



**Workers'
Compensation
Board**



New York State Workers' Compensation Board **2016 ANNUAL REPORT**

Andrew M. Cuomo, Governor
Kenneth J. Munnely, Chair





2016 ANNUAL REPORT

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WORKERS' COMPENSATION BOARD'S 2016 ANNUAL REPORT

Executive Summary

The Workers' Compensation Board (WCB or Board) is pleased to submit its 2016 Annual Report. Pursuant to Workers' Compensation Law § 153, this report states in detail the work the Board has done in hearing and deciding cases and related aspects of the Board's operations, including assembly and adjudication of workers' compensation claims, carrier compliance with timely filing of First Reports of Injury (FROIs), and issuance of stop work orders (SWO) against employers that fail to maintain appropriate workers' compensation coverage.

Board Operations

In addition to the Statewide Administrative Office located in Schenectady, the Board maintains nine District Offices, 13 Customer Service Centers, and three Hearing Points located throughout the state (see A-1). Please

see the Board's website for addresses, directions and parking information, as well as an interactive map of the types of services located at each office at: wcb.ny.gov/content/main/DistrictOffices/MainPage.jsp

Stop Work Orders

Nearly all employers in New York State are required to secure workers' compensation coverage. Since 2007, the Board has been authorized to assess penalties (WCL § 141-a) or issue a stop work order (SWO) if an employer fails to maintain required workers' compensation coverage. The SWO has

proven an effective vehicle in promoting compliance. Since 2007, the Board has issued approximately 14,500 SWOs, including 1,705 SWOs in 2016. The vast majority of these were issued downstate — 1,266 in the five boroughs of New York City (see A-2).

Average Weekly Wage

Indemnity benefits are based on the injured worker's average weekly wage (AWW) in the year prior to the accident, subject to statutory maximum benefit rates. Since July 1, 2010, the maximum benefit rate has been two-thirds of the prior year's statewide average weekly wage (SAWW), as determined by the Department of Labor. In July 2016, the maximum benefit rate was \$864.32, based on a 2015 SAWW of \$1,296.48.

Excluding the lowest category of wages (\$0 to \$299.99), there is a fairly equal distribution of AWW in established claims in 2016. The highest category of wages (SAWW and higher) continues to trend higher each year. In 2016, close to 25% of established claims were in this category (see A-3).

Claims

First Report of Injury

In 2016, the Board challenged insurance carriers to improve and maintain timeliness of submitting First Reports of Injury (FROI), starting with a performance goal of 75% and increasing to 85% by the third quarter. According to NYCRR Section 300.22, a FROI must be received within 18 days of the disability event or 10 days from employer knowledge of the event or 10 days from the initial date of disability, whichever is longer.

The payor compliance initiative started in May 2014, at which time only 38% of FROIs were submitted on time. As a result of WCB outreach and education, the compliance rate increased to 65.5% by the first quarter of 2015 and up to 71.5% by the fourth quarter of 2015, when the Board started assessing performance penalties. NYS insurance carriers improved their performance in 2016 and by the fourth quarter of 2016 submitted approximately 78% of all FROIs on time (see A-4).

Assembled Claims

A claim is assembled once the Board learns of a workplace injury and assigns the claim a Board case number. For the purposes of this report, a claim is assembled when the Board receives a notice of injury and a qualifying medical form. The number of assembled claims totaled 169,636 in 2016 (see A-5).

Controverted Claims

In a controverted claim, the insurance carrier or self-insured employer challenges the injured worker's eligibility for workers' compensation benefits. When this happens, a pre-hearing conference is held.¹ The expedited hearing process sets a goal of holding a pre-hearing conference within 30 days and resolving controverted claims within 90 days.

There was a 5.8% decrease in controverted claims in 2016 (see A-7 and A-8). In most cases, a pre-hearing conference was held within 25 days of the notice of controversy (see A-9).

Established Claims

Regulations require the Board to issue a decision determining employer liability in all claims involving more than one week of lost time, even if the insurer has accepted the claim and is making payment. Effective January 15, 2016, the Board no longer issues determinations in claims that are assembled where there is no compensable lost time and no issues or disputes to resolve. To find liability, the Board must determine that (1) an accident or occupational disease arising out of and in the course of employment occurred, (2) timely notice was given to the employer, and (3) there was a causal relationship between the work injury or illness and the consequential disability. This is known as Accident, Notice, and Causal Relationship or Occupational Disease, Notice, and Causal Relationship (see A-10 and A-11).

¹ Insurers file a Notice That Right To Compensation Is Controverted to challenge a claim, but the Board's business rules do not treat a claim as controverted unless a qualifying medical form is filed by an authorized health care provider. In many claims, the insurer withdraws the notice of controversy or the claimant does not pursue the claim.

Claim Resolution

In 2016, the Board issued 394,297 resolutions, approximately 11% more than in 2015 (see A–12). By statute, the Board resolves issues in workers' compensation claims through both formal and informal means. Formal resolution refers to the formal hearing process, in which a workers' compensation law judge receives evidence, hears testimony, decides disputed legal and factual questions, and awards benefits. Informal resolutions do not involve hearings; decisions are proposed based on information collected in the electronic case file of the injured worker when there is no significant dispute between the parties. They are proposed by the Board and are not effective if either party objects within 30 days.

Two new informal resolution processes implemented in 2016, in part, allow available hearing calendar time to be utilized for cases with issues: Section 32 Waiver Agreements (March 1, 2016) and Stipulation Agreements (November 2, 2016). Although an informal process is followed to resolve these agreements, the resulting desk determinations are final determinations.

Informal Resolutions

More than half (53.6%) of 2016 resolutions came about through informal channels, including: conciliation, administrative determinations, and final desk determinations (see A–12).

Approximately 29.1% of resolutions were by conciliation, compared to 24.7% in 2015. The percentage of administrative determinations is down slightly from 2015 (25.3% vs. 23.9%), due, in part, to

eliminating their issuance in certain cases that do not have compensatory lost time. In the new final desk determination category, there were 2,381 resolutions in 2016; this category is expected to increase in 2017 and allow for more timely hearings for cases with issues (see A–12).

Formal Resolutions

In 2016, the Board held 291,641 hearings (A–14), which produced 165,290 hearing resolutions and 17,652 formal waiver agreements (see A–13). The number of hearings increased by 4.3% over 2015 (see A–14); the number of formal resolutions increased by 3.2% (see A–12).

Appeals Process

If one of the parties believes the judge had an error of fact in the decision, that party may raise an objection through an administrative appeal. The Board's Administrative Review Division (ARD) receives all requests for appealed cases. Effective February 1, 2016, proposed regulations for Application for Board Review (RB-89) were issued to streamline and clarify the process. These regulations were subsequently adopted and became effective on December 1, 2016. Over the past few years, the Board has worked diligently to reduce the amount of time it takes to resolve appealed cases. The inventory of ARD cases continued to decline in 2016 — the pending inventory has been reduced by half over the past two years. Currently, 93% of ARD cases are less than six months old (see A–16).

Current Offices, Hearing Points, and Service Center Locations

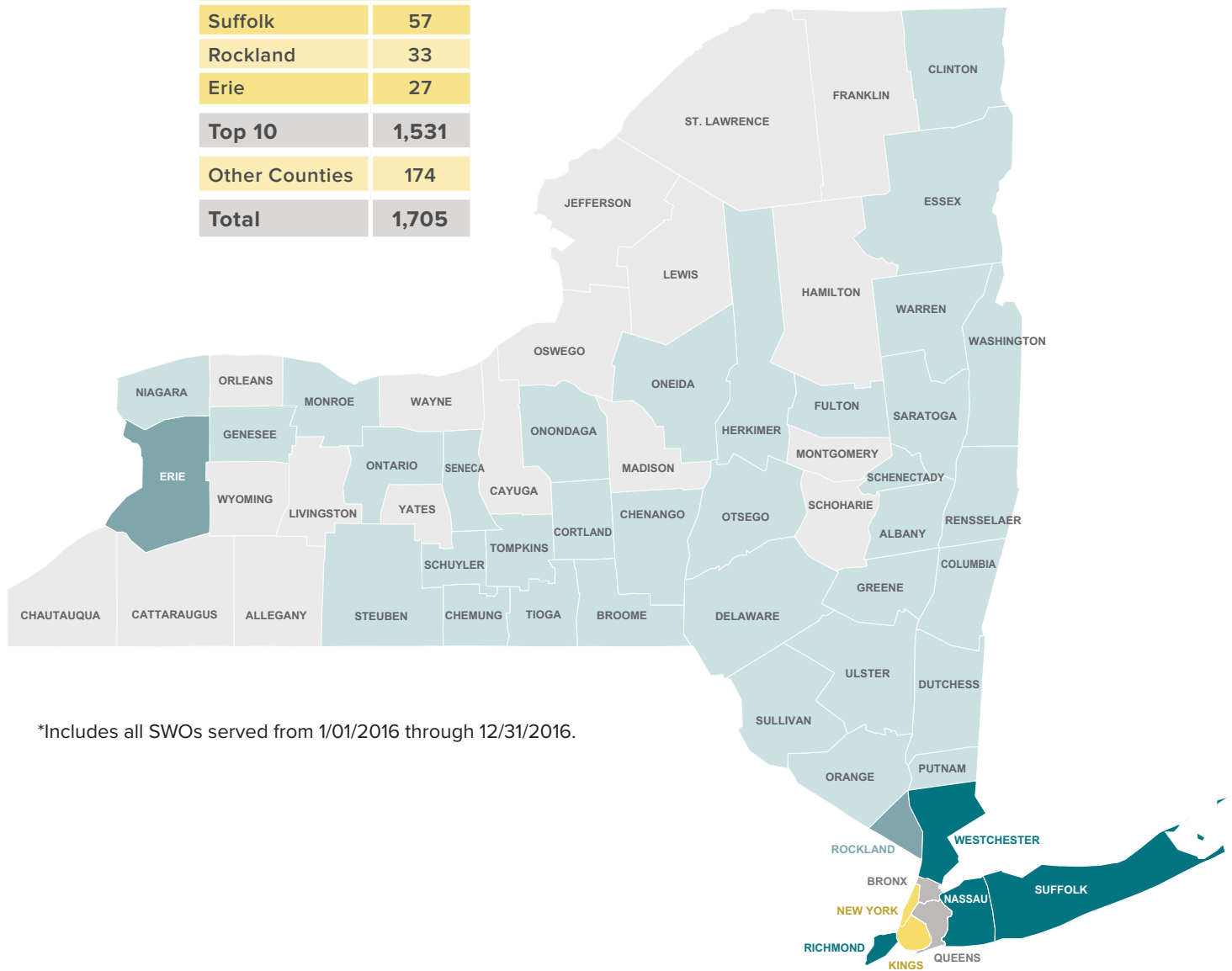


Stop Work Orders (SWOs) Served in 2016*

County Name	Count
New York	428
Kings	340
Queens	236
Bronx	184
Richmond	78
Westchester	77
Nassau	71
Suffolk	57
Rockland	33
Erie	27
Top 10	1,531
Other Counties	174
Total	1,705

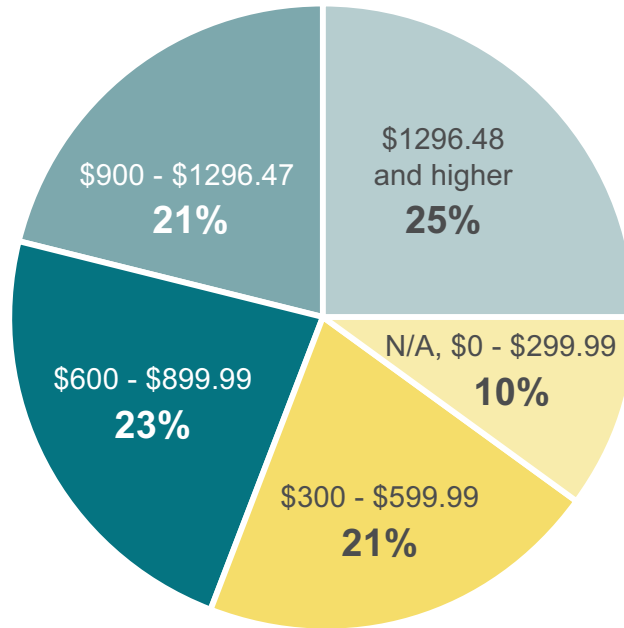
SWOs Served

- 0
- 1 to 20
- 21 to 50
- 51 to 100
- 101 to 250
- 251 to 500



*Includes all SWOs served from 1/01/2016 through 12/31/2016.

Average Weekly Wage For Established Claims* with First Indemnity Award in 2016



Average Weekly Wage For Established Claims with First Indemnity Award in 2012 to 2016

Average Weekly Wage (# and % of Claimants)	First Indemnity Award Year									
	2012		2013		2014		2015		2016	
	#	%	#	%	#	%	#	%	#	%
N/A, \$0 - \$299.99	7,091	9.8%	6,883	9.5%	7,116	9.4%	6,674	8.9%	7,669	9.8%
\$300 - \$599.99	18,291	25.4%	17,894	24.7%	18,022	23.8%	17,060	22.9%	16,841	21.5%
\$600 - \$899.99	18,118	25.1%	17,969	24.8%	18,353	24.2%	17,649	23.7%	17,723	22.6%
\$900 - less than SAWW**	15,315	21.2%	15,251	21.1%	15,970	21.1%	16,004	21.5%	16,718	21.3%
SAWW and higher	13,298	18.4%	14,430	19.9%	16,317	21.5%	17,197	23.1%	19,397	24.8%
Totals	72,113	100%	72,427	100%	75,778	100%	74,584	100%	78,348	100%

*An “established claim” is one where the WCB has made a finding of a work-related accident or injury.

**SAWW = Statewide Average Weekly Wage as determined by the NYS Department of Labor.

The established claims data include some previously established claims for which a Board finding during calendar year 2012-2016 amended or reaffirmed the claim’s status. For Administrative and Conciliation resolutions, parties have 30 days to object to the resolution. Since the data is captured in mid-January, some resolutions “duly filed” in December (but not finalized) are not included in the counts for this report. It is estimated that these affirmations account for between 1% and 3% of the total.

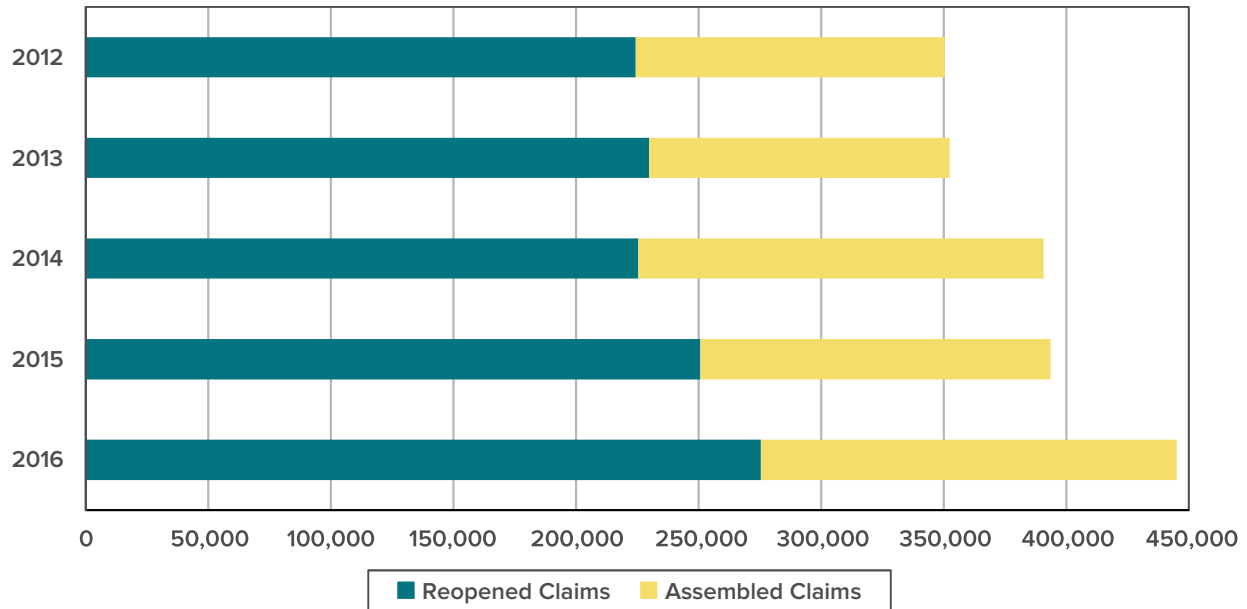
Payor Compliance in 2016 by Quarter

Timely First Report of Injury (FROI)

Quarter	Payor Count	Performance Goal	% of FROI Submitted On Time
Quarter 1	718	75%	75.8%
Quarter 2	704	80%	79.9%
Quarter 3	690	85%	79.0%
Quarter 4	701	85%	77.6%

According to NYCRR Section 300.22, for a FROI to be considered timely it must be received within 18 days of the disability event or 10 days from employer knowledge of the event or 10 days from the initial date of disability, whichever is longer.

Claims Assembled & Reopened From 2012 to 2016



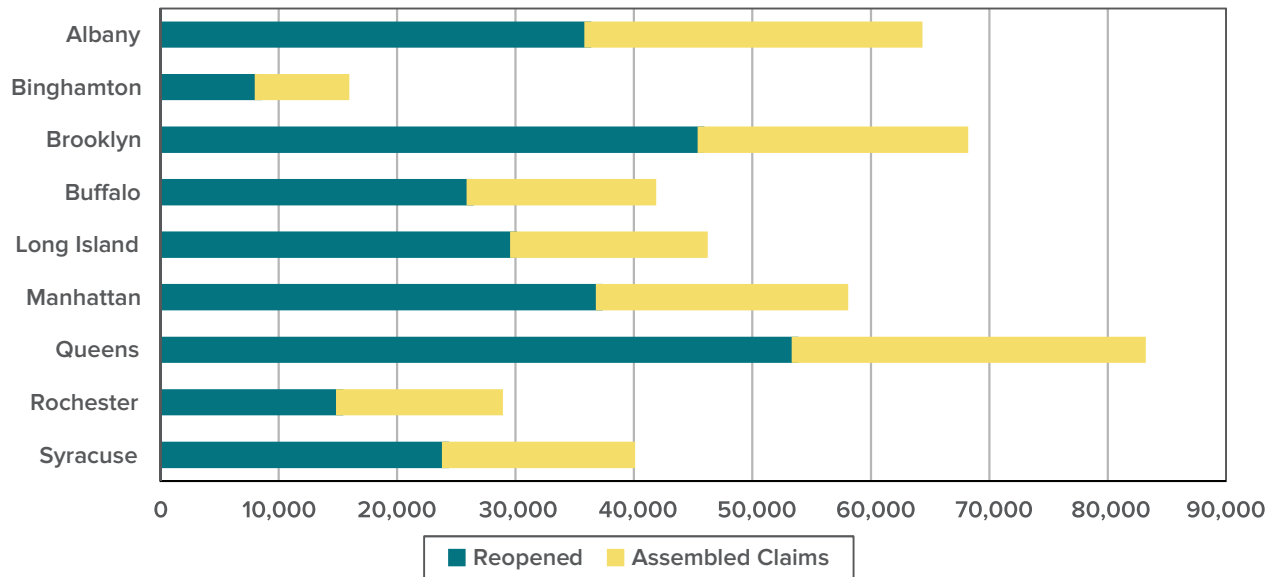
Year	Reopened Claims	Assembled Claims
2012	224,412	126,064
2013	229,897	122,615
2014	225,450	165,304
2015	250,804	142,830
2016	275,423	169,636

The implementation of Electronic Data Interchange (EDI) by all carriers in April 2014 has enabled the Board to auto-assemble claims upon receipt of the First Report of Injury (FROI). Now, 88% of assembled claims are auto-assembled. When the carrier learns of the disability event (workplace injury), it must file a FROI with the Board. The higher number of assembled cases since 2014 reflects the effectiveness of EDI, which in turn supports the Board's efforts to monitor and ensure compliance with filing and payment obligations.

A **reopened claim** is one that has been reactivated to resolve new issues following a finding that no further action was necessary.

The count of **claims assembled** post WCB reform (after September 28, 2008) excludes claims that were assigned a WCB claim number but for which the Board did not receive sufficient information, despite requests, to take further action. The WCB has changed its claim assembly process several times over the past few years. While this makes trend analysis difficult, the number of claims assembled continues to reflect the number of reported workplace injuries for which the agency may be called upon to resolve issues, monitor compliance, and ensure the timely and appropriate payment of benefits. The count of assembled claims includes both accepted and controverted claims under the Workers' Compensation Law, Volunteer Firefighters' Benefit Law, and Volunteer Ambulance Workers' Benefit Law.

Claims Assembled & Reopened in 2016 by District Office



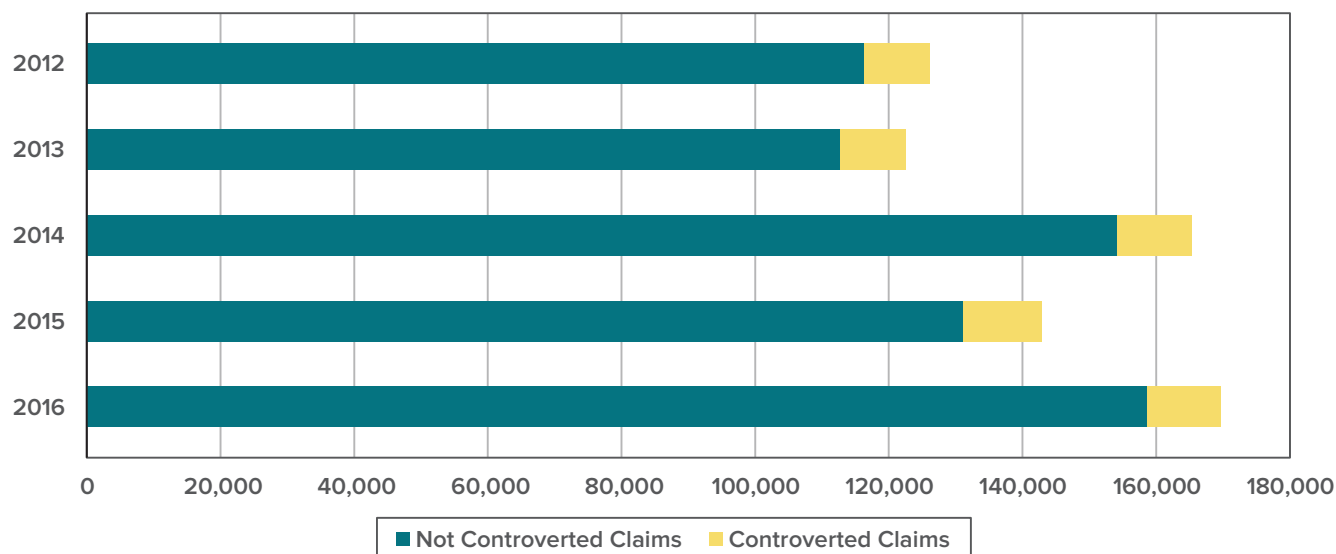
District Office	Reopened Claims	Assembled Claims
Albany	36,040	28,101
Binghamton	8,223	7,526
Brooklyn	45,618	22,390
Buffalo	26,105	15,556
Long Island	29,762	16,261
Manhattan	37,028	20,844
Queens	53,564	29,437
Rochester	15,063	13,658
Syracuse	24,020	15,863
Totals	275,423	169,636

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Claims Assembled: Controverted vs. Not Controverted From 2012 to 2016



Year	Total Claims Assembled	Controverted Claims	Not Controverted Claims	Percent Controverted
2012	126,064	9,838	116,226	7.8%
2013	122,615	9,850	112,765	8.0%
2014	165,304	11,175	154,129	6.8%
2015	142,830	11,743	131,087	8.2%
2016	169,636	11,063	158,573	6.5%

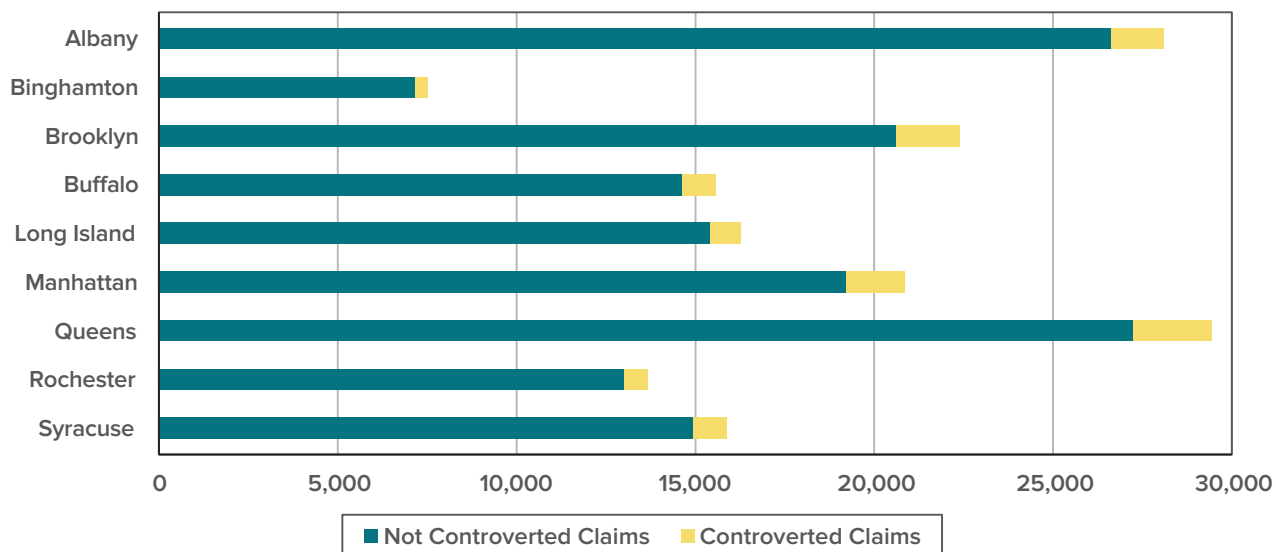
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A **controverted claim** is one for which the Board has received:

- 1) "Notice That Right To Compensation Is Controverted" indicating that the Carrier disputes the claim, and
- 2) qualifying medical documentation.

Claims Assembled: Controverted vs. Not Controverted by District Office



District Office	Total Claims Assembled	Controverted Claims	Not Controverted Claims	Percent Controverted
Albany	28,101	1,483	26,618	5.3%
Binghamton	7,526	377	7,149	5.0%
Brooklyn	22,390	1,745	20,645	7.8%
Buffalo	15,556	990	14,566	6.4%
Long Island	16,261	844	15,417	5.2%
Manhattan	20,844	1,605	19,239	7.7%
Queens	29,437	2,412	27,025	8.2%
Rochester	13,658	700	12,958	5.1%
Syracuse	15,863	907	14,956	5.7%
Totals	169,636	11,063	158,573	6.5%

The implementation of Electronic Data Interchange (EDI) by all carriers in April 2014 has enabled the Board to auto-assemble claims upon receipt of the First Report of Injury (FROI). Now, 88% of assembled claims are auto-assembled. When the carrier learns of the disability event (workplace injury), it must file a FROI with the Board. The higher number of assembled cases since 2014 reflects the effectiveness of EDI, which in turn supports the Board's efforts to monitor and ensure compliance with filing and payment obligations.

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- 2) qualifying medical documentation.

Pre-Hearing Conferences (PHC) Held From 2012 to 2016 Median Days from Controversy to PHC by Year

Year	Total PHC	Median Days from Controversy to PHC
2012	8,866	26
2013	9,387	26
2014	10,266	25
2015	11,427	25
2016	12,487	25

A **controverted claim** is one for which the Board has received:

- 1) "Notice That Right To Compensation Is Controverted" indicating that the Carrier disputes the claim, and
- 2) qualifying medical documentation.

The governing Board regulation directs that the pre-hearing conference be held within 30 days. This benchmark is consistently met by the Board.

Claims Established from 2012 to 2016 by Claim Type and Year

Year Established	Total Claims Established	WCL Claims (1)	VFBL Claims (2)	VAWBL Claims (3)
2012	106,854	106,210	581	63
2013	104,137	103,579	509	49
2014	124,878	124,164	643	71
2015	134,126	133,268	790	68
2016	101,703	101,225	437	41

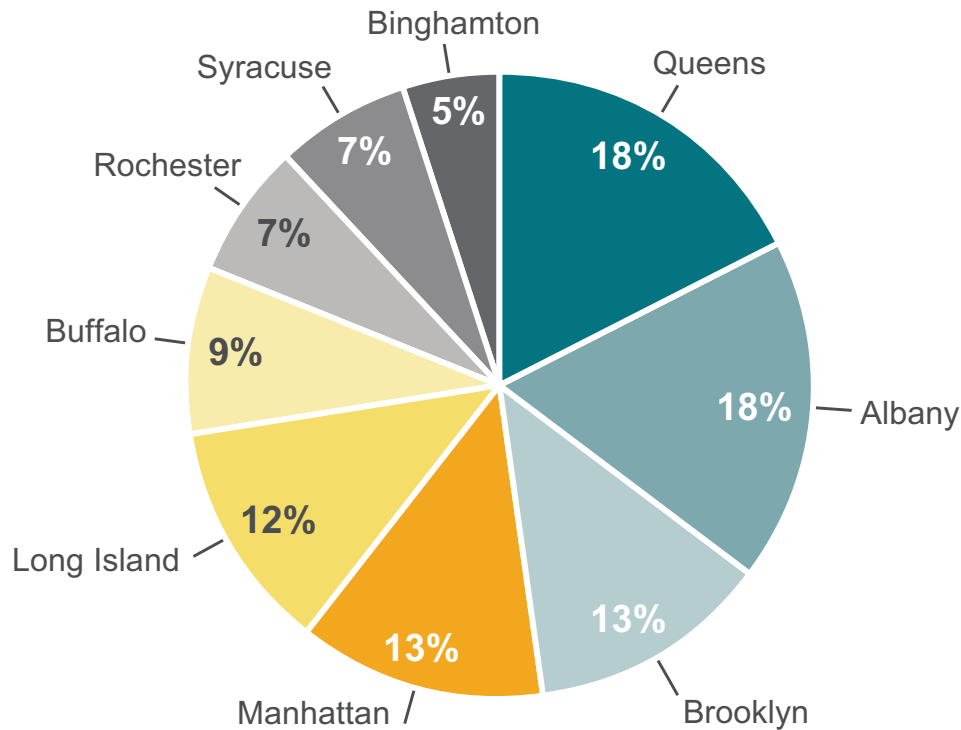
- (1) Claims under the Workers' Compensation Law
- (2) Claims under the Volunteer Firefighters' Benefit Law
- (3) Claims under the Volunteer Ambulance Workers' Benefit Law

An “established claim” is one where the WCB has made a finding of a work-related accident or injury.

The established claims data include some previously established claims for which a Board finding during calendar years 2012-2016 amended or reaffirmed the claim’s status. For Administrative and Conciliation resolutions, parties have 30 days to object to the resolution. Since the data is captured in mid-January, some resolutions “duly filed” in December (but not finalized) are not included in the counts for this report. It is estimated that these affirmations account for between 1% and 3% of the total. The established claims data includes all established claims regardless of whether the claims had compensable lost time.

The number of established cases in 2016 is lower, in part, due to the discontinuation of administrative determinations (AD-NSL) for medical-only cases as of January 15, 2016.

Claims Established in 2016 by District Office



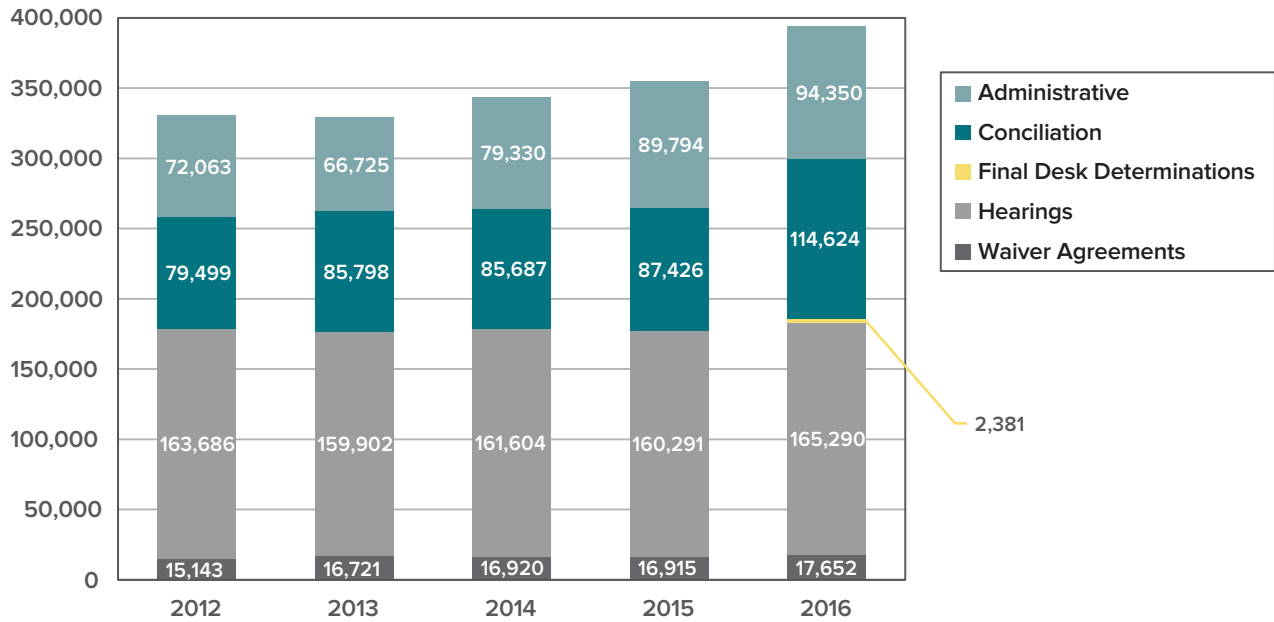
District Office	Claims Established
Albany	17,925
Binghamton	4,585
Brooklyn	13,017
Buffalo	9,000
Long Island	11,697
Manhattan	13,195
Queens	18,250
Rochester	7,207
Syracuse	6,827
Totals	101,703

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AD-NSL decisions are no longer being issued for claims with no compensable lost time, effective January 15, 2016.

Claim Resolution by Board Processes 2012 to 2016



Claim Resolutions	Resolution Year				
	2012	2013	2014	2015	2016
Administrative	72,063	66,725	79,330	89,794	94,350
Conciliation	79,499	85,798	85,687	87,426	114,624
Final Desk Determinations	-	-	-	-	2,381
Hearings	163,686	159,902	161,604	160,291	165,290
Waiver Agreements	15,143	16,721	16,920	16,915	17,652
Totals	330,391	329,146	343,541	354,426	394,297

Administrative includes Administrative Determinations, Administrative Closures and Cancellations (A claim is cancelled if it is determined to be a duplicate).

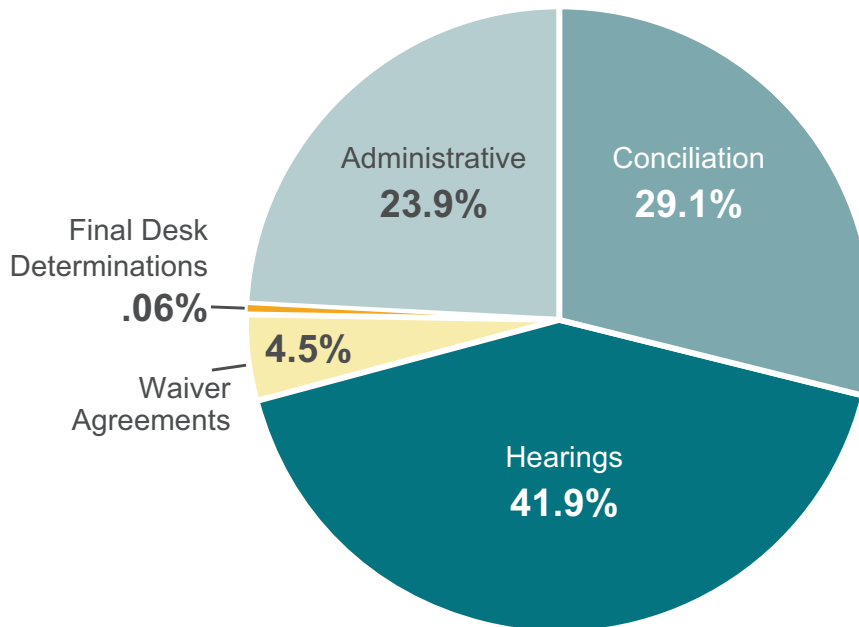
Conciliation provides an informal and prompt resolution of the claim based upon the cooperation of both parties: the injured worker and the insurance carrier/self-insured employer.

Final Desk Determinations reflect final desk decisions, which are identified by WCB decision forms (NOSD-SL, NOSD-NSL, C67-D, C68A-D, and PD-32). The new PD-32 waiver agreement was implemented by the Board effective March 1, 2016. The new stipulation agreements were implemented by the Board effective November 2, 2016.

A claim resolved by the **Hearing** process is one for which a judge has determined that no further action by the Board is necessary at the conclusion of the hearing; this includes Pre-Hearing Conferences. A Pre-Hearing Conference provides a mechanism for the identification of issues and relevant evidence and permits parties of interest an opportunity to assess their case and to resolve outstanding issues prior to scheduling a hearing regarding those issues.

Waiver Agreements settle any or all issues in a claim for workers' compensation benefits, subject to the Board's approval.

Claim Resolutions by Board Processes in 2016



Claim Resolution	Number of Resolutions	Percentage of Resolutions
Informal	211,355	53.6%
Administrative	94,350	23.9%
Conciliation	114,624	29.1%
Final Desk Determinations	2,381	0.6%
Formal	182,942	46.4%
Hearings	165,290	41.9%
Waiver Agreements	17,652	4.5%
Totals	394,297	100.0%

Administrative includes Administrative Determinations, Administrative Closures and Cancellations (A claim is cancelled if it is determined to be a duplicate).

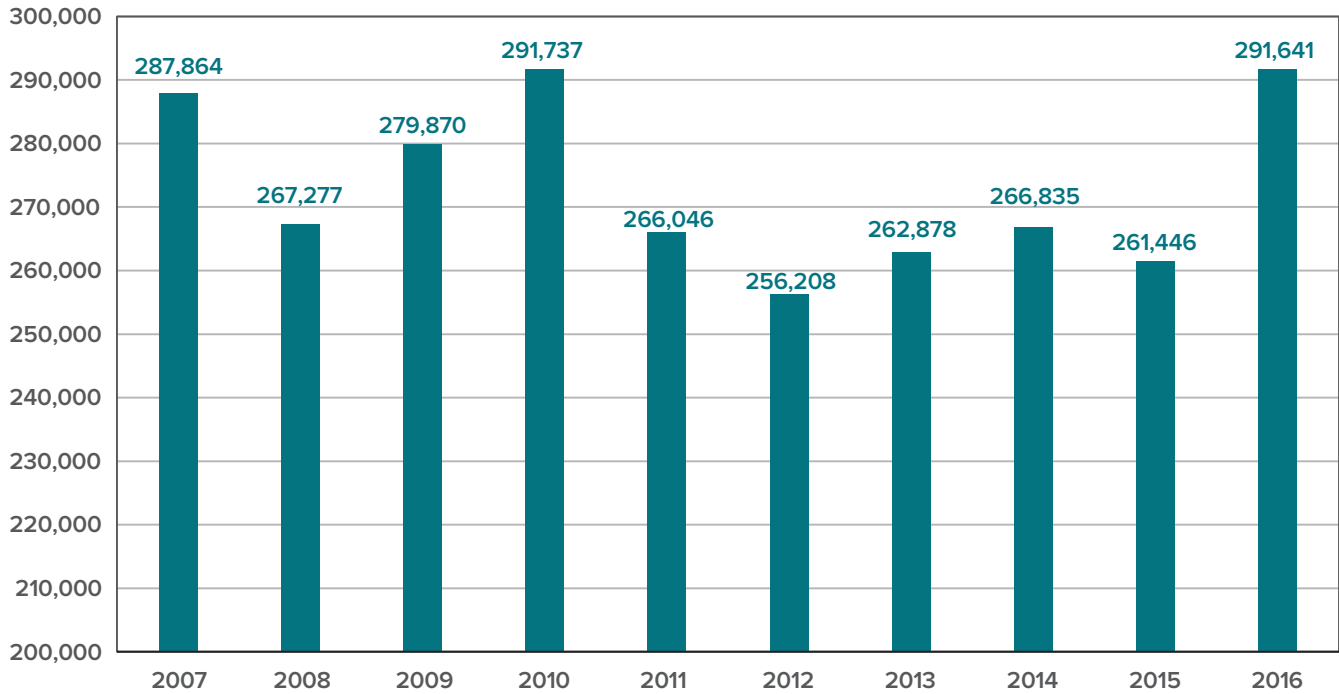
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Number of Hearings Held from 2007 to 2016 Ten-Year Trend

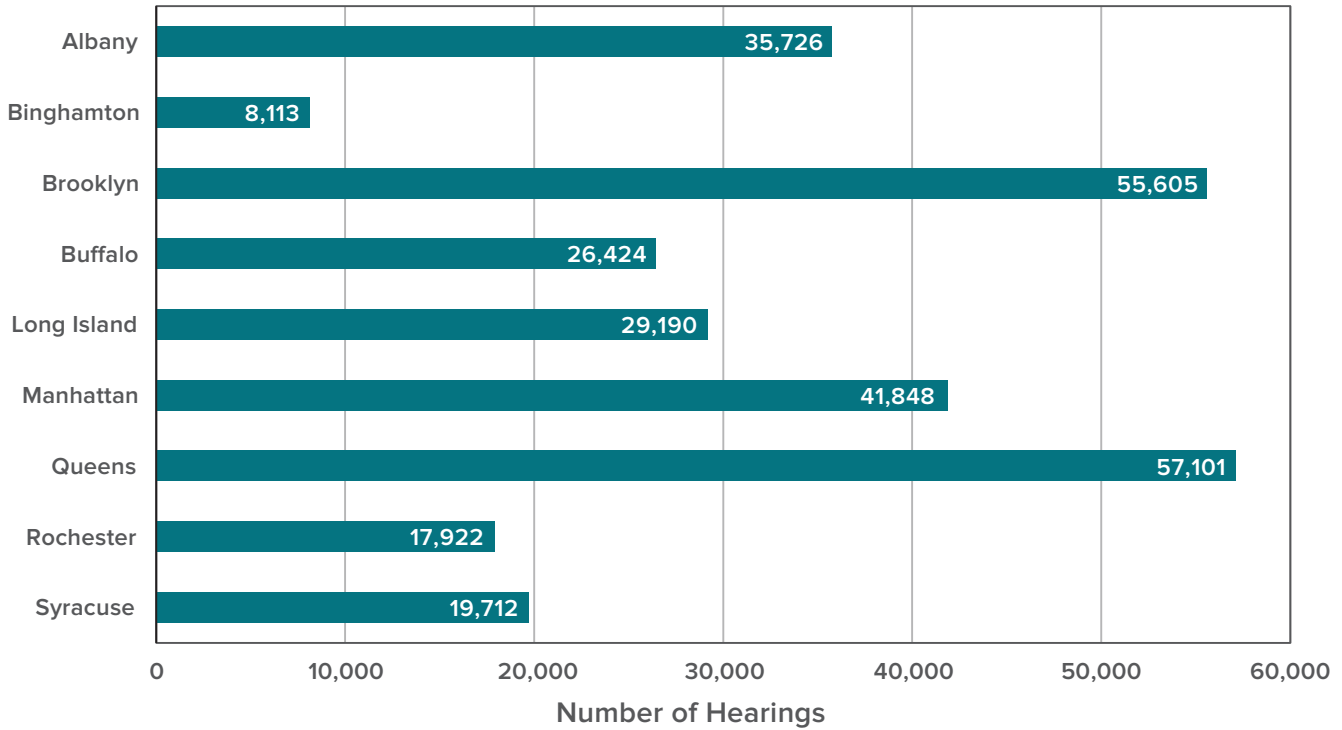


Year	Total Hearings Held
2007	287,864
2008	267,277
2009	279,870
2010	291,737
2011	266,046
2012	256,208
2013	262,878
2014	266,835
2015	261,446
2016	291,641

Through 2015, the number of hearings excludes commissioner hearings, board panel reviews and Section 32 waiver agreements. It includes hearings held at district offices, customer service centers, and hearing point locations.

Starting in 2016, the count includes Section 32 hearings. For comparison purposes, the 2016 hearing count (excluding Section 32 hearings) is 272,811.

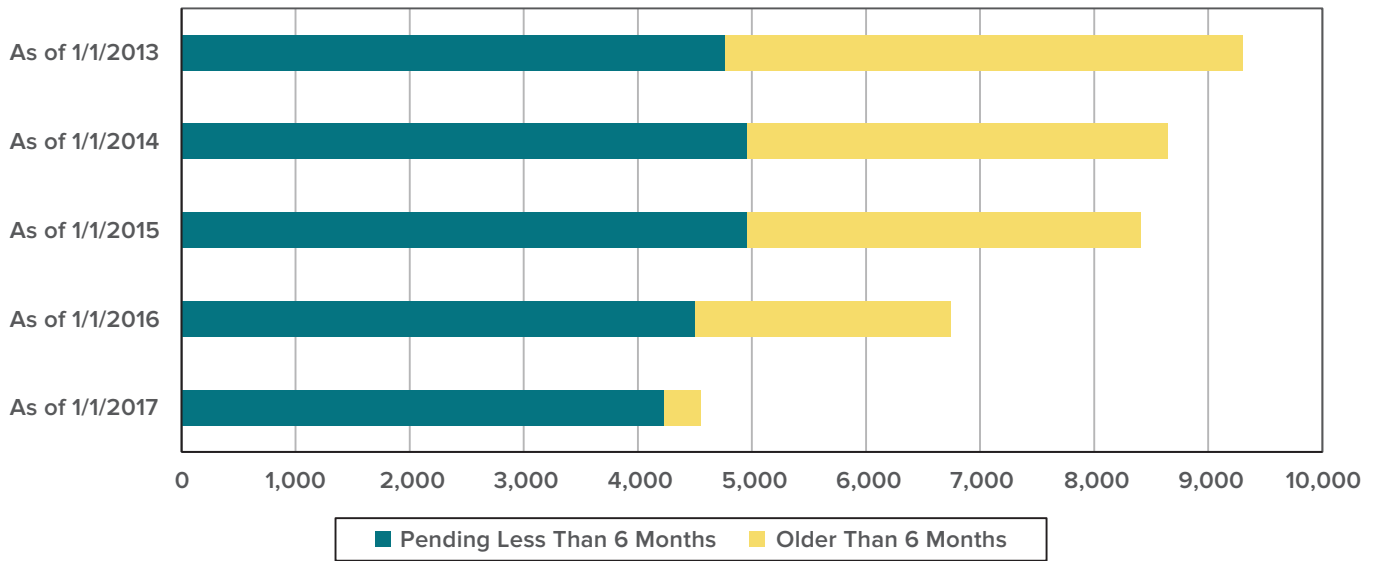
Hearing Count in 2016 by District Office



District Office	Number of Hearings	Distinct Claim Count per District
Albany	35,726	21,624
Binghamton	8,113	4,584
Brooklyn	55,605	30,682
Buffalo	26,424	15,276
Long Island	29,190	16,787
Manhattan	41,848	23,703
Queens	57,101	31,347
Rochester	17,922	10,935
Syracuse	19,712	11,888
Totals	291,641	166,826

The number of hearings excludes commissioner hearings and board panel reviews. It includes hearings held at district offices, customer service centers, and hearing point locations.

Appealed Claims Inventory Five-Year Trend



As of Date	Inventory	Older than 6 Months	Percentage Pending < 6 Months
1/1/2013	9,298	4,533	52%
1/1/2014	8,644	3,684	57%
1/1/2015	8,404	3,445	59%
1/1/2016	6,740	2,240	67%
1/1/2017	4,547	315	93%

Age is measured from the application date of the administrative review. Accuracy of age depends on availability and accuracy of the “Appeal Application Date” of the claim.