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INFORMAL DISPUTE RESOLUTION A WIN-WIN FOR ALL PARTIES

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What is Informal Dispute Resolution?

- ▶ **Dispute -- one side takes a position on a claim and the other side opposes.**
- ▶ **OWCP Informal Resolution -- one side withdraws the demand, or the other side withdraws opposition, or both sides agree to compromise.**
- ▶ **OALJ Formal Resolution – an ALJ order is entered awarding benefits or denying claim.**
- ▶ **OWCP tracks the time (the average number of days) it takes for disputes to be resolved. Appeals are not included in this process.**



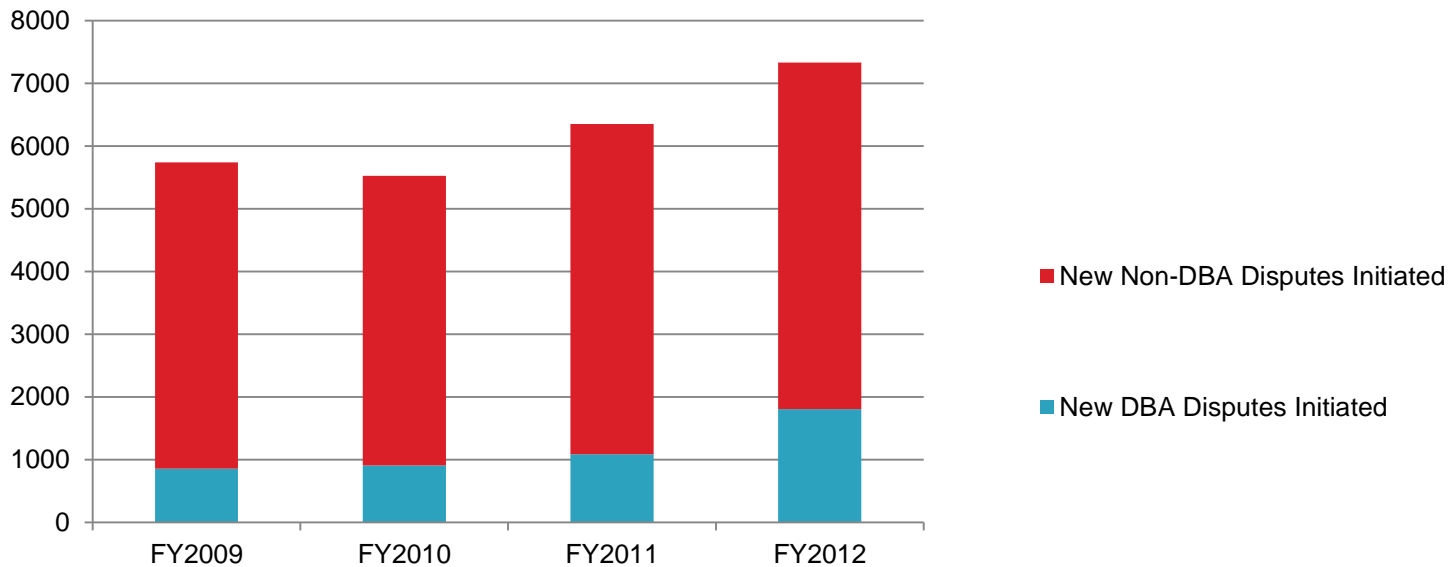
Recent Trends

- ▶ Increase in the Number of New Disputes
- ▶ Increase in ALJ Workload
- ▶ Increase in Average Time to Resolve Disputes
- ▶ Increase in the hourly rate for claimant's attorney fees
- ▶ Most prevalent issues in dispute are Medical Treatment and Nature and Extent
- ▶ Disputes that take the longest time to resolve are Jurisdiction and Injury AOE/COE



Dispute Resolution Volume

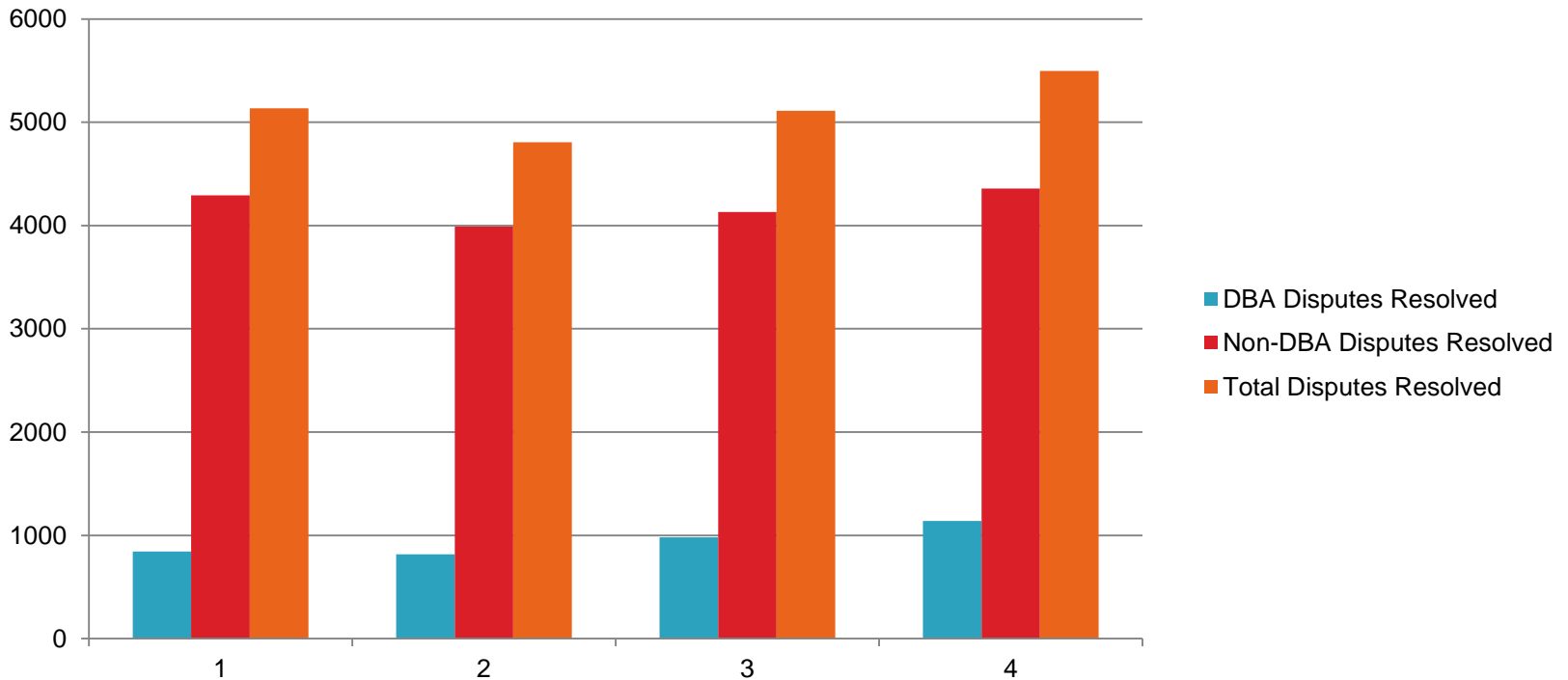
	<u>FY2009</u>	<u>FY2010</u>	<u>FY2011</u>	<u>FY2012</u>
New DBA Disputes Initiated	854	908	1084	1804
New Non-DBA Disputes Initiated	4887	4620	5269	5528
Total New Disputes Initiated	5741	5528	6353	7332





Number of Disputes Resolved

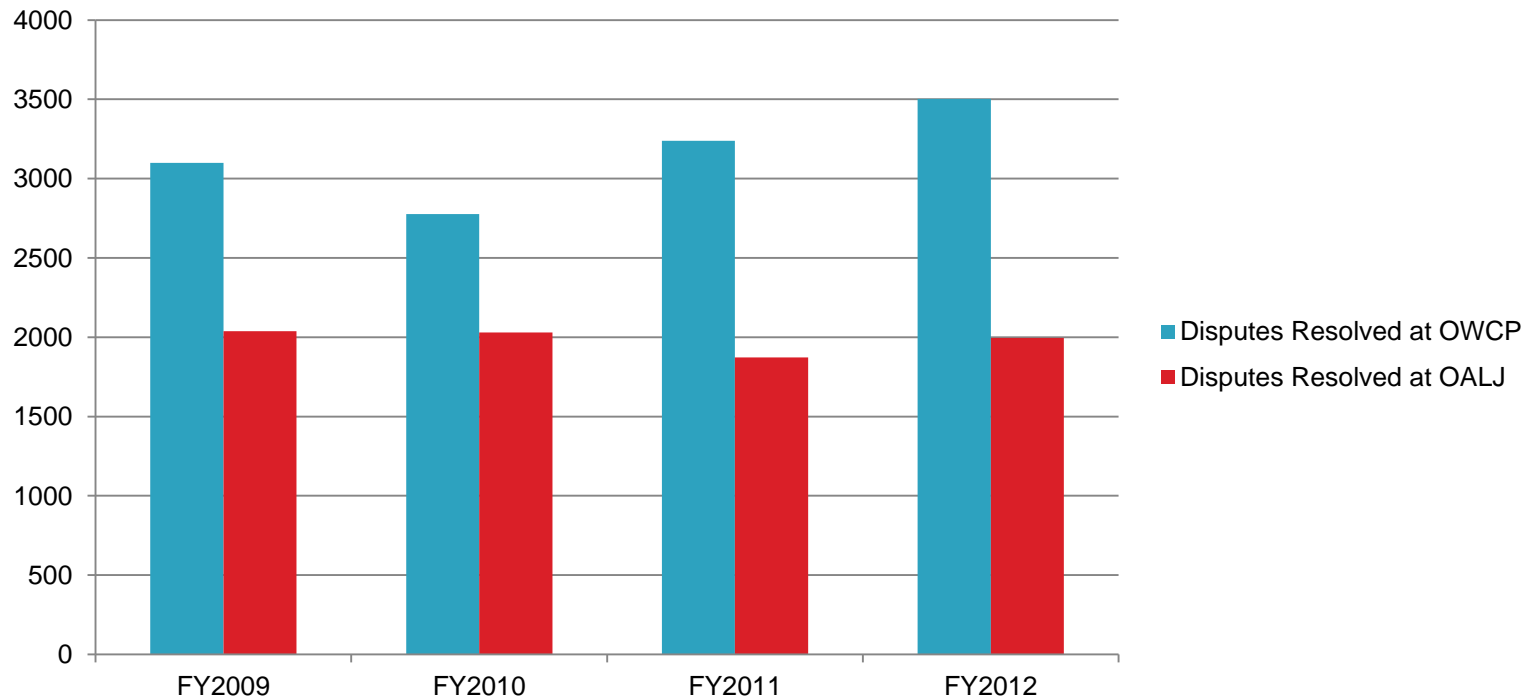
	<u>FY2009</u>	<u>FY2010</u>	<u>FY2011</u>	<u>FY2012</u>
DBA Disputes Resolved	843	817	982	1139
Non-DBA Disputes Resolved	4293	3990	4130	4358
Total Disputes Resolved	5136	4807	5112	5497





Disputes Resolved at OWCP v. OALJ

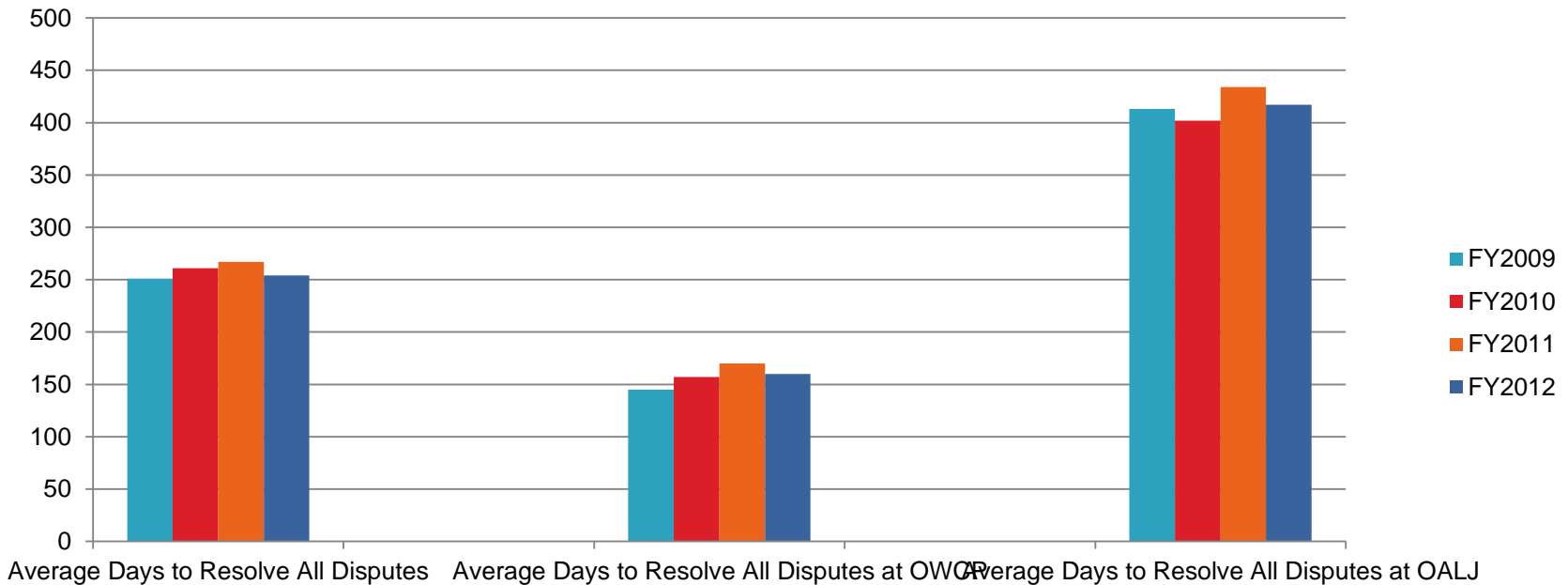
	<u>FY2009</u>	<u>FY2010</u>	<u>FY2011</u>	<u>FY2012</u>
Disputes Resolved at OWCP	3099	2777	3239	3502
Disputes Resolved at OALJ	2037	2030	1873	1995





Overall Dispute Resolution Timeliness

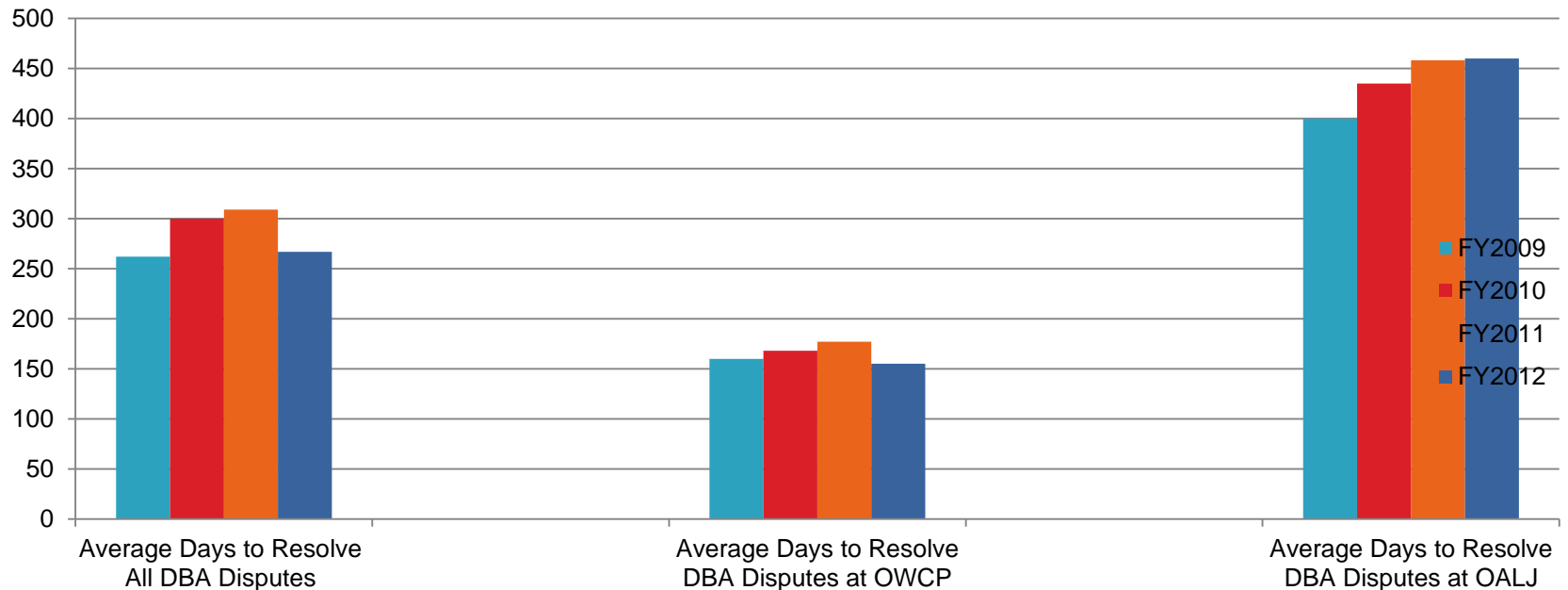
	<u>FY2009</u>	<u>FY2010</u>	<u>FY2011</u>	<u>FY2012</u>
Average Days to Resolve All Disputes	251	261	267	254
Average Days to Resolve All Disputes at OWCP	145	157	170	160
Average Days to Resolve All Disputes at OALJ	413	402	434	417





DBA Dispute Resolution Timeliness

	<u>FY2009</u>	<u>FY2010</u>	<u>FY2011</u>	<u>FY2012</u>
Average Days to Resolve All DBA Disputes	262	300	309	267
Average Days to Resolve DBA Disputes at OWCP	160	168	177	155
Average Days to Resolve DBA Disputes at OALJ	400	435	458	460





OWCP's Role in Dispute Resolution

- ▶ **Assistance to claimants to navigate the claims process**
- ▶ **Technical assistance to employers and claims administrators/adjusters**
- ▶ **Encourage the parties to communicate and exchange evidence early in the dispute**
- ▶ **Informal Conferences to mediate disputes**
- ▶ **Referral to OALJ for formal hearing if informal dispute resolution is not likely or possible**



The Informal Conference Process

- ▶ **Either party may request an Informal Conference.**
- ▶ **The Claims Examiner reviews the file and may request additional evidence required to resolve the dispute.**
- ▶ **Conference may be in person or by phone.**
- ▶ **Opportunity for each party to explain and/or support its position on the issues and to listen to the other side.**
- ▶ **The Claims Examiner facilitates discussion among the parties, leading to agreement and/or compromise**
- ▶ **The Claims Examiner makes written recommendations based on review of the evidence and application of case law.**



Formal Litigation at the OALJ

- ▶ **After informal conference, OWCP refers the case to the OALJ upon the written request of any party.**
- ▶ **Formal discovery, which may include forensic medical evaluations, depositions, written interrogatories and other discovery requests**
- ▶ **Settlement opportunities via Mediation or Settlement Judges Program at the OALJ**
- ▶ **Full APA hearing – affords claimant his “day in court”**
- ▶ **Binding Decision and Order after hearing**



How To Improve Dispute Resolution

- ▶ **What we can do to change the culture of the claims community so that there is more cooperation and less litigation?**
 - **At the OWCP:**
 - 1. Train Claims Examiners to recognize potential claim disputes and intervene early**
 - 2. Improve Claims Examiners' mediation skills**
 - 3. Improve Claims Examiners' technical proficiency so that their recommendations are based on analysis of the evidence and are legally sound.**
 - 4. Make available video informal conferences**



How To Improve Dispute Resolution

- **Within the Claims Community:**
 - 1. Investigate the claim promptly and make claim decisions based on the evidence.**
 - 2. Be proactive to obtain the necessary documentation to support a claim denial and provide the documentation to the OWCP and the opposing attorney if there is one.**
 - 3. Be willing to listen to the other side.**
 - 4. Take the long view, assess the overall exposure of the claim, and look for opportunities to resolve disputes and settle the claim early.**
 - 5. If you must litigate, pick your fight judiciously – consider the cost of litigation and chances of success.**



Informal Dispute Resolution at the OWCP Is A Win-Win for All Parties

- ▶ **Dispute usually means benefits are withheld. Resolution usually means benefits are resumed or the denial is formalized in a binding order with appeal rights.**
- ▶ **Minor disputes that are resolved informally speeds benefit delivery to claimants, save the employer/carrier litigation time and expense, and reduce the overall cost of the claim.**
- ▶ **The sooner a dispute is resolved, the quicker the benefits are paid, and the sooner the claimant gets on with his life.**
- ▶ **The more cases are informally resolved at the OWCP, the fewer the cases that are referred to the OALJ.**



QUESTIONS & COMMENTS?



OWCP/DLHWC Website

<http://www.dol.gov/esa/owcp/dlhwc/lstable.htm>

- ▶ **Statutes, Regulations, and Procedure Manual**
- ▶ **Contact Information for all Longshore Offices**
- ▶ **Longshore Forms**
- ▶ **FAQs**
- ▶ **Defense Base Act Page**
- ▶ **Links to OALJ and BRB websites**



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