

FINAL REPORT  
FISCAL YEAR 1989

MASSACHUSETTS WORKERS' COMPENSATION  
ADVISORY COUNCIL



Linda Ruthardt  
Chairman



Arthur Osborn  
Vice-Chairman

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### INTRODUCTION

This is the third annual report of the Workers' Compensation Advisory Council. As the report for fiscal year 1989, it reviews the period from July 1, 1988 through June 30, 1989.

The majority of this report presents summary fiscal year information from the various divisions of the Department of Industrial Accidents. The inspection and submission of this information on an annual basis offers a means for monitoring the agency's performance. We had hoped to be able to provide a wide variety of statistics which could allow parties to draw their own conclusions on the progress of the new law, but as of the date of this writing, we have not been provided with the necessary data.

In reviewing extra-departmental affairs, additional attention is devoted to several important issues which have come into focus since the submission of the previous report. Foremost among these, and presented in the opening section, is the Advisory Council's concern with the budgetary process and the delays which exist in the resolution of disputed cases. In addition, a number of other topics will be discussed which the Council believes merit consideration by all interested parties. This discussion will be followed by a descriptive update of the Advisory Council, its 1989 fiscal year activities, and a department overview. Finally, the

reader's attention should be drawn to Appendix C, which is an Executive Summary to the first phase of a comprehensive study of the workers' compensation system undertaken by Peat Marwick and Main during the latter part of the fiscal year.

#### A. BUDGETARY PROCESS

As all observers are aware, the Commonwealth of Massachusetts faced a severe fiscal shortfall during the fiscal year which concluded June 30, 1989. The budget for fiscal year 1990 subsequently underwent much discussion and debate by various parties. Due to the economic prognosis for the state in the upcoming fiscal year, the final state budget did not fulfill the expectations of many groups and individuals, and any analysis of the FY'90 budget must acknowledge this general context. At the same time, it is necessary to note that the failure of budgetary appropriations to meet DIA requirements must be considered a factor in the agency's inability to meet its statutory mandates.

It was recognized at the outset of the discussions which led to the 1985 law changes that the intended legislative improvements would necessarily require a larger budget. At the most basic level, the Council believes that one of the strongest elements of the reform law (Chapter 572 of the Acts of 1985) was the assignment of the system's administrative

cost to the business community by means of an assessment process. Further, it is the Advisory Council's understanding that the purpose of the assessment mechanism was to allow revenue neutrality to insulate the Department of Industrial Accidents from shifts in the state's economic climate.

In some ways, the goals of the assessment system have been met. The department reviews all elements in the assessment and collection process, and expert actuarial services are utilized to help ensure that employers are not assessed more than necessary. With the exception of a two-year project to eliminate the backlog, the agency has had no impact upon revenues generated by tax dollars. Yet the purpose behind the assessment process has not been allowed to function. Each year, appropriations requested by the Department of Industrial Accidents have been cut, thereby exacerbating resolution of the agency's case backlog and efficiency.

Prior to the finalization of this year's budget, the administration of the DIA and the judges collaborated in devising a system which could accommodate the scheduling of additional cases. This plan projected an increase of almost 15% in the judges' workload over the first six months of FY'90, thereby allowing more cases to be heard and curtailing the increasing delays between conciliations and conferences. Much of the proposed expansion funds which were cut could have been employed to make this plan operational.

As a case in point, the FY'89 budget request by the DIA, which was supported by the Advisory Council, was for \$13,921,252. The administration proposal (House 1) was for \$13,930,724, with a cap of 305 positions. House 5600 called for an appropriation of \$12,471,833 and 282 positions. This total included \$350,000 in computer expansion and funds for the Council to do a study on the implementation of the reform law as mandated by statute. The Senate recommended a budget of \$12,630,105, and final approval was on the House figure of \$12,409,178 for 282 positions. An additional 20 positions were included for the backlog elimination project.

In FY'90, the DIA's request for \$13,712,317 for the upcoming fiscal year was again supported by the Advisory Council. Included in this amount, and to be paid by the state, was the same amount of funding as provided in the prior fiscal year for the backlog elimination project, even though some costs had obviously increased. While representing a 10% increase over FY'89, the amount was still 2% less than the figure requested by the department at the outset of the previous budget process. It is reasonable to conclude that this lesser amount was requested in light of the ongoing fiscal constraints facing the state.

By the conclusion of the most recent budgetary process, the DIA's budget request had been pared by \$561,548, for a total of \$13,150,779. Inasmuch as this amount was \$20,000 above a maintenance budget and no expansion was included in the appropriations for most state agencies, the DIA was

relatively fortunate. However, from the vantage point of recent history, the size of the budget is far less impressive. While the net cost of operating all state agencies has risen, the assessment process has dropped the net cost for the operation of the DIA from \$2,957,909 in FY'85 to \$775,000 in FY'90.

It is not clear where the apparently different attitudes toward the assessment system arise. The philosophical underpinnings of the assessment mechanism are confirmed by the Senate Ways and Means Committee in its FY'88 budget, which states that, "A new approach to the financing of many unavoidable cost increases needs to be developed, perhaps through partnerships with businesses and citizens who directly benefit from the services provided by the agency...". That this approach lies behind the DIA assessment process was more recently recognized by the Senate Ways and Means Committee in its narrative for the DIA budget for fiscal year 1989, when it stated:

"It is important to highlight that with the institution of reform, the Department's expenditures are fully-assessed upon employers. This increase in spending, therefore, has not come at additional cost to the state."

Acknowledgment of the revenue neutral concept came in the Governor's budget proposal for FY '89 (House 1), which noted that additional resources for the Department of



Industrial Accidents are offset by additional revenues. Additional recognition of the agency's ability to provide its services with minimal impact on tax revenues is demonstrated by the fact that in each of the budget proposals from the respective Ways and Means Committees, the bulk of the monies for the DIA are included in retained revenue accounts. This procedure provides for a more efficient system, while at the same time limiting the state's appropriation since funds will not have to be transferred back and forth between various accounts.

Assessments fund 94.3% of the DIA's fiscal year 1990 budget. Those funds not generated by the assessment process are earmarked for the backlog elimination project, which is intended to be a temporary expenditure to resolve the thousands of pre-reform cases waiting to be adjudicated.

It is clear that while the current workers' compensation system is improved over the pre-reform system, its performance is still imperfect. But in assessing the effectiveness of the 1985 reform, it is impossible to say how the system might be working if the DIA had been provided with the resources it believed necessary to meet its mandate. Since the reform, the agency has periodically evaluated its needs and discussed them with the Advisory Council, and the Council has supported the agency's budget requests. As the groups best positioned to monitor the system and its changing

needs, the views of the Advisory Council and the DIA on the budget merit serious attention. This would seem especially true since the employer community which now funds the system is represented on the Council.

The Council has supported the DIA's budget requests to date because it believes that the changes brought about by the reform law should be afforded an opportunity to succeed. The past two years have demonstrated that without the necessary resources, the initial success in service was lost. All parties in the workers' compensation system--workers, employers, doctors, attorneys, insurers, and government--will be adversely affected by continued shortcomings in the system.

#### B. DELAYS IN THE RESOLUTION OF CASES

One of the most significant factors which fueled the 1985 reform was concern over the widespread and lengthy delays which plagued most cases in the system. Delays continue to receive close scrutiny in evaluating the system's performance. The FY 1989 backlog elimination project has been quite successful in resolving "old law" cases. At the time that this project was initiated in 1988, there were 12,202 cases in the backlog. At the close of fiscal year 1989, the backlog of old law cases had dropped to 5,410.

In addition to the delays in the adjudication of pre-11/1/86 cases, there is a continuing and increasing delay with the resolution of "new law" cases. This is particularly disturbing in light of the hopes that the changes enacted by Chapter 572 of the Acts of 1985 would afford expeditious resolution to a disputed case to all parties. The primary delay exists between the conciliation and the conference. By the end of March of this year, there was an average delay of almost 11 weeks. In turn, the average time for the issuance of an order from the close of the hearing was 2 days better than that set forth in the law. Therefore, the time problem appears to be in scheduling the conference, not in waiting for a decision to issue from that proceeding.

At the close of FY'89, the period of time between conciliation referral and conference schedule date was 14 weeks in Boston, 20 weeks in Fall River, 17 weeks in Springfield, and 18 weeks in Lawrence and Worcester. The actual delay for each office is the period of time beyond the 28 day period set forth in the statute. There is a perception that fewer cases are resolving at conciliation as delays to the scheduling of a conference are increasing. If this correlation is correct, the problem exacerbates a backlog/production problem which becomes more difficult to solve as the case volume at conciliation and in dispute resolution steadily increases.

### C. ADMINISTRATION OF THE SECTION 65 FUNDS

A number of issues have been resolved during the past year concerning the administration of the various funds set forth in §65 of Chapter 152. Last fall, the Council raised a number of questions concerning the crediting of interest to the various trust funds as set forth in §65 (6) of the law. Requests for clarification were made to the State Treasurer of the Commonwealth when reports showed only \$431.52 having been credited in interest to the trust fund accounts.

Through the assistance of the Secretary of Labor, a meeting between members of the Advisory Council, the DIA, and the Administration, including the Treasurer, took place last winter in order to discuss the situation. The issue of posting interest on the balances in each of the funds was clarified. By the end of the fiscal year, a total of \$1,246,994 had been credited to the private trust fund and \$33,801 had been posted to the public employer trust fund. In addition, a procedure for opening lines of communication was developed so that the information on cash flows could be directed to the Treasurer allowing for more sophisticated investment expected to yield higher earnings. For example, under the previous methodology, interest in the funds earned 6.83% and 7.87% in prior fiscal years, while during the last quarter of FY'89 the funds were earning over 9.5%.

The addition of these amounts of interest to the various trust funds had a positive impact on the assessment rate for this year. It is hoped that such interest can continue to accrue so as to limit the amounts of assessment needed.

#### D. ADMINISTRATION OF THE SPECIAL FUND

In addition to its questions concerning the interest in the trust funds, the Council also raised some questions over the course of the fiscal year regarding the application of the Special Fund in §65 of the law. Monies in the special fund are generated solely by revenues from assessments upon private sector employers. Other than the backlog elimination project, which is level-funded at this time by state appropriations, the revenue for the operations of the department is completely drawn from assessments, interest, and various fines and fees.

The Advisory Council sought clarification of the integration of the Special Fund with the Commonwealth's General Fund. Under the workers' compensation statute, funds for the DIA are to be kept separate and apart from all other monies received by the Commonwealth [§65 (6) of the law]. The main issue for the Council was whether any funds not expended by the Special Fund in a fiscal year would revert to the General Fund, or whether those funds would remain in the Special Fund to pay for the operating expenses of the DIA.

A meeting with the Secretary of Administration and Finance was arranged by the Secretary of Labor to discuss these concerns with representatives of the Council. The opportunity to open the lines of communication proved very useful. The Council has been assured that if excess assessments occur in any fiscal year, no funds will revert to the Commonwealth. The report on the Analysis of the \$65 Trust Funds done for the DIA at the close of the 1989 fiscal year showed a starting balance of \$300,000 in the Special Fund for the start of the new fiscal year. These balances, and the interest which accrues, can be used to offset assessment estimates in future years.

#### E. FISCAL YEAR 1990 ASSESSMENT

The report which was used to establish the FY'90 assessment rate noted improvements in the quantity and quality of information available to analysts. This is a welcome sign, since from the outset the Council has stressed the importance of sound data bases for monitoring and improving departmental operations.

The assessment for the current fiscal year was reviewed by the Advisory Council at its June 28, 1989 meeting. The assessment rate for public entities increased from 0.06002 in fiscal year 1989 to 0.10416 in fiscal year 1990. It was .0216 in FY'88. This is a significant increase, particularly

in light of the fiscal crisis facing political subdivisions of the state, which has resulted in cuts from local aid to cities and towns. At the same time, the fund was estimated to have a negative balance of over two million dollars as of June 30, 1989. A shortfall in public employer assessments for FY'89 was identified as one of the reasons for this negative balance.

The private employer assessment increased from .02232 in FY'89 to .02397 in FY'90. This rate is still less than the .0379 assessment rate for FY'88. The Private Trust Fund expected payout under §34B (COLA) has been much less than previously anticipated. This is due in part to the fact insurers that have newly submitted reimbursement requests in FY'89 generally have a lower number of claims relative to their size than those who sent in FY'87 requests. (Some still have not submitted requests). While the payout was less than projected for the Private Trust Fund, the June 1989 analysis of the Public Trust Fund projects possible problems for it. As of the close of the third quarter of the fiscal year, there was a backlog of reimbursement requests that had not been processed due to the low balance of the fund. There is still a significant portion of public employers, including the state, who have not sought reimbursement, nor paid their assessments. In fact, one interpretation of the law [§65 (5)] could make the fines to be levied (at present) for non-payment greater than the assessments.

In FY'88 the premium based rates were 2.9% for the public employers and 1.3% for private employers. The rates for the current fiscal year are 5.0% and 1.2% respectively. While the private rate has decreased, the public rate has increased significantly. If those public employers who have not paid their assessment begin to contribute and request reimbursement, the Public Trust Fund will be at risk of not being able to pay legitimate claims.

#### F. SECOND INJURY FUND

The initial reform law changed the percentage of reimbursement from the second injury fund (§37 of the law) from 50% to 75%. Such reimbursement was to be applicable for all compensation paid subsequent to the first 104 weeks of disability. The issue of the Second Injury Fund was the basis of a good deal of discussion during the past year. With the 104 week period expiring in November of 1988, it was necessary to establish a format for handling those cases.

In October of 1989, the department promulgated circular letter number 244 to address the procedure for claims under sections 37 and 37A for all injuries occurring on or after December 10, 1985. Under this procedure, a petition for reimbursement is to be filed with the Attorney General's office, which will defend such actions under the law. If the petition is denied, or if no action is taken within 60 days,



the insurer can file a form (#122) with the DIA and a conference (not a conciliation) will be scheduled. As in any other adjudicated matter, disputed cases will be heard by administrative judges.

In a related matter concerning the Second Injury Fund, there is presently a case pending before the Appeals Court of the Commonwealth concerning payment for services provided under the "old" Second Injury Fund, i.e., the one that existed prior to the passage of the 1985 reform law. At issue is an order from the Superior Court directing the Commissioner of Industrial Accidents to assess workers' compensation insurers and self-insurers the money that is owed a claimant above the \$12,549.45 remaining in the "old" Special Fund. A question exists as to whether that assessment process is still applicable in light of the changes made by Chapter 572 of the Acts of 1985. Briefs have been filed in the matter and oral arguments will most likely take place in the near future.

#### G. JUDICIAL DECISIONS

During the past fiscal year, several judicial decisions have had an impact on the workers' compensation system. One of the decisions, Lettich's Case, 403 Mass 389 (1988) was discussed in the Advisory Council's fiscal year 1988 final report. This decision broadened the fact-finding authority

of the reviewing board, enabling it to determine facts on the appeal of a case to the board. Legislation has been proposed to rescind the effects of this decision and presently is before the legislature. The result, if the decision's effect is not blunted, can only be increased backlogs as more claims can reach the reviewing board level.

Another decision of the Supreme Judicial Court has an ancillary impact on the workers' compensation system in the Commonwealth. In Deerfield Plastics v. Hartford Insurance Co., 404 Mass 484 (1989) the court dealt with a negligence claim by an employer for the investigation, setting of a reserve, and settlement of an industrial accident case. In this case, the company was insured under a retrospective rating plan. The Court rejected the insurer's argument that the burden was on the company to show that the settlement was higher than any reasonable settlement would have been. The decision stated that the insurer had the burden to prove that the amount of the settlement did not exceed the highest reasonable amount at which the claim would likely have been settled if it had been properly investigated. Since this decision was issued in April 1989, it is still too early to determine its impact on the administration of claims. It is not inconceivable, however, that in light of this standard set by the Court, insurers might become more reticent to settle matters without litigation.

Another important court decision issued in the last year concerns the effective date of a section of Chapter 152. In Powell v. Cole Hersee Co., 26 Mass App. Ct. 532 (1988), the court was confronted with determining the effective date of the amendment to §24 of the law, which concerns the waiver by an employee of his/her common law right to sue the employer. The court decided that the phrase "upon passage" refers to the time when the Governor's approval takes place through the affixing of his/her signature. In this particular matter, the court held that the changes were effective as of December 10, 1985, and that no constitutional barrier prevented the statute from taking effect on passage. Whether this application will be applied as the effective date of other sections is still to be determined.

The Appeals Court determined that the enactment of Chapter 691 of the Acts of 1987, with respect to attorney fees, was to cure an imperfection in the 1985 bill. In Arbogast v. Employers Ins. of Wausau, 26 Mass. App. Ct. 719 (1988) the court held that the award of fees in a successful proceeding under chapter 152 was procedural in nature. Consequently, the amendment in the 1987 bill for the payment of fees was applicable to an order for an injury prior to 11/1/86 and was fully retroactive in effect.

In Rebeiro v. Travelers Ins. Co., 27 Mass. App. Ct 1116, 536 NE2d 1103 (1989) the court held that an employee could

not enforce in court an offer to settle a case by a lump sum which had previously been rejected as insufficient by the claimant's attorney.

The Appeals Court also held, in Rivera v. H.B. Smith Company, Inc., 27 Mass. App. Ct. 1130, 537 NE2d 1270 (1989) that a 1944 circular letter of the department requiring that insurers deliver or mail workers' compensation checks to the claimant's home was entitled to deference and was consistent with the DIA's regulations on the timeliness of payments. A recent decision of the Supreme Judicial Court, Daly's Case, 405 Mass 33, 537 NE2d 1224 (1989), held that an insurer could be required to pay a portion of a claimant's attorney fee in a third party action (section 15 of chapter 152) and that a claimant was entitled to fees and costs in an insurer's appeal from a judgement that it pay a portion of the attorney fees in the third party action.

#### H. ADVISORY COUNCIL

The Advisory Council's last report noted the addition of three new members. There have been two changes in the composition of the Advisory Council since last year. Richard Brown, a labor representative, resigned in May of this year. As of this writing there has been no new appointment to replace him. Grady Hedgespeth was appointed by the Governor as Secretary of Economic Affairs replacing Joseph Alviani as

an ex-officio member of the Council. However Secretary Hedgespeth has recently resigned and Alden Raine has been appointed by the Governor to succeed Secretary Hedgespeth. A list of all Advisory Council members and their corresponding terms is attached as Appendix A.

During the past fiscal year the Council met twelve times. A copy of the Council's agendas is attached as Appendix B. Since the initial members were appointed in August of 1986 the Council has held 38 meetings and one subcommittee meeting through June 30, 1989.

## OVERVIEW OF WORKERS' COMPENSATION SYSTEM

### MEDICAL REIMBURSEMENT RATES

During the last year, the Rate Setting Commission reviewed medical reimbursement rates. Section 64 of Chapter 572 of the Acts of 1985 mandates the Commission to conduct a review of rates for all health care services provided under the workers' compensation statute. Based upon that review, the Commission was to revise all rates that were determined to be inadequate with respect to such services. The Commission promulgated new rates after holding a public hearing in order to elicit the positions of interested parties. Those rates are once again under review. A hearing was held on August 7, 1989 and new rates were published September 1, 1989.

A public hearing was also held on April 18, 1989 to review the methodology for the implementation of allocating certain costs for medical malpractice liability insurance through the rates for medical care. This was a result of Chapter 351 of the Acts of 1986, which contained a provision for subsidizing malpractice premium costs by industrial accident payers. A 3.5% additional year end payment (based on a doctor's workers' compensation revenue), was included for the first time this year. Physician liability was set at \$2,187,300 and for dentists it was estimated to be \$2,550. The amount would be variable for political subdivisions who do not insure with insurance carriers.

Another issue in the area of medical treatment which is of continuing concern to the Advisory Council is the access of injured workers to quality health care. Throughout the past year, the Council has been informed of numerous instances of injured workers being refused medical treatment. The importance to the workers' compensation system of reliable and effective medical treatment cannot be understated. Delays in treatment and diagnosis can complicate or prevent the worker's return to work as a productive member of the workforce and prolong the resolution of disputed cases, thereby increasing costs to all parties to the system. In order to resolve this issue, a reasonable solution must be devised which can satisfy the concerns of all parties.

The issue of access was not only of concern to those interested in workers' compensation. The General Court commissioned a study (Chapter 164, section 91, of the Acts of 1988) to investigate the reported physician shortage in the state. The Commission recommended that workers' compensation pass-throughs for medical malpractice be paid in a timely fashion and that the establishment of reimbursement rates under workers' compensation be reconsidered. At present, the statutory authority rests with the Rate Setting Commission. The report also suggested that rates for workers' compensation be increased to improve worker access, and that

appropriate utility controls should be implemented to limit costs.

#### WORKERS' COMPENSATION INSURANCE PREMIUMS

As noted in the most recent annual report, the Supreme Judicial Court approved an average 19.9% increase for insurance premiums, effective January 1, 1988. On November 23, 1988, a new filing was submitted requesting a 23.5% statewide average increase, to be effective January 1, 1989. The Council exercised its limited right to appear as an interested party at the hearing and outlined some of its thoughts on the filing. A stipulation was entered at the hearing by the Workers' Compensation Rating and Inspection Bureau and the State Rating Bureau for a 14.2% overall average increase in the existing workers' compensation rates, to be effective on and after January 1, 1989. The stipulation also provided that the rates be in effect throughout 1989 and that a new filing not be submitted prior to November 15, 1989, except in certain limited circumstances. In addition, a revised retrospective rating tax multiplier of 6.7% was implemented this year for those insureds with such coverage.

It is expected that a new filing will be forthcoming this fall. To date, no action has taken place on the issue of the unlimited payroll cap, which was relegated to a separate hearing in the 1987 filing. A filing on the



assessment for the guaranty fund to be included in premiums was held September 5, 1989. As of the date of this report no decision has been issued.

#### AUDITS OF THE DIA

The Department of Industrial Accidents was subject to two separate reviews of its operation during the last fiscal year. One of these was conducted by the State Auditor's office, in accordance with section 65 (10) of the law. This section was amended recently to call for biennial audits rather than yearly audits. The audit itself extended over a number of months and its findings are not available at this writing.

The second review was sponsored by the Advisory Council, in accordance with its authority as set forth in section 60 of Chapter 572 of the Acts of 1985, providing for a systemwide review of the workers' compensation system. Peat Marwick Main and Company was selected from a pool of applicants to conduct this study. Due to the project's uncertain funding and occurrence over two fiscal years, it was divided into two separate components. The initial study, Phase I, concluded with the issuance of a report at the end of the fiscal year. Some of the findings will be briefly summarized here.

The Phase I report concluded that the workers' compensation system and the Department of Industrial Accidents were strengthened by the reform act, and noted improvements in such areas as staffing, rehabilitation services, automation, and case-handling. However, the study also cited inefficiencies at both the system and organizational levels as contributing to backlogs and delays. Further, the study stressed that the interrelatedness of many aspects of system and organizational operation caused delays to carry over from one unit to another. For instance, backlogs in the processing of various forms were seen to impede the efficiency of the system for monitoring case management, and supplying needed information.

At the system level, backlogs and delays were concluded to stem from incentives or disincentives contained in certain provisions of the reform law which resulted in a higher volume of cases than anticipated. The increased case volume has created backlogs in claims processing, conferences, hearings, issuance of decisions, and lump sum settlements. Procedural and staffing constraints were further found to cause backlogs and delays in conciliation, data entry, investigations, and trust fund payments.

Inadequate staffing was also found to inhibit the department's ability to fully pursue some of its mandated activities. The Office of the Legal Counsel was seen to be

unable to pursue collections for fines as vigorously as it might due to its small staff, and staffing constraints were also cited for the department's inability to audit employer assessment payments made through insurance companies. Another factor singled out for its impact upon work performance was delay in hiring or appointments. A slow appointment process for administrative judges, for instance, was blamed for exacerbating existing delays in case flow, and was seen to require improvement before multiple appointments come up in the future.

In the human resource area, the report pointed out units where employee training or follow up training could enhance organizational effectiveness. Additionally, while employee morale was seen to be generally satisfactory, there were areas where departmental employees seemed to desire greater input. On the technical side, computer expansion was identified as necessary in order to permit information processing and workflow to operate smoothly. Automation of the department's Insurance Register was also seen to be of particular importance. A copy of the Executive Summary of the report is attached as Appendix C.

#### LEGISLATION

The Council provides a forum for the ongoing discussion of changes in the workers' compensation system. During the

past year the Council discussed virtually all the bills filed for 1989 at its March meeting. It voted to take positions on those where seven of the voting members were in agreement. Forty-seven bills, which had been available for review prior to the meeting, were discussed and the Council's position was transmitted to the Joint Commerce and Labor Committee. In addition, the Chairman of the Council testified with respect to the Council's position on the proposed bills, indicating which bills were/were not supported and which bills the Council took a neutral position on.

The changes enacted in 1985 now have a significant track record to review their effectiveness. A list of FY '89 legislative changes is included as Appendix D.

#### NON-DISCRIMINATION

One of the changes enacted by the 1985 amendments to the workers' compensation law incorporated language which precluded discrimination against employees who exercised their rights under the law. For the last two years we have surveyed each of the superior courts in the state in order to ascertain if any civil suits have been filed under §75 b (2) of the statute. Last year we had 2 respondents and both indicated that no actions had been filed. This year 5 courts responded and once again there were no records of any suits being filed.

It appears that it will be difficult to determine if any suits seeking to enforce this section are filed without reviewing the entire dockets of each superior court in the state. In terms of the larger systems, this is not feasible. In smaller counties, respondents indicated that if such complaints had been filed they would have been aware of it. The scarcity of data makes it difficult to confirm if this section has been effective, or if it is not being utilized.

## DEPARTMENTAL OVERVIEW

The organizational structure and various components of the DIA as restructured by the 1985 reform law have been outlined in previous annual reports and will not be repeated here. This overview will focus upon updates and developments within the departmental units during the past fiscal year.

### DIVISION OF ADMINISTRATION

This division is composed of a number of different components. As part of its ongoing duties, the department has established a Rules Committee, which is comprised of members of the bar, management, labor, the insurance industry, and the DIA. This committee met a number of times during the past year to discuss and resolve issues affecting departmental operation. These discussions led the department to propose new rules for the following:

452 CMR 1.20 Joinder

452 CMR 1.23 Amendment to Claims and Complaints

452 CMR 3.06 Reimbursement of COLAs

452 CMR 3.07 Reimbursement for Benefits for Second  
Injuries

The department held a hearing on the proposed rules on May 1, 1989 and the rules were promulgated by the Secretary of State on June 23, 1989. A copy of the rules changes is attached as Appendix E.

SECTION 65 - EMPLOYEES OF UNINSURED EMPLOYERS

The administration of claims against uninsured employers continues to be a major source of concern. During the past year, 335 cases were referred to the Office of the Chief Legal Counsel. Statistics on the result of cases where a disposition has been reached during the fiscal year are included in Appendix G. During fiscal year 1988 payments totaled \$1,689,000 and increased about 84% to \$3,117,229. While the fund has had some success in defending these cases this is still a cost that is unfairly placed upon law abiding employers. The projection for FY'90, based upon data available well before the closing of the books for FY'89, suggested a budget of \$3,750,000 for this element of the private employer trust fund.

Since the books for the fiscal year have just closed, it is not possible to obtain full fiscal year data on amounts billed and collected. However, for the first 3/4's of the year, the DIA issued 2,099 late first report fines for a total of \$209,900. Through the hearing process, 262 fines were dismissed leaving \$183,700 in billings remaining, over one-third of which had been collected by early April. In addition, there were 7,797 filing fees, for a total billing of \$1,432,268 and 210 appeals for a billing of \$24,315. There have been no fines yet for late assessments for private or public employers and we are unaware of any fines levied

for the filing of an untimely medical report under §30A. The Peat Marwick audit indicates that the Insurance Registry's operation may make defense of the trust fund more difficult because of the lack of dating of notices.

#### CLAIMS ADMINISTRATION

The Office of Claims Administration is responsible for handling most of the material which is sent to and from the DIA. At least 50,944 quarterly reports have been filed this year, which is still far fewer than the statute requires. The office processes on average almost 7,500 pieces of correspondence each week, of which 1,052 are rejected for improper completion of the forms.

During the past year there has been a steady increase in the number of claims being filed at the DIA. This increase places additional strains on a system that is already inundated with administrative functions. A graph which depicts the increase in claims which have been referred to conciliation (after review by the Office of Claims Administration) is included in this report as Appendix F. In each month of 1989, there were dramatic increases over 1988 and over all but one month of 1987.

It is difficult to pinpoint the reasons for the large increase. One possible explanation is that the initial projections underestimated the true number of cases. Another



is that there is greater awareness of the law and the system as a result of the reform process. Another factor is that more people working translates into more industrial accidents.

The statistics on the number of claims/complaints being filed present serious cause for concern (see Appendix G). In 1986, an average of 520 claims were entered per week. This increased to 570 a week in the 1987 calendar year (a 36% increase), while the 1988 calendar year average stood at 545 week (30% increase over 1986). Projections for calendar year 1989 show an average of 660 referrals per week. This represents a 57% increase over 1986, 16% over 1987 and 21% over 1988. It is a 30% increase over the same calendar period (January through June) from 1988 to 1989, which means that 4,007 more cases have been referred to Conciliation in the first six months of 1989.

Over a three month period this fiscal year, a rough picture of the types of issues being presented to the DIA can be examined. The numbers are listed in Appendix G, pages IV and V. While 40% of the temporary/total cases go forward and 50% of the permanent and total cases go forward to Division of Dispute Resolution (DDR), only 20% of the claims for medical benefits are referred. While 44% of the cases listed on page V are claims, the percentage of lump sums for cases entered is equal to the percentage of discontinuance

requests. This indicates that lump sums have not been discouraged by the 1985 changes.

#### Conciliation Unit

The statistics on the number of matters referred to conciliation after review by claims administration were about the same in the past year as in previous years, 80%. In our last report we noted that a higher than average number of cases were referred to the Boston office during FY'88. This was a result of the scope of the Boston region both expanding, then contracting, during the course of the fiscal year.

Statistics provided by the DIA for the first half of FY'89 established that 29.4% of the cases scheduled for conciliation were resolved at conciliation where both parties appeared. Overall, 51.7% of the cases were referred to dispute resolution, but 6.6% were referred without a conciliation, which means that almost 7% of the time the respondent did not appear. This referral rate was almost identical in a 7 month report of completed conciliations by the DIA. Included as part of that total of 51.7% of finished cases which were referred, were 45.1% which were referred after a conciliation where both parties appeared, leaving a 6.6% referral rate where the respondent didn't appear. In turn, 30.9% were resolved after a conciliation took place.

This resolution rate has remained fairly constant on a weekly basis over the last two years with the procedure closing about  $\frac{1}{2}$  of the cases referred. In addition, a check of cases concerning multiple section 36 cases last fall determined that there had been six multiple filings but attorney fees had not been paid more than once.

#### DISPUTE RESOLUTION

A total of thirteen (two of whom were former "recalled" judges) new judges were appointed to the Division of Dispute Resolution during the past fiscal year. Although the statutory authority to hire the new judges was enacted in January of 1988, the majority of them were not appointed until the latter part of the summer in 1988. Prior to the eventual appointments, the department had indicated to the Advisory Council that delays in Dispute Resolution would increase if the judges were not appointed by April of 1988. This prediction turned out to be accurate.

With the exception of January of 1989, a trend toward increases in the number of referrals to conciliation has been underway. A chart included as Appendix F shows that this trend began in August of 1988, approximately four months after the effective date of the latest amendments to the workers' compensation statute. The increases began at approximately the same time that most of the additional

judicial appointments began. Had the hiring of judges and other staff taken place at the expected time, it is reasonable to assume that the additional experience would have helped to prepare the agency for the large influx of cases.

Concern over the delays in the appointment process were raised both within the administrative process of the commonwealth and with the Governor's Council. Due to its concern over the growing number of cases in the department's backlog, the Advisory Council requested a meeting with the Governor's Council in January, 1989. The following month, the Chair and Vice-Chair of the Advisory Council met with the Governor's Council to express the Advisory Council's concerns.

In addition to changes in the composition of the Industrial Accident Board and the Reviewing Board, several other matters concerning the Division of Dispute Resolution were addressed during the past fiscal year. The judges and the department devoted a significant amount of time to seeking a resolution to the backlog of cases at the conference level. A potential solution was reached which was to begin implementation in the 1990 fiscal year.

Under the plan, the workload of each of the administrative judges would increase by approximately 8% in July of 1989 and a total of 15% by January of 1990. Under

the scheduling format used in FY'89, the cycles would schedule each judge for approximately 628 conferences a year. This plan would schedule an average of about 720 conferences per year per administrative judge. Included in the plan was the creation of additional hearing rooms and the hiring of additional stenographers to handle the extra hearings that would be generated by conducting a greater number of conferences. However, because funds for these components of the plan were not appropriated, its viability is uncertain.

Another component of the plan entailed a change in the scheduling of cases. The scheduling issue was under discussion for several months, and the DIA and members of the bar met in February to discuss scheduling, the backlog, lump sum counseling, and conferences. The new interim cycle that will be implemented in FY'89 will alter the administrative judges' cycle from 11 weeks to 13 weeks. The interim cycles will include:

3 conference weeks (12 per afternoon); followed by 2 continued/decisions weeks; followed by

6 hearing weeks (3 each morning) during which 2 morning conferences will be scheduled each hearing day in the first 5 weeks; followed by

2 continued hearing/decision weeks.

The interim cycle would eventually be replaced by a new scheduling format which would add additional cases (from the

present schedule for all judges it would add about 2,576 conferences a year with a full complement of administrative judges) to the judges' schedules, but would attempt to schedule the vast majority of all proceedings in the morning. The scheduling of matters before the agency in the morning is an issue which appears to have the support of a number of the parties involved in the adjudication of cases at the DIA.

Any review of performance in the Division of Dispute Resolution cannot consider the end product alone. Numbers alone do not explain output and performance of either the division or individual judges. Resolving complicated cases requires knowledge, skill, and patience. In looking at the number of decisions mailed out and cases resolved, one must consider that each case has its own complexity and problems. In addition, each administrative judge is usually at a different point in his/her cycle, so figures should be viewed with this in mind. Another factor which can be expected to cause differences in overall average statistics is the significant increase in new personnel. Finally, there is no way to factor in the difficulty involved in any particular case which can present itself at any point in the dispute resolution process. Nevertheless, while statistics do not replace quality work, they are the only available measure of performance in the resolution of cases.

During the 1989 fiscal year, the department mailed out 1,287 decisions, an average of 107 a month. This is 14% less than FY'88 monthly average of 124 per month. Information on cases resolved showed a total of 11,298 in FY'89, an average of 942 per month. In FY'88, this figure was 8,331, for an average of 694 a month. The net monthly average total per judge this fiscal year is 37.3 (11,298 resolutions/[29 judges X 12 months]-48). This is a 5% decrease from last fiscal year (39.1 per month). These figures may be explained by the large number of new judges becoming oriented in the early stages of their tenure and other positions being offline.

During the 1989 fiscal year, a total of 9176 conference orders were issued. In addition, 8075 more conferences were scheduled than in FY'88, an 82% increase. Finally, 3001 fewer hearings were scheduled than in FY'88, a decrease by 30%. This drop in the number of scheduled hearings may help explain the decrease in the number of decisions.

As of the early part of May of this year, the reviewing board had issued 265 decisions on pre 11/1/86 injuries and 44 on post 11/1/86 injuries. An additional 357 appeals were disposed of by memorandum decision. The reviewing board operated for just over two months with one position vacant.

In fiscal year 1989 itself, the board filed 120 decisions, 110 memoranda of disposition, 85 lump sum cases on appeal to the review board, 10 review board decisions were

appealed (3 already decided--2 affirmed and 1 remanded which the review board has already returned), and 12,177 lump sums approved. While the number of decisions appealed has decreased from 29 to 10, the number of decisions issued in FY'88 was 192 and the number of memoranda of disposition was 210. Last fiscal year, of the 497 claims for review filed, only 30% (147) were post 11/1/86 injuries. This year, of the 477 claims for review filed, 277 (58%) were cases with post 11/1/86 dates of injury.

Some matters are assigned to a single justice for the purpose of refining issues and exploring the possibility of settlement. Appeals filed after 11/1/86 are reviewed and qualitatively evaluated for the issues presented. The use of this system permits the scheduling of cases which deal with the same section of the law simultaneously if it is expedient to do so.

The reviewing board also reviews and approves lump sum agreements. We received statistics for a four month period which show the following:

<u>Month</u>	<u>Total # LS Scheduled</u>	<u>Total #LS Approved</u>	<u>% of LS Approved</u>
1/89	1,146	903	78.8%
2/89	1,292	1,024	79.3%
3/89	1,413	1,065	75.4%
4/89	1,195	888	74.3%
Totals	5,046	3,380	76.9%



While this is a small sample, the approval percentage shows that over 20% of those scheduled are not approved. Statistics were not available as to the number of claimants who were represented by counsel. While we do know that the number of lump sums heard has increased about 24% from 1984 to 1988, we are not in a position to compare the approval percentages to determine if they have increased or decreased since the implementation of lump sum counseling.

#### OFFICE OF EDUCATION AND VOCATIONAL REHABILITATION

The Office of Education and Vocational Rehabilitation is comprised of a public information unit, a lump sum unit, a vocational rehabilitation unit, and a support staff unit.

Along with her regular duties, the director of the office acts as the commissioner's representative on the Governor's Committee on Employment of the Handicapped. This responsibility stems from the provision in c. 152 §30I that the DIA assist and cooperate with the Division of Employment Security, the United States Department of Labor, and any other appropriate state or federal agency in attempting to make new jobs and training programs available to disabled employees eligible to receive compensation benefits.

Additionally, the office is required to certify vocational rehabilitation providers who provide services under the statute. In May of 1989, the office identified 61 certified vocational rehabilitation providers in circular letter no. 241.

### Public Information Unit

The greatest change in the office during the fiscal year involved upgrading positions in the public information unit. As originally set up, the public information desk, which operates the department switchboard and handles inquiries from the public, was staffed by 5 principal clerks. The relatively low job classification for these employees led to complete turnover at least two times over a two year period, as principal clerks moved to fill openings for head clerk positions.

The director of OEVR and the department administration determined that it would be necessary to upgrade the positions at the front desk in order to retain staff and professionalize the unit. The Department of Personnel Administration (DPA) agreed to review the classifications, but civil service regulations prevented the open positions from being filled until the review was completed. Consequently, departmental managers and members of the commissioner's staff maintained the public information services on a rotating basis during the six-month review period. The DPA ultimately agreed that a reclassification was in order and the positions were assigned the classification of public information officer.

With the upgrading of the public information positions, effort is now underway to broaden the unit's responsibilities

and more fully link it to departmental activity. Currently, each of the five information officers spends one afternoon a week in a particular office of the department, a program which should provide the unit with a complement of specializations for responding to public inquiries. The unit responds to approximately 84,000 telephone inquiries per year and has distributed over 100,000 information booklets since the 1985 changes. Plans also include involving the unit in refining existing outreach programs and assisting in the preparation of the department's annual report.

#### Rehabilitation Unit

The vocational rehabilitation unit works with claimants who require job modification or new vocational skills in order to return to gainful employment. An indication that the services of this unit are becoming credibly established is evidenced by steady increases over the past year in self-referrals and in the number of claimants returning for rehabilitation following a lump sum.

During the 1989 fiscal year, 35,730 referrals were made to the vocational rehabilitation unit, an increase by over 700 from the previous year. Contact was made with 16,110 injured employees, and 3,110 mandatory meetings were scheduled as a result of contact. Although some 200 fewer contacts were made than in FY'88, there were nearly 800 more

mandatory meetings held. Additionally, 718 individual work rehabilitation plans (IWRPs) were developed, almost twice the number developed in FY'88. At the close of the fiscal year, 303 of those who had returned to work were considered successfully rehabilitated after completing 60 days on the job. This figure represents a total of 184 more rehabilitations than in the 1988 fiscal year.

The Advisory Council's 1987 and 1988 Annual Reports pointed out the heavy caseloads carried by many rehabilitation counselors. During the 1989 fiscal year, a supervisor and a rehabilitation counselor were added to the Boston office and a supervisor was added to the Springfield office. Continued personnel constraints nevertheless require the Boston and Springfield supervisors to carry one-half caseloads in addition to their supervisory duties. In addition, the heavy caseloads of a number of rehabilitation counselors is diminishing their ability to provide follow-up and other services.

The staffing shortage is probably most severe in the Lawrence office, where the volume of cases is far too high for the current staff. During the 1989 fiscal year, a single rehabilitation counselor handled 3000 referrals, made contact with 1119 individuals, and had meetings with 309 of these.

Further complicating caseload difficulties for the vocational rehabilitation unit was a review board decision in January which determined that pre-reform cases are eligible

for rehabilitation services (Jones' Case). This decision necessitated the assignment of a supervisor to assume a caseload for old-law cases. There is a concern that the volume of cases in the unit will lower the quality of services rendered and affect the morale of employees unable to perform their duties as they wish.

#### Lump Sum Unit

In the lump sum unit, a disability analyst position was added to each regional office during the 1989 fiscal year. The office is hoping to improve the lump sum process through observation and study. Consideration is being given to producing a booklet which could be used as an educational tool on the lump sum process. The office also hopes to develop a means for screening cases and better identifying those cases where lump sum interviews aren't necessary.

During the past fiscal year, a total of 8,650 cases were heard by lump sum counselors, an average of 721 per month. Approximately 2% of these cases are pro se.

#### OFFICE OF SAFETY

The Office of Safety awarded its third round of safety grants during the 1989 fiscal year. Twelve organizations received funds to provide health and safety education and training to a variety of industries and occupations.

Organizations receiving funds and the amounts for which they were funded are listed in Appendix J.

Twenty-five proposals were submitted in response to the FY'89 RFP. Recipients were recommended by the Office's Proposal Selection Committee on the basis of uniform criteria and ranking. A total of \$350,054.34 was awarded, and \$322,331.62 was spent for the delivery of the proposed programs. Awards ranged from a low of \$20,144.70 to a high of \$31,633.35, but nine of the twelve programs received between \$30,337.56 and \$31,633.35. A total of 3898 participants received training through these programs.

Vendors were to have submitted final payment vouchers, final reports, attendance sheets, and evaluation forms to the Office by August 31, 1989. The Office is currently preparing a report on the programs for the Commissioner. The Peat Marwick audit suggests this department's activities be placed elsewhere. Its costs did not appear supported, raising the issue of efficiency of scale.

#### OFFICE OF INSURANCE

The Office of Insurance is responsible for the issuance of self-insurance licenses, the investigation of uninsured employers, the maintenance of the Insurance Registry, and the receipt of insurance cancellations, terminations and renewals.

A total of 44 new applications for self-insurance were approved in FY'89, while 11 new applications were denied. The number of licensed self-insured employers stood at 123 at the close of the fiscal year. However, these licenses covered 207 employers as a result of subsidiaries being included in a license. Only one license for group self-insurance has been established since the initial statutory allowance of group self-insurance under the 1985 reform law.

A matter concerning self-insurance which arose in the course of the fiscal year involved the application of Dennison Manufacturing Company for a self-insurance license. The DIA rejected the company's initial application on the grounds that §25D of the workers' compensation statute precludes a self-insurer or a lawyer acting on its behalf from using a servicing company to handle its claims. The Office of Insurance cited Dennison's use of a service company, stemming from the terms of an Excess Workers' Compensation and Employers' Liability Reinsurance Policy to be issued by Liberty Mutual Insurance Company. Arguments in opposition to the interpretation of §25D raised the language in M.G.L. c. 175 §47A, which authorizes domestic insurance carriers to engage in insurance-related activities. A hearing at the department was scheduled for August 7, 1989. Dennison withdrew the appeal at the hearing and, as a result, the department issued a circular letter (No. 243) which

outlined the conditions under which the DIA would permit the provisions of claims services to self-insurers/group self-insurers by insurance carriers.

Under Chapter 691 of the Acts of 1987, the department became authorized to issue "stop work" orders on companies failing to provide workers' compensation coverage. Orders to close are issued 10 days after notice is given and no evidence of coverage is supplied to the department. A series of fines was also implemented to encourage compliance, as well as ensure due process requirements.

Many offending companies appear to be complying with the law by purchasing insurance following the receipt of notice. The DIA issued 30 stop work notices in cases assigned during the past fiscal year, and collections were made on fines totaling \$7,200. Only 6 notices led to actual orders to close. Cooperation with other agencies of the commonwealth has assisted the department in its investigations.

#### REGIONAL OFFICES

One change in the past year has been the relocation of the Fall River regional office. The office was moved on December 29th of 1989 to 30 Third St. in Fall River. For the majority of the past fiscal year, the regional office in Lawrence has had an acting regional manager, but as of June 11, 1989, a new manager has been on board for the office.



With the appointment of new judges this year, there will hopefully be a full complement of administrative judges in each regional office. This will assist in the assignment of cases because there is a disparity between regions in the scheduling of matters. As of this May, Springfield had only 7% of the backlog cases (both conferences and hearings) awaiting scheduling, while Fall River had 22%. A list of the percentages for each office for backlog and prolog cases awaiting scheduling as of 5/19/89 is as follows:

<u>Office</u>	<u>Backlog %</u>	<u>Prolog %</u>
Boston	34	36
Fall River	22	19
Lawrence	20	14
Springfield	7	13
Worcester	17	18

These backlog cases are defined by a filing date prior to June 20, 1988 and as of that time the backlog would not have any additional cases added to it. Backlog scheduling is expected to end by January of 1990 under current conditions in Springfield and a year later in the other offices.

## CONCERNS

### 1. BUDGET PROCESS

The intent of the assessment process was to ensure that the DIA would have the necessary revenues to provide its services in a prompt and efficient manner to injured workers, as well as decrease the concomitant delays experienced by the business community. In return for what was believed to be a more expeditious system to handle cases, the lawabiding employers in the state would pay the operating costs of the DIA. Those costs have increased dramatically over the last few years. Claims have also risen tremendously, in part due to the commonwealth's low unemployment rate, since injury totals can be expected to rise with increases in the workforce. The General Court initiated the assessment process in response to just this contingency, seeking to ensure that the DIA would not be held hostage to economic forces beyond its control.

The business community has tried to support the DIA's efforts. The 1988 fiscal year budget called for an appropriation of \$10,065,038 and a personnel cap of 236 positions. A year later those figures were increased to \$12,409,178, with a total of 302 positions. The percentage change in funding and staffing increased 124% and 167% respectively from fiscal year 1986 to fiscal year 1990. As an additional perspective on the increase in costs,

expenditures for the agency were \$2,825,237 in FY'84, while the FY'90 appropriation is 365% higher. One would hope to see perceptible improvements as a result of such sizeable increases.

When the time comes to analyze the effectiveness of the 1985 reform, it will be impossible to determine how the workers' compensation system would be operating if the DIA had been provided with the resources it believed necessary to perform its function. Such funds, as represented by departmental budget requests, have never been available. Since the requested funds may well have made a substantial difference to the organization and would have come at no direct cost to taxpayers, it becomes more difficult to measure improvements afforded by the post-reform system.

## 2. DELAYS

Delays in the resolution of cases continue to plague the system. While a greater number of cases are being filed, there has also been a significant increase in staffing and funding. The funding increase was based upon projections regarding the administrative needs of the restructured DIA. It would appear that the initial projections understated the level of claims being filed on a yearly basis, since higher employment levels and increased awareness of the law alone cannot explain the dramatic rise in claim activity. If this

assessment is accurate, the DIA is placed in an even more difficult position in terms of its ability to keep pace with workers' compensation claims.

The 1984 Annual Report of the agency, just prior to reform, noted that the delay in scheduling a conference had been reduced from nine months to four months. The same problem exists presently, even though the intent of 1985 changes was to place cases on a "fast track" system. This goal has not yet been achieved. As incoming cases clog the system, the problem gets worse. Additional funds and personnel have not solved the problem. The impact on injured workers and their families, as well as the business community, is devastating. All parties must work together to remedy this situation.

Delays can exist in other areas as well. Interruptions in data processing capabilities impact productivity. This problem is exacerbated when staff attempt to keep up with the increasing volume of forms and cases. Another example is duplicate filings which require additional time and resources. State administrative procedures which impact on filling vacancies create problems for managers and workers alike. Each of these can only have a long term negative effect on morale.

### 3. PUBLICATION OF REVIEW BOARD DECISIONS

In the Advisory Council's final FY'88 report, we noted that the decisions of the Reviewing Board had not yet been published. The intent of the legislature is unclear as to whether publication of the decisions is to be done by the DIA or by a publisher. During the last fiscal year, two attempts were initiated to solicit proposals to publish the decisions (the last request for proposal had a deadline of 7/19/89). No proposals to publish the decisions were received by the department. In the absence of any bids, it is the understanding of the Advisory Council that the DIA can select a publisher.

While the impending publication of the decisions is a positive sign, it must be pointed out that it has been nearly four years since the law was signed. It is reasonable to presume that the legislature's intent in mandating publication was to provide parties with decisions of the Reviewing Board so that they could inform their clients and make prudent decisions concerning litigation. It is impossible to say whether appeals would not have been filed if the decisions were published. However, since a primary goal of the system is to provide a uniform and expeditious resolution to disputed claims, the dissemination of relevant case law is imperative. The department is diligently working to finalize publication of Review Board decisions and is hopeful that by the release of this report copies will be available.

#### 4. COMPUTER SYSTEM

Another area of concern involves the use and operation of the computer system. The concern here is with the actual computer system and not with the employees of the data processing unit. The DIA has experienced extensive problems in its attempts to increase system capacity. Shutdowns of the system result in idle time for many employees and place pressures on managers and employees to catch up in their production. Shutdowns also increase costs by requiring greater use of overtime.

In addition, problems in the availability of statistical information continue to exist. Certain reports required by the statute have still not been provided, and biannual reports which were to be available for this report have not been made available as of this writing, but are expected in the near future. As of yet we are unable to determine if the data on the system can provide any answers to the problems faced by the DIA. Consequently, the analysis of improvements and possible problem areas must be postponed for yet another fiscal year.

#### 5. INSURANCE POLICY CANCELLATIONS

Another area of ongoing concern which relates to technology is in the processing of insurance policies. Currently, processing the cancellation of insurance policies in the department's Insurance Register is a highly labor

intensive task. The critical importance of this function demands accuracy. With increases in the number of employees filing claims who believe their employers are not insured, this function has taken on still greater significance. At present, a card is received and must be time stamped for each policy cancellation. If the policy is renewed or another policy is procured, a card (3 X 5 file card usually) noting this information must be received, time stamped, and entered onto the computer.

This information is important not only for knowing who is insured, but also for purposes of the assigned risk pool, whereby the statute (§65A) requires that the DIA certify to the Commissioner of Insurance that an employer is entitled to insurance. The DIA must also approve any cancellation of a policy under the assigned risk pool and provide a hearing for any employer who objects to the cancellation within the statutory time frame. This process also creates work, time, and expense for insurers. It is reasonable to assume that their costs are passed on to insureds.

It is our understanding that the insurance industry has devised a program to provide cancellation/renewal information by computer tape. If this process can save the DIA time and minimize error, as well as reduce costs for insurers and employers, use of tapes should be explored.

## 6. INSURANCE MARKET

Concerns also exist with respect to the state of the insurance market in the Commonwealth and its impact on workers' compensation. Much of this concern is beyond the scope of the workers' compensation system and many of its interested parties. A resolution to the crisis in the auto insurance market will impact the insurance industry as a whole and may cut down the number of carriers leaving the state.

A growing sense of frustration exists with the rising cost of workers' compensation, with respect to both insurance premiums and health care costs. The size of the residual market (assigned risk pool) has grown over the last few years. Five years ago, only five states had residual market shares in double figures and only one exceeded 20%. In 1988, 18 states had residual markets greater than 20%.<sup>2</sup> The size of the Massachusetts Assigned Risk Pool, as of 1987, was 25%. This made it the largest writer of workers' compensation in the state. Along with rising costs of workers' compensation, the growing size of the residual market is another development that stands to affect the future efficiency of the system in this state.



## 7. INCREASED COSTS

The March 1989 edition of the Social Security Bulletin published by the United States government showed a 12.3% increase in the total amount of regular workers' compensation benefits paid nationally from 1985 to 1986 for regular workers' compensation programs (exclusive of black lung benefits), with a total expenditure in 1986 of \$23.4 billion. The percentage increase for medical/hospital costs was 13.9%, while compensation payments increased 11.4%. For all compensation programs, the total percentage increase was 11.3% (\$25,019,000,000 expended) and the respective increases for medical/hospitalization and compensation was 14.3% and 9.8%. The increase in benefit payments in Massachusetts was 25.3% during that year and while the highest in the country, it coincided with a number of changes affecting benefits introduced by the 1985 amendments.

The standard premium earned during calendar year 1986 was \$926,924,586, while in 1987 it was \$970,503,390, and in 1988 it was \$1,141,612,183. The estimated standard earned premium for 1989 is \$1,378,000,000 and for 1990 it is \$1,683,000,000. These annual increases, for actual and estimated figures, are approximately 5% (86-87), 18% (87-88), 21% (88-89), 22% (89-90). The overall percentage increase from the actual 1986 standard earned premium to the estimated 1990 written premium is 82%.

Information from the National Foundation for Unemployment Compensation and Workers' Compensation show Massachusetts increasing 262.3% from 1977-1986 in total cash payments (weekly benefits and medical), while at the same time the national increase was 213.8%. However, the average benefit cost for covered employee in 1986 for Massachusetts was \$268 and nationally it was \$269. While the percentage change for Massachusetts for this 10 year period was 194.5, it is far less than in Maine (448.4%), Connecticut (253.5%), and Rhode Island (253.2%). While these cost figures do not bode well for Massachusetts, there is the possibility that the experience in other jurisdictions can assist this state in dealing with this extremely serious issue.

#### 8. MEDICAL ACCESS

The issue of prompt access to medical treatment for victims of industrial accidents continues to be a serious concern for the Advisory Council. During the past year, the Council once again heard reports of workers' compensation patients who experienced difficulties in finding physicians who would agree to treat them. Recent history suggests that the access problem is largely due to physician dissatisfaction with workers' compensation rates and with clients that are perceived as litigious. It is not yet clear how or whether the promulgation of new medical rates this

past September will affect medical access, but the Advisory Council is concerned that this problem be expeditiously and equitably resolved. In a related development, a bill was filed in the fall of 1988 the intent of which is to transfer the authority for setting medical rates for workers' compensation from the Rate Setting Commission to the DIA. No final action has been taken on this bill at this writing.

#### 9. MISCELLANEOUS

As noted in our last report, the review of judges' performance prior to reappointment is an extremely sensitive and important matter with potentially widespread human relations and technical consequences for the system. It is important that the review process be based on carefully considered criteria. In the past year, 88 cases at the hearing level required a trial de novo following a judge's vacancy. On average, there were nearly 36 cases to be completed for each vacancy. This places a burden on other judges who are already presented with an increasing backlog of cases. Every effort should be made to ensure that the appointment process operates effectively and few, if any, matters remain to be completed.

The review process takes on added significance in light of the potential turnover in the Administrative Judges in 1992 and 1994. A total of 9 and 7 terms, respectively, end

in each of those years. Estimates by the Peat Marwick study suggest that over 1300 cases will not be heard and approximately 170 decisions not written in 1992 if judges are not appointed/re-appointed in a timely fashion. This system cannot handle any additional backlogs such as might be created by this scenario.

APPENDIX A  
MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL

<u>Voting Members</u>	<u>Term Exp.Date</u>
Linda Ruthardt, Chairman (Business)	6/25/91
Arthur Osborn, Vice-Chairman (Labor)	6/25/91
Joseph Coffey (Self Insurer)	6/25/89 *
Rick Brown (Labor) Resigned 5/89	6/25/89
James Farmer (Labor)	6/25/90
Paul Meagher (Business)	6/25/90
Kevin Mahar (Labor)	6/25/92
Douglas Mure (Business)	6/25/92
Samuel Berman (Business)	6/25/93
Ron Ferris (Labor)	6/25/93
 <u>Non-Voting Members:</u>	
Dr. Ruth Jordan (Medical)	6/25/89 *
Evelyn Wedding (Rehabilitation)	6/25/90
John Antonakes (Insurance)	6/25/92
Emily Novick, Esq. (Claimants' Bar)	6/25/93
Secretary Paul Eustace	
Executive Office of Labor	Ex-Officio
Secretary Grady Hedgespeth	
Executive Office of Economic Affairs	Ex-Officio

\* Members continue until they either resign or a placement is appointed and sworn in.

APPENDIX B

AGENDA FY 1989

July 13, 1988

Inter Agency Task Force  
FY 1989 Budget Report  
Discussion-Conciliation  
    a. status and role under c.691  
    b. section 36 cases/data  
Discussion - Health Care Reimbursement Rates  
Tillinghast Report  
Proposed Rules 7/21/88 Public Hearing

August 10, 1988

Supplemental Budget/Assessment Amendments  
Rules Hearing

September 14, 1988

Report On Printing Of Review Board Decisions  
Mass Bar Association's Letter  
Conciliation  
Lump Sum Counseling  
Budget Discussion

October 12, 1988

M.B.A. - Letter to DIA  
Section 37 - Second Injury Fund  
Budget  
Requests For Proposals - Study  
Statistical Update

November 9, 1988

Office Of Safety  
Annual Report  
Discussion Study Of Medical Reimbursement Rates  
Insurers Insolvency Fund

December 14, 1988

Lettich's Case - Discussion/Impact - Judge McCarthy  
Lump Sum Process  
Budget - Secretary Eustace

Treasurer's Report  
Medical Reimbursements - Council Member John Antonakes  
Audit Process Update - Steve Day  
Competitive Rating Study - Chairman Ruthardt

January 11, 1989

Rate Setting Study  
Audit  
Competitive Rating Study  
Bills - Spring 1989  
Treasurers' Report

February 1, 1989

MassCOSH - Nancy Lessin  
Department Update - Commissioner Pressman & Staff  
Miscellaneous - Audit Update  
Second Injury Fund Update

March 8, 1989

Legislation - Bills Filed  
Budget Proposed

April 12, 1989

Steven Wright, Attorney General's Office  
Roger Singer, Commissioner, Division of Insurance  
American Mutual Insolvency  
Tom Driscoll - Liberty Mutual - Residual Market  
Joel Pressman, Commissioner, DIA - Backlog  
Mark Abraham, Peat Marwick - Audit

June 14, 1989

Dr. Kenneth Ditzian - Methods of Treatment  
Steve Wright - Attorney General's Office  
Section 65 - Trust Fund  
Evelyn Wedding - Rehabilitation Report  
Peat Marwick & Main - Audit Update

June 28, 1989

Trust Fund Administration  
Peat Marwick Main - Report  
Evelyn Wedding - Rehabilitation Report  
Fiscal Year 1990 Assessment  
Miscellaneous

## EXECUTIVE SUMMARY

In 1985 the Commonwealth of Massachusetts enacted c.572 of the Acts of 1985, the Massachusetts Workers' Compensation Reform Law (Reform Law), which amended M.G.L. c.152, to usher in a new era of comprehensive changes to the Workers' Compensation System (the System). The Reform Law mandated sweeping changes in the practice, scope and administration of workers' compensation in the Commonwealth. It enhanced the operations and responsibilities of the designated workers' compensation agency, the Department of Industrial Accidents (DIA) and authorized an oversight body in the Workers' Compensation Advisory Council (the Council).

The statute called for a review of the implementation of the Reform Law. Through a competitive bidding process, the Council selected KPMG Peat Marwick to assess the efficiency and effectiveness of the DIA and the System. The study has been funded by the DIA from revenues collected through assessments on law-abiding, private employers in the Commonwealth.

The Council divided the study into two distinct phases. The purpose of Phase I was to concentrate on post-reform cases in our review of DIA operations and to investigate certain significant issues concerning the System. Phase II, assuming it is commissioned, will entail a state-by-state comparison of certain aspects of the System and target Phase I results for further analysis.

This document presents the results of the Phase I work. The project goals and objectives are defined in Section I. Our approach to the study is outlined in Section II and relevant background material is summarized in Section III. The major departmental processes and workflows are described in Section IV. Section V presents an overview of the DIA's organizational structure.

To analyze the DIA and the System, we developed five analysis perspectives, each with several key review criteria and relevant questions. The analysis perspectives, which are described in Section VI of this document, are:

- Operations
- Statutory Compliance
- Financial Management
- Organization and Staffing
- Specific System Issues



As a result of our research and analysis, we have several findings which are presented in Section VII. Our assessment revealed strengths and shortcomings in both the DIA and the System. Significant strengths we observed as a result of the reforms include an:

- Improved process and services for injured workers, characterized by:
  - more timely receipt of benefits due to the payment without prejudice provision
  - more available vocational rehabilitation services
  - greater awareness of workers' rights and benefits under the law
  - assurance of coverage under the new Trust Funds in the event of uninsured employers
- Improved morale within the DIA, evidenced by:
  - improved opportunities and career path for DIA employees
  - a genuine concern on the part of DIA managers, staff and judges for improving System performance
- Improved framework for handling cases, especially:
  - vastly improved automation capabilities with a state-of-the-art computer system
  - a better aligned organization structure within DIA
  - regional offices to allow injured workers easier access to services

Overall, we observed many positive benefits since the Reform Law took effect. It is obvious that the DIA has made significant progress in improving the administration of the System. In addition, we found several areas where further improvements could be made. In many cases, progress has been constrained by the various statutes, regulations and other Commonwealth procedures under which the DIA must operate.

The more significant findings of this study are:

- Backlogs and Delays

Certain provisions of the Reform Law contain incentives or disincentives which have created a higher volume of cases than expected. This increased volume has caused a substantial new backlog to develop in several areas including:

- Claims Processing
- Conferences
- Hearings
- Issuance of Decisions
- Lump Sum Settlements

Procedural and staffing constraints have further compounded the backlogs and delays in:

- Conciliation
- Data entry
- Investigations
- Trust Funds payments

The effectiveness of the new on-line computer tracking system, which relies on timely input of data, is constrained by these backlogs. As a result, the DIA managers and staff, who must compensate for incomplete system information, are not as effective as they could be.

- DIA Budget Inadequacy

DIA performance has been hampered by the lack of an adequate budget. The DIA receives appropriations annually and participates in the budget process as required by all departments of the Commonwealth. However, the funding of the DIA is revenue neutral since all funds are reimbursed to the Commonwealth by assessments on private employers.

- Trust Fund Exposure  
Staff shortages, backlogs, pending legal decisions, withdrawal of insurers from the Commonwealth, and current accounting practices are combining to create significant financial exposure for the Trust Fund. This issue could undermine DIA accomplishments and cripple the new System if left unaddressed.
- Staffing Shortages  
Staffing in DIA needs further review to optimize allocation of resources across units. On the surface, it is clear that some units are understaffed, based upon the volume of activity and high priority of their function. Other units appear to be overstaffed based upon the value of the function to the DIA and the System.
- Lump Sum Settlements  
Lump sum settlement procedures are often untimely and inconsistent. Workers are not given sufficient financial information upon which to base their decisions and cases are not being processed in a timely manner.

Major findings with respect to the System relate to the:

- Reform Law  
Some of the original intentions of the Reform Law are not being achieved. The law built in certain disincentives and conflicting practices which do not adequately discourage litigation and lump sum settlements. Another statute, M.G.L. c.23E, hampers the DIA's ability to creatively respond to new challenges.
- Compensation for Service Providers  
The current compensation structure established for various service providers in the System does not provide equal incentives to service providers and discourages efficient processing of cases. There is a perception that rates for insurers and medical professionals are inadequate, and there is concern that the structure of attorney fees tends to encourage more litigation.

This Phase I study includes a process for prioritizing recommendations according to five criteria:

- Impact on the DIA and the System
- Condition of Existing Methods
- Impact on Statutory Compliance
- Tangible Benefits
- Implementation Risks

During Phase II we will prioritize the recommendations in conjunction with the Council and the DIA. The priority scheme is described in Section VIII.

### Recommendations

To address the significant findings, we developed preliminary recommendations and logically grouped them at a project level. These recommendations will be further refined as Phase II progresses and we incorporate the findings of the state-by-state comparison. The recommendations are presented in Section IX and include a project description, major activities to consider, expected benefits, and the estimated time needed for completion.

The preliminary recommendations have a primary common goal, to eliminate the backlog and prevent its recurrence. Solving this problem, however, has many dimensions and no quick fixes. Accordingly, we have suggested several actionable projects to approach this goal in a structured manner. We recognize there may be legislative and administrative barriers beyond the immediate control of the DIA and the Council. However, we believe these recommendations represent a reasonable starting point from which to address further system improvements.

The projects we are preliminarily recommending are:

1. Revise Legislation and Regulation
2. Modify the Lump Sum Approvals
3. Change Trust Funds' Financial and Administrative Procedures
4. Redirect Office of Safety

5. Automate Insurance Register
6. Upgrade Conciliation Process
7. Complete Detailed Staffing Analysis
8. Modify DIAMETER to Improve Claim Processing
9. Investigate Potential for System Abuse
10. Redesign Management Information Reports
11. Improve Internal Communications
12. Re-evaluate Attorney Compensation
13. Improve Medical Access
14. Expand Systemwide Educational Efforts
15. Enhance Legal Counsel's Support
16. Link Performance Criteria
17. Enhance Budget Planning Process
18. Audit Reimbursements and Assessments
19. Conduct "Housekeeping" Projects
20. Commence Phase II

In Section X, Preliminary Implementation Schedule, we suggest time frames for implementing the project recommendations. Due to the nature of the recommendations, the implementation should realistically take place over a three-year period. A more definitive implementation plan will be finalized during Phase II after the recommendations are prioritized based upon KPMG Peat Marwick's ranking of projects and the DIA and Council's assignment of importance to the different prioritization criteria.

\* \* \* \* \*

Finally, we would like to acknowledge the courtesy and cooperation extended to us by the Council, Council staff, and the DIA staff during the course of the study.

*Peat Marwick Main + Co.*

APPENDIX D  
(Additional Legislation)

Chapter 78 Of The Acts Of 1988  
Effective September 22, 1988 (No Emergency Preamble)

Relevant Section

Section 17. Section 65 of chapter 152 of the General Laws, as amended by section 15 of chapter 691 of the acts of 1987, is hereby further amended by striking out, in line 166, the words "an annual" and inserting in place thereof the words: a biennial.

Analysis

This changes the audit from a yearly requirement to once every two years.

Chapter 130 of the Acts of 1988  
Approved July 14, 1988

This bill was discussed in our last report and concerned the admissibility of medical records in both administrative and court proceedings.

Chapter 236 of the Acts of 1988  
Approved July 27, 1988

This change was noted at length in our last report. This legislation amended section 65 to permit the state to assess private employers for the fringe benefit and indirect costs of the DIA.

Chapter 302 of the Acts of 1988  
Approved November 30, 1988

Analysis

This legislation expanded the scope of the guaranty fund to encompass workers' compensation insurance. The fund is obligated for covered claims against the insolvent insurer existing prior to insolvency and within 60 days after insolvency, up to a limit of \$300,000.

## APPENDIX E

- 1.20: Joinder
- 1.23: Amendments to Claims and Complaints

### 1.20: Joinder

(1) An administrative judge before whom a proceeding is pending may join, or any party to such proceeding may request the administrative judge to join, as a party, on written notice and a right to be heard, an insurer, employer, or other person who may be liable for payment of compensation to the claimant.

(2) A party to be joined shall not be allowed to raise a defense of late claim if the original claim was filed timely, but shall be allowed to raise any and all other reasonable defenses which would have been available to him had the claimant filed an original claim against the party to be joined, provided that the party requesting joinder, in the absence of mistake or inadvertence, made a reasonable attempt to ascertain the identity of the correct party or parties before the filing of the original claim.

(3) When it is decided, after proper hearing of a request to join, that the subject of such request shall be joined, the new party shall be allowed a reasonable period of time to prepare a defense. Such period shall not exceed forty-five (45) calendar days from the date of joinder, unless the administrative judge who orders the joinder finds that additional time to prepare a defense is needed.

### 1.23: Amendments to Claims and Complaints

(1) A party may amend his claim or complaint as to the time, place, cause, or nature of the injury, as a matter of right, at any time prior to a conference on a form provided by the department. At the time of a conference or thereafter, a party may amend such claim or complaint only by filing a motion to amend with an administrative judge. Such a motion shall be allowed by the administrative judge unless the amendment would unduly prejudice the opposing party.

(2) A party may amend a claim or complaint on a form provided by the department as to a party as a matter of right at any time prior to a conference whenever the controversy created by the amended claim or complaint arose out of conduct, incident, or series or occurrences set forth or attempted to be set forth in the original claim or complaint.

(3) No amendment to a claim or complaint may be made except as provided by M.G.L. c.152 and these rules. Any party shall be allowed a reasonable period of time to prepare a defense



to an amended claim or complaint. Such period shall not exceed forty-five (45) calendar days from the date of notice of the amendment, unless an administrative judge finds that additional time to prepare a defense is needed.

- 3.06: Reimbursement of Cost of Living Adjustments
- 3.07: Reimbursement of Benefits for Second Injuries

3.06: Reimbursement of Cost of Living Adjustments

(1) Persons entitled to receive yearly increases in benefits under M.G.L. c.152, s.31, pursuant to St.1982, c.663, s.1, shall continue to receive said benefits on or after November 1, 1986 and shall not be eligible for benefits pursuant to M.G.L. c.152, s.34B. For the purposes of M.G.L. c.152, s.65(2)(a), "adjustments to compensation pursuant to section 34B" shall not include benefits which are paid under M.G.L. c.152, s.31, pursuant to St.1982, c.663, s.1. Any overpayment by an insurer or self-insurer resulting from the promulgation of this rule shall be recovered only through the use of future credits and not through a reduction of benefits currently paid.

(2) The initial increase in benefits under M.G.L. c.152, s.34B, shall be payable on the first October 1st subsequent to the date marking the twenty-four (24) month anniversary of the date of injury. The initial increase in benefits under M.G.L. c.152, s.35F, shall be payable on the first October 1st subsequent to the date marking the thirty-six (36) month anniversary of the date of injury.

(3) Any request for reimbursement made pursuant to M.G.L. c.152, s.65(2)(a) or s.65(2)(b), must be received and date stamped by the department, on a form prescribed by the department, no later than two (2) calendar years from the date on which the benefit payment, for which the reimbursement request being filed, was made.

3.07: Reimbursement of Benefits for Second Injuries

(1) Any insurer or self-insurer may request a conference under M.G.L. c.152, s.10A, on a form provided by the department, for the resolution of any controversy arising under M.G.L. c.152, ss.37 and 37A, provided that such a request has been preceded by the filing of a petition for reimbursement, along with a certificate of service, with the department of the attorney general. A petitioner will be allowed to file a request for a conference only when the petition is not resolved within sixty (60) calendar days of service. The request for a conference must include a copy of the petition and the certificate of service.

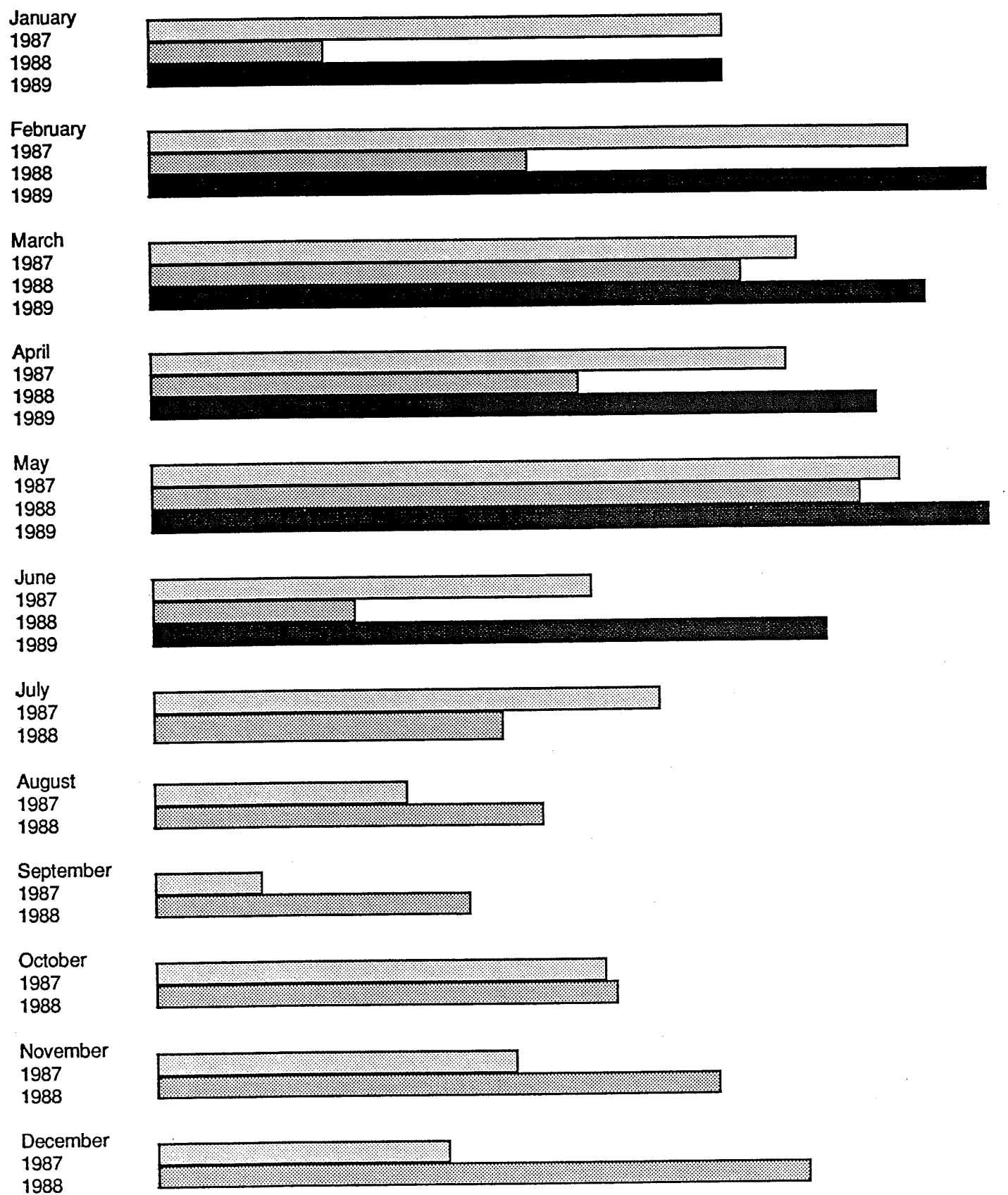
(2) If an order requiring reimbursement of benefits under M.G.L. c.152, ss.37 and 37A, is appealed, in accordance with

M.G.L. c.152, s.10A, reimbursement thereunder shall be automatically stayed pending a decision after hearing under M.G.L. c.152, s.11. If such an order is not appealed, it shall become effective fifteen (15) calendar days after the date of the order.

(3) Funds shall be disbursed pursuant to M.G.L. c.152, s.65(2)(c) and (2)(g), only after the filing of a memorandum of agreement or the issuance of a final order or decision on a form prescribed by the department. Any request for reimbursement made pursuant to M.G.L. c.152, s.65(2)(c) or s.65(2)(g), must be received and date stamped by the department, on a form prescribed by the department, no later than two (2) calendar years from the date on which the benefit payment, for which the reimbursement request being filed, was made.

(4) Reimbursements shall be made under M.G.L. c.152, s.65(2)(c) and (2)(g), only for injuries occurring on or after December 10, 1985.

## CLAIMS/DISC REFERRED TO CONCILIATION AFTER REVIEW



400 425 450 475 500 525 550 575 600 625 650 675 700

AVERAGE NUMBER OF WEEKLY CLAIMS

APPENDIX G

I

	<u># of Claims/Disc Prior To Review</u>	<u>Average Per Week Per Month</u>	<u># Refer. Concil.</u>	<u>Average Per Week Per Month</u>
Jan. 1987	3486	697	2461	615
Feb.	3338	835	2706	677
March	3452	863	2520	630
April	3067	767	2511	628
May	3431	686	3368	674
June	2921	730	2197	549
July	3182	636	2909	582
August	2585	646	1928	482
September	3036	759	1682	420
October	3352	670	2807	561
November	2470	618	2135	534
December	2511	628	2022	506
<b>Total '87</b>	<b>36,831</b>	<b>708</b>	<b>29,618</b>	<b>570</b>
Jan. 1988	2800	560	2313	463
February	2605	651	2091	523
March	3017	754	2404	602
April	3306	661	2752	550
May	2641	660	2199	550
June	1168	584	1388	463
July	2124	708	2593	519
August	3224	806	2179	545
September	4042	808	2520	504
October	3534	884	2248	562
November	3011	753	2431	608
December	4123	825	3209	642
<b>Total '88</b>	<b>35,597</b>	<b>684</b>	<b>28,332</b>	<b>545</b>
January 1989	3106	777	2242	561
February	3449	862	2796	699
March	4144	829	3399	680
April	3229	807	2651	663
May	3637	909	2889	722
June	3871	774	3182	636

II

SCHEDULED MEETING STATISTICS - FISCAL YEAR 1989

<u>MEETING TYPE</u>	<u>BOS</u>	<u>FR</u>	<u>LAWR</u>	<u>SPFLD</u>	<u>WORC</u>	<u>STATE WIDE</u>	<u>FY88</u>
Conference	9217	2296	1916	2062	2420	17,911	9,836
Hearing	4025	893	587	735	875	7,115	10,116
Lump Sum Conference	7539	2365	1859	1201	1740	14,704	

BACKLOG CASES AWAITING SCHEDULED DATE

BOSTON	1871
FALL RIVER	1149
LAWRENCE	1058
SPRINGFIELD	364
WORCESTER	968
<u>TOTAL</u>	<u>5,410</u>

	<u>FY'89</u>	<u>FY'88</u>
Total Collections		
<u>Special Fund:</u>		
Assessment:	14,546,086	11,614,770
Filing Fees:	832,365	366,661
1st Report Fines:	163,200	68,100
Fines from stop work orders:	7,200	
Total:	<u>\$15,548,851</u>	<u>\$12,049,531</u>
<u>Private Trust Fund:</u>		
Assessment:	7,380,492	12,606,770
Sec. 65 Reimbursement:	122,639	13,246
Interest:	1,246,994	
Total:	<u>\$8,750,125</u>	<u>\$12,620,016</u>
<u>Public Trust Fund:</u>		
Assessment:	1,016,941	857,706
Interest:	33,801*	
Total:	<u>\$1,050,742</u>	

Total Collected All:	\$25,349,718	\$25,527,253
Amount expended - FY89	Private \$7,419,273	Public \$889,481
COLA Payments FY89	Private \$4,229,911	Public \$ 889,481
COLA Payments FY88	Private \$7,052,778	Public \$1,364,992
Balance 6/30/89	Private \$10,670,165	Public \$195,440
Balance 7/1/88	Private \$9,339,313	Public \$34,179

\*\$10,356 not as yet credited

COMPARISON - Section 65 PaymentsFY'88 expenditures - section 65  
cases for uninsured employers

Indemnity	1,208,344
Medical	266,536
Legal Fees	138,819
Section 36	75,170

Total: \$1,688,869

FY'89 expenditures - section 65  
cases for uninsured employers

Indemnity	1,951,217
Medical	731,084
Legal	204,764
Section 36	157,592
Travel	960
Burial	2,000
Welfare Liens	9,482
Veterans Liens	6,794
Investigations	36,090
Voc. Rehab. Exp.	19,379

Total: \$3,119,362

UNINSURED EMPLOYER CASES - 7/1/88 THROUGH 6/30/89

Cases referred to DIA attorneys	340
Cases not yet reaching disposition	135
Cases reaching disposition	185
Fund prevailed indemnity	77 (42%)
Employee paid (closed)	71 (38%)
Employee paid indemnity (open)	37 (20%)
Average number claimants weekly FY'89	75
FY'88	50
Average weekly wage FY'89	\$218.84
FY'88	\$191.81

Fiscal Year 1988 Report On Section 65 Funds

FY'88	Public Trust (1)	Private Trust (2)	Special Fund (3)
7/1/87	\$ 541,465	\$ 5,437,801	- 0 -
7/1/87 thru 6/30/88 Collections	857,706	12,643,159	12,049,532
Total	\$1,399,171	\$18,080,960	\$12,049,532
7/1/87 thru 6/30/88 Expenditures	1,364,992	8,741,647	- 0 -
Total	\$ 34,179	\$ 9,339,313	\$ - 0 -

**Statistics for Sections of Law Being Claimed  
Cases with Claims Entered**

<u>Date</u>	<u>Total</u>	<u>34+</u>	<u>34A+</u>	<u>35+</u>	<u>31+</u>	<u>28+</u>	<u>13or30+</u>	<u>30w/lt.+</u>
12/88	1501	1224	37	27	13	3	116	2
11/88	1580	1253	65	38	12	20	133	7
10/88	1438	1168	56	36	9	5	126	1

	<u>13A+</u>	<u>34B+</u>	<u>35B+</u>	<u>7+</u>	<u>8+</u>	<u>33+</u>	<u>35A+</u>	<u>1+</u>	<u>Nothing</u>	<u>Other</u>
12/88	2	2	1	5	4	0	1	29	2	3
11/88	7	2	2	0	5	1	1	27	0	7
10/88	3	3	2	3	6	0	3	12	2	3

**Statistics for Sections of Law Being Claimed -  
Cases with Conciliations Held (number of cases held)**

<u>Date</u>	<u>Total</u>	<u>34+</u>	<u>34A+</u>	<u>35+</u>	<u>31+</u>	<u>28+</u>	<u>13or30+</u>	<u>30w/lt.+</u>
12/88	3522	2801	90	68	13	25	186	6
11/88	3262	2555	90	61	17	18	220	3
10/88	3052	2280	94	57	18	20	219	1

	<u>13A+</u>	<u>34B+</u>	<u>35B+</u>	<u>7+</u>	<u>8+</u>	<u>33+</u>	<u>35A+</u>	<u>1+</u>	<u>Nothing</u>	<u>Other</u>
12/88	10	5	3	2	7	1	1	36	231	37
11/88	10	3	2	2	5	0	2	24	223	27
10/88	14	4	6	3	4	0	5	22	266	39

**Statistics for Sections of Law Being Claimed -  
For Cases with Conciliation Held - Number of Cases Referred**

<u>Date</u>	<u>Total</u>	<u>34+</u>	<u>34A+</u>	<u>35+</u>	<u>31+</u>	<u>28+</u>	<u>13or30+</u>	<u>30w/lt.+</u>
12/88	1266	1114	44	28	7	8	38	0
11/88	1133	979	47	24	8	5	35	0
10/88	1102	938	46	21	8	8	48	1

	<u>13A+</u>	<u>34B+</u>	<u>35B+</u>	<u>7+</u>	<u>8+</u>	<u>33+</u>	<u>35A+</u>	<u>1+</u>	<u>Nothing</u>	<u>Other</u>
12/88	1	0	0	0	1	1	0	3	16	5
11/88	1	0	1	0	1	0	0	4	23	5
10/88	2	0	1	1	3	0	1	4	16	4

The numbered sections are listed from left to right in a priority sequence which can include any section to the right, but not to the left. Any case listing §34 will be listed in that column. If a case lists §34 and §28, it will be included in the §34+ totals. If a claim lists §28, §13/30, §13A and §7 it will be in the §28 column only.

V

STATISTICS FOR TYPES OF CASES FOR CASES ENTERED

<u>Date</u>	<u>Total</u>	<u>Employee Claim</u>	<u>Injury Claim S36</u>	<u>Ins.Req. Disc.</u>	<u>Lump Sum Req.</u>	<u>TPC 13/</u>	<u>TPC 30H+</u>	<u>TPC 13A+</u>
10/88	3243	1438	298	675	822	20	0	4
11/88	3596	1580	183	975	845	24	0	8
12/88	3510	1501	251	883	859	34	0	5
<u>TOT.</u>	<u>10,349</u>	<u>4519</u>	<u>732</u>	<u>2533</u>	<u>2526</u>	<u>78</u>	<u>0</u>	<u>17</u>
%		44%	7%	24%	24%	.8%	0	.2%

TPC = Third party claim. For example TPC 13/30+ is the third party claim for medical reimbursement.

REVIEWING BOARD

	<u>FY88</u>	<u>FY89</u>
Claims for Review filed:		
Pre 11/1/86 injuries:		
1st half -	201	88
2nd half -	149 (350)	112 (200)
Post 11/1/86 injuries:		
1st half -	43	146
2nd half -	104 (147)	131 (277)
TOTAL -	497	477
Decisions Issued -	192	120
Memoranda of Disposition -	210	110
Review Board Decisions Appealed -	29	10
Lump Sums of Cases on Appeal to Reviewing Board -		85
Lump Sums Approved -		12,177



APPENDIX H  
ADMINISTRATIVE JUDGE DECISIONS MAILED OUT BY MONTH FY 89

SUMMARY OF NUMBER OF DECISIONS MAILED OUT

NAME	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	TOTAL
Brooker	8	4	11	8	10	0	5	3	12	10	2	12	85
Cleary	4	8	4	4	3	6	6	8	8	2	6	6	65
Coleman	-	0	0	0	0	1	0	1	2	3	2	1	10
Cox	-	0	0	0	0	0	0	0	0	1	0	4	5
DaDalt	4	7	4	4	5	4	5	4	6	3	3	5	54
Demeter	0	6	4	4	7	4	4	3	1	4	9	2	48
Evers	-	1	0	0	0	1	3	2	0	1	5	7	20
Ferin	-	0	0	2	2	2	6	4	4	4	7	3	34
Fischel	4	11	8	4	3	10	7	7	7	3	8	3	75
Gallo	9	8	9	7	6	6	7	6	6	8	6	5	83
Gromelski	-	0	0	0	0	1	1	2	2	3	2	2	13
Heffernan	8	7	6	7	8	6	4	12	8	6	9	2	83
Jackson	6	3	2	6	6	5	6	4	3	2	5	4	52
Jennings	14	6	6	5	9	11	4	6	8	5	4	8	86
Joyce	-	-	0	X	0	0	0	0	0	4	3	5	12
Leroy	-	0	0	0	0	0	0	0	1	0	1	2	4
Male	-	0	0	0	0	0	0	1	0	0	0	1	2
McGuinness	0	12	6	9	4	5	10	7	6	3	15	4	81
McKinnon	4	13	1	7	5	12	5	5	5	2	5	4	68
Moreschi	-	0	0	0	1	0	0	2	13	1	6	4	27
Pickett	6	4	3	6	3	7	3	7	7	3	4	X	53
Rogers	8	6	5	9	6	4	2	3	14	8	12	4	81
Romm	6	8	4	3	5	5	6	4	5	6	6	2	60
Ryan	2	4	4	5	6	6	3	10	3	5	10	0	58
St. Amand	4	8	6	6	5	6	4	5	4	3	5	3	59
Scannell*	6	10	24	X	0	-	-	-	-	-	-	-	40
Solomon	-	-	-	-	0	0	0	0	0	2	5	4	11
Taub	-	-	-	-	-	-	-	-	-	-	0	0	0
Vergados**	0	2	2	3	2	2	2	3	2	-	-	-	18

<u>Totals</u>	93	128	109	99	96	104	93	109	127	92	140	97	1287
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Qtr. Tot.		330		299		329		329
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Qtr. Avg./Mon		110		99.7		109.7		109.7
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Monthly Average		107.3
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X Statistics not available

\* Term expired 11/22/88

\*\* Term expired 3/15/89

# APPENDIX I

## CASES RESOLVED BY ADMINISTRATIVE JUDGES FY'89 (lump summed, withdrawn, adjusted, others)

NAME	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	TOTAL
Brooker	56	14	19	41	25	39	31	36	58	30	29	47	425
Cleary	26	30	19	45	17	19	40	20	21	31	36	29	333
Coleman	-	25	81	45	32	13	41	34	36	5	21	25	358
Cox	-	1	51	17	48	30	49	39	23	53	8	19	338
DaDalt	52	52	43	55	43	30	42	52	54	43	59	46	571
Demeter	12	38	22	56	21	42	24	59	15	6	5	1	301
Evers	-	12	51	29	93	31	65	23	18	58	74	36	490
Ferin	-	16	58	10	48	46	52	90	46	103	92	12	573
Fischel	55	28	18	24	42	28	83	55	64	20	36	75	528
Gallo	17	27	28	77	24	53	31	50	41	77	40	49	514
Gromelski	-	7	29	16	75	19	42	26	60	29	21	64	388
Heffernan	32	46	41	37	29	32	26	18	60	9	34	76	440
Jackson	28	15	68	43	14	44	26	29	70	26	52	38	453
Jennings	33	22	22	25	25	40	26	27	50	36	48	19	373
Joyce	-	-	42	X	21	52	17	89	24	46	78	48	417
Leroy	-	13	28	8	45	29	55	14	21	43	12	110	378
Male	-	9	30	14	58	23	54	34	27	85	23	42	399
McGuinness	35	43	25	21	56	17	67	27	23	54	26	47	441
McKinnon	41	31	28	16	56	20	60	28	30	71	14	46	441
Moreschi	-	3	43	15	50	24	21	33	18	47	36	32	322
Pickett	38	27	39	55	31	14	56	18	20	59	56	X	413
Rogers	67	48	27	62	17	36	14	24	67	13	41	56	472
Romm	20	48	37	35	33	35	43	19	64	12	41	58	445
Ryan	7	51	33	45	46	26	44	38	72	38	53	54	507
Scannell*	29	20	3	X	0	-	-	-	-	-	-	-	52
St.Amand	20	50	38	36	50	36	75	82	25	50	95	86	643
Solomon	-	-	-	-	13	20	5	48	20	27	57	22	212
Taub	-	-	-	-	-	-	-	-	-	-	42	18	60
Vergados**	0	0	1	2	2	2	2	1	1	-	-	-	11
Total	568	676	924	829	1014	800	1091	1013	1028	1071	1129	1155	11298

X Statistics not available

\* Term expired 11/22/88

\*\* Term expired 3/15/89

APPENDIX J

Proposals Funded By DIA's Office Of Safety For Fiscal Year 1989

Safety Council of Western Massachusetts  
90 Berkshire Avenue  
Springfield, MA. 01109

Title: Accident Prevention Times Three

Category of Applicant: Non-Profit Organization

Target Population: Employees and Employers/Supervisory

Total Funds Awarded: \$24,441.82

Occupational Health Program  
Department of Family and Community Medicine  
University of Massachusetts Medical Center  
55 Lake Avenue North  
Worcester, MA. 01655

Title: Practical Approaches to Maximize Worker Involvement

Category of Applicant: Public Employer/Educational

Institution/Non-Profit Organization

Target Population: Employees and Employers/supervisory  
Personnel

Total Funds Awarded: \$31,443.00

Labor Education Center  
Southeastern Massachusetts University  
North Dartmouth, MA. 02747

Title: Health & Safety Training on Preventing Back  
Injuries

Category of Applicant: Educational Institution

Target Population: Employees

Total Funds Awarded: \$20,144.70

Massachusetts Coalition for Occupational Safety  
And Health (MassCOSH)

241 St. Botolph Street, Room 227

Boston, MA. 02115

Title: Metals Exposure: Hazard Recognition,  
Health Effects, Reproductive Hazards and Hazard  
Control

Category of Applicant: Non-Profit Organization

Target Population: Employees

Total Funds Awarded: \$31,499.98

Cambridge Medical Care Foundation  
Macht Building - 4th Floor  
Cambridge Hospital

1493 Cambridge Street

Cambridge, MA. 02139

Title: Health & Safety Training in the Biotechnology  
Industry: II

Category of Applicant: Non-Profit Organization

Target Population: Employees and Employers/Supervisory  
Personnel

Total Funds Awarded: \$30,487.72

Local 369  
Utility Workers Union of America, AFL-CIO  
120 Bay State Drive  
Braintree, MA. 02184  
Title: Asbestos Program  
Category of Applicant: Labor Organization or Federation  
Target Population: Employees  
Total Funds Awarded \$31,633.35

Associated Industries of Massachusetts  
441 Stuart Street  
Boston, MA. 02116  
Title: Moving Materials Safely  
Category of Applicant: Employer Organization  
Target Population: Employees and Employers/Supervisory  
Personnel  
Total Funds Awarded: \$31,618.62

Office Technology Education Project (OTEP)  
241 St. Botolph Street  
Boston, MA. 02115  
Title: Hazard Identification & Prevention for VDT Users:  
Training Video and Curriculum  
Category of Applicant: Non-Profit Organization  
Target Population: Employees and Employers/Supervisory  
Total Funds Awarded: \$31,553.80

Massachusetts Respiratory Hospital  
2001 Washington Street  
Braintree, MA. 02184  
Title: Health Education & Training of Ethylene Oxide-  
Exposed Union Hospital Personnel  
Category of Applicant: Public Employer  
Target Population: Employees and Employers/Supervisory  
Personnel  
Total Funds Awarded: \$31,457.32

InterCare Occupational Health, Inc.  
c/o Leonard Morse Occupational Health Services, Inc.  
6 Union Street  
Natick, MA. 01760  
Title: Back Injury Prevention Awareness Program  
Category of Applicant: Non-Profit Organization  
Target Population: Employees and Employers/Supervisory  
Personnel  
Total Funds Awarded: \$30,402.06

AtlanticCare Medical Center  
Rehabilitation Department  
500 Lynnfield Street  
Lynn, MA. 01904  
Title: Injury Prevention Program  
Category of Applicant: Non-Profit Organization  
Target Population: Employees and Employers/Supervisory  
Personnel  
Total Funds Awarded: \$25,034.45

North Central Massachusetts Chamber of Commerce  
80 Erdman Way

Leominster, MA. 01453

Title: Safety Awareness/Hazard Recognition &  
Prevention Program

Category of Applicant: Employer Organization

Target Population: Employees and Employers/Supervisory  
Personnel

Total Funds Awarded:

\$30,337.56

FOOTNOTES

1. Circular Letter 1499, 1/13/89 of the Massachusetts Workers' Compensation Rating and Inspection Bureau.
2. The Standard, p. 3, April 21, 1989

### ADDENDUM

In the course of research into other areas concerning the workers' compensation statute, the Council has had the opportunity to review a myriad of documents that pertain to the history of the system in Massachusetts. That process has been enlightening, as well as informative. In many ways, Massachusetts has been in the forefront of important issues facing the field nationally. For instance, while many state patterned their laws on the statute of Great Britain, which construed injury "by accident", Massachusetts avoided this potential pitfall and defined injury in terms of a personal injury arising out of or in the course of employment. In this regard, occupational injuries which were the result of work were compensable in this state, while they were not in others.

One aspect of the initial bill in particular concerned how the drafters dealt with the issue of providing coverage. While the question of a state fund has often been raised in this state, and even proposed as a constitutional amendment, it has never been enacted. The initial bill proposed that all employers become subscribers to an organization which would provide coverage for work related injuries. Prior to passage, the bill was amended to make membership voluntary. In this way the insurance entity would compete with other insurers for customers. In some ways, our research into the

Massachusetts Employees Insurance Association has created more questions than answers. Perhaps through the discussion generated by this report some of the answers may be forthcoming. If nothing else this brief bit of history may be useful for future research, or may just provide some insight into just how far our system has evolved.

### HISTORY

The Massachusetts Employees Insurance Association (MEIA) was established to provide employers in the state with an avenue to purchase workers' compensation insurance. It was set forth in Part IV of Chapter 751 of the Acts of 1911, which was the initial passage of workers' compensation in the state. (Appendix A) The Act itself was approved on July 28, 1911 with most of the provisions to take effect on July 1, 1912. Only Section IV, establishing the MEIA, became effective on January 1, 1912 in order to have an insurer operational on the effective date of the bulk of the law.

One other element of the law at enactment merits attention. That is section 3 of Part V of Chapter 751 of the Acts of 1911: That section states:

Any liability insurance company authorized to do business within this commonwealth shall have the same right as the association to insure the liability to pay the compensation provided for by Part II of this act, and when such liability company issues a policy conditioned to pay such compensation the holder of such policy shall be regarded as a subscriber so far as



applicable within the meaning of this act, and when any such company insures such payment of compensation it shall be subject to the provisions of Part I, II, III and V and of section twenty-two of Part IV of this act, and shall file with the insurance department its classification of risks and premiums relating thereto and any subsequent proposed classifications or premiums, none of which shall take effect until the insurance commissioner has approved the same as adequate for the risks to which they respectively apply.

(This language also incorporates the amendment of Chapter 571 of the Acts of 1912).

Against the protest of labor organizations, this section was added by the Senate as a result of the persistent efforts by stock insurance companies. It gave all liability insurance companies the right to provide workers' compensation insurance, thus making the companies competitive with the mutual company created by the Act.<sup>1</sup> The intent of the committee which drafted the initial Bill (House # 2154 of 1911) was to leave the MEIA as the sole mutual insurance company writing insurance in the state.<sup>2</sup>

While apparently referring to the MEIA as a "state company", the idea was neither to have a state institution write workers' compensation policies nor to create state insurance. It was patterned after the German Employers' Association. The initial appointment of the Board of Directors was vested in the Governor in order to insure a quick start-up of the company. It was formed on the mutual plan, totally in the hands of its subscribers, who were employers in the Commonwealth.

Employers were free to choose if they wanted to subscribe. In fact, one of the reasons cited by the Supreme Court in its advisory opinion to the legislature on the constitutionality of the Act was the voluntary nature of subscription. Unlike a 1910 New York Law, which had been found to be unconstitutional (Ives v. South Buffalo Railroad, 201 NY 271), the court stated that this law didn't constitute legal compulsion or a deprivation of fundamental rights.<sup>3</sup> Basing its opinion in large part on the fact that the law was not a compulsory act, the advisory opinion stated that it was constitutional.

The MEIA received its license from the Commissioner of Insurance on June 27, 1912. The legislative committee that had investigated the issue of industrial accidents and that had drafted the initial bill had recommended that the Board of Directors be allowed to spend \$15,000 of the state's money in order to get organized. After the initial start-up, the MEIA was to be self supporting. That sum was appropriated on January 31, 1912 for expenses of the MEIA (Chapter 42 of the Acts of 1912). The Commonwealth's treasury was also authorized to advance to the MEIA up to \$100,000 from June 6, 1912 through June 5, 1913 (Chapter 721 of the Acts of 1912). Any money advanced was to enable the MEIA to carry out the provisions of the law which fell within its enabling legislation and was to be secured by 4 year notes at 4%

interest, payable two times a year. The state was also empowered to borrow in order to loan the money and the notes were not to be construed as making the MEIA deficient in funds as long as subscribers liabilities were greater than the amount of the notes, less the proceeds of the notes held by the MEIA.

In the years subsequent to the Act's passage there were many changes, a number of which impacted on the MEIA. Chapter 666 of the Acts of 1912 gave the Commissioner of Insurance the right to withdraw approval of any premium or distribution of subscribers given by the MEIA or another insurer. Chapter 708 of the Acts of 1914 required that the MEIA and other insurers provide the IAB with certain statistical information. Chapter 314 of the Special Acts of 1915 allowed the Association to transact within the state any kind of liability insurance which mutual companies were legally permitted to transact. Chapter 200 of the Acts of 1916 gave the MEIA, with the Insurance Commissioner's approval, the same rights as the mutual insurance carriers. It likewise gave to mutual companies the right to write workers' compensation, which was already vested in the MEIA. This legislation basically gave the MEIA the same status and rights as other insurers and provided it with the authority to expand its area of coverage.

Another change was introduced by chapter 350 of the Acts of 1919, section 69, which reorganized certain departments in state government. This legislation transferred the powers of section 18, Part IV of chapter 751 of the Acts of 1911 to the Department of Labor and Industries. This section dealt with the promulgation of rules/regulations for safety, and gave the MEIA the power to inspect premises in order to ensure that the safety levels were met. The language in section 69 states, in part, "The powers and duties conferred and imposed upon the Industrial Accident Board by section eighteen Part IV of chapter seven hundred and fifty-one of the Acts of nineteen hundred and eleven are also transferred to and shall hereafter be exercised and performed by said department". However, there were no powers "imposed on the IAB", only the MEIA. While this issue is probably moot as a result of the total reorganization and consolidation of state laws in 1921, this change intended to transfer power the IAB never had. It also occurred just after the MEIA changed its name.

#### THE ORGANIZATION OF THE MEIA

The initial Board was appointed by the Governor for one year terms. Chapter 338 of the Acts of 1914 set the number of the elected members of the Board at fifteen, for terms to be established in the bylaws. The Board was to choose officers yearly. Seven or more members constituted a quorum.

The law also stated that an employer in the state may (emphasis ours) become a subscriber of the Association. Each subscriber was entitled to one vote with an additional vote for each 500 employees of the subscriber. The initial law set a requirement that no policy would be issued until 100 employers had subscribed, covering at least 10,000 workers. If these requirements were not met, no policy could be issued until the minimal numbers of subscribers/employers were exceeded.

The Board was to distribute subscribers into groups depending on the nature of business and other degrees of risk. Subscribers were to pay yearly premiums in cash or notes. If the Association didn't have enough cash to pay off incurred losses, it could assess subscribers to meet such losses, to be paid proportionately. The company would pay dividends and any such dividend or premium assessment had to be approved by the Commissioner of Insurance. The Association established rules to enforce safety regulations and was given access to the premises of subscribers in order to investigate compliance.

Any subscriber was to give notice of any policy to employees and, prior to ending membership in the Association, also give notice in writing to all employees. Subscribers were indemnified by the Association. Finally, the expenses of those directors of the Board appointed by the Governor were to be approved by the Governor's Council and not to exceed fifteen thousand dollars.

### EXPERIENCE OF THE MEIA

By its own accounts, the MEIA experienced a rapid growth. Its first Annual Report (for the six month period ending 12/31/12), shows a membership of 440 employers, covering 76,500 employees for a gross premium of \$619,256.97.<sup>4</sup> The Association employed 56 people and placed a strong emphasis on accident prevention. It also had a claim and medical department.

The Association established three general groups of subscribers, in accordance with the hazards of the industries. It also established five special groups:

- A. Street Railways
- B. Boston Elevated Railway
- C. Fall River Shipbuilding Company
- D. American Steel and Wire Company
- E. United Shoe Machine Company

The purpose of the division into groups was to place a check on rates chargeable to subscribers, as shown by dividends, so that each group would pay its own costs and not that of other groups.

The initial dividends for the three general groups ranged from 30-41.7%. Subsequent to the dividend declaration, in January of 1913, stock companies reduced premium rates by 25%, pending approval by the Insurance Commissioner. The Association argued that, through

dividends, the subscribers secured greater rate reduction, retroactive to 1/1/12, while the reduced rates of stock companies took effect on 2/15/13. According to the MEIA, this resulted in a \$500,000 overcharge by the stock companies which would not be refunded.

The MEIA used a "merit" type rating schedule to provide incentives for subscribers to achieve lower rates through accident reduction and safety compliance. Its expenses amounted to 16½% of earned premiums, which was a direct indication of its attempt to provide coverage at cost. The Association itself went to great lengths to advertise its existence and cost advantages. Its existence was not without controversy, however. There was early debate concerning whether it was a "State Institution". The Association stressed that it was not, but rather a mutual company, managed by employers who subscribed. Its advantage was that it paid no commission to agents which other insurers hired in order to deliver new clients. By exerting strong control over its membership, through safety programs, it appears that the MEIA felt that it could provide coverage at rates which were substantially lower than its competitors.

The stress on safety is clear from the initial annual reports of the IAB. By the time the first report was published (Public Document #105-1914), the association had nine safety engineers. When a subscriber joined, an

inspection was made of the plant. In March of 1917, the MEIA originated a simple system of premium discounts for subscribers whose plants complied with certain safety conditions. In August of 1913, the MEIA claimed its merit system was adopted by almost all other liability companies, resulting in a potential cost savings to all insureds in the state.

All plants were inspected at least once a year and some as many as 2-5 times when warranted by circumstances. Over 1600 inspections were made in the first year of the law alone. There were more than 800 subscribers, covering more than 100,000 workers. In subsequent years, the MEIA reported that a high percentage of subscribers had accepted its safety recommendation. The MEIA's system of having records kept of each subscriber's accidents allowed the association's safety engineers to take up with the employers its detailed accident experience when conducting reinspections.

The MEIA was not established as a monopolistic undertaking, but a cooperative enterprise on the mutual plan. Its aim was to reduce costs by decreasing expenses through safety programs and by eliminating commissions paid to agents. It was hoped that by providing insurance at a lower cost it would force liability companies to offer lower rates.

The Insurance Commissioner presented a statement to the Joint Judiciary Committee of the General Court on April 21,



1916, which set forth his position on the level of workers' compensation insurance rates. He noted that the amendments to open up the writing of policies to other carriers had resulted in intense competition. In order to prevent the larger carriers from achieving an unfair advantage, the law was amended to give the Insurance Commissioner approval of the rates. The original rates were pitched too high and, through 1914, three reductions in rates were approved. When a fourth rate reduction request was made in 1914, the MEIA protested that the request was too low and only done to diminish competition.

The legislature ultimately set up a Commission to look into the matter. The Commission reported that almost total authority for rates had been delegated to the Employer's Liability Assurance Corporation, LTD. The Commission recommended that a rate making bureau, composed of stock and mutual companies, be established under the supervision of the State. This failed to pass the legislature but led to the establishment by the insurance companies of the Massachusetts Workers' Compensation Rating and Inspection Bureau (MWCRIB), in July of 1915. Through investigation and discussion by a large committee of involved parties, of which the MEIA was a part, new rates and factors to be used in establishing future rates were finally established.

Concern nevertheless continued over the level of workers' compensation premium rates continued. In February 1917, the Joint Special Committee on Workers' Compensation Insurance Rates and Accident Prevention issued its report. In examining the average expenses of the three types of carriers the report stated:

Expense As A % Of Premium Collected	
1. Stock Companies	40.13%
2. Mutual Companies	16.41
3. MEIA	14.85

A comparison shows the expense ratio of the Mutual Companies and the MEIA were 23.72% and 25.28% less, respectively, than the stock companies. This information is taken from a report of the Insurance Commissioner and clearly showed that insurance could be written at a cost less than that required by stock companies. At the same time the report stated that MEIA rates were 10% higher than stock companies and that it was paid dividends of 30%. The MEIA expenditures for inspection and accident prevention was 2.3% of earned premiums against 1.8% of the stock companies. Examination of these figures must recognize the lower initial expenses of the MEIA due to the fact that its subscribers included many of the large employers in the state which had safety programs in place.

They recognized that the cost of competition was keen and recommended the elimination of the competitive method of conducting workers' compensation. The committee stated:

"With a State fund, managed and controlled by employees of the State, appointments would not always be made for efficiency but would sometimes be prompted by political expediency, and the best results could not possibly be obtained. It is our belief that the solution of the rate difficulty lies in changing the law so as to provide for a single insurance carrier, operated by business men insuring their workmen therein, and controlled by the Commonwealth to an extent sufficient to safeguard the interests of all concerned. Thus insurance will be carried at cost by the industries of the Commonwealth, and managed by the men most concerned."<sup>5</sup>

The committee felt that the cost factors weighed heavily in favor of a single carrier. It noted that the MEIA and American Mutual had their expense ratios to about 15% of premium, and believed that if one company did all the business, the ratio could be reduced to about 12%. The committee thereby recommended all stock and mutual companies be forbidden to transact workers' compensation insurance and that the MEIA be made the state's only carrier.<sup>6</sup> The Committee also recommended that employers be permitted to self insure and that coverage be made compulsory on all employers.

One minority report (written by George Jackson) of the committee disagreed with the recommendation that all other companies be eliminated from writing workers' compensation on the premise that this recommendation exceeded the scope of

the committee's mandate. The writer of this report felt that the recommendation was not fully flushed out during the hearing process and that the creation of a state controlled monopoly wasn't necessarily in the best interest of all concerned. He states that such a strong monopoly could have a restraining effect upon legislation filed in the interests of employees. While not totally opposed to the concept of the state fund, Jackson could not agree with the precept that one company would control.

The author of another minority report also took exception to the recommendation that the MEIA be given a monopoly. The author asked "Why the MEIA, not one of the older, more established insurers?" He saw the recommendations as paternalism and felt the current system was satisfactory.

Whether the 1917 report had any specific impact on the MEIA is unknown. However, by February 1919 a Special Committee Report on Workers' Compensation (Senate 334 of 1919) brought forth the recommendation that a State Fund be established. The report also notes the metamorphosis of the MEIA into the Liberty Mutual Insurance Company.<sup>7</sup> The minority report of the committee did not concur in the recommendation for the establishment of a state fund to compete with other insurance carriers. The minority sees the proposed state fund as nothing more than the MEIA

resurrected, but without additional powers and privileges granted to the MEIA since its inception, and now enjoyed by its successor, Liberty Mutual. The minority felt there was no necessity for a competitive state fund and believed that it would have difficulty competing with established insurance carriers.

Some additional insight into the effectiveness of the MEIA can be gleaned from Best's Insurance Annual Reports for Casualty and Miscellaneous line beginning in 1914. That first report noted that the association had the privilege of calling upon the state for credit up to \$100,000, but at that time the step had not been necessary. The MEIA showed a substantial surplus for its first twenty months of operation, and a review of the MEIA by the state insurance department stated that its estimates for outstanding claims was consistently liberal and that payments were promptly made.

The second report noted that the association had been very profitable. The expense ratio had been reduced from 22 1/2% of earned premium in 1913 to 15% in 1914. In addition, the dividends paid in 1913 ranged (depending on which group the subscriber was in) from 28% to 33% and in 1914 from 20% to 55%. Once again the association received a good report from the insurance department. For 1915 the expense ratio was down to 10.2% and dividends ranged from 10% to 20%. In addition the 1915 report noted that the Texas Employers'

Insurance Association, which was created as part of the Texas Employers' Liability Act in 1913, was considering adopting a plan established by the MEIA. That plan would issue to members participation certificates for the apparent share of surplus to which the member would be entitled in a calendar year, paying interest on the certificates which would be payable upon call by the association. This plan would allow the association to have almost \$100,000 in capital stock owned year by year by different people, with stock periodically retired as new stock was issued with the accumulation of new funds.

The 1917 report noted that the Texas association had adopted the MEIA plan and its certificates were drawing 7% interest. By this time the expense ratio had been brought down to 9.2%, with dividends in the same 20% to 30% range as in previous years. The report noted that the Board of Directors was still made up by a number of substantial Massachusetts business persons. In addition, in 1916 the association absorbed the Mutual Compensation Insurance Company of Philadelphia, which was organized by interests connected to the MEIA.

#### NAME CHANGE

The date of the name change is listed in the 5th annual report of Best's Insurance Reports, Casualty and Miscellaneous, as August 15, 1917. One of the reasons given

for the name change was that the old name was rather difficult to remember and it did not clearly indicate the company or its purpose. Following the name change, the company entered a number of states. In 1917 the company reinsured the entire business of the Pennsylvania Mutual Liability Association and continued its profitability with an expense ratio of 9.5%

The date of organization used for Liberty Mutual is 1/1/12 (the date section IV of chapter 751 of the Acts of 1911 took effect) and it is described as follows: "The company was incorporated in January 1912, by a group of Massachusetts industrial executives to provide insurance on their plants under the Workers' Compensation Act which became effective in Massachusetts that year".<sup>8</sup>

The first time that Liberty Mutual comes up in the minutes of the IAB is on August 23, 1917. References to the MEIA start to diminish until the last one is listed on January 24, 1918. The last MEIA reference is probably on old cases that finally made it before the IAB. There is no direct reference in the minutes of the IAB which refer to the MEIA becoming Liberty Mutual. The minutes of the IAB show that, as of 4/26/17, the MEIA was actively soliciting business in requesting from the Board a list of uninsured employers in the state.<sup>9</sup> (Appendix B) This may have been an attempt to increase the number of insureds prior to the

subscribers changing the name and direction of the Association.

There does not seem to be any other information on the MEIA after the 1917-1918 period. The last reference that we were able to find was in a United States Department of Labor, Bureau of Labor Statistics Report (# 496), issued on January 1, 1929. In publishing a chart on the various states' worker's compensation acts, it characterizes the election of insurance coverage in Massachusetts as subscription to the MEIA, or other private carriers. It also lists the MEIA as one of the entities which provides accident prevention work in the state.

In 1920 the Commonwealth changed its then existing format for publishing the various statutes. All of the existing laws were consolidated and rearranged. In making the changes the state repealed all of the existing laws (both revised laws and acts of specific years, i.e. chapter 751 of the Acts of 1911). The state also enacted new statutes, which encompassed most of the prior laws and placed the various pieces of legislation into specific categories of the Massachusetts General Laws. It was at this time that Massachusetts General Law Chapter 152 comes into being.

Chapter 282 of the Acts of 1920 set forth all the laws which were expressly repealed. All of Chapter 751, except Part IV, section 1-15, inclusive is repealed (see page 2860



of Appendix I).<sup>10</sup> At the same time, the Index of the Disposition of Statutes since the Revised Laws, lists Part IV, sections 1-15 as primarily a special law.<sup>11</sup> A further check, along with the state house librarian, into Shepards (which lists laws that have been repealed or amended) shows no subsequent repeal of Chapter 751, of the Acts of 1911, Part IV, sections 1-15.

#### SUMMATION

The MEIA appeared to have been a productive enterprise. Its brief experience, as reported in the 1917 and 1919 legislature reports is attached as Appendix B. The statistics do not seem to indicate any significant difference in the one year (1917) after the change, except for the percentage of Investigation and Accident Expenses Incurred which doubled. However, this one year does not present any statistically valid conclusion. The fact that the law may still be "on the books", does raise a number of questions for consideration.

One of the reasons that it may never have been repealed is that in the 1917 and the 1919 reports, the majority recommends the establishment of a single entity that would provide workers' compensation insurance. Although the focus in each of the reports is different, the impact is the same. There would be one carrier in the state. In order to easily

establish such an entity in the future, the enabling legislation may have been left on the books.

The possibility that the law is still valid can raise some interesting questions. Is there a possibility that the state could create a new MEIA? Would the state want to create such a company if it could? Would policy holders want the state to create such an entity for them to subscribe to? What impact, if any, would such an entity have on such things as insurance rates or the Assigned Risk Pool? Could the MEIA be established again and if so, what role would it play in the Massachusetts insurance market today.

What is clear is that the largest workers' compensation carrier in the nation was established by the Massachusetts legislature. Its initial Board of Directors was appointed by the Governor. Their expenses were to be approved by the Governor. The state appropriated \$15,000 to fund the initial start-up of the company. The State also gave the company a line of credit and provided authorization to borrow if so needed by the association. Whether the law is still applicable is a question we have been unable to answer. We do not have the necessary expertise in the area of legislative history or intent, but if an answer can be formulated as to the statute's applicability today, it may provide a mechanism for answering some of the questions raised above.

APPENDIX A

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The said reports shall contain the name and nature of the business of the employer, the location of the establishment, the name, age, sex and occupation of the injured employee, and shall state the date and hour of the accident, the nature and cause of the injury, and such other information as may be required by the board.

Any employer who refuses or neglects to make the report required by this section shall be punished by a fine of not more than fifty dollars for each offence.

PART IV.

THE MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION.

SECTION 1. The Massachusetts Employees Insurance Association is hereby created a body corporate with the powers provided in this act and with all the general corporate powers incident thereto.

SECTION 2. The governor shall appoint a board of directors of the association, consisting of fifteen members, who shall serve for a term of one year, or until their successors are elected by ballot by the subscribers at such time and for such term as the by-laws shall provide.

SECTION 3. Until the first meeting of the subscribers the board of directors shall have and exercise all the powers of the subscribers, and may adopt by-laws not inconsistent with the provisions of this act, which shall be in effect until amended or repealed by the subscribers.

SECTION 4. The board of directors shall annually choose by ballot a president, who shall be a member of the board, a secretary, a treasurer, and such other officers as the by-laws shall provide.

SECTION 5. Seven or more of the directors shall constitute a quorum for the transaction of business.

Vacancies in any office may be filled in such manner as the by-laws shall provide.

SECTION 6. Any employer in the commonwealth may become a subscriber.

SECTION 7. The board of directors shall, within thirty days of the subscription of twenty-five employers, call the first meeting of the subscribers by a notice in writing mailed to each subscriber at his place of business not less than ten days before the date fixed for the meeting.

SECTION 8. In any meeting of the subscribers each subscriber shall be entitled to one vote, and if a subscriber

Contents of report.

Penalty.

The Massachusetts Employees Insurance Association created.

Board of directors, appointments, etc.

Powers of board.

Officers of the board.

Quorum.

Vacancies.

Any employer may be a subscriber.

First meeting of the board.

Number of votes to which each subscriber is entitled.

subscriber is entitled.

has five hundred employees to whom the association is bound to pay compensation he shall be entitled to two votes, and he shall be entitled to one additional vote for each additional five hundred employees to whom the association is bound to pay compensation, but no subscriber shall cast, by his own right or by the right of proxy, more than twenty votes.

Issue of policies.

SECTION 9. No policy shall be issued by the association until not less than one hundred employers have subscribed, who have not less than ten thousand employees to whom the association may be bound to pay compensation.

Same.

SECTION 10. No policy shall be issued until a list of the subscribers, with the number of employees of each, together with such other information as the insurance commissioner may require, shall have been filed at the insurance department, nor until the president and secretary of the association shall have certified under oath that every subscription in the list so filed is genuine and made with an agreement by every subscriber that he will take the policies subscribed for by him within thirty days of the granting of a license to the association by the insurance commissioner to issue policies.

SECTION 11. If the number of subscribers falls below one hundred, or the number of employees to whom the association may be bound to pay compensation falls below ten thousand, no further policies shall be issued until other employers have subscribed who, together with existing subscribers, amount to not less than one hundred who have not less than ten thousand employees, said subscriptions to be subject to the provisions contained in the preceding section.

ties of the insurance commissioner.

SECTION 12. Upon the filing of the certificate provided for in the two preceding sections the insurance commissioner shall make such investigation as he may deem proper and, if his findings warrant it, grant a license to the association to issue policies.

subscribers to be distributed in groups.

SECTION 13. The board of directors shall distribute the subscribers into groups in accordance with the nature of the business and the degree of the risk of injury.

Payment of premiums.

Subscribers within each group shall annually pay in cash, or notes absolutely payable, such premiums as may be required to pay the compensation herein provided for the injuries which may occur in that year.

Liability of subscribers.

SECTION 14. The association may in its by-laws and policies fix the contingent mutual liability of the subscribers

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for the payment of losses and expenses not provided for by its cash funds; but such contingent liability of a subscriber shall not be less than an amount equal to and in addition to the cash premium.

SECTION 15. If the association is not possessed of cash funds above its unearned premiums sufficient for the payment of incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses upon the subscribers liable to assessment therefor in proportion to their several liability.

Assessments.

Every subscriber shall pay his proportional part of any assessments which may be laid by the association, in accordance with law and his contract, on account of injuries sustained and expenses incurred while he is a subscriber.

SECTION 16. The board of directors may, from time to time, by vote fix and determine the amount to be paid as a dividend upon policies expiring during each year after retaining sufficient sums to pay all the compensation which may be payable on account of injuries sustained and expenses incurred.

Dividends.

All premiums, assessments, and dividends shall be fixed by and for groups as heretofore provided in accordance with the experience of each group, but all the funds of the association and the contingent liability of all the subscribers shall be available for the payment of any claim against the association.

All funds to be available for payment of claims.

SECTION 17. Any proposed premium, assessment, dividend or distribution of subscribers shall be filed with the insurance department and shall not take effect until approved by the insurance commissioner after such investigation as he may deem necessary.

Insurance commissioner to approve premiums, etc.

SECTION 18. The board of directors shall make and enforce reasonable rules and regulations for the prevention of injuries on the premises of subscribers, and for this purpose the inspectors of the association shall have free access to all such premises during regular working hours.

Rules and regulations for the prevention of injuries, etc.

Any subscriber or employee aggrieved by any such rule or regulation may petition the industrial accident board for a review, and it may affirm, amend, or annul the rule or regulation.

Rules may be reviewed, etc.

SECTION 19. If any officer of the association shall falsely make oath to any certificate required to be filed with the insurance commissioner, he shall be guilty of perjury.

False oath of officer, etc.

SECTION 20. Every subscriber shall, as soon as he secures a policy, give notice, in writing or print, to all persons

Certain notice to be given to

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employees,  
etc.

Same.

Subscribers  
required to  
pay damages  
by judgment  
of a court may  
be reimbursed  
in certain  
cases.

Certain  
provisions  
of law to  
apply.

Expenses of  
the board to  
be approved  
by the  
governor and  
council.

An employee  
who accepts  
payment, etc.,  
releases the  
subscriber.

Certain  
words and  
phrases  
defined.

under contract of hire with him that he has provided for payment to injured employees by the association.

SECTION 21. Every subscriber shall give notice in writing or print to every person with whom he is about to enter into a contract of hire that he has provided for payment to injured employees by the association.

SECTION 22. If a subscriber, who has complied with all the rules, regulations and demands of the association, is required by any judgment of a court of law to pay to an employee any damages on account of personal injury sustained by such employee during the period of subscription, the association shall pay to the subscriber the full amount of such judgment and the cost assessed therewith, if the subscriber shall have given the association notice in writing of the bringing of the action upon which the judgment was recovered and an opportunity to appear and defend the same.

SECTION 23. The provisions of chapter five hundred and seventy-six of the acts of the year nineteen hundred and seven and of acts in amendment thereof shall apply to the association, so far as such provisions are pertinent and not in conflict with the provisions of this act, except that the corporate powers shall not expire because of failure to issue policies or make insurance.

SECTION 24. The board of directors appointed by the governor under the provisions of Part IV, section two, may incur such expenses in the performance of its duties as shall be approved by the governor and council. Such expenses shall be paid from the treasury of the commonwealth and shall not exceed in amount the sum of fifteen thousand dollars.

PART V.

MISCELLANEOUS PROVISIONS.

SECTION 1. If an employee of a subscriber files any claim with or accepts any payment from the association on account of personal injury, or makes any agreement, or submits any question to arbitration, under this act, such action shall constitute a release to the subscriber of all claims or demands at law, if any, arising from the injury.

SECTION 2. The following words and phrases, as used in this act, shall, unless a different meaning is plainly required by the context, have the following meaning: —

APPENDIX B

**% Of Premiums Written In Massachusetts**

1912	1913	1914	1915	1916	1917
13.8	15.7	19.0	20.9	21.5	24.7 *

**% Of Earned Premium, Massachusetts Business**

1912	1913	1914	1915	1916	1917
12.0	13.0	19.0	20.3	21.7	23.0 *

**% Of Losses Incurred, Massachusetts Business**

1912	1913	1914	1915	1916	1917
15.0	12.4	14.6	15.5	16.8	17.4 *

**% General Admin. Expenses, Massachusetts Business**

1912	1913	1914	1915	1916	1917
12.5	19.5	18.4	14.5	16.7	15.0 *

**Commissions Incurred, Massachusetts Business**

1912	1913	1914	1915	1916	1917
0	0	0	0	0	0

(none of the mutual companies incurred any commissions)

**% Of Taxes Incurred, Massachusetts Business**

1912	1913	1914	1915	1916	1917
10.6	12.9	13.3	1.3	15.3	15.4

**% Of Investigation & Adjustment Expenses Incurred, MA. Business**

1912	1913	1914	1915	1916	1917
4.3	5.3	8.7	11.2	10.5	21.0*

% Of Inspection & Accident Prevention Expenses Incurred, MA. Bus.

1912	1913	1914	1915	1916	1917
7.4	23.6	24.9	20.0	20.0	21.0*

\* Statistics of Liberty Mutual Insurance Company



FOOTNOTES TO ADDENDUM

1. Report of the Joint Special Recess Committee on Workers' Compensation Insurance Rates and Accident Prevention - February 1917, Senate Bill #370, page 9
2. Report of the Commission on Compensation for Industrial Accidents - July 1, 1912, pages 53-54
3. Opinion of Justices, 209 Mass. 607,611 (1911)
4. First Annual Report of the Director of the Massachusetts Employees Insurance Association
5. Note 1, supra, page 29
6. Note 1, supra, page 33
7. Report of the Special Recess Commission on Workmen's Compensation - February 1919, Senate Bill #334, page 5
8. Insurance Almanac, pages 425-427, 1989
9. Minutes of the Industrial Accident Board, 1917, page 438 states as follows:

In regard to letter from the Massachusetts Employees Insurance Association:

VOTED: That the Board grant the request of the Massachusetts Employees Insurance Association for information in connection with a list of employers to be furnished by said insurer, showing whether such employers are insured or not insured under the Workmen's Compensation Act, so far as our records afford such information, upon the understanding that such information will be placed at the disposal of any insurer requesting it and the cost of the labor expense to be paid by the requesting party. The clerical labor involved shall be furnished by the Board and under their supervision. No information shall be given which shall show the name of the insurer covering the liability of the employer under the Workmen's Compensation Act.

10. Mass General Laws of 1921, Chapter 282, Vol. I, page 2860
11. Mass General Laws of 1921, Chapter 282, Vol. II, page ccix