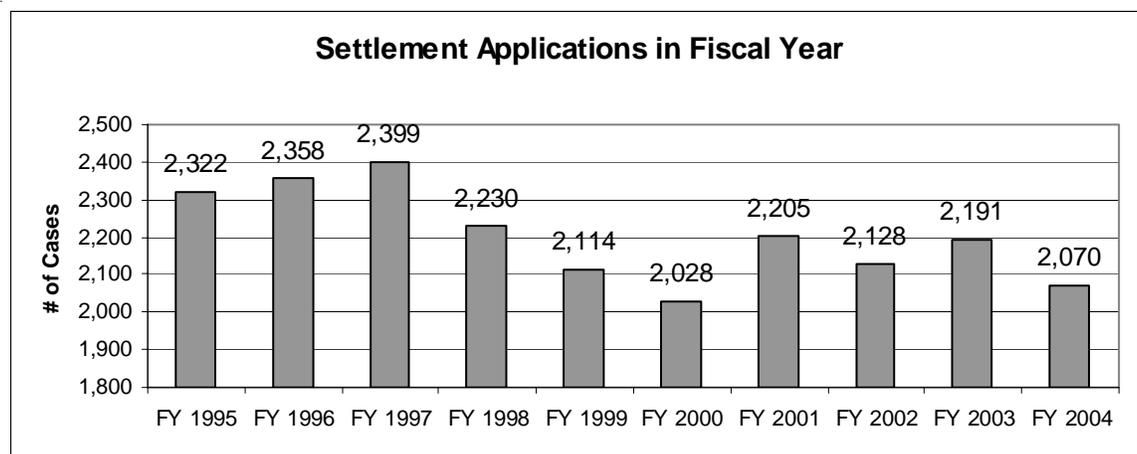


Summary of Settlements

Fiscal Year ¹	2004	2003*	2002	2001	2000
Applications					
Applications Pending at Beginning of Fiscal Year	158	142	136	159	99
Applications Made in Fiscal Year	2,070	2,191	2,128	2,205	2,028
Total	2,228	2,333	2,264	2,364	2,127
Dispositions					
Applications Approved Without Litigation	1,326	1,318	1,376	1,366	1,321
Applications Approved at the Original Hearing Level	748	805	689	811	596
Applications Approved at Review Hearing Level	12	15	14	23	14
Applications Approved at the Sup. Ct./Crt. App. Level	5	2	1	2	0
Applications — Total Approved	2,091	2,140	2,080	2,202	1,931
Applications — Total Disapproved	25	35	42	26	37
Total	2,116	2,175	2,122	2,228	1,968
Applications Pending at End of Fiscal Year	112	158	142	136	159

¹ Fiscal years run from July 1 through June 30.

* Numbers for FY 2003 may differ from those shown in the FY 2003 Annual Report due to corrections to data.



Legal

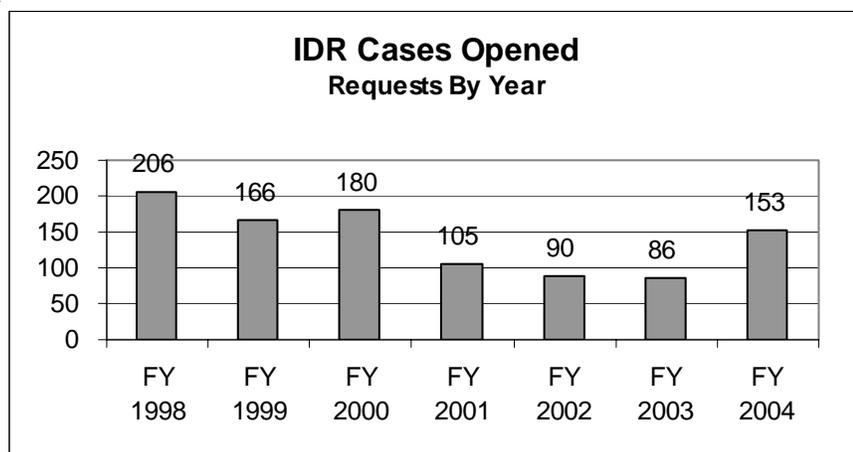
The Legal section of the Nebraska Workers' Compensation Court is responsible for reviewing lump sum settlements, facilitating informal dispute resolution, responding to inquiries from the public, providing legal advice to the court's administrative staff, and monitoring legislation for potential impact on the workers' compensation system. The section includes the court's general counsel, three staff attorneys, and a mediation coordinator/legal assistant.

Statistics for lump sum settlements processed in FY 2004 (July 1, 2003 through June 30, 2004) can be found in section 1, page 18 of this annual report. Summaries of the Nebraska Supreme Court and Court of Appeals decisions relating to workers' compensation may be found on the court's Web site (<http://www.nol.org/workcomp/about/casesummary.htm>).

Informal Dispute Resolution

Informal Dispute Resolution (IDR) is available to anyone with an interest in a workers' compensation dispute. The process is voluntary and the guidelines for IDR are found in Rule 48. It provides a dispute resolution mechanism for health care providers, vocational rehabilitation counselors, and others who would otherwise have no standing before the court. Attorneys may participate, but parties to the dispute do not have to be represented. The court may also order IDR and, in fact, disputes involving a change in the treating physician must be submitted for IDR before a motion or petition can be filed. IDR is attempted in all litigated cases in which a party is unrepresented.

The court's IDR process focuses on interest-based mediation. This means that one of the court's professionally trained attorney-mediators assists the parties in reaching a resolution of the dispute that satisfies the underlying interests of the parties. The mediator does not make decisions nor evaluate the case on behalf of either party. Mediation can be an empowering process because it allows the participants to decide the outcome rather than an arbitrator or judge. Many IDR inquiries can be resolved without the need for a mediation conference simply through information and education provided by the mediation coordinator.



Mediation conferences are conducted by the section's three staff attorneys. All of the attorney-mediators and the mediation coordinator are trained in the basic skills of mediation through a nationally recognized 30-hour training program through the Office of Dispute Resolution in Lincoln, Nebraska. Advancement of mediation skills is encouraged, and as opportunities arise the mediators receive additional training.

Closed Cases

The mediation coordinator evaluates all requests to determine whether the issues are appropriate for IDR under workers' compensation laws and rules. Sometimes they are not. In 10 of the 158 cases closed in FY 2004, the parties came to an agreement while still in the intake process with communication facilitated by the mediation coordinator. Mediation through the court is voluntary; in 89 cases, or 56 percent of all closed cases, one party declined to participate or did not respond to the request. Cases may be closed for a variety of other reasons as shown in the following table.

IDR Cases Closed	
Party(s) Did Not Consent	62
Mediated	39
No Response by Party(s)	27
Withdrawn/Unknown Reasons	11
Withdrawn/Resolved by Parties	10
Withdrawn/Plaintiff Represented	8
Inappropriate For Mediation	1
Total Closed in FY 2004	158

Mediated Cases

Of the 158 cases closed in FY 2004, 39 met in a mediation conference either in person or over the telephone. Of those 39 cases, 51 percent reached full or partial agreement.

Outcome of Mediated Cases	
No Agreement	19
Full Agreement	14
Partial Agreement	6
Total Mediated in FY 2004	39

Coverage and Claims

This section includes a manager, two compliance examiners, a workers' compensation auditor, and two program assistants. Section responsibilities are divided into three categories: medical services; compliance; and self-insurance.

Medical Services Activities

Section staff respond to inquiries from a variety of sources concerning the application and use of the court's Schedule of Medical and Hospital Fees, the Independent Medical Examiner program, managed care, the choice of physician rule, and other questions relating to medical, surgical, and hospital services under the Nebraska Workers' Compensation Act.

Fee Schedule

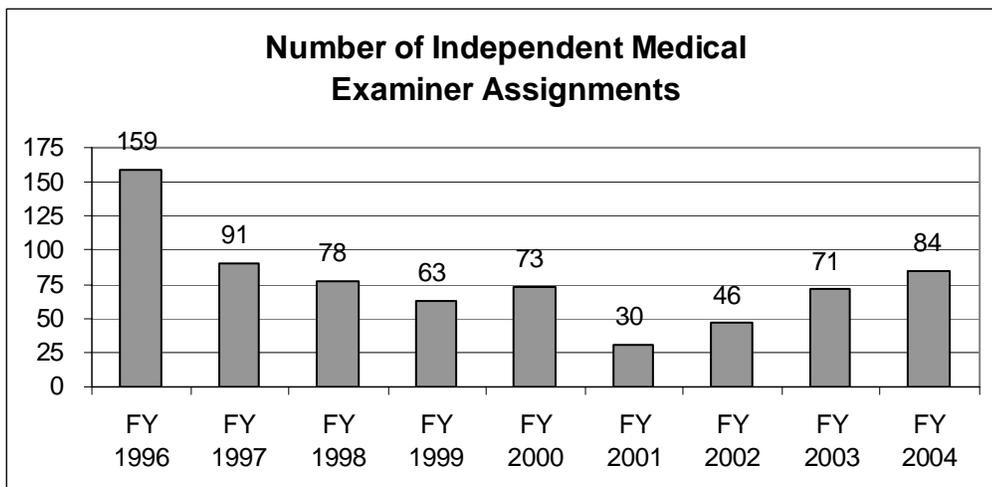
Section 48-120 of the Act requires the court to review the Schedule of Medical and Hospital Fees at least biennially and make appropriate changes when necessary. During FY 2004, the schedule was reviewed and a complete revision was adopted at a public hearing held May 12, 2004. The revised schedule is effective for all payments made on and after July 1, 2004.

Independent Medical Examiner (IME) System

Once a dispute arises regarding the medical condition of the employee or related issues, either side may request a finding by an independent medical examiner. The IME system was designed to give the parties an additional means of resolving disputes outside the judicial process.

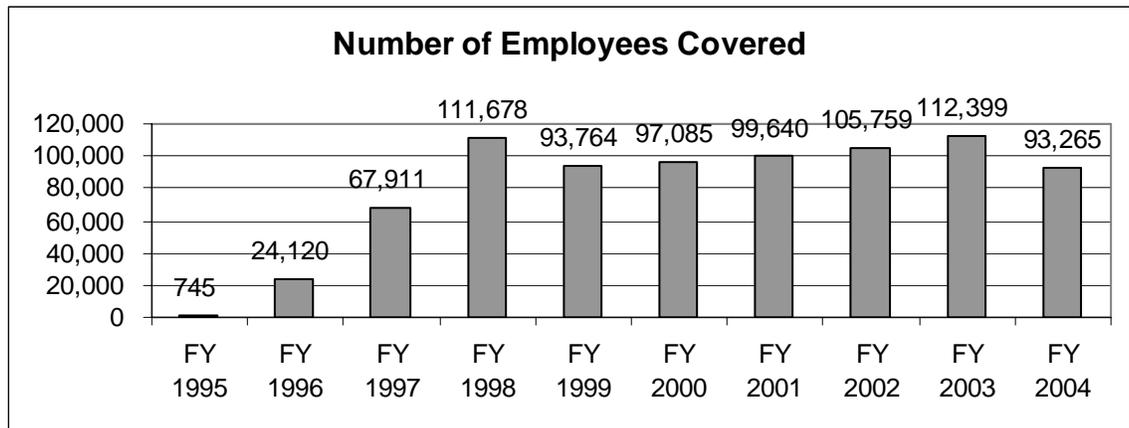
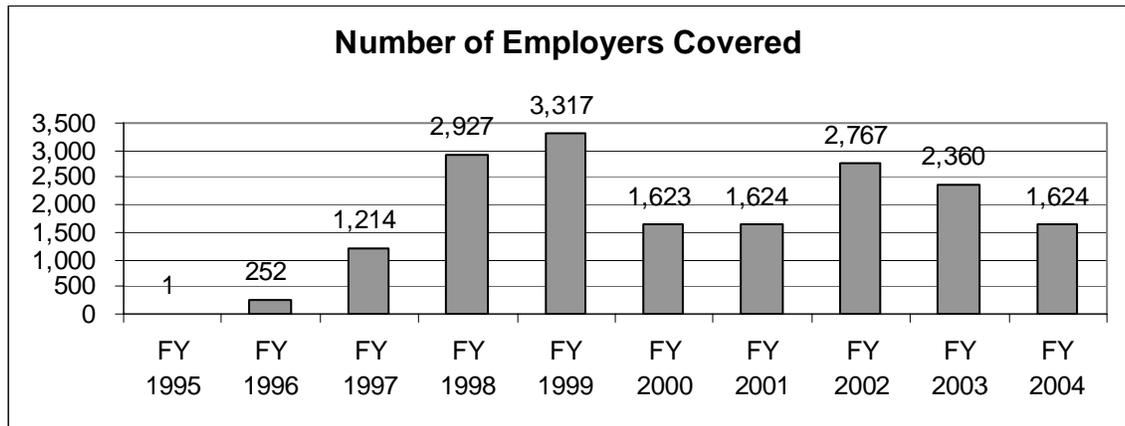
To serve as an Independent Medical Examiner for the court, physicians must complete an application and be approved by the judges of the court. Currently there are 234 physicians on the court's list of Independent Medical Examiners.

The number of requests for assignment of an IME was up during FY 2004, and 84 assignments were made compared to 71 during FY 2003. Fifty-eight requests were submitted by employees and their attorneys, employers submitted 24 requests as opposed to 30 the year prior, and two assignments were ordered by a judge of the court. The graph below shows assignments since the system began in 1996.



Managed Care Plans for Workers' Compensation

A table showing current information about managed care plans certified for workers' compensation is available on the court's Web site (<http://www.nol.org/workcomp/misc/mcp.pdf>). No new applications were submitted during FY 2004. On June 30, 2004 there were 1,624 employers and 93,265 employees covered by the certified managed care plans. Bar graphs showing the trend in covered employers and employees follow.



Compliance Activities

One of the primary enforcement activities of the section is to identify employers who do not have insurance coverage as required under the Nebraska Workers' Compensation Act. The section sent almost 4,500 informational letters to new corporations registering with the Secretary of State during FY 2004. When an uninsured employer is identified, compliance examiners first attempt to bring the employer into compliance. If the efforts of the staff do not result in compliance, the case is then referred to the Attorney General's office for further action.

Insurance carriers, risk management pools, and self-insured employers are also required to comply with obligations under the Act, including the obligation to report injuries and payments in accordance with the Act and the court's Rules of Procedure. Coverage and Claims staff enforce those reporting requirements, requesting missing injury reports and monitoring for their receipt, clarifying discrepancies on existing reports and obtaining missing information. The section has devoted an increasing amount of time to the

court's Electronic Data Interchange (EDI) initiative. Section staff have worked with Public Information and Information Technology staff on compliance issues, testing, editing for errors, and planning for future EDI activities.

Compliance examiners respond to a large volume of phone inquiries from a variety of sources and on a variety of topics. Topics frequently addressed include: medical issues, insurance carrier identification and contact information, benefit calculation questions, payment explanation, delay in receiving benefits, and general rights and obligations questions. The examiners recorded over 3,500 calls during FY 2004. Often, callers identify situations in which employers are uninsured, injury reports are not being filed, and insurers, employers, or risk management pools are not complying with other obligations under the Act. Staff investigate the specific cases, encourage voluntary compliance, and take appropriate legal action when necessary. Nearly 300 case investigations were opened last fiscal year.

Self-Insurance Activities

The Coverage and Claims section is responsible for reviewing applications for individual self-insurance, determining and collecting fees and assessments, and monitoring those employers who have been granted the privilege of self-insurance for continued ability to meet their financial obligations under the Nebraska Workers' Compensation Act. Self-insurance privileges are subject to periodic review and renewal. The Coverage and Claims section initiated a program for periodic on-site audit of payroll records in FY 2002. Through FY 2004, a total of 19 audits have been performed.

At the beginning of each calendar year, the court calculates and collects from employers self-insured for the prior calendar year the necessary assessments for the state's General Fund, the Compensation Court Cash Fund, and the Workers' Compensation Trust Fund. The assessments are based on the number and classification of employees, payroll, and benefits paid during the previous calendar year. Additional assessments are made for carrying out the Insurance Fraud Act. Because much of the information about self-insurers in Nebraska is kept on a calendar year basis, the statistics reported do not always coincide with the end of the court's fiscal year. It is important to note this distinction in the tables that follow. As of June 30, 2004 there were 50 employers approved for self-insurance. For calendar year 2004 assessment purposes, there were 52 self-insurers

Self-Insured Status By Major Industrial Division

Manufacturing	14
Services	10
Transportation & Public Utilities	8
Retail	7
Government	6
Insurance	3
Wholesale	2
Total Self-Insurers as of 6/30/2004	50

(employers who were self-insured for all or part of calendar year 2003). The State of Nebraska is self-insured by statute and is not included in any of the statistics that follow.

Self-Insurance Status By Calendar Year

Calendar Year	# of Self-Insurers	# of Employees	Gross Payroll
2003	52	135,670	\$3,932,199,098
2002	58	135,904	\$3,961,076,218
2001	62	139,419	\$3,914,599,183
2000	62	148,113	\$3,785,487,567
1999	64	136,136	\$3,785,362,521
1998	68	130,134	\$3,908,884,324
1997	76	123,282	\$3,095,073,558
1996	89	137,640	\$3,441,007,693
1995	92	130,854	\$3,268,057,718
1994	85	122,475	\$3,044,621,915

Note: 2004 figures not available at time of publication.

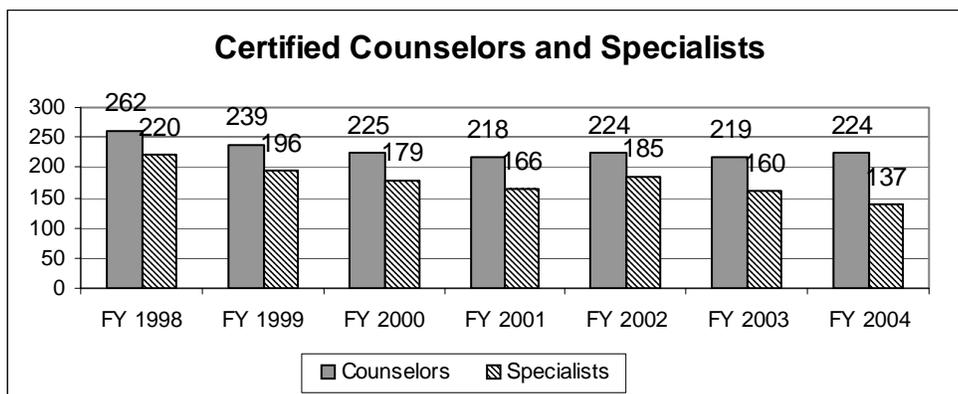
Vocational Rehabilitation

A manager, three vocational rehabilitation specialists, and two support staff are responsible for duties associated with vocational rehabilitation services to which an employee may be entitled under the Nebraska Workers' Compensation Act. The goal of vocational rehabilitation is to return an injured worker to suitable, gainful employment after an injury covered under the Act. A wide variety of services are available, from coordinating return to the pre-injury job with the employer to a period of formal retraining.

The duties of the section can be divided into three broad categories: certifying vocational rehabilitation counselors and job placement specialists, appointing counselors when parties cannot agree, and reviewing, approving, and monitoring vocational rehabilitation plans.

Certification of Counselors and Specialists

Vocational rehabilitation services can only be provided to injured workers by individuals who have been certified by the court. Rules 39–41 contain the requirements for certification. On June 30, 2004 there were 224 vocational rehabilitation counselors and 137 job placement specialists certified by the court. It should be noted that all certified counselors are not listed on the directory maintained by the court. By rule, vocational rehabilitation counselors and job placement specialists employed by a state agency and not working as private vocational service providers are considered certified. They are not included on the directory as they may not be selected or appointed to a workers' compensation vocational rehabilitation case. The directory lists 139 private vocational rehabilitation counselors, 59 of whom are located in Nebraska.



Appointment of Counselors

When an injured worker claims entitlement to vocational rehabilitation services, the employee and the employer (or the employer's insurer) must try to agree on a vocational rehabilitation counselor to evaluate the employee and provide needed services. If they cannot agree, one of them can ask the court to appoint a counselor from the directory. Of the 648 cases requiring a vocational rehabilitation counselor in FY 2004, the court appointed 163 counselors from its directory and the parties were able to agree upon a counselor in the other 485 cases.

When a vocational rehabilitation counselor is agreed upon or appointed, a vocational rehabilitation case is established. On June 30, 2004 there were 990 open cases. A total of 716 cases were closed for a variety of reasons during FY 2004 (training completed, employee returned to work, claim settled, etc.).

Vocational Rehabilitation Plans

Once it is determined that an employee may be entitled to vocational rehabilitation services in order to return to suitable, gainful employment the employee is evaluated and, if necessary, a vocational rehabilitation plan is developed. The level of services to be provided is based on a hierarchy outlined in Section 48-162.01 of the Nebraska Workers' Compensation Act. These services range from coordinating a return to the pre-injury job with the pre-injury employer to a plan of formal retraining.

A vocational rehabilitation plan of some type is involved in a majority of the cases monitored by the section. The following chart shows the type of plan involved in the 557 cases either closed during FY 2004 or currently being monitored. There cases involve 753 plans, as many cases involve more than one plan.

Type of Vocational Plan	
Job Placement	289
Associate Degree	226
Certificate/Other Training	108
English as Second Language (ESL)	48
General Education Diploma (GED)	37
Seminar/Remedial	19
Bachelor's or Other Advanced Degree	15
On-The-Job Training (OJT)	11
Total Vocational Plans in FY 2004	753

When an employee is in a court-approved vocational rehabilitation plan, the following costs are paid by the Workers' Compensation Trust Fund administered by the court: tuition, books, tools, other appropriate fees and costs, and board, lodging, and/or travel in some circumstances. In addition, salaries, other benefits, and expenses incurred by the court for the purposes of vocational rehabilitation are paid from the fund. Total disbursements from the trust fund for vocational rehabilitation purposes are shown in Section 1, page 12 of this Annual Report.

Vocational rehabilitation counselor fees for the evaluation of the employee, development and implementation of a vocational rehabilitation plan, and preparation of a loss of earning power evaluation are paid by the employer or workers' compensation insurer. This also includes charges by job placement specialists or interpreters, if necessary. The employer or insurer is also responsible for temporary disability benefits while the employee is undergoing vocational rehabilitation.

Public Information

The court's Public Information section exists for three purposes:

- to educate the public regarding Nebraska workers' compensation law and procedural rules. Public Information staff respond to inquiries received on the court's toll-free information line and email help desk, and also disseminate information by means of the court's Web site, publications, workshops, and seminars.
- to provide access to public records maintained by the court.
- to process and analyze injury and payment reports filed electronically and on paper by the court's trading partners, including insurers, risk management pools, and self insured employers. Public Information staff also administer access to the court's extranet Claims Search database to assist trading partners in complying with their reporting responsibilities.

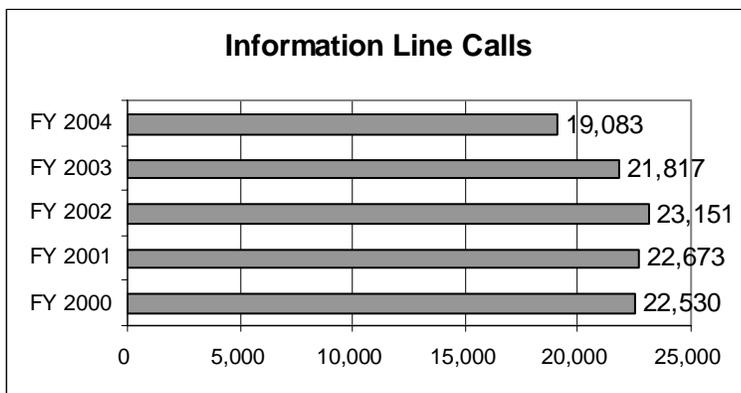
Providing these services requires seven full-time staff members: a manager, two public information specialists, a data quality assurance analyst, a computer operator, a receptionist/secretary, and an office clerk.

Education

Information Line

The court's toll-free information line enables the court to serve the public more efficiently and saves the cost of long-distance calling. Public information specialists assist callers on the information line from 8:00 a.m. to 5:00 p.m, Monday through Friday. After hours and during weekends and holidays, callers receive instructions to leave a message so that a specialist can return the call on the next working day.

The specialists provide answers to commonly asked questions about workers' compensation in Nebraska or research inquiries for a response, usually within 24 hours. Calls can also be transferred to other court sections for more information. Court staff do not provide opinions, guesses, or legal advice.

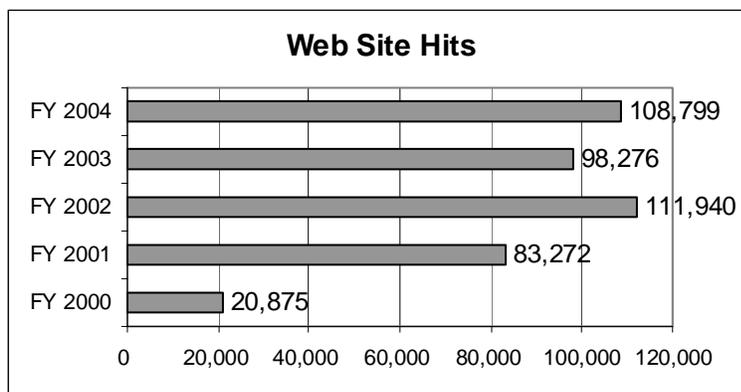


The information line received 19,083 calls in FY 2004, an average of 366.9 calls per week or 77 calls per day. This is a 12.5 percent decrease from FY 2003. Increased use of the court's Web site and electronic help desk may have contributed to the decrease in calls. Calls on the information line come from employees, attorneys, employers, insurers, medical and vocational rehabilitation providers, and others in Nebraska and throughout the nation.

Web Site

Public Information staff create and maintain the court's Web site (<http://www.nol.org/workcomp/>). The site's internal coding was upgraded in February 2004 to comply with the World Wide Web Consortium (W3C) standards to increase overall accessibility and ease of use. Public Information staff use online validators created and maintained by the W3C to test all Web pages for valid coding. Another recent improvement is the use of Secure Socket Layer (SSL) technology in our electronic Web forms. SSL technology encrypts information transmitted to the court to protect private information from internet hackers.

Among these secure forms is an electronic version of the court's Record Request form. Web site visitors can request workers' compensation records online by completing the required form fields and clicking the "submit" button. The Feedback form is also secure. Web site visitors should use this form to send questions, comments and requests to the court. All information transmitted from our secure Web forms come to the court's electronic help desk in the form of email. Public Information staff responded to 6,170 such emails in FY 2004.



In FY 2004, the Web site received 108,799 hits, a 10.7 percent increase from FY 2003. The court's Web site server host, Nebrask@ Online, gathers these statistics and it should be noted that these statistics do not include hits to our Web site from State of Nebraska agencies.

Of the Web site activity that was tracked in FY 2004, the files in the "Publications/Forms" page had the most hits with 35,498 (32.6 percent of all hits in FY 2004). More than 20 percent of these were for the Rule Book, with a total of 7,773 hits (7.1 percent of all hits). This was followed by the "Electronic Data Interchange (EDI)" page with 11,711 hits (10.8 percent of all hits) and the "Frequently Asked Questions (FAQ)" page with 9,941 hits (9.1 percent of all hits).

Publications

The Public Information section designs, writes, edits, and maintains an inventory of the following publications and forms.

- Annual Report
- Statistical Report
- Rules of Procedure
- Bulletin (*newsletter of the court*)
- Rights & Obligations (*also available in Spanish*)
- Choosing a Doctor for a Work-Related Injury (*also available in Spanish*)
- Vocational Rehabilitation Services (*also available in Spanish*)
- Informal Dispute Resolution and Mediation
- Information for Claimants Not Represented by an Attorney
- Record Request Form
- Form 1–First Report of Alleged Occupational Injury or Illness
- Form 4–Subsequent Report
- Form 12–Insurance Coverage
- Form 50–Choice of Doctor (*also available in Spanish*)
- Form 63-1–Request for Independent Medical Examiner
- Form 67-2–Notice of Agreement to use a Named Independent Medical Examiner

Workshops and Seminars

Public Information staff also assist with planning, preparing, and conducting informational workshops and seminars presented by the court. During FY 2004, court staff have presented information to approximately 250 people in a total of seven workshops and seminars.

Record Searches

One of the most common requests from the public are for record searches. Public Information staff fulfilled 8,409 requests for public records in FY 2004, a 59 percent increase from FY 2003. Of the record requests received in FY 2004, 84 percent were fulfilled by means of electronic mail or electronic fax. Policy changes effective August 1, 2002 resulted in the creation of a new Record Request form in paper and electronic formats. Five-year searches of first and subsequent reports are fulfilled at no charge if sufficient information is provided to promptly identify the records. Public Information staff fulfill most record requests within four business days.

Data Processing and Analysis

Public Information staff processed 71,897 first reports and 86,211 subsequent reports in FY 2004. At the time of publication, 99.9 percent of all first reports and 90 percent of all

subsequent reports are filed electronically using Electronic Data Interchange (EDI). Public Information staff process the electronic reports and also code and manually enter the remaining paper reports. Once processed, the data quality assurance analyst examines and maintains the data for statistical purposes.

The court has implemented a secured Internet application hosted by the state's Information Management Services (IMServices) Agency. Access to the court's Claims Search database is administered by Public Information staff. These agency administrators provide the court's trading partners with access to basic claims information that will help them to file accurate subsequent reports with the court. The administrators assist trading partners with the approval process, maintain the approved user list, and provide basic troubleshooting services when problems arise. At the time of publication, 42 of the court's 154 trading partners are approved for access to this database.

Information Technology

The Information Technology section of the Nebraska Workers' Compensation Court is responsible for the administration and maintenance of the court's computer systems and network. This includes the court's databases relating to reports of injury, payments, vocational rehabilitation, and adjudication, which are maintained in Oracle. The court has implemented a system for exchanging information through Electronic Data Interchange (EDI). The section maintains an electronic connection with the database at the National Council on Compensation Insurance (NCCI). The court also takes advantage of Internet access to Secretary of State information related to corporation and business records. Providing these services requires a manager, three full-time staff members, and one development contractor.

Fiscal Year Activities

Ending June 30, 2004, the court completed its seventh full year of managing data on its client/server system, which utilizes an Oracle database. The database currently contains nine full years' worth of information, going back to calendar year 1996 for first reports of injury. The court also added to its historical statistical injury-related information for purposes of performing cross-year analysis. Over the seven-year time frame the section has developed and maintains 362 program units: 299 in Oracle Forms/Reports, 49 in Micro Focus Cobol, and 14 in Borland Delphi. The section also provides support for an Oracle adhoc reporting tool used by 22 court staff members for producing reports and data extracts from the database.

During the fiscal year the court completed a series of analysis projects in conjunction with re-engineering efforts in the areas of adjudication, vocational rehabilitation, and coverage and claims. The court continues to move toward maintaining its documents and records in electronic format, and to familiarize staff with using electronic files and documents in place of paper files and documents.

The court shares with the Social Security Administration (SSA) injury, payment, settlement, and adjudication information to assist the SSA with reducing duplicate payments.

The section has completed its prerequisite preparations to begin developing new client/server applications using the Borland Delphi development environment. The court worked closely with the state government Information Management Services (IMServices) agency in preparing development procedures that assure that client/server applications are in compliance with disability access requirements. The first deliverable from the new environment included a comprehensive combined lookup application that looks across multiple data areas in the database.

Electronic Data Interchange Initiative

The court's Electronic Data Interchange (EDI) reporting initiative allows employers, insurers, and others to file certain reports with the court in an electronic format as opposed to sending forms through the mail. At the time of publication, 99.9 percent of all first reports and 90 percent of all subsequent reports are filed electronically using EDI. In conjunction with electronic subsequent report processing, the court implemented a new "claims" oriented data/processing design that facilitates managing the electronic

processing of these reports. The court, using the development and hosting services of IMServices, maintains a secured Internet application which allows claims administrators access to injury report information. This assists the insurance companies and third party administrators with properly filing injury and payment information.

Proof of Coverage

The court continued work during the year in preparation for receiving electronic transmissions of Proof of Coverage data from external data sources. The ultimate goals are to maintain a local repository of policy information for records management purposes and to be able to compare this information against employer information as provided to the court by other agencies.

Nebraska Occupational Injury and Illness Survey — 2002

Occupational Safety and Health Act

The Occupational Safety and Health Act of 1970 (OSHA) became an official part of the nation's labor laws in 1971. With its passage, Congress declared its intent “. . . to assure as far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.”

Under this Act, employers are required to keep records of all work-related deaths, any diagnosed occupational illnesses and any occupational injuries which involve loss of consciousness, restriction of work or motion, transfer to another job, or requires medical treatment beyond first aid. Employers with more than ten (10) workers are required to maintain a log and summary of occupational injuries and illnesses (OSHA No. 300) and a supplementary record (OSHA No. 301)¹ of each occurrence within the calendar year. These records are retained at the work site for five (5) years and must be available for inspection by representatives of the U.S. Department of Labor and the U.S. Department of Health and Human Services. Employers with less than eleven (11) employees and those employers who conduct business in one of the low hazard industries specified by OSHA are generally exempt from these recordkeeping requirements unless they are notified of the necessity to maintain these records for a given year for statistical purposes.

Occupational Injury and Illness Survey

In order to measure and evaluate the efforts in reducing work-related injuries and illnesses, a standardized system to collect, compile and analyze the health and safety statistics was established and implemented. This standardized system enables data users to identify those industries that need improvement, furthers monitoring and education programs, and allows employers to compare their incidence rates with other employers in the same industry.

The Nebraska Workers' Compensation Court has cooperated with the U.S. Department of Labor and the Bureau of Labor Statistics since 1971 in conducting an annual survey of Nebraska Employers which has provided these essential work injury and illness statistics. The 2002 sample surveyed 3,191 employing units in the state.

Information regarding the survey and the results of the Occupational Injury and Illness Survey 2002 is available on the court's Web site (<http://www.nol.org/workcomp/about/2002noii.pdf>).

¹In the State of Nebraska the Workers' Compensation Form 1 — First Report of Alleged Occupational Injury or Illness, may be used in place of the OSHA No. 301 form.

Census of Fatal Occupational Injuries (CFOI) — 2003

The Census of Fatal Occupational Injuries (CFOI) Program was developed by the U.S. Department of Labor, Bureau of Labor Statistics (BLS) to provide a timely and accessible census of work-related fatalities. The CFOI program is a federal/state cooperative program. In Nebraska, CFOI is conducted by the Nebraska Workers' Compensation Court. This is the 12th year that CFOI has been conducted in all 50 states and the District of Columbia.

2003 Census of Fatal Occupational Injuries

CFOI 2003 used multiple data sources including death certificates, workers' compensation reports, medical examiner reports, and other available federal and state administrative records, to compile a complete, verifiable count of Nebraska fatal workplace injuries. The census covers all traumatic occupational fatalities, including those resulting from injuries to the self-employed, laborers on small farms, government workers, and others too difficult to identify from a single data source.

Besides comprehensive counts of fatal work injuries, the 2003 census provides information on the demographic characteristics of the deceased workers (including age, gender, and race), the occupations and industries the decedents worked in and the circumstances of their tragedies. This wealth of information on hazards in Nebraska workplaces yields vital insights to aid in preventing future workplace fatalities. Safety and health researchers are able to study patterns of fatal work injuries, identify hazardous activities and equipment, and alert workers to these dangers.

Note on industry and occupation classifications: Beginning with the 2003 reference year, CFOI began using the 2002 North American Industry Classification System (NAICS) for industries and the Standard Occupational Classification (SOC) system for occupations. Prior to 2003, the program used the Standard Industrial Classification (SIC) system and the Bureau of the Census occupational classification system. Because of the substantial differences between the current and previous systems, the results by industry and occupation in 2003 constitute a break in series, and users are advised against making comparisons between the 2003 industry and occupation categories and the results for previous years.

2003 Census Results

The Nebraska Census of Fatal Occupational Injuries recorded 51 fatal workplace injuries during 2003, down from 83 the previous year. Other findings of the census include:

- Transportation accidents were the leading fatal event, accounting for 28 (55 percent) of fatal occupational injuries in 2003. Contact with objects and equipment followed with 11 (22 percent), assaults and violent acts contributed 6 (12 percent).
- Among industry groups, the largest number of fatal work injuries was in trade, transportation, and utilities with 19 deaths (37 percent). Agriculture, forestry, fishing and hunting followed with 15 deaths (29 percent).

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- Eleven (22 percent) of those fatally injured were 25 – 34 years of age, nine (18 percent) were 35 – 44 years of age, and nine (18 percent) were 65 years and over.
 - Forty-eight (94 percent) of those fatally injured were white, non-hispanic.
 - Forty-three (84 percent) of those fatally injured were men.
 - Twenty-nine (57 percent) of those fatally injured were wage and salary workers. The remainder were self-employed.

Information regarding the census and the results of the Census of Fatal Occupational Injuries 2003 is available on the court's Web site (<http://www.nol.org/workcomp/about/2003cfoi.pdf>).