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Objective

To address litigation against / by the Compensation Fund and other legal matters.

Third Party

Where an accident was caused by the negligence of a third party other than the employee or employer, in circumstances that render the third party liable for the payment of damages in terms of the common law, the Commissioner has the right, in terms of section 36 of the Act, to take legal action against the third party for the recovery of compensation and medical expenses paid by the Compensation Fund. Where a worker claims damages personally in a civil action, the Commissioner may intervene to recover any expenses incurred by the Fund.

An amount of R4 713 million was instituted in 2005/06 against the Road Accident Fund and R4 110 million, which included outstanding claims of the previous years, were recovered during the financial year. The difference between the amount instituted and the amount recovered can be attributed to further investigation by the Road Accident Fund and claims that had to be written off as irrecoverable.

Objections - section 91

Section 91 of the Act supports the *audi alterem partem* rule, as any person affected by a decision of the Commissioner, which includes decisions under delegated powers by a number of the Commissioner's staff, has a right to lodge an objection against such decision. Such an objection must be lodged within 180 days from the date of the decision.

This component was strengthened with the appointment of additional staff on contract, additional assessors and presiding officers who will be introduced to the court during the next financial year.

During this financial year 548 persons availed themselves of their right to lodge objections in comparison with 1093 objections in the previous year. A total of 1 965 outstanding objections had to be carried over from the previous year, which meant that the office had to cope with 2 513 objections from April 2005 to March 2006. Table 10 reflects how these cases were dealt with:

Table 10
Objections 2005 / 2006

| | |
|--|------|
| Carried over from previous year | 1965 |
| New cases received | 548 |
| | |
| Total cases | 2513 |
| | |
| | |
| Less: Withdrawn or abandoned | 172 |
| Lodged outside the prescribed period, etc. | 52 |
| Succeeded before hearing | 90 |
| | |
| Objections heard: | |
| | |
| Succeeded | 110 |
| Dismissed | 65 |
| Judgement reserved | 21 |
| | |
| Outstanding as at 31 March 2006 | 2003 |

Applications for additional compensation - section 56

Compensation is based on the no fault principle i.e. workers have abdicated their common law right to take legal action against employers. In the event of an accident caused by negligence of the employer or a person in the employer's service who is in an authoritative position, provision has been made under section 56 for a worker to lodge an application for additional compensation.

Claims for increased compensation can be based on negligence or as a result of a patent defect in the condition of the machinery used in the business and where the employer or responsible person knowingly or negligently failed to remedy the defect or to have it remedied.

Additional compensation is based on pecuniary losses and ordinary benefits are taken into account when calculating such additional compensation. During this financial year only 13 applications were received.