

Dwight T. Lovan, Commissioner
Department of Workers' Claims



LABOR AND INDUSTRY

2002 HB 348

- ✘ Established the consensus procedure in KRS 342.316 and made it retroactive
- ✘ Reintroduced the RIB for category 1 with breathing above 80 while enrolled in retraining
- ✘ 25% for category 1 and breathing greater than 55% but less than 80% of predicted values
- ✘ 50% for category 1 and breathing below 55% , category 2 breathing above 55 but below 80% or category three with breathing above 80%
- ✘ 75% for category 3 and breathing above 55 but less than 80%
- ✘ Total disability for category 3 and breathing below 55% or PMF

CONSENSUS FINDINGS

FROM 7/14/02 THROUGH 6/2010

✘ CWP Claims Filed	2309
✘ Claims completing panel	1612
✘ Claims reaching consensus	1569
✘ Negative consensus	1291
✘ Category 1 consensus	211
✘ Category 2 consensus	45
✘ Category 3 consensus	7

VISION MINING V. GARDNER, 364 SW3D 455 (KY. 2011)

- ✘ The consensus procedure for CWP placing additional proof requirements for CWP cases found unconstitutional
- ✘ The majority decision reiterated that at the time of the decision in *Holmes* there was a rational basis for the disparate treatment
- ✘ CWP claims should be subjected to the same procedure and rebuttable standards as other pneumoconiosis claimants i.e. University evaluations *footnote 41*
- ✘ “Pneumoconiosis is pneumoconiosis”

With the decision final, we have returned to the use of University Evaluations for the following reason:

The statute as it now exists without any changes and excluding the unconstitutional provisions provides us with a mechanism to decide CWP claims. The Supreme Court decision only struck down those provisions dealing specifically with CWP. The provisions for all occupational disease claims remain. CWP is an occupational disease, and all other occupational disease claims undergo a University Evaluation.

OVERCOMING THE KRS 342.315 EVALUATION

- ✘ In order to reject a university evaluator's clinical findings and opinions, the Administrative Law Judge must state a reasonable basis for rejecting such clinical findings and opinions. *Bullock v. Goodwill Coal Co.*, 214 SW3d 890 (Ky. 2007).

POST VISION MINING EXPERIENCE (AS OF JUNE 16, 2014)

- ✘ *167 claims have been referred for KRS 342.315 evaluations
- ✘ 28 claims are pending appointments
- ✘ 56 claims have appointment scheduled
- ✘ 92 claims have completed the evaluation process
- ✘ 493 claims continue to be temporarily assigned to the CALJ

*some files have records review filed only and therefore are not included in the detail of those referred.

UNIVERSITY EVALUATIONS

135 COMPLETED AS OF 5/20/2014

Negative: 64 equating to 47.4%

(-/0, 0/0, 0/1)

Category 1: 35 equating to 25.9%

(1/0, 1/0, 1/2)

Category 2: 12 equating to 8.9%

(2/1, 2/2, 2/3)

Category 3: 6 equating to 4.4%

(3/2, 3/3, 3/+)

Complicated/Progressive Massive Fibrosis:

18 equating to 13.3%

PULMONARY – FVC AND FEV1

80% and above: 47 equating to 34.8%

55-79%: 68 equating to 50.4%

<55%: 20 equating to 14.8%

✘ Are there any implications for KRS 342.732?

- + KRS 342.732 provides scheduled benefits based on x-ray interpretations and breathing studies
 - ✘ Can x-rays now be required?
 - ✘ Can breathing studies now be required?
 - ✘ Is KRS 342.732 so essentially and inseparably connected and dependent with the provisions of KRS 342.316 which were found unconstitutional that the General Assembly would not have enacted KRS 342.732 without the stricken provisions of KRS 342.316?
 - ✘ Is KRS 342.732, standing alone, incomplete and incapable of being executed in accordance with the intent of the General Assembly?

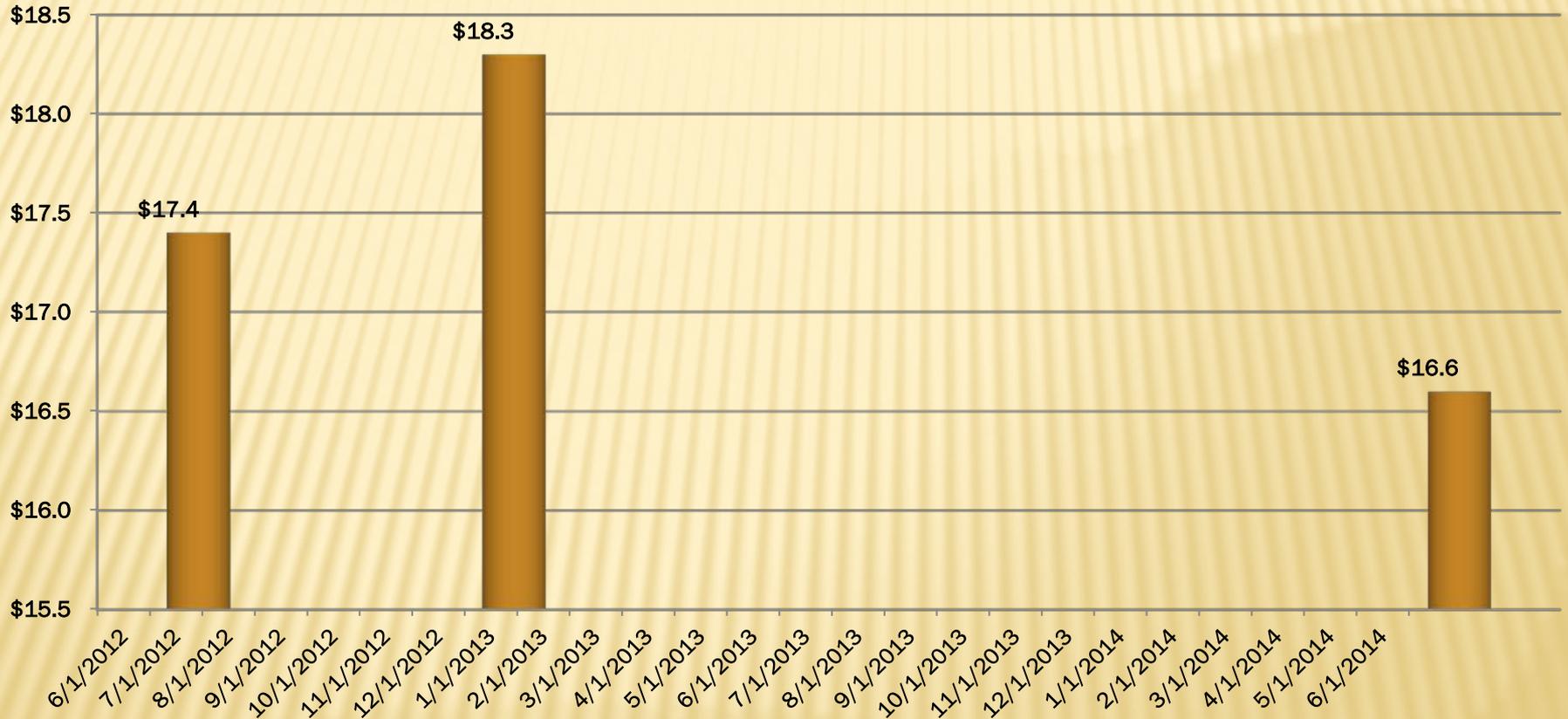
HB 348 Black Lung Benefit Chart

ILO Category (x-ray)	Pulmonary Function FVC or FEV 1	Percent of Disability	Duration of Benefits
Category 1	80%-100%	RIB	104 weeks
Category 1	55%-79%	25%	425 weeks
Category 1	Less than 55%	50%	425 weeks
Category 2	80%-100%	25%	425 weeks
Category 2	55%-79%	50%	425 weeks
Category 2	Less than 55%	75%	520 weeks
Category 3	80%-100%	50%	425 weeks
Category 3	55%-79%	75%	520 weeks
Category 3	Less than 55%	100%	Lifetime*
Complicated Pneumoconiosis		100%	Lifetime*

WORK GROUP

COAL WORKERS' PNEUMOCONIOSIS FUND

BENEFIT RESERVE FUND BALANCE (MILLIONS)*



*Workers' Compensation Funding Commission Assessment Rates: 2012 – 0% of premium and 0.00 cents per ton of coal severed; 2013 – 0% of premium and 0.00 per ton severed; 2014 – 2.54% of premium and 2.54 cents per ton severed. Source: CWP Fund.

BENEFIT PAYMENTS

FY 2012:

- ❑ \$1,095,203 paid
- ❑ Average Biweekly payout \$42,123 (\$21,062 per week) to 114 beneficiaries

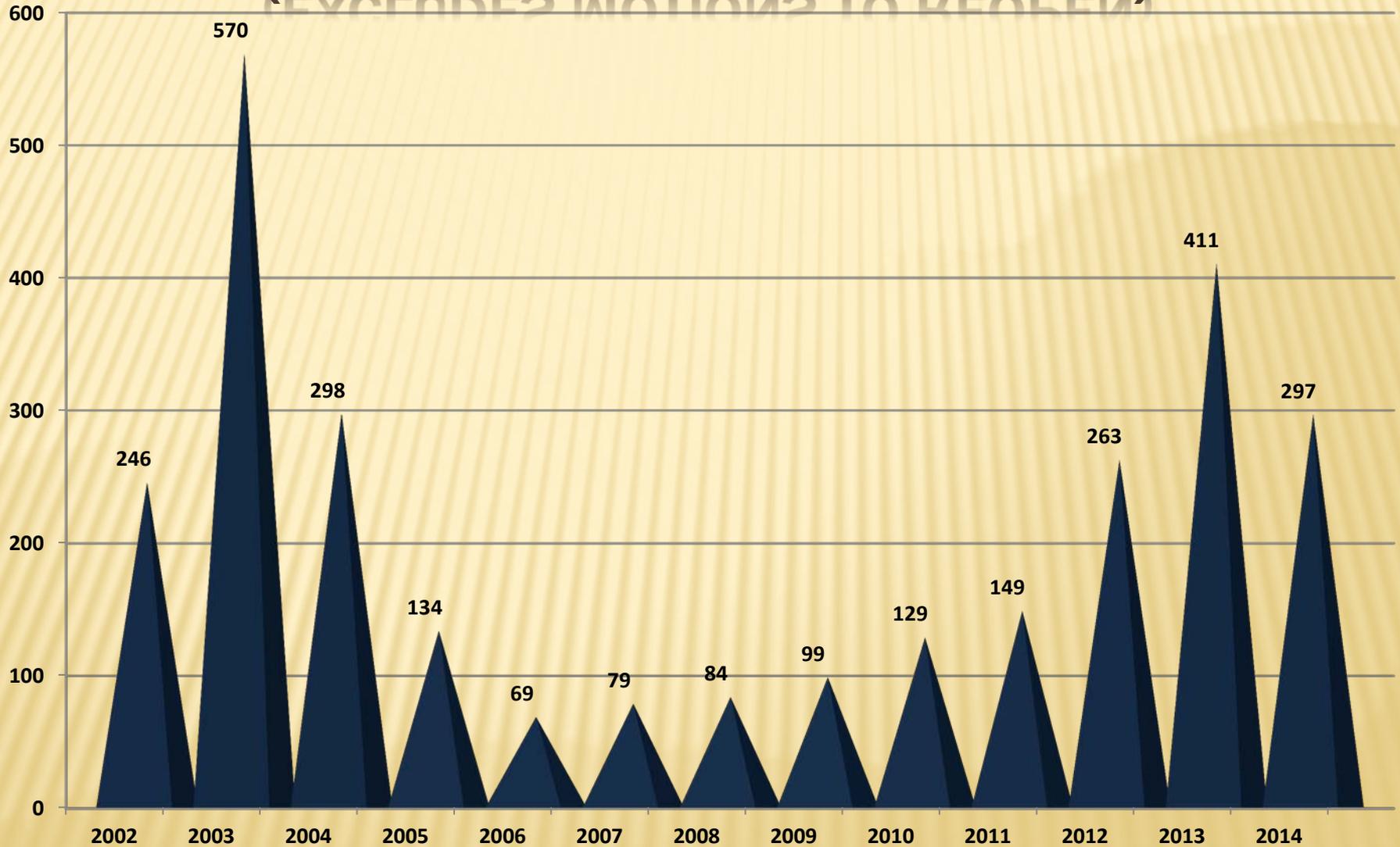
FY 2014:

- ❑ \$3,325,305.2 paid
- ❑ Average biweekly payout \$127,887 (\$63,943 per week) to an average of 132 beneficiaries.

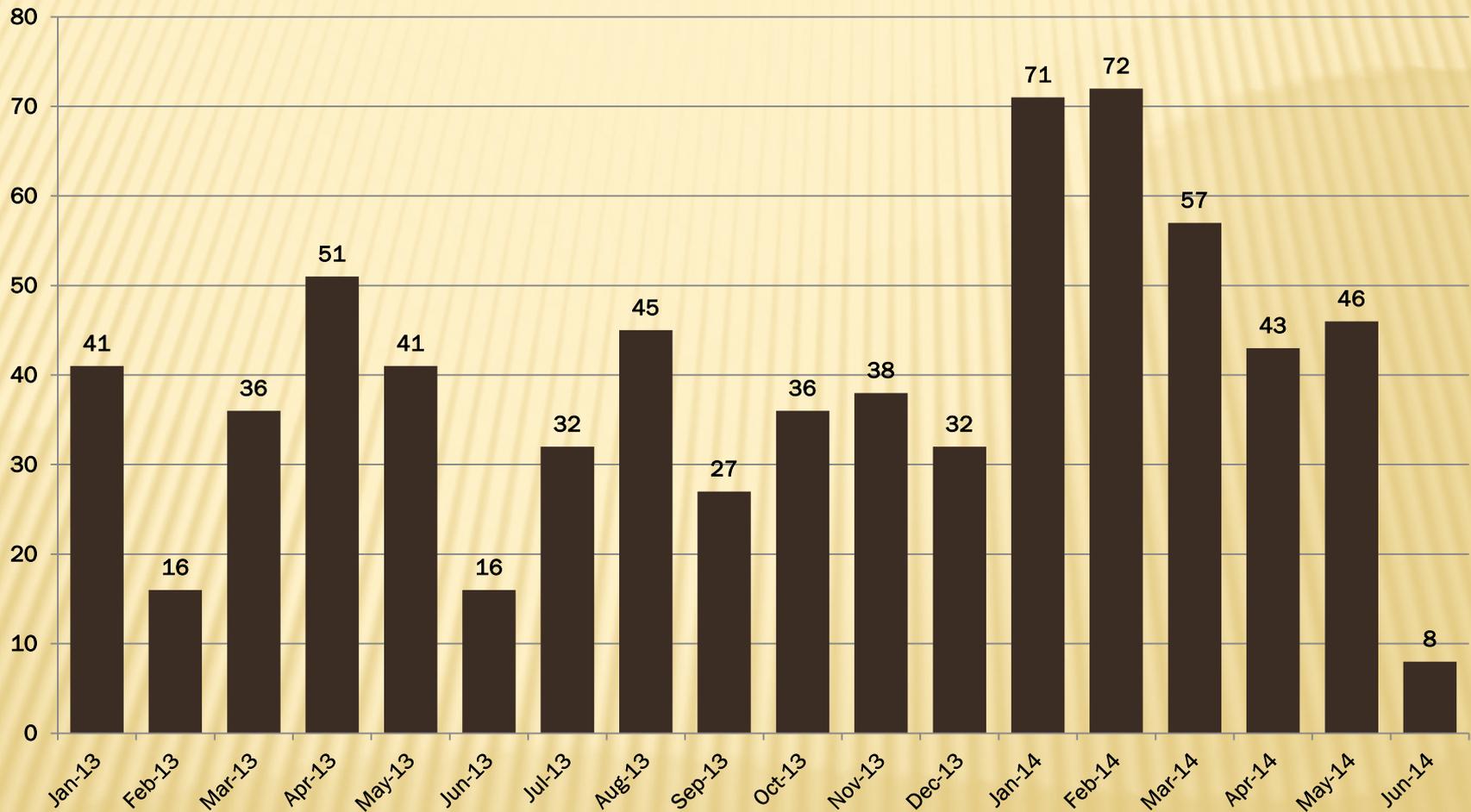
CLAIM ACTIVITY SINCE 12/96 INCEPTION

- ✘ Claim activity as of 6/30/2012: 286 Claims (awards and settlements)
- ✘ Claim activity as of 12/31/2012: 289 Claims (awards and settlements)
- ✘ Claim activity as of 6/13/2014: 413 Claims (awards and settlements)

CWP CLAIMS FILED BY CALENDAR YEAR (EXCLUDES MOTIONS TO REOPEN)



NUMBER OF CWP CLAIMS BY MONTH



Run date: 6/9/2014; Source: DWC I&R

Data through 6/6/2014

Number of CWP Claims filed per month from 1/1/2013 through present

NUMBER OF CASES RESOLVED SINCE 5/2012 (CONSTITUTIONALITY)

- × 13 Awards
- × 204 Agreements
- × 77 Dismissals

NUMBER OF CASES RESOLVED SINCE 1/2014 (JUDGE CASE)

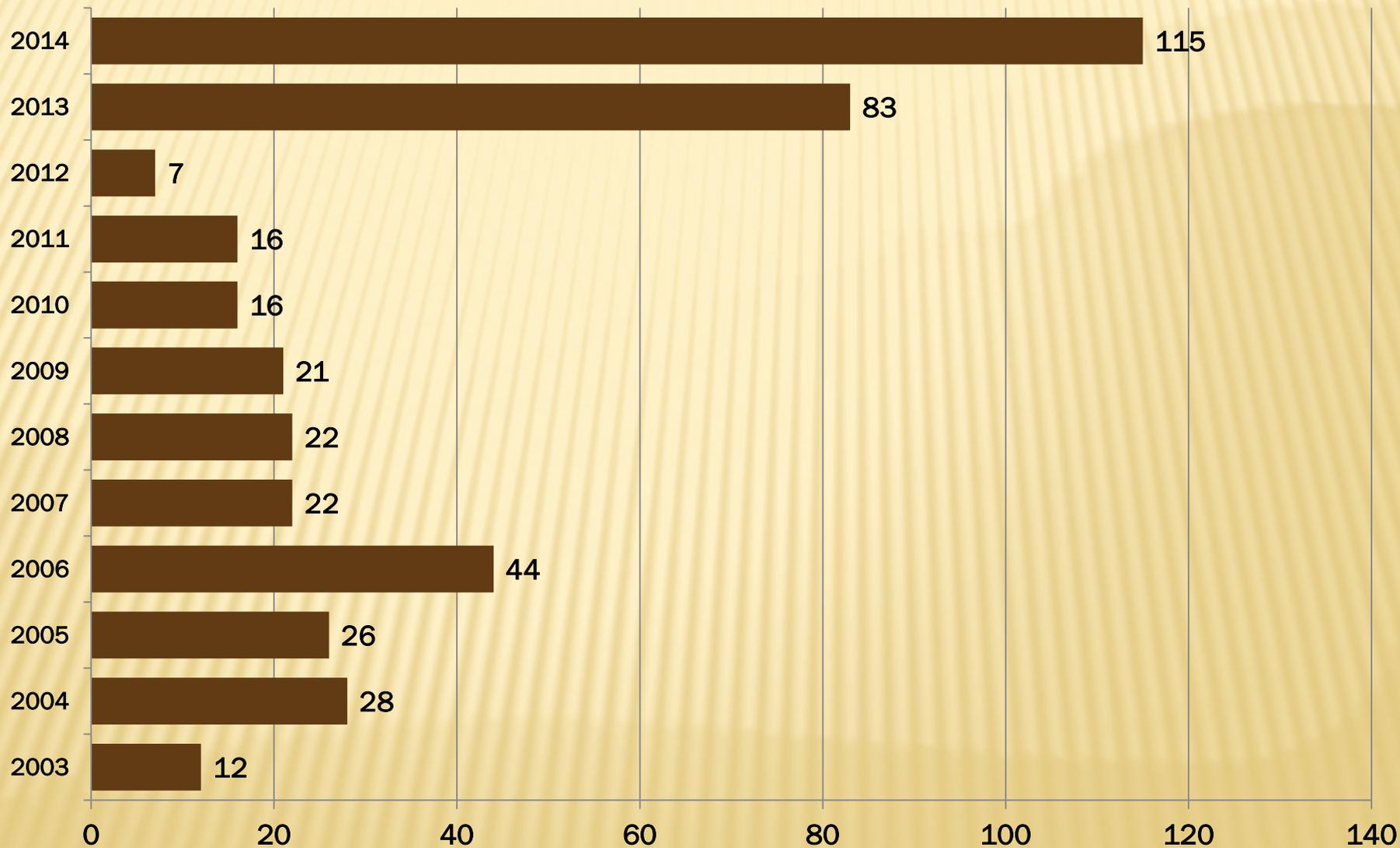
- × 3 Awards
- × 115 Agreements
- × 22 Dismissals

Total of 140 Cases Resolved Since 1/2014

CWP CLAIMS IN THE SYSTEM

- × 493 Acknowledged and Temporarily Assigned
- × 9 Appeals Held in Abeyance
- × 1 Appealed to Court of Appeals
- × 1 Appealed to Supreme Court
- × 23 Appealed to Workers' Compensation Board
- × 25 Assigned to ALJ
- × 26 Consolidated
- × 11 Held in Abeyance
- × 241 Pending
- × 24 Proof Time
- × 159 Scheduled for Pre-hearing Conference
- × 9 Set for Hearing
- × 9 Submitted for ALJ Decision

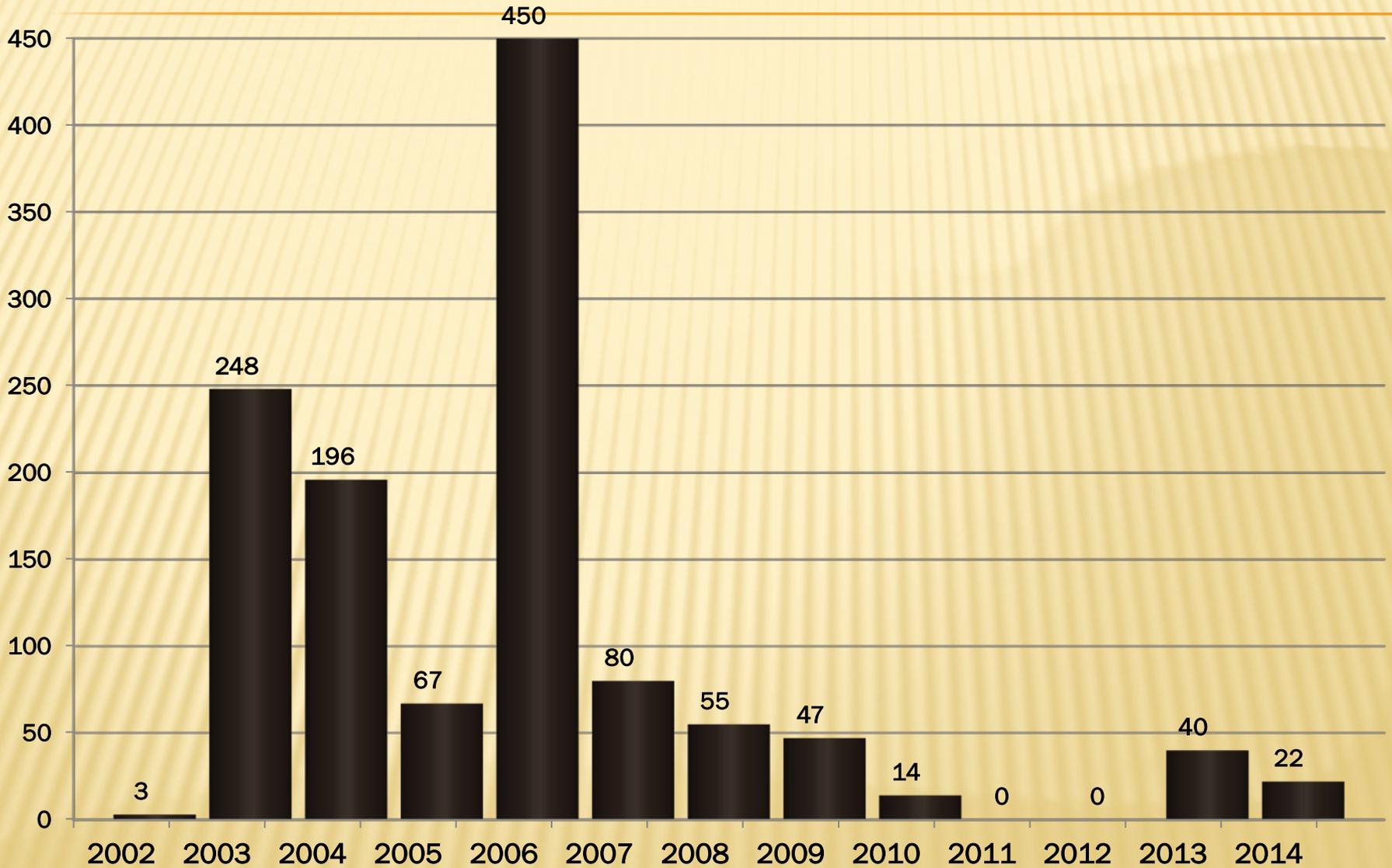
CWP Agreements by Calendar Year (Excludes Motions to Reopen)



CWP Awards by Calendar Year (Excludes Motions to Reopen)

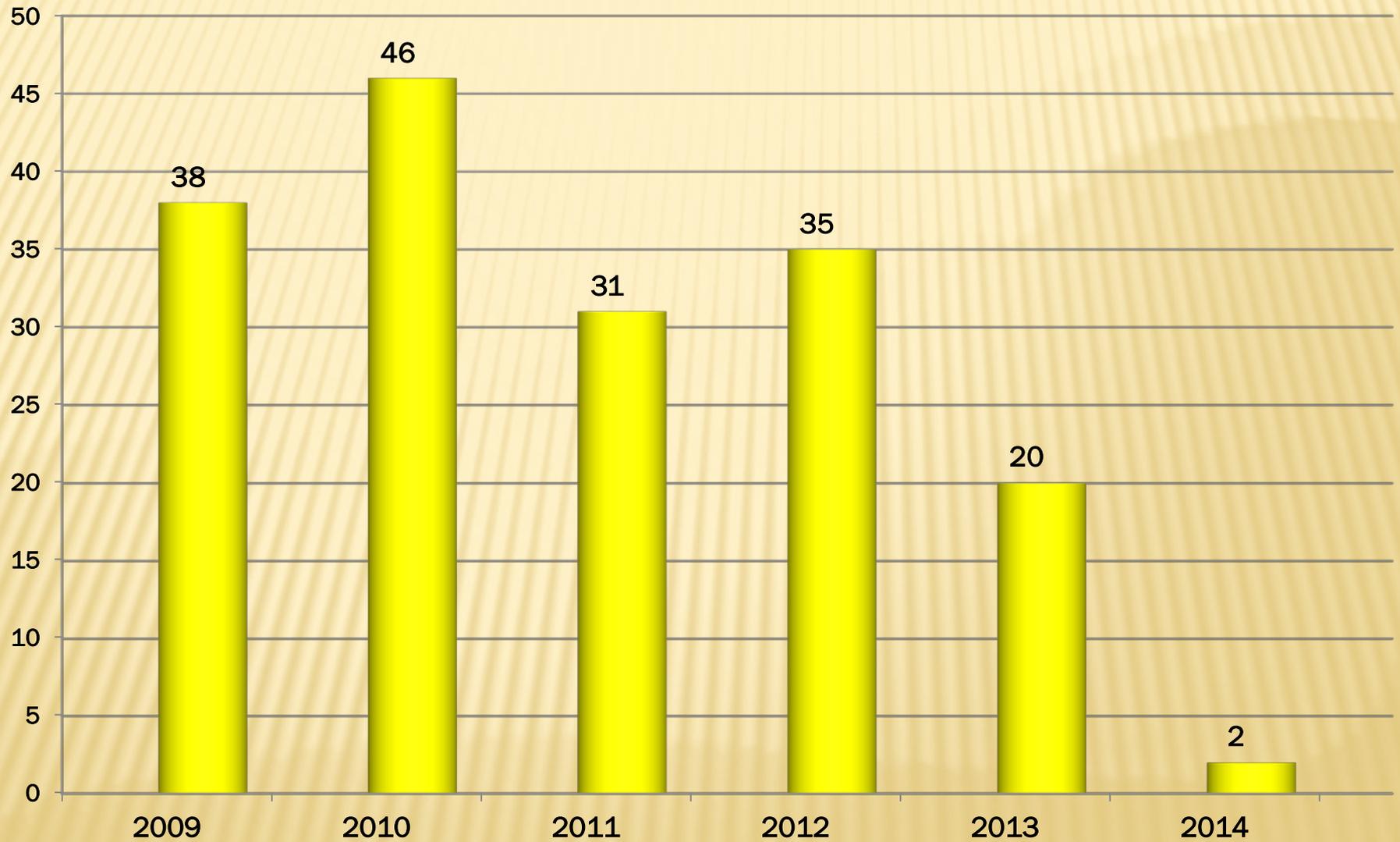


CWP Dismissals by Calendar Year (Excludes Motions to Reopen)

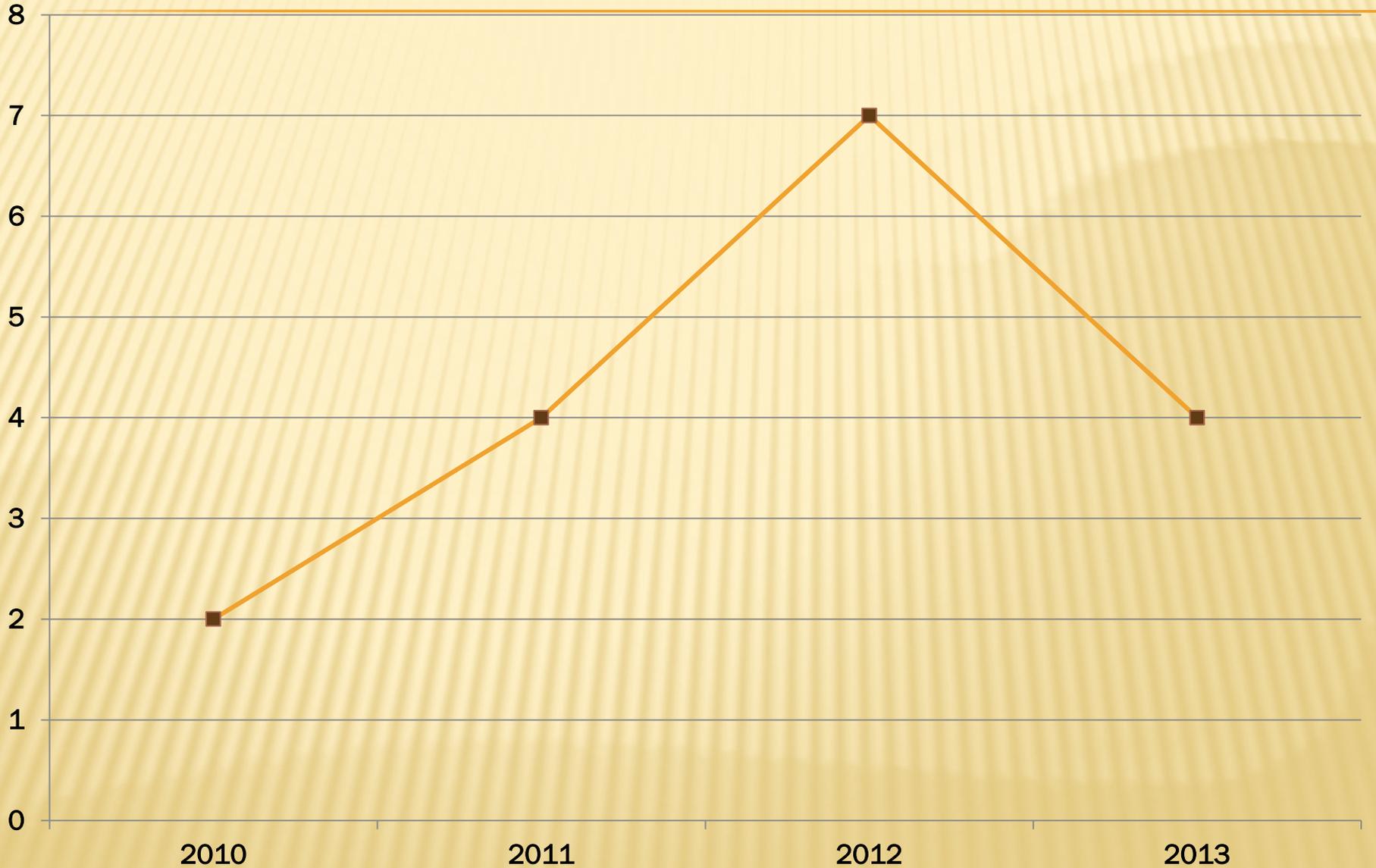


'OTHER' OCCUPATIONAL DISEASE

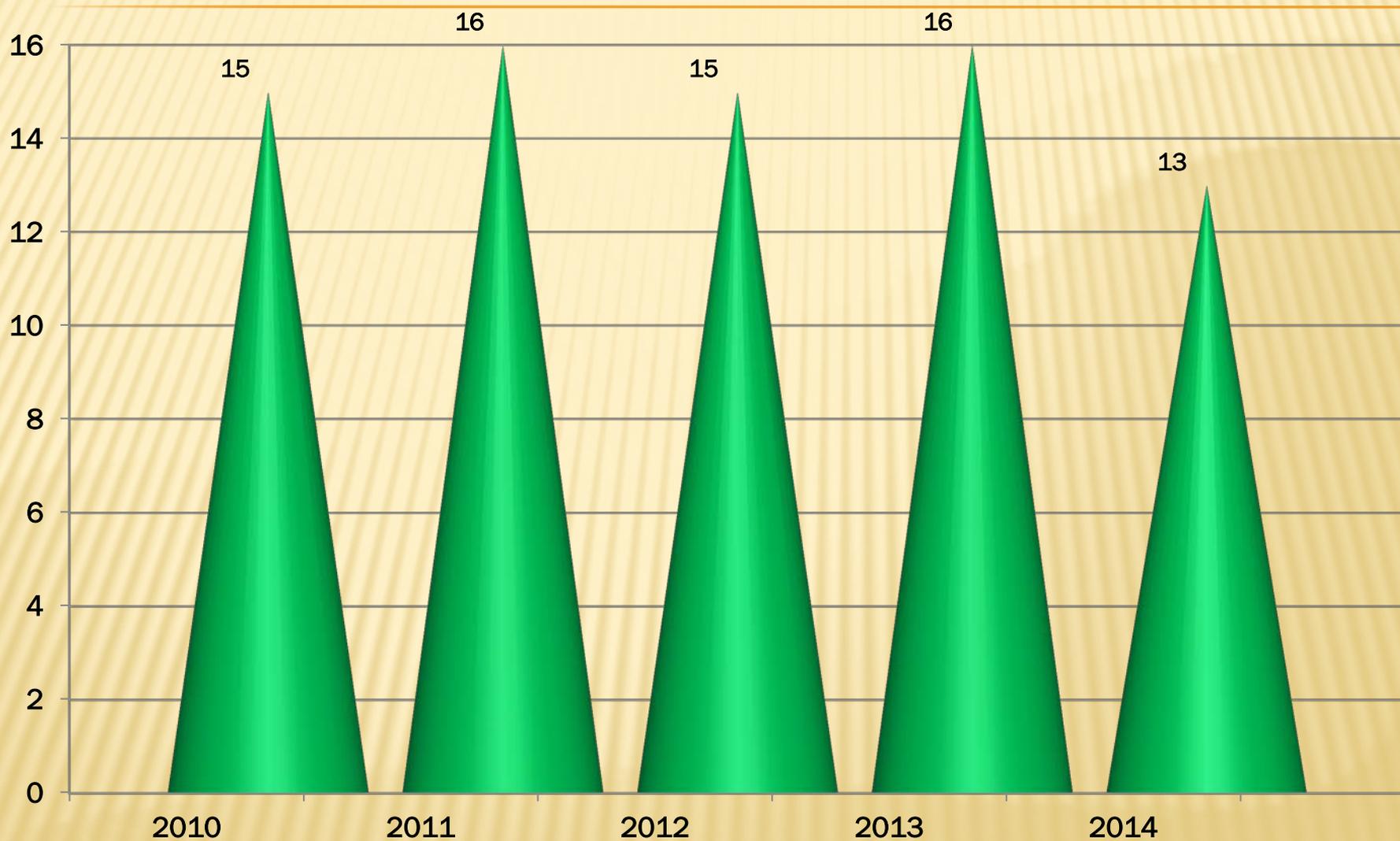
'Other' Occupational Disease Claims Filed by Date of Last Exposure



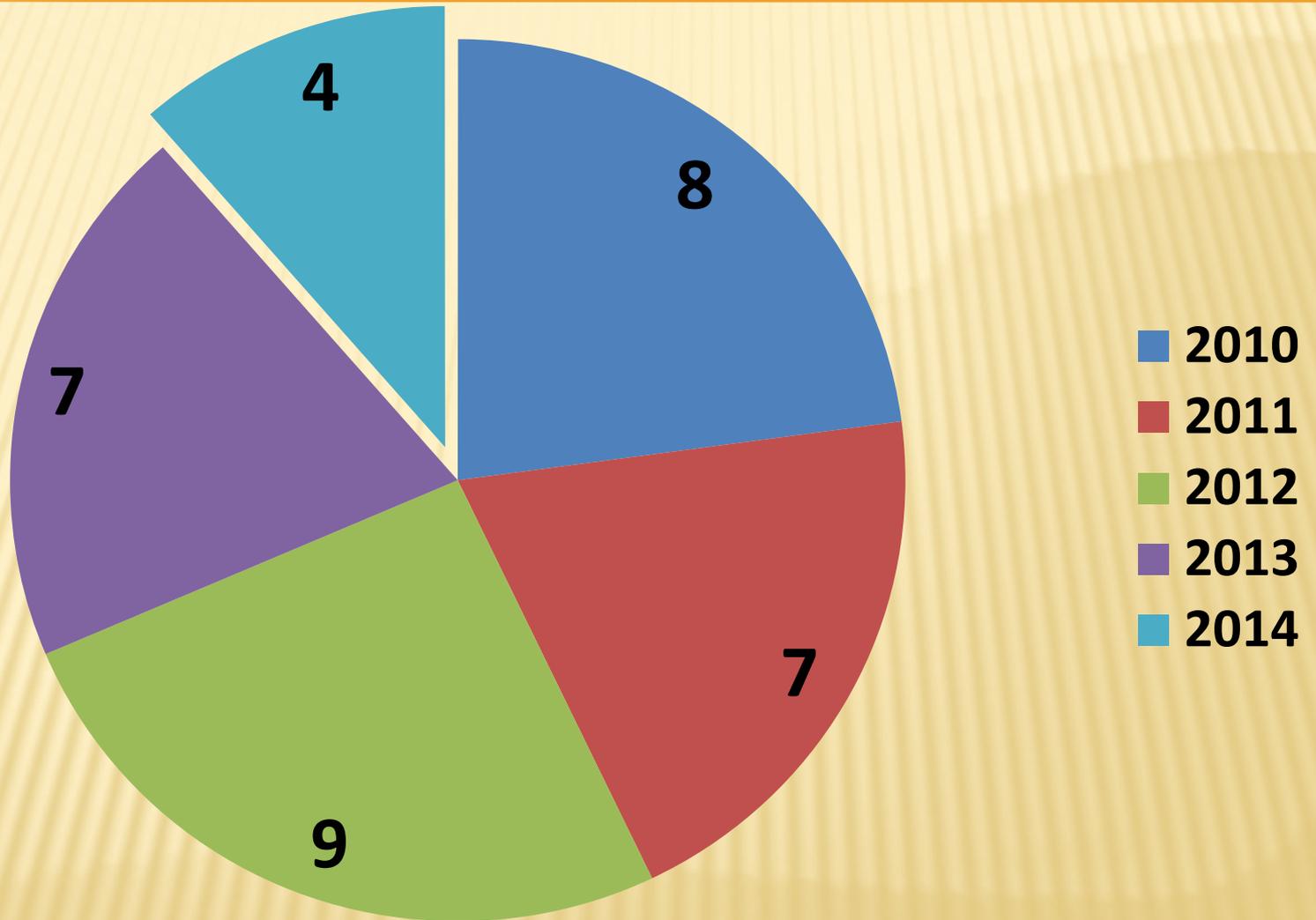
'Other' Occupational Disease Awards by Award Date



'Other' Occupational Disease Agreements by Agreement Date



'Other' Occupational Disease Dismissals



Thank you

www.labor.ky.gov/workersclaims