

COMMONWEALTH OF MASSACHUSETTS

FISCAL YEAR 1990
ANNUAL REPORT

Workers' Compensation Advisory Council

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Stevens M. Day
Executive Director

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INTRODUCTION

This is the fourth annual report of the Workers' Compensation Advisory Council. As the report for fiscal year 1990, it reviews the period from July 1, 1989 through June 30, 1990.

A descriptive overview of the Advisory Council and some of its major activities during the fiscal year is provided in the introduction. Included here are brief descriptions of several reports prepared by the Council or produced under its auspices during the fiscal year.

The opening section of the report focuses upon the offices and activities of the Department of Industrial Accidents. This section begins with a review of some of the activities and accomplishments of the agency during the fiscal year, including the promulgation of new rules, the publication of Review Board decisions, and the assessment of fines and penalties. This is followed by a discussion of the budget process and a review of the funds established by Section 65 of the workers' compensation statute. The remainder of the department overview is primarily devoted to reviewing the operation and activities of the various departmental offices during the year. These updates should provide a picture of the various activities in which the agency is engaged, as well as a sense of the volume of departmental activity. The section concludes with an update on delays experienced in the dispute resolution process and a discussion of the state auditor's report on the agency.

The second section turns its attention to the state of the workers' compensation system. The focus here is on developments arising during the past fiscal year in the larger workers' compensation environment. Topics discussed here

include judicial decisions which impact the workers' compensation system, pertinent legislation enacted by the General Court, a premium rate filing for workers' compensation insurance, and medical reimbursement rates.

The third section of the report highlights several critical issues that pose problems for the general stability of the workers' compensation system and which are of some concern to the Advisory Council. While some of these issues are mentioned in the body of the report, they are singled out for further attention because of the potential seriousness of their influence. Issues identified here include increases in the number of judicial requests, workers' compensation costs, delays in the DIA, uninsured employers, and workers' compensation insurance rates.

The report concludes with a review of Advisory Council concerns with various aspects of the workers' compensation system.

The Workers' Compensation Advisory Council

The Massachusetts Workers' Compensation Advisory Council was established under the 1985 reform law to monitor the workers' compensation system and make recommendations for its continued improvement. In continuing the cooperative precedent set by the mid-1980s workers' compensation reform effort, the Council is comprised of representatives of the major constituencies in the workers' compensation system.

There are ten voting members who serve on the Council, five representing employers and five representing employees. In addition, four nonvoting members are appointed to represent the claimant's bar, the medical community, vocational rehabilitation providers, and the insurance industry. The Secretary of Labor and the Secretary of Economic Affairs are ex-officio members of the

Council.

The Advisory Council meets on a monthly basis to review various aspects of the Department of Industrial Accidents and the workers' compensation system. During the 1990 fiscal year, the Council held ten regular meetings and two subcommittee meetings. Since its inception in 1985, the full Council has met forty-five times.

Formal action by the Council requires an affirmative vote of seven voting members, and seven voting members are required for a quorum. A list of the Council members and their respective affiliations is set forth in Appendix A. A list of the Council's agendas for the past fiscal year is set forth in Appendix B.

The Council has operated over the past 15 months with nine voting positions. During the past year, Edmund Corcoran, Assistant Director of Workers' Compensation and Medical Services for the MBTA, was appointed to the self-insurance slot. Dr. Edwin Wyman, Jr., from the Ambulatory Care Center at Massachusetts General Hospital, was appointed to the Council as a representative of the medical providers in the Commonwealth.

In June of 1990, the Governor named a new Chair and Vice-chair of the Advisory Council. These positions rotate every two years between employee and employer representatives. Arthur Osborn was appointed to serve as Chair and Paul Meagher was appointed to serve as the Vice-chair. In September of 1990, Doug Mure was appointed Vice-chair to replace Paul Meagher and in December Joseph Faherty was appointed Chair to replace Arthur Osborn.

Council Studies

One of the initial charges to the Advisory Council set forth by the Legislature directed the Council to undertake studies on several aspects of workers' compensation that were not directly addressed by the 1985 reform. Several of these studies were published during the past fiscal year.

Report on Competitive Rating

A study of competitive rating for establishing insurance premiums investigated the advantages and disadvantages of this system in relation to other forms of insurance pricing. One aspect of the study focused on experiences in states which utilize some form of competitive rating and compared premium levels before and after the system's adoption. Comparison was also made between the Massachusetts system and the various competitive rating states on a number of important indicators.

The report concludes that in light of the inconclusive experiences of competitive rating jurisdictions and the current state of the insurance market in the Commonwealth, competitive rating does not appear to be a viable alternative to the current system. In any case, further study is necessary before considering the advisability of introducing the system in Massachusetts.

Report on Occupational Disease

The Council completed a study of occupational diseases and their relationship to the workers' compensation system. This report focused on some of the general and systemic problems presented by such injuries for any workers' compensation system.

The report emphasizes that workers' compensation statutes should cover occupational diseases, and that legislative bodies should eliminate language mandating that a disease be peculiar to a trade or require a specific exposure period in order to be compensable. While the Massachusetts statute does not contain any of these restrictions, they do operate in some jurisdictions.

The report also stresses that greater attention should be devoted to diagnosis, treatment, surveillance, education, and training. Changes in any state system must recognize the long latency periods for many of the diseases and

attempt to eliminate the reliance on the court system to remedy these injuries.

Report on Markup Case Scheduling

A third report investigated whether a markup system of case scheduling would improve the existing scheduling system used by the Department of Industrial Accidents. The "markup" system is one in which the parties to a dispute decide when they wish the case to be heard, and the moving party assumes the primary responsibility for getting the case scheduled. In theory, the moving party's interest in resolving a case as quickly as possible should result in a more rapid movement of cases through the system.

While the recommendation regarding the markup system recognizes that the existing system has a built-in legislative mechanism for scheduling, it also suggests that other avenues may expedite some cases and matters before the agency. In particular, one suggestion was to explore whether sending certain matters to a "motion session" might alleviate scheduling problems.

System Wide Audit: Phase II

The Advisory Council contracted for studies of the workers' compensation system during the latter half of the 1990 fiscal year. These studies, which separately reviewed medical access for injured workers and friction costs in the workers' compensation system, represent a complementary phase of a comprehensive study of the workers' compensation system introduced by section 60 of Chapter 572 of the Acts of 1985.

The first phase of the study was completed at the close of the 1989 fiscal year and was summarized in the Advisory Council's Fiscal Year 1990 Annual Report. While this phase offered a broad review of the workers' compensation system, the later studies sought to complement and narrow that focus.

The Advisory Council contracted with Milliman and Robertson, Inc. to conduct the study of friction costs. For the study of medical access, the Council hired Lynch Ryan and Associates, Inc.. In sponsoring this research, the Advisory Council identified the research issues and scope of services for each study, but the contractors independently designed and conducted the studies and formulated their own conclusions and recommendations.

Report on Medical Access

Lynch Ryan & Associates conducted this study in conjunction with the Boylston Group. The study sought to determine the accessibility and quality of medical services to injured employees. This focus included the identification of barriers to prompt and quality medical treatment and the formulation of solutions to any existing problems.

The study was primarily based upon surveys and interviews with work-injured individuals, medical providers, employers, and attorneys.

The study found that while there appears to be little problem with access to immediate care resulting from an injury, access difficulties increase as a patient seeks specialist care and rehabilitation therapy services.

Additionally, the study found that the medical specialist community identifies work-related injuries as more difficult and less desirable to treat than other cases. This orientation apparently stems from the involvement of non-medical interests in treatment, perceptions of patient motivation, reimbursement levels, and the amount of paperwork. The study concludes that access problems will not be resolved solely through fee increases.

A number of recommendations were made for improving not only access problems and quality of care, but also for improving provider perceptions of injured workers. These include: developing a prototype coordinated care initiative, streamlining

provider reimbursement procedures, promoting education on available networks, encouraging the development and use of standard protocols, developing a database of workers' compensation medical practice, and establishing a greater recognition of the research showing the direct application of stress management techniques to workplace injuries. These recommendations are being analyzed further by the Advisory Council for potential future action.

Report on Friction Costs

Milliman & Robertson, Inc. collaborated on this study with John Lewis, an independent consultant. The study examined a number of specific areas which entail costs for all parties in the system.

The study assessed the relative cost and benefit of several procedures introduced into the DIA by the 1985 amendments, examined the attorney fee structure and the lump sum process, analyzed the distribution of insurance premium dollars, and attempted to determine the impact of external economic factors upon the cost of workers' compensation.

The study relied upon interviews, DIA data, and economic surveys in conducting the research. Among its conclusions, it found that the conciliation and lump sum counseling procedures could be more effective, and suggested that consideration be given to refining them. The study also found that a large increase in claims since 1988 may be due to a change in attorney fees and an economic downturn in that same year, as well as changes in attitudes of injured workers, attorneys and other parties. The Advisory Council is in the process of reviewing all recommendations for potential further action.

These studies are on file at the State House Library.

SECTION 1
Overview of the
Department of Industrial Accidents _____

Departmental Activities _____

During the past fiscal year the Department of Industrial Accidents has issued twelve circular letters. While these administrative bulletins are not necessarily legally binding as precedent in any formal context, they do provide background and guidance for parties and practitioners. The Department has issued over 250 circular letters dating back to 1934.

The letters issued during the past year with their corresponding topics are:

#242 7/1/89 Cost of Living Adjustment

#243 8/30/89 Provision of Claims Services to Self-Insurers by Insurance Companies

#244 10/89 Requests for Proceedings under section 37 of 37A of M.G.L. c.152

#245 10/4/89 New Format for Preparation of Petitions for Approval of Third Party Settlements under M.G.L. c. 152, s.15

#246A 11/18/89 Cost of Living Adjustments and New State Average Weekly Wage and Minimum Weekly Compensation Rate

#247 11/27/89 Medical Records

#248 12/89 Filing Appeal of Decisions to Reviewing Board

#249 12/8/89 Adjustments to Compensation Pursuant to M.G.L. c.152, s34B(c) (Cases involving injuries that occurred after 10/1/86)

- #249A 4/90 Corrected version of #249
- #250 2/90 Notification Requirements on Lump Sum Requests when §37 and §37A are pending issues¹
- #251 2/90 Requirements for filings under section 36
- #252 5/25/90 Lump Sum Procedure
- #253 6/12/90 Certification List of Vocational Rehabilitation Providers under 452 CMR 4.03 by the Office of Education and Vocational Rehabilitation

Publication of Reviewing Board Decisions/
Annual Statistics

The publication of reviewing board decisions has been finalized. These volumes include both digests of the cases and subject indexes, as well as official citations for decisions issued. The initial volume begins in April 1987 and covers the period to March 1988. Subsequent volumes should include cases through the end of each respective calendar year. It is hoped that the full dissemination of the information will not only improve the practice at the DIA, but will also lessen the dramatic backlog of reviewing board appeals.

The DIA has published statistical findings, which, pursuant to §12 of M.G.L. c 23E, are to be prepared each year and submitted to the Advisory Council and the legislature. This information covers the fiscal years 1985-1989 and is published in a report entitled "Reforming the System". In addition to outlining the progress achieved in administering the 1985 changes, the report notes the changes in workload from 1984-1989. It also incorporates information, as set forth in §11(3) of M.G.L. c.23E, which is intended to indicate the promptness of the first payment of compensation by each insurer and self-insuring employer. This report should provide a barometer in future years for assessing the effectiveness of the new law.

Department Rules

The Department of Industrial Accidents has worked extensively during the past year on redrafting its rules and regulations. In order to best use the experience of the various parties which are part of the system, a rules committee has been in place over the last few years to meet and discuss the various changes. This process solicits input from various perspectives in order to address outstanding concerns.

During the past year, the Department revised a number of regulations. The rules pertaining to self-insurance were amended as of November 9, 1989, pursuant to emergency requirements. A hearing was held on January 12, 1990 for the proposed changes in 452 CMR 5.00, which were ultimately promulgated by the Secretary of State on February 16, 1990 and were effective as of February 2, 1990.

Additional changes were proposed by the Department in early June of 1990. These rules were the product of extensive discussions by the Rules Committee. At its meeting of June 13, 1990, the Council voted to support the draft of the proposed rules.²

The Department held a hearing on June 15, 1990 in order to solicit public comments on the proposed rules. A reopened hearing was then scheduled for July 16, 1990. This hearing was scheduled to solicit public comment on certain revisions of the rules that were the subject of the first hearing, including: 1) a proposed deletion of the suggested new definition of "file" or "filed" in 452 CMR 1.02, as well as the proposed amendments to 1.11(1) and 1.15(2); and 2) addition of certain language in 452 CMR 1.03 regarding reporting of injuries involving death. These revisions to the rules were adopted and became effective as of August 17, 1990.

Penalties/Fees

In FY'90, forty-eight \$7 penalties totaling \$94,139 and eleven \$8 penalties totaling \$17,089 were

assessed for matters referred to DDR. There were sixty \$7 awards for a total of \$76,789 and eleven \$8 awards for a total of \$5,800. These figures are based upon voluntary compliance of the filing of agreement, pay, or resume payment forms. A total of one hundred and eight \$7 awards and twenty-two \$8 awards were levied, amounting to \$170,928 and \$22,889, respectively.

This year's numbers for matters in DDR indicate a large increase over FY'89. While the \$7 and \$8 penalties in FY'89 are similar (41 and 8, respectively), the amounts of the penalties were \$36,868 and \$4,612, only 37% of this year's amount.

The converse was true for the Office of Claims Administration. In FY'89, ninety-seven \$7 awards were made, totaling \$109,548, and four \$8 penalties were levied which totaled \$1,807. A total of one hundred thirty-eight \$7 penalties were made this year, amounting to \$146,416, with twelve \$8 penalties for \$6,419.

The issue of attorney fees generated by the law has been a topic of constant discussion since the 1985 changes. In cases in DDR with disposition dates during the last fiscal year, a total of \$74,990,649 for 19,863 awards was recorded, an average of \$3,777 per award. Thirty awards, totaling \$49,241 were made, which may not be utilized in the establishment of premium rates, pursuant to §7F. The percentage is only .06% of the total and would have virtually no impact on a premium rate filing.

The data clearly indicates that issues in DDR concerning penalties do not appear to be based on seeking fees for prosecuting penalties. Last fiscal year, there were 13,939 fee awards, for a total of \$50,712,048 in attorney fees.

The average award of \$3,638 for FY'89 was only 4% less than the average award in FY'90. A total of 35 fees (.25% of the total number), which amounted to \$37,918, was to be excluded from premium rates.

In terms of the fees generated by the filing of agreements, pay forms or resume forms in Claims Administration, the voluntary nature of compliance appears to have resulted in serious under-reporting. A total of 1,309 fees, for \$1,070,343, was collected for FY'89. In contrast, the conciliation statistics for scheduled dates in FY'89 indicates that 7,066 cases were adjusted. If only 50% of these cases were claims, there should have been 3,533 pays from conciliation alone that would have indicated a possible fee. The published information understates the amount. A total of 82 fees (6%) were for penalties, and \$67,755 was precluded from inclusion in premium rates.

In FY'90, 1,493 fees were assessed, totaling \$1,371,981. Of these, forty-three (3%) dealt with penalties, and \$35,343 could not be included in premium filings. The Department's records indicate total fees of \$51,782,391 in FY'89 and \$76,362,530 in FY'90, not including the underreporting. There was a 47% increase from FY'89 to FY'90. A total of \$190,257 of the \$128 million is to be excluded from the rates in the last two years. This information may be used by the Commissioner of Insurance, for comparison purposes, to check against the separate annual reporting procedure mandated by §53A(11). We have been unable to verify if such procedure exists.

Section 65 -

Employees Of Uninsured Employers

The incidence of uninsured employers continues to be a problem. It appears that as insurance premiums increase, more employers are willing to run the risk of criminal and civil sanctions.

At the state level, a standardized process has been instituted to ensure that potential vendors are in compliance with the insurance mandate of the law. This procedure requires documented evidence of insurance coverage from all contracting parties subject to the law. It is unclear how strictly the provision is enforced at the local level. Unverified reports suggest that uninsured

construction contractors have circumvented the law by asking homeowners to request building permits. If this happens, the scrutiny of the law is bypassed as a result of the party's implicit, or explicit, violation of the law.

In 1990, the Advisory Council was informed that fines for failure to file first reports by uninsured employers would be attached to other fines levied. The DIA is working on a method of billing uninsured employers for reporting violations of first reports of injury. The law requires all employers, regardless of insurance status, to file first reports. A mechanism is being developed to integrate these fines with all others and thereby maintain consistency in the system for computing fines.

At the onset of calendar year 1990, there were 601 cases for employees of uninsured employers in the department's caselog. During the past fiscal year, claims were filed on 348 new incidents. As of the latter part of August of 1990, 151 of these cases have required at least one proceeding to be scheduled in DDR and 16 of the cases have already been settled by an approved lump sum agreement.

During the FY'90 period, 391 claims against uninsured employers were referred to the DIA legal staff. This represents a 15% increase over FY'89. By way of comparison, during the first 2 1/2 years a total of 398 claims were filed.³ The chart below summarizes the filing and disposition status of claims filed against the workers' compensation trust fund §65(2)(e) during FY'90 and FY'89.

TABLE 1

Uninsured Employer Cases 7/1/89 - 6/30/90		
	FY'89	FY'90
Initial cases referred to DIA attys.	340	391
Cases not yet reaching disposition	145	185
Cases reaching disposition	185	206
- Fund prevailed indemnity	77(42%)	78(38%)
- Employee paid (closed)	71(38%)	94(46%)
- Employee paid (open)	37(20%)	34(16%)

Of the 391 cases initially filed in the past fiscal year, nearly half (185) have not reached

disposition as of this writing. The trust fund prevailed in 78 of the 206 cases for which disposition was reached. In the remaining cases, the employee was paid and the case was closed in 94 cases, while the employee was paid and the case remained open in 34 cases.

The average weekly wage for \$65 employees was \$235.00 in FY'90, \$219 in FY'89, and \$192 in FY'88. There were 94 employees receiving weekly payments in FY'90. In FY'89, there were 75 such employees and in FY'88, there were 50. While the 22% increase in the last two years in the average weekly payments would appear to be related to the increase in the average weekly wage, the 88% increase in the number of weekly claimants is disturbing.

Administration of the Section 65 Funds and Special Fund

The trust funds which provide the benefits set forth by §65 of Chapter 152 were intended, through the assessment process on the employer community, to pass on the various costs of the system to its most frequent users.

The funds socialize certain benefit costs and spread them amongst all employers. The potential exists, however, for public employers choosing to pay the benefits required by the law without the use of any form of insurance to be assessed without receiving reimbursements. At the same time, certain public employers might pay far less in assessments than they receive in reimbursements. This difference could become increasingly important due to the tenuous status of local aid.

Reports on the funds are listed in Appendix C. This is the only accounting information on funds available this year. Even though the assessment process allocates the operating expenses of the agency to private employers (through the Special Fund), the expenditures this year were more than \$250,000 (2%) less than the previous year. The fact that employees must pay a larger portion of their health insurance premium contributed to this situation.

Expenditures for the private trust increased 93% over FY'89, while the public trust increased 210%. Fluctuation in this area, evidenced by a decrease in expenditures in FY'89, makes it difficult to draw any conclusions, particularly since second injury reimbursements have not yet been paid.

Each of the funds had greater balances at the end of the year. Some of the issues outlined in our last report concerning the administration of the funds were raised in FY'90. In addition, during the past year the Council has asked for clarification from the DIA as to why there have been different balances and totals listed by the Auditor and the Treasurer's offices for the respective funds for identical time periods.

Comparison of this year's balances with the previous year's disbursements, pursuant to §65(4)(c), establishes that the balance of each of the funds has exceeded the 35% level.⁴ Application of the statutory formula indicates that \$477,617 in the public trust fund, \$14,594 in the private trust fund, and \$409,219 in the special fund are in excess of the level set forth in the law. The law requires that the budget for those funds, for the purpose of calculating the fund assessment rate, be reduced by those amounts over 35%.

The private trust fund's overall payments increased 93% in the last fiscal year. Much of this increase is due to large growth in COLA payments, which rose 158%. However, this year's amount is only 55% above that of FY'88. This fluctuation makes it difficult to draw any conclusions from this year's totals. In the last three years, over \$22 million has been expended for cost of living adjustments.

The ratio of public trust fund COLA reimbursements to private trust fund COLA reimbursements continues to grow. The ratio of payouts was 19% in FY'88, 21% in FY'89 and 26% in FY'90. This data appears to support the premise outlined in the FY'90 assessment calculation analysis that there is a greater utilization of COLA requests in the public sector than in the private sector.

Total payments under §65 for employees of uninsured employers grew 9% in FY'90. Most of this increase is for indemnity payments, since both medical expenditures and §36 payments dropped significantly. A 77% increase in reimbursements, while not approaching the amount of the payout, indicates a more aggressive posture on behalf of the fund. In addition, over \$530,000 was earned in interest, and the fine amounts for stop work orders more than doubled, another indication of stricter enforcement of the law.

The agency has collected far more revenues generated by the statute in the past year than previously. First report fines grew more than five and a half times the amount of the previous year. Stop work order fines more than doubled, while reimbursements for §65 cases increased 77%. The reimbursement amount, as a percentage of payments, rose from 3.9% last year to 6.4% this year. Filing fees also increased 77%, an indication of rising litigation.

The revenue produced by the fines and fees totaled \$2,397,689 this year, up from \$1,002,765 in FY'89. In light of the difficult economic climate this year, this ability to generate revenues is beneficial for the DIA. It limits reliance on assessments and attempts to place the cost of the system on the parties which use it.

In the special fund alone, \$2,894,482 was generated in fines, fees and interest in FY'90, which was equal to 20% of the assessment collections. For the private trust fund, a total of \$767,352 was produced through fines, reimbursements and interest, which was equal to 14% of the assessment collected. These ratios can change as a result of adjustments to the succeeding assessment based upon ending balances, but they are nonetheless an indication that the statutory mechanisms provide the DIA with sources of revenue apart from the assessment and appropriation process.

As noted in our previous report, the State Auditor conducted a biennial audit of the DIA, as required by §65(10) of the law. A subsequent audit

should be conducted again in the upcoming year to cover years 1989 and 1990.

Budgetary Process

The final amount appropriated by the Legislature for fiscal year 1990 was \$3,465,629 as an appropriation line item and \$9,685,150 in a retained revenue line item. The Department of Industrial Accidents requested \$13,377,645 for fiscal year 1991, which included \$859,879 to be used for the Department's backlog project.

The Department submitted an expansion request for 40 positions that would require an additional \$832,743 (without fringe benefits) in funding. The Council reviewed the DIA's budget at its January 10, 1990 meeting. The Council voted to support the maintenance request as presented, but in accordance with its authority as set forth in Massachusetts General Law Chapter 23E, section 17, the Council also prepared an alternative expansion request.

The Council proposed an expansion budget that totaled \$803,611 without fringe benefits. The proposal called for an additional 38 positions, many of which replicated the Department's personnel request. It also included funds to hire interns for dispute resolution. The Council's proposal differed in seeking an additional four pro-log administrative judges, rather than six as proposed by the agency.

The Council also sought the addition of an administrative law judge. This request was intended to assist in the elimination of the backlog of cases awaiting decision at the reviewing board. It was made in light of the fact that the Reviewing Board's capacity to decide appeals is constrained by its additional responsibility for approving lump sums. This situation worsens when administrative judges are added, since the number of possible appeals is then also likely to increase.

The Council also suggested additional positions in the investigative unit to track insurance coverages, additional legal positions for

the Office of the General Counsel, and an additional auditor for internal audits. This package was submitted to the Secretary of Labor.

The Governor's proposal in House 1 for 1990 called for \$3,398,724 in a direct appropriation account and \$9,912,206 in a retained revenue account, for a total of \$13,310,930, with no expansion and a reduction of the backlog funding to \$708,095.

In May 1990 the House Ways and Means Committee released its budget proposal for fiscal year 1991, which recommended the same funding as proposed by the Governor (House 1). The Senate Ways and Means Committee reported out a total amount of \$13,310,740. The Senate proposal also reverted back to the single appropriation account. This requires implementation not only of a different administrative format, but also requires the tax base to be increased in order to meet the appropriation. The Joint Conference Committee reported out the Senate version and this was signed by the Governor on August 1, 1990.

Departmental Offices

The Department of Industrial Accidents is organized into two divisions. The administrative arm of the agency is the Division of Administration, while the department's adjudicatory affairs are conducted by the Division of Dispute Resolution (DDR). The department also includes the Office of the Legal Counsel and the Affirmative Action Office.

The Division of Administration conducts a range of administrative functions for the DIA. It is comprised of the Office of Claims Administration, the Office of Education and Vocational Rehabilitation, the Office of Insurance, the Office of Administration and Data Processing, and the Office of Safety.

Office of
Claims Administration

The Office of Claims Administration reviews and processes nearly every document received by the DIA. This office processes tremendous amounts of paper on both a weekly and yearly basis. During the past fiscal year, the office received almost 7,500 pieces of correspondence each week.

The backlogs in processing time for entering information into the diameter computer system decreased dramatically during the past fiscal year. At the close of FY'89, there was a 53 day delay for entering first reports, but by the end of this past fiscal year, the delay had been reduced to nine days, an improvement of 83%.

In FY'89, a total of 59,138 first reports and 63,542 pay forms were entered. In FY'90 the corresponding figures were 52,342 and 58,180, respectively. The weekly fatality report listed 181 fatalities in FY'89 and 92 in FY'90.⁵

The number of incoming requests for adjudication continues to grow. Monthly totals are set forth in Table 2. As in past years (Appendix D), the largest number of requests for adjudication filed by parties was experienced in May.

TABLE 2

	# of Req.	Wkly. Avg. Per Month	#Refer Concil	Wkly. Avg Per Month
July(89):	3,134	784	2,577	644
Aug (89):	3,527	882	2,917	729
Sept(89):	4,043	809	3,293	659
Oct (89):	3,494	874	2,855	714
Nov (89):	3,116	779	2,633	658
Dec (89):	3,738	748	3,421	684
Jan (90):	3,104	776	2,544	636
Feb (90):	2,791	698	2,551	638
Mar (90):	4,415	883	3,627	725
Apr (90):	3,115	779	2,850	713
May (90):	3,913	978	3,003	751
June(90):	4,415	883	3,311	662
Totals:	42,805	823	35,582	684
1991 Fiscal Year -1st Half Totals				
26 weeks	23,191	892	19,134	736
1990 Fiscal Year -1st Half Totals				
26 weeks	21105	812	17696	681

The Office of Claims Administration has established a new procedure to resolve the rising number of appeals of first report fines. A First Report Compliance Officer has been hired to review all appeals of fines issued by the agency and represent the agency in appeals to the Commissioner. The responsibilities of the position will eventually also include outreach and education.

Previously, the processing of appeals and billings was done as a pilot project. In fiscal year 1989, there were 2,026 appeals received, of which 1,221 (60%) were waived under the process set forth in the DIA rules. [Note: The figures under the pilot project reflect decisions made at the hearing level].

A total of 11,007 appeals of fines were received in FY'90. The office conducted 7,860 administrative reviews, from which it waived 4,368 (58%) of the fines. At the close of the fiscal year, 4,613 administrative reviews were pending. There were 366 appeals of the administrative findings, for which 303 hearings were held. These hearings resulted in the Commissioner's Office issuing 255 orders, of which 98 (38%) affirmed the findings of the First Report Officer. The fines were waived in the remaining cases.

The DIA sent out fines totaling \$2,557,700 and \$910,591.92 was collected following waivers. This money was deposited into the special fund established by \$65 to pay the operating expenses of the agency.

The processing unit in the Office of Claims Administration received 389,497 pieces of correspondence in fiscal year 1990. It entered the following transactions: 7,087 Agreements, 7,732 Appeals, 20,292 Claims, 3,790 \$36 forms, 12 \$37 forms, 10,974 Discontinuances, 10,892 Denies, 52,342 First Reports, 11,591 Terminations, 9,514 Lump Sum Requests, 47,288 Pays, 3,410 Extends, 1,404 Resumes, 1,137 Third Party Liens, and 903 Third Party Claims.

A computer report is available that provides some indication of the nature of cases in dispute.

This report captures data prior to review by Claims Administration and referral to conciliation. The report indicates an 11% increase in claims for cases entered for FY'90, representing 44.6% of the total cases, up 1% from the previous fiscal year. Claims for loss of function or disfigurement (\$36) increased 24% and were 8.3% of the total cases entered, up 1% from FY'89. Discontinuances rose 12% and accounted for 24.1% of the cases entered, a 1% increase. None of these figures indicates that the overall percentage of the cases is shifting dramatically.

In FY'89, the ratio of the percentage of total cases entered of claims (including \$36) to discontinuances was $51.3\%/23.5\% = 2.18$, and in FY'90, it was $52.9\%/24.1\% = 2.20$. The total number of cases entered rose 3,902 (9.4%) to a total of 45,485 in the last fiscal year.

During the last year, there were 252, or 3%, fewer lump sum requests entered. The percentage of total entries dropped from 23.5% to 21%. Lump sums have increased, possibly indicating that more of the lump sums are not the result of a request, but occur during the course of ongoing litigation. Third party claims have increased minimally, with almost all the entries as claims for medicals. The total percentage is still less than 2%. The percentage of the total claims where the primary issue is a fee for an attorney went from 134 (.34%) in FY'89 to 191 (.42%) in FY'90.

No significant changes arose in sections of the law for which benefits were sought.⁶ The number of third party claims increased 42%. There was a 12% increase in the number of discontinuance requests, but as a percentage of the total, the increase was .64%. Most of the claim requests concerned total disability (both temporary and permanent) and claims for medical benefits. Figures for the last two years are available in Appendix E.

Conciliation Unit

The Conciliation Unit conducts informal mediations of claims/discontinuances in attempting to resolve matters prior to their entry to the Division of Dispute Resolution.⁷ During the past fiscal year,

the conciliation unit scheduled 49,699 matters and entered dispositions for 34,807 conciliations. A total of 14,315 (28.8%) matters were rescheduled. Statistics on the conciliation process appear in Appendix F.

The total number of available staff positions in the Conciliation Unit has decreased from an initial figure of 20 in 1985 to 19 in 1990, thereby spreading an increasing number of judicial requests over a workforce that has decreased by 5%.

Cases referred from conciliation to dispute resolution increased from 16,033 in FY'89 to 18,218 in FY'90, a difference of 2,185, or 13.6%. The following statistics indicate both totals and percentage totals of cases referred from conciliation to DDR in the last two fiscal years.

TABLE 3

REGION	FY'89		
	CLAIMS	COMPLAINTS	TOTAL
BOSTON	4123 (54%) (45%)	3498 (46%) (52%)	7621 (48%)
FALL RIVER	1393 (59%) (15%)	961 (41%) (14%)	2354 (15%)
LAWRENCE	1138 (56%) (12%)	889 (44%) (13%)	2027 (13%)
SPFLD.	1356 (72%) (15%)	516 (38%) (8%)	1872 (12%)
WORCESTER	1238 (57%) (13%)	921 (43%) (14%)	2159 (13%)
TOTALS	9248 (58%)	6785 (42%)	16033
REGION	FY'90		
	CLAIMS	COMPLAINTS	TOTAL
BOSTON	4470 (54%) (44%)	3834 (46%) (48%)	8304 (46%)
FALL RIVER	1583 (57%) (15%)	1174 (43%) (15%)	2757 (15%)
LAWRENCE	1302 (52%) (13%)	1180 (48%) (15%)	2482 (14%)
SPFLD.	1387 (66%) (14%)	700 (34%) (9%)	2087 (11%)
WORCESTER	1502 (58%) (15%)	1086 (42%) (14%)	2588 (14%)
TOTALS	10244 (56%)	7974 (44%)	18218

Increased referrals can be quantified in terms of the number of conference slots available. As of FY'91, the twenty-one administrative judges each handle 708 conferences a year, requiring 14,868 conference slots. The referral of 16,033 cases in FY'89 exceeds current capacity by 1,165 cases, and the referral numbers for FY'90 show an excess of 3,350 cases. These referrals took place prior to the recent increase in the average number of scheduled conferences. The level of referrals, coupled with fewer conference slots, has created increasing delays in non-backlog matters. [Note: These figures do not include the 4,956 possible conference slots used by the seven backlog judges].

There was a 2% decrease in total referrals for claims in the last year, partially due to an increase in complaints filed and a lower resolution rate for discontinuances. While many of the percentages are similar over the last two years, only the Springfield office shows a substantial departure from the average. In each year, although to a lesser degree in FY'90, a much higher percentage of the referrals were claims, rather than complaints.

For finished cases (as of a report run 8/31/90), the conciliation unit handled 19,782 claims in FY'90, an increase of 11% over the previous year. The percentage of cases closed in FY'90 was 51.2%, similar to the 52.1% closed in FY'89. However, this year the percentage of those dispositions conciliated increased from 16.3% to 18% of the total. In addition, while the percentage closed decreased slightly, those cases resolved by the conciliators rose from 30.6% to 33.9%.

Claims for \$36 benefits rose 27% in the last fiscal year. The percentage of cases referred in FY'90 decreased to 12.2% from 13.7% in FY'89. In each year the vast majority of claims are adjusted at conciliation.

Requests by insurers to discontinue benefits increased 15% in FY'90, to a total of 10,798. A higher percentage of cases was referred (75.3% v. 72.6%) in FY'90 compared to FY'89. If

discontinuances continue to grow, even at a 75% referral rate, the judicial resources of the DIA will be further strained.

Third party claims showed the most dramatic increase in the last year, up 58% to a total of 894. Despite the increase in total numbers, the resolution rate in FY'90 was 87.8%, down from 90.1% in FY'89.

Overall, conciliation finished 35,089 cases in FY'90, a 14% increase over FY'89. As in FY'89, 48% were closed in FY'90. While the overall resolution rate decreased slightly, the resolutions which took place where both parties appeared at conciliation increased 2.5%, to 33.6%. In two years covering 65,796 cases, only 247, or .4%, had a conciliation disposition of pay without prejudice. This figure only represents this disposition at conciliation, and the availability of data is dependent upon voluntary filing of pay forms by insurers. However, it may be an indication that the environment remains one where a "liability" mind set still exists and that parties are resistant to this element of the statute.

Office of Safety

The Office of Safety awarded its third round of safety grants during the 1990 fiscal year. Twelve organizations received funds to provide health and safety education and training to a variety of industries and occupations. Organizations receiving funds, the target audience, title, and the award amounts are listed in Appendix G.

The grants were awarded by the DIA after a review and ranking of proposals by a selection committee established by the DIA. A total of \$349,459.61 was awarded. Seven of the grantees were non-profit organizations, three were labor

organizations, and the remaining two grants went to a public employer and a sole proprietorship. Awards ranged from a low of \$13,469.46 to a high of \$32,758.90, although the majority (8) were for over \$30,000. A total of 4,568 participants received training from these programs, an increase of 17% over FY'89. For the upcoming fiscal year, 15 grants have been awarded from the 19 proposals received.

**Office of Education
and Vocational Rehabilitation**

The Office of Education and Vocational Rehabilitation is comprised of three units: the public education unit, the vocational rehabilitation unit, and the lump sum counseling unit. The public information unit provides a number of outreach services to the public, including an informational telephone line, a walk-in information desk at the Boston office, and written informational materials. The vocational rehabilitation unit administers the rehabilitation responsibilities of the agency. The lump sum counseling unit meets with employees and reviews the economic and legal implications of settlement, with the recommendations of counselors submitted to the reviewing board, which has ultimate authority over lump sum approvals. In addition, the director of the office has represented the department on the Governor's Committee on Employment of the Handicapped. This committee has worked on a long-range plan to promote the consideration of people with disabilities in jobs associated with a number of planned projects.

The Public Information Unit

The past year was the first in which the public information unit operated with a full complement of public information officers. This infusion enabled the unit to expand its educational outreach efforts on behalf of the agency. During the year, public information officers produced the department's first annual report, as well as an informational

brochure for employers. Preparations also began on an informational brochure for injured employees on vocational rehabilitation. In addition, the unit inaugurated an interdepartmental publication, "DIA Notes", in order to improve informal communication in the agency.

The unit has begun, and is attempting to extend, informational services to non-English speaking members of the public. The department's first trained switchboard operator, hired during the past year, is bilingual. Other multi-lingual employees of the office will be working with the public education unit in putting department publications into non-English languages.

The Vocational Rehabilitation Unit

There was a large volume of activity in the vocational rehabilitation unit during the year, with new highs being recorded in several of the actions taken by the unit. The unit handled 42,345 referrals, made 9,587 contacts, scheduled 810 mandatory meetings, made 1,778 referrals to rehabilitation, drew up 930 individual work plans (IWRPs), made 266 placements, and determined that there were 376 successful rehabilitations.⁸

During its first several years of operation, the unit's primary focus was on explaining its objectives to rehabilitation providers and monitoring rehabilitation services. The last fiscal year saw the unit begin to make a more concerted effort to enhance the quality of job placement services provided by rehabilitation vendors. There is now a commitment to recertifying providers on the basis of the quality of rehabilitation services. To that end, the unit met with a number of providers during the year in order to communicate its expectations for the coming certification period. Additionally, vocational rehabilitation counselors began meeting with adjusters from insurance companies in order to discuss the range of rehabilitation services available and to make insurers better consumers of such services.

The office published a list in June of 1990 of 79 certified vocational rehabilitation providers in

the Commonwealth (circular letter # 253). This represents a 30% increase over the two previous years, when the list (circular letters 236 & 241) contained 61 providers. During the past three years, the average bill for Massachusetts workers' compensation rehabilitation was \$2,859.47.⁹

Lump Sum Counseling Unit

Requests for lump sums increased by approximately 100 per month during FY'90 over the previous year. This volume required some lump sum counselors to handle 12 cases a day on a daily basis.

Statistics for FY'89 for the lump sum counselors show that 8,649 interviews were scheduled, of which 7,718 (89.2%) were referred to the reviewing board. A total of 162 (1.9%) were rescheduled (if rescheduled during the fiscal year, some double counting in the totals may occur). Only 32 (.4%) were voluntarily adjusted, while 568 (6.5%) were withdrawn by a party. The DIA withdrew 160 (1.8%) when the party did not appear. This figure may also double count matters if the party refiled and the matter was once again scheduled during the year.

In FY'90, 13,030 lump sum interviews were scheduled, and 11,620 (89.2%) were referred to the reviewing board. Because 674 (5.2%) were rescheduled, the totals may include double counting of certain cases, thereby inflating the percentage referred. Less than one percent, a total of 86, were voluntarily adjusted and only 485 (3.7%) were withdrawn by a party. One percent of the cases are withdrawn by the DIA when a claimant does not appear. This indicates that few decisions, by either claimants or insurers, are altered by this point in time. It also suggests that the lump sum counseling process is of limited effectiveness in resolving cases and, in fact, could be adding to delay in disposition.

Office of Insurance

The Office of Insurance carries out a number of important responsibilities for the DIA. The Office is comprised of the self-insurance unit, the insurance unit, and the investigations unit.

One of the responsibilities of the office is the statutory review of all applications for self-insurance licenses.¹⁰ During the past year, new regulations have been promulgated concerning self-insurance licenses. At the end of the year, there were 123 licensed self-insurers covering an additional 70 subsidiaries. A total of 31 applications to self-insure were received, of which 12 (with 11 subsidiaries) were approved and 5 denied.¹¹ The remaining applications were withdrawn.

An issue raised during the past year concerning the license of self-insurers has to do with the use of insurance carriers to perform claims service. This issue was raised by a self-insurer license application by Dennison Manufacturing Company, which noted its intention to utilize the servicing company of an insurer to process its claims. There was concern that this practice was a violation of section 25 (D) of Chapter 152.

In a letter dated August 28, 1989, Commissioner Timothy Gailey of the Division of Insurance notified the DIA that pursuant to section 47 of M.G.L. Chapter 175, domestic insurers could engage in claims handling for licensed self-insurers. Any party engaging such service is to file an agreement with both the DIA and Division of Insurance stating that the insurer providing such services is subject to M.G.L. chapter 176D, which governs unfair and deceptive practices by insurance carriers.

On August 30, 1989, the DIA issued circular letter #243, which outlines the position of the agency and the procedures to be followed in such applications. A total of four self-insurers are using domestic insurers to administer claims in FY'90.

The Insurance Registry in the Office of Insurance collects and monitors insurance terminations and renewals for the approximately 125,000 employers in the state. It also receives notification when an out of state employer undertakes business in the state. As indicated in previous annual reports, the review process continues to be performed manually, through the use of 3 X 5 file cards.

The Investigation Unit of the office conducted 3,300 coverage investigations during the fiscal year and found 1,000 employers violating the mandate of the law to have workers' compensation coverage. In particular, construction projects in the metropolitan Boston area and businesses on Cape Cod were targeted for week long sweeps on insurance checks.

A total of 55 stop work orders were issued and \$23,600 was collected in fines. This is an increase of 30 orders and \$9,200 in collections from last fiscal year. The DIA held 5 administrative hearings on stop work orders and 25 criminal complaints were undertaken against violators.

In the 1985 amendments, the legislature directed the Office of Insurance to examine case files in order to identify questionable claims handling techniques. Inappropriate actions, which rise to the level of a general business practice, may be reported to the Division of Insurance for administrative action.

The office is also to investigate written complaints concerning questionable techniques used by insurers. The office has taken no action against any self-insurers in the past year. As part of the initial annual report published by the department, the office indicated the promptness of payment for insurers and self-insurers. While this report can only show data where the insurer has complied with the law and filed the proper papers, it offers some indication of which insurers are paying promptly.

Division of
Dispute Resolution

The Division of Dispute Resolution (DDR) is divided into three units: the Industrial Accident Board, the Reviewing Board, and Operations. The primary responsibility of the Division is to resolve disputed cases.

Industrial Accident Board

The Industrial Accident Board is comprised of administrative judges who hear disputed cases from an initial conference to final hearing. At the present time, there are 28 administrative judges on the Board. Seven of these serve as temporary appointees who are specifically charged with resolving cases in the DIA's pre-reform backlog. Each of the seven temporary judges has been appointed for an additional year.

The backlog has decreased significantly from its initial determination of 12,202 cases awaiting scheduling in June of 1988 to a total of 479 at the end of this fiscal year. The regions with conferences awaiting scheduling are: Boston (156), Fall River (137) and Lawrence (186). A total of 1,088 cases were in progress as of August of 1990. As of mid-January of 1990, there were 2,604 backlog cases awaiting scheduling and 973 in progress.

The Council was supplied with the information on continuances of hearings before the Department during the latter part of the fiscal year. Under section 11 of Chapter 152, a continuance may be granted by an administrative judge only for reasons beyond the control of a party or his attorney. Continuances are to be set forth in writing, compiled quarterly and submitted to the Council. The figures on continuances are listed in Appendix H.

It is believed that the language regarding continuances was incorporated into the law in order to counter the perception that parties might be able to manipulate the assignment of cases in order to better serve their interests. Under the current process, once a matter is referred to dispute

resolution, it is assigned to an administrative judge who will have responsibility for the matter at both the conference and hearing. There is thus little incentive for parties to ask to continue cases in the hope of being assigned to a judge viewed as more sympathetic.

The number of scheduled conferences increased from 17,917 in FY'89 to 19,745 in FY'90, a total of 1,828 (10.2%). As of the beginning of FY'91, judicial workloads were increased on average from 678 to 708 scheduled conferences per year. This figure represents a 54% increase over the figure of 461 scheduled at the beginning of FY'88.¹² In the last two fiscal years, the number of scheduled conferences has doubled (100.7% increase). Administrative judges averaged 705 scheduled conferences last year. See Appendix H for a breakdown of conference actions in FY'89 and FY'90. [Note: Not all judges were "on line" for the entire year and this should be taken into account when considering averages.]

The number of orders issued rose by 11.3%, from a total of 9,216 in FY'89 to 10,261 in FY'90. The ratio of orders to scheduled events was 51.5% in each year. The average number of orders issued per administrative judge was 366.5 for the fiscal year just concluded.

For conferences held in FY'90, the average rate of appeal of conference orders was 76%. The median of the percentage rates was 76.4%, while the range was from 67.1% to 86.2%. These rates are similar to the 73.1% rate for the nine month period ending 9/30/89. However, a DIA report from the later part of 1987 noted an appeal rate of about 50% and an estimated appeal rate of 85%-90% prior to the assignment of the same administrative judge to hear both the conference and hearing. If each of these matters was litigated through the hearing stage, the system would obviously be even more overburdened. Many cases are resolved after the appeal of the conference order, and about 40% of the appeals go forward.

Each appeal that does not result in a hearing creates a de facto delay for those cases that do go

forward. The current schedule provides for 72 hearings per judge in each hearing cycle. Since an average of 53% of the appeals of conference orders result in hearings, the remaining 47%, while ultimately ending in resolution, create inherent delays for cases going forward, due to the time period in which they are resolved. They also create additional costs, such as legal preparation for hearings, which would be unnecessary if the cases resolved earlier. While having the same administrative judge handle the disputed matter at both conference and hearing was intended to decrease litigation, the high appeal rate raises questions as to the causes of these additional costs and delays.

Commissioners formerly handled not only conferences and hearings but, prior to the 1985 reform, also handled lump sum conferences. Administrative judges currently only make recommendations on lump sum settlements, but due to the statutory appeal process enacted in 1985, it could be construed that decisions require more detailed findings and research.

Published workload statistics for the department in two categories, with the number of adjudicators and averages for the fiscal or calendar years, are listed below. [Note: Figures for the last two fiscal years do not include backlog judges.]

TABLE 4

Year/#	Orders	Avg.	Decisions	Avg.	TOTAL	AVG.
OLD LAW						
1975/16	4,527	283	828	52	5,355	335
1976/12	3,960	330	684	57	4,684	387
1977/12	4,151	346	533	44	4,684	390
1978/12	4,487	374	523	44	5,010	418
1979/12	6,488	541	564	47	7,052	588
1980/12	7,019	585	622	52	7,641	637
1981/12	9,109	759	646	54	9,755	813
1982/12	8,244	687	737	61	8,981	748
1983/17	6,110	359	595	35	6,702	394
1984/17	7,105	418	834	49	7,939	457
NEW LAW						
FY'89/21	7,162	341	1,109	53	8,271	394
FY'90/21	8,063	384	1,246	59	9,309	443

The number of decisions mailed out during FY'90 increased 15%, from 1,287 to 1,475 (Appendix J). The number of cases resolved increased 51%, from 11,298 in FY'89 to 17,005 this year (Appendix K).

Hearing statistics for scheduled dates in FY'89 showed a total of 7,117 dispositions, for which 1,261 (17.7%) decisions were filed. A total of 1,158 (16.3%) were withdrawn, 480 (6.7%) voluntarily adjusted, 56 (.8%) dismissed, 1,102 (15.5%) rescheduled, and 1,191 (16.7%) referred to lump sum. A lump sum request was received in 481 (6.8%) of the cases and a judge recommended a lump sum in 1,238 (17.4%). No disposition was available for 2.1% of the cases.

Hearing statistics for scheduled dates in FY'90 indicated a total of 8,728 dispositions, for which 871 (10%) decisions were filed. There were 1,376 (15.8%) withdrawals, 519 (5.9%) voluntary adjustments, 48 (.5%) dismissals, 1,022 (11.7%) reschedules, and 1,702 (19.5%) lump sum referrals. A lump sum request was received in 406 cases (4.7%) and a judge made a recommendation to lump sum in 1,238 (14.2%) cases. No disposition was available for 1,546 of 17.7% of the cases.¹³

Many of the available figures, such as withdrawals or adjustments, are similar and indicate a resolution in just over 20% of the matters.

In the period 11/1/86-1/1/90, there were 4,618 decisions issued by administrative judges and 1,419 appeals taken. This averages out to 159 decisions and 49 appeals per judge. An average of 31% were appealed, while the percentage appealed for individual judges ranged from 13% to 59%. However, it should be noted that it is difficult to fully assess the appeal rates for hearing decisions, since judges are at different points in the scheduling cycle at any given point in time. Also, a number of the judges are recent appointees, which may skew overall percentages.

Statistics are available for some of the events in the dispute resolution process. While

individual judicial cycles vary, judges should receive a similar number of cases over the course of a year. Due to a time lag in computing the statistics, the figures available cover a period ending 4/1/90 and are included as Appendix L.

The regional offices vary widely in the time from the close of the hearing to a decision. The statewide mean time for the six month period ending 8/30/89 was 33.4 days and the median was 10 days for 194 cases. For the period 4/1/89-3/31/90, the statewide mean time for a decision after the close of a hearing was 80.4 days and the median was 53 days for 1,020 cases. In Fall River (204 cases), the mean was 36.7 days and the median was 10 days. In Lawrence (85 cases), the times were 114.3 days and 105 days, respectively. The Fall River office also had the shortest mean from the end of the conference to an order, 3.5 days, while the statewide average was 4.5 days. In all of the various offices, the timeframes for this event were less than the timeframes set forth in the law. [Note: There are two judges permanently assigned to Lawrence and three permanently assigned in the other three regions. In addition, as space and scheduling permit, an additional AJ is rotated to each of the regions].

Reviewing Board

The Reviewing Board, comprised of four Administrative Law Judges, functions as the appellate body of the DIA. Along with ruling on appeals, the Reviewing Board is responsible for approving third-party and lump sum settlements. Two former administrative judges were recalled during the last year to assist with lump sums.

The Reviewing Board issued a number of decisions this past year which address some important issues. On 11/12/89, the board issued a decision in Grant's Case, Board #70921-87, which addressed a question concerning the application of §8 of the law. The board held that it applied only where an insurer commenced paying voluntarily and that the requirement to pay within 14 days from

knowledge of any source that benefits are due applies to situations where there has been an agreement executed or certain DIA judicial action. The decision also addresses the requirements of §7 which would be applicable upon the filing of a first report, not a claim. If parties act together to avoid filing first reports and accompanying responsibilities, they may be subject to §14 penalties and administrative review by the Division of Insurance.

The issue of a dual jurisdiction was addressed in Conant's Case, Board #48506-87, 6/8/90. In a 2-1 decision, the board held that entitlement to benefits under the Massachusetts act was not applicable where an offer to work was conditional and the employer could reject the employee. The contract of hire was therefore not based in Massachusetts, but in the second jurisdiction where the employee traveled to work to complete the contract of hire.

In Kelly's Case, Board #54287-77, 1/29/90, the board decision affirmed a holding which awarded the employee's claim for permanent and total benefits. This case in its initial life [394 Mass 684 (1985)] dealt with the issue of an alleged emotional injury as a result of a personnel action and was found to be compensable. It was the impetus for changes to §29 of the act. The recent board decision upheld the claim for §34A benefits and in noting the resistance to the claim, discussed assessing §14 costs. The board did give notice to parties that where an appeal is transparently without merit, it would assess such costs. The board similarly admonished a claimant for appealing where the employee had waived the taking of a medical deposition and had submitted no medical evidence in support of the claim (Buchanon's Case, Board. #013933-82, 4/20/90).

The board held that §11C of the law did not require it to pass on the propriety of each evidentiary ruling, but stated that if an appellant believed that an erroneous ruling was so serious as to require reversal, he/she should identify the ruling and point out why it is of sufficient

gravity to warrant reversal (Blanchard's Case, Board #4707-83, 12/6/89). In Andrade's Case, Board #60877-87, 11/17/89, the board denied a claim filed by an MBTA employee who was injured while riding the system for free for non-job reasons. The decision stated that while free travel was a benefit of work, such travel did not make the injury job-related.

In a case decided just after the close of the fiscal year (Barofsky's Case, Board #023659-87, 7/9/90), the board issued a decision on the definition of average weekly wage that has generated much discussion. The lengthy decision (three of four members concurring) examined the statutory language and held that medical insurance premiums were not included in the statutory definition by the legislature and were therefore not a component to be used in weekly wage calculations. The dissenting opinion, after examining "earnings" in accordance with its usual meaning, concluded that if the payment of health insurance premiums is one of the terms of the contract of hire, it should be included in the average weekly wage computation of the claimant. This decision has been appealed to the courts.

Lump Sums/Appeals

Timeframes varied by region for approval of lump sums. The average time for a lump sum, with an interview, was shortest in Lawrence, 39.1 days, longest in Fall River, 49.2 days, and averaged 45.8 days for the state.¹⁴ By comparison, records show that in September of 1988, it took 4-6 weeks in Boston and 2-3 weeks in the regional offices to obtain a lump sum conference.

The use of the lump sum to resolve and dispose of pending matters before the DIA continues to grow. This clearly results from the lengthy delays between various stages of the dispute resolution process. A total of 18,155 lump sum conferences were scheduled during the past year, up 3,451 (23.5%) from the previous fiscal year. (See Appendix L) During a four month period examined in our last report, there was a 76.9% approval rate of scheduled cases. This year the figure is 84.7%.¹⁵

One of the most striking statistics from the past fiscal year is the percentage of lump sum disapprovals. Only 115 out of 18,155 (with the same potential for double-counting on the approvals) were not approved. This is 0.6% of the total. Thus, of the 15,501 cases where action was taken by the reviewing board, 99.4% were approvals.

It should be noted that the approval figures only show final actions. If an indication is made by the review process that the agreement may not be approved in its current form, then the parties may amend it to address the concerns raised by the board. Such changes are not reflected here.

It is also interesting to note that only 5 out of 18,155 cases were voluntarily adjusted and 1,887 or 10.4% were withdrawn. This suggests that the latter figure represents matters where liability has been established and the former where it hasn't. For some reason, over 10% of those seeking to lump sum change their minds and decide not to proceed, although the lump sum process itself appears to have no effect on an insurer's acceptance of liability.

In order to facilitate the lump sum process (effective 7/1/90 in Boston only), cases for which the parties have arrived at a proposed settlement can be brought before an Administrative Judge, who can recommend approval of the agreement (see Circular letter #252). Prior to a conference, the parties may either file a form 116 with a stay of proceedings request or present the agreement on the date of the scheduled conference. If the latter choice is made, all the requisite papers must be prepared and an interview held with a disability analyst. The analysts are available for walk-in interviews.

Subsequent to a conference, the parties may either file a stay or have the agreement heard by the Administrative Judge. In these instances, a lump sum interview is directed at the discretion of the judge. The Administrative Judge will issue a recommendation to the Reviewing Board for approval if it is seen to be in the employee's best interest. If successful, this trial policy will be used in the regional offices after 9/1/90.

During the past year, 465 claims for review were filed with the reviewing board, a decrease of 2.5% from FY'89 and 6.4% from FY'88 (see Appendix L). The number of appeals is much more evenly divided between pre-11/1/86 injuries and post-11/1/86 injuries than in past years, and most appeals in the last two years have been for post-11/1/86 injuries. The number of decisions issued decreased 41% from FY'89 and is down 59% since FY'88.

Memoranda of disposition have also decreased in the last three fiscal years, from 210 in FY'88, to 110 in FY'89, to 92 this past year. The number of appeals of reviewing board decisions has decreased dramatically in the last two years. In FY'88, 29 holdings were appealed, and these have dropped to 10 and 7 in the last two fiscal years. The reluctance to appeal may be a positive indication that parties are not continuing to litigate, but are instead accepting the final decision made within the administrative system. As of September 1990, the number of pending or active cases at the reviewing board was 1,165, up from 1,076 in November of 1989. However, the board inherited a caseload of over 700 cases in 1986.

Operations Unit

The Operations section of the division includes the Judicial Support Unit, the Court Reporting Unit, and the Scheduling and Docketing Unit.

The Judicial Support Unit provides secretarial and administrative support to the Industrial Accident and Reviewing Boards. The Court Reporting Unit is comprised of court reporters who furnish verbatim transcripts of hearings.

During the past year, there has been a dramatic increase in turnover among the administrative and support staff in the division. The efforts of this staff in producing decisions, scheduling disputed matters, and transcribing hearings are vitally important, and the state and the agency should take steps to reduce employee turnover.

SECTION 2
The State of the
Workers' Compensation System _____

Workers' Compensation
Premium Rate Filing _____

On November 15, 1989 the Workers' Compensation Rating and Inspection Bureau of Massachusetts (WCRIB) submitted a proposed filing to the Division of Insurance seeking an increase of 42.6% on the statewide average premium to be effective January 1, 1990.

As in previous hearings on workers' compensation rates in 1987, the Advisory Council sought neutral analysis of the rate filing by an outside authority. Such action is taken pursuant to chapter 152, section 53A 6(b), which authorizes the Advisory Council to present a written statement and oral testimony relating to any issues which may arise during the course of any rate hearing to establish premium rates for workers' compensation insurers.

On November 22, 1989 a notice of hearing was issued scheduling a hearing for December 22, 1989 on the proposed filing. The Advisory Council filed a notice of intent to appear as an interested party with the Division and the moving party. An approval of appearance was received by the Council on December 5, 1989. This approval noted the Council's limited right to present a written statement and oral testimony and its inability to cross-examine any party or to appeal any decision.

In order to assist the Council in its analysis of the rate filing, a contract of up to \$20,000 was awarded to the actuarial firm of Tillinghast Inc., which reviewed the filing and submitted an analysis to the Advisory Council. This analysis was shared with the parties and presented to the Division of Insurance prior to the December 22, 1989 hearing.

In its presentation at the hearing, the Advisory Council noted its concern over the increasing size of the assigned risk pool, as well as the various administrative delays which create hardships for both employees and employers. Its testimony also noted the frustration, particularly on the part of employees and employers in the construction industry, on the perceived failure to act on the issue of a payroll cap.

The parties who fully participated in the hearing arrived at a stipulated decision, which became effective for policies terminating after December 31, 1989. The final approved rate of 26.2% was very close to a calculation reached by Tillinghast when it explored the component of difference between the 1990 filing request and the adjusted 1989 filing request, which was 25.2%.

The 26.2% average increase included increases of 21.2% for manufacturing classifications, 22% for construction classifications, and 31.3% for other classifications. Approval of the Assigned Risk Adjustment Program (ARAP) was included in the increase and accounted for 5% of the 26.2% total. A plan to provide experience rating for insureds with low premiums also received approval.

The Advisory Council believes that the Tillinghast analysis contributed to the resolution of the filing at the lower rate. It is expected that the next filing will be made in the late fall of 1990, and additional documentation regarding the economic impact of Chapter 572 of the Acts of 1985 is likely to be included.

A point to note is the difference between rate increases and premium growth. Since January 1983, three separate rate filings have been approved, becoming effective on January 1st of 1988, 1989 and 1990. The approvals were for 19.9%, 14.2%, and 26.2% average increases. While these are the only increases since the 1985 reform, they are also the only approved changes in the manual rates since early 1983. Since premiums are based on payroll, premium growth includes wage increases and increases in manual rate classifications.

While the average weekly wage has increased 31.6% since the 1985 reform, it has increased 59.2% since the 1983 rate change. This statewide average income growth is reflected in the levels of premiums.

FY'91 Assessment

The assessment rate for public entities decreased from 0.10416 in FY'90 to .09164 in FY'91, a drop of 12%. The rates for the two previous fiscal years were 0.06002 in 1989 and .0216 in 1988. While the rate has decreased slightly from FY'90, it has still risen significantly over the last four years. In light of the current fiscal situation, this increase remains troublesome.

At the beginning of FY'90, it was estimated that the Public Trust Fund had a negative balance of over \$2 million. Since the projected budget was for \$6.8 million, the negative balance was equal to approximately 29.4% of the money necessary to fund the Public Employer Trust Fund. The actuarial assessment for FY'91 predicted a substantial decrease in underfunding, even though the projected budget is for \$6.781 million and the fund lists a negative balance of \$1,130,315 at the end of FY'90.

The assessment for private employers rose from .02397 in FY'90 to .03630 in FY'91, an increase of 34%. One reason for the increase is that the Private Trust Fund had a balance of over \$12 million at the onset of FY'90. The corresponding decrease in investment income also affected the assessment rate. The expected investment income for FY'90 was \$906,075, while for FY'91 it is \$192,391, with a balance of \$2,591,877 at the close of the fiscal year. However, based upon the actual balances, which were not available as of the date of this report, investment income should be much greater.

In FY'90, the assessment rate on the basis of standard premiums was 5.0% for public employers and 1.2% for private employers. In FY'91, these figures have changed to 4.9% and 1.9%,

The 1985 reform sought to provide a stable source of revenue to the Second Injury Fund. The pre-reform Second Injury Fund was often financially unable to pay the claims filed against it.¹⁷ It is likely that the fund's frequent insolvency discouraged the filing of claims.

Between FY'82 and FY'86, the fund's expenditures often were equivalent to total available funds. In FY'84, no funds were expended. At the onset of FY'86, the balance was \$48.93. Interest received by the fund averaged just over \$27,000 over the five years, while the balances and assessments collected fluctuated drastically. It was widely recognized that improvement was needed in these areas.

As noted in our previous report, the Advisory Council has devoted significant attention to problems with the Second Injury Fund, and a discussion group was formed in order to explore potential solutions. One issue is that as of the close of FY'90, the trust fund had processed no applications for reimbursement from the two trust funds. During the past year, the DIA has also received legislative authority to expend from the trust fund the reasonable and necessary costs of defending the fund. This practice was supported by the Council both in the supplemental budget for FY'89 and in the Budget Reduction and Reform Act of 1989, where it was ultimately enacted.

Entitlement to reimbursement from the fund was to be available as of November 1, 1988. The attorney general is authorized to defend the fund against any claims, and in March of 1990, a representative of the Attorney General's office spoke to the Council regarding its plans for structuring a process to be used to handle the Second Injury Fund. There were believed to be as many as 1,500 outstanding claims against the fund, with an undetermined potential liability.

It is possible that the employer assessment for the Trust Fund could increase, and delays in reimbursements could effect the cost relief to employers that the fund was intended to generate.

Judicial Decisions

Courts

A decision of note issued during the past year concerned the question of an employee fraudulently procuring benefits under the law. In Shaws Supermarket, Inc. and Liberty Mutual Insurance Company v Anthony Delgiacco, (Suffolk Superior Court Civil Action Number 88 - 4949), the court found that the employee had intentionally misrepresented his health in order to get a position which required a healthy back for lifting objects. Prior to hire, the employee acknowledged no previous back problems, but settled six cases for related back injuries with other employers two weeks after filing the employment application.

On the fifth day of employment with Shaws, the employee injured his back. He received \$11,115 in workers' compensation benefits from the insurance carrier. However, the court held that the misrepresentation of the previous injuries was a substantial and material fact in the claimant getting the job and voided the contract of employment. The insurer received a judgement for the amount of compensation paid, plus interest, costs and attorney fees. This matter has been appealed.

In another Superior Court decision, it was decided that a claimant could not state a common law claim for a violation of public policy where the legislature has created a statutory remedy, (Magerer v. John Sexton & Co., et al, Civil Action No. 89-794-C, January 1990). In this matter, the claimant maintained that he had been fired for filing workers' compensation grievances under a collective bargaining agreement. This is the first court action known by the Council to concern the application of §75B of Chapter 152. It does not answer the question of whether there is any discrimination against individuals for exercising their rights or whether this section has been an effective deterrent against such discrimination.

There have been other recent decisions in Superior Court that have raised issues relevant to the workers' compensation act. In St. Germaine v. Prendergast, (No. 89-1247, Barnstable Superior Court, 6/12/90), the court decided that §24 did not bar a derivative tort suit against an employer after a dependent minor child suffered an injury and received benefits under the act. Since this action arose under another law, it was a statutory right, not a common law action barred by §24. The decision appears to interpret §24 as applying to possible plaintiffs who are themselves somehow dependent upon the injured employee. This action appears to allow suits by those not dependent upon the injured person, while foreclosing those who are dependent from doing so. Such a possibility is potentially incongruous.

The application of §75A in the return of an injured employee to a suitable job was involved in civil action this year. The employee in question had been disabled and in receipt of benefits for three years when he requested a return to a suitable position. The court ruled that the phrase "suitable job" is used in the context of an injured employee, not a fully recovered worker, because the phrase connotes some sort of accommodation which would not be necessary if the employee was healthy. The employee was ordered to be reinstated and the defendant was ordered to pay a reasonable attorney fee. (Hayes v. City of Boston Penal Institution Department, Suffolk Civil Action No. 88-7193)

Finally, questions have been raised concerning the constitutionality of the loss of consortium prohibition contained in §24. On the eve of an argument before the Supreme Judicial Court, which had taken the case on its own initiative from the Appeals Court, the parties settled. A published account of the matter (Massachusetts Lawyers Weekly, 12/25/89, p.31) seems to suggest that this will not be the last case of this kind.

The Court of Appeals issued a decision on July 31, 1990 which, while outside the FY'90 reporting period, is nevertheless worth noting. In Daly v. Commonwealth & Others, 89-P-405, the court dealt with a suit brought by a former Special Assistant Attorney General seeking to recover \$72,403.87 which was owed to him for his services in defending the Second Injury Fund prior to the 1985 changes. The holding stated that the special funds established under the 1985 statute were successors to the old second injury fund. A judgement was entered directing the DIA to pay the obligation from the special fund, since legal fees are an operating expense of the department.

As is often the case, the decision creates additional questions. The court stated that when the legislature desired to expressly repeal a particular section of the law, this intent was expressly stated. This could lead to the conclusion that since the old funding mechanism was not acted upon in that fashion, but instead only amended further, it may still be applicable.

However, another portion of the decision notes that the source of funds has been altered by the 1985 amendments, which suggests that only the earlier assessment process may be employed. If legal expenses are part of the operating expenses, it is unclear what implications this leaves for the recent amendments (see Chapter 653 of the Acts of 1989, section 97, which is quoted below under "Legislation") that authorize payments from the trust funds for such activities as defending the fund.

In addition, the decision states that the expense of defending the old fund was to be paid from the fund. During oral argument before the court, questions were raised relative to the fact that such authorization appeared to be permissive in nature and questioned whether the Attorney General's office should be held accountable for the debt. Since the passage of Chapter 565 of the Acts of 1989 appears to limit the exposure of the "new" trust fund, it is still unclear what, if any, liability the fund will have for pre-1985 claims.

There have been a number of other decisions

from the courts, some of which may be of interest to practitioners and interested parties. The Court of Appeals issued decisions in the following matters, a number of which were issued as judgements under a single justice's authorship. In one case, a claimant's argument stated, in part, that traumatic stress disorder was based in part on an incident surrounding the purchase of a raffle ticket at work (Hunt's Case, 89-J-357, 1/22/90). The Court affirmed the findings of the administrative judge and reviewing board that the injury had its origins in incidents other than the workplace.

On 2/14/90 the Court issued a judgement reversing the reviewing board's affirmance of the administrative judge's decision denying benefits (Hoffman's Case, 89-J-169). The Court issued an order in the same case on 4/30/90 denying the employer's motion to file a late appeal.

In another matter, the Court upheld the reviewing board, holding that the findings were supported by substantial evidence, and remanded the matter for further deliberations on attorney fees (Holland's Case, 89-J-119, 4/5/90). Finally, while noting the scholarly opinion of the reviewing board, the court disagreed with the premise and decision that the approval of an agreement to pay was ministerial and that the filing itself creates a binding agreement. (King v. Excelsior Insurance Co., 89-J-832, 5/3/90)

A number of decisions were published in the past year. Among them was the holding in McCarthy's Case, 28 Mass. App. Ct. 213 (1990), where the claimant was denied benefits due to the failure to establish, pursuant to §26A of the law, that unsoundness of the mind existed at the time of the decedent's suicide. Another decision held that the fellow servant defense was not available in a consortium action by a wife and children, and basically was no longer a vital defense in any respect. Marques v. Bellofram Corp., 28 Mass. App. Ct. 277 (1990).

The Supreme Judicial Court issued decisions in the several matters which involved issues pertinent

to workers' compensation. In a decision issued at the end of FY'89, the Court held that there was no implied agreement for indemnification between a general contractor and a subcontractor, and therefore chapter 152, §23 barred recovery against the subcontractor for any tort claims [Larkin v. Porter, Inc., 405 Mass. 179 (1989)].

There appear to still be a number of cases that deal with claims for the loss of consortium as a result of the decision in Ferriter. One case involved a loss of consortium claim from an alleged 1980 injury and the issue of whether the spouse was barred from suing in court as a result of issue preclusion after a denial of the claim by the DIA [Corrigan v. General Electric, 406 Mass 478, (1990), O'Connor, J. Dissenting]. Even though a consortium claim is an independent cause of action, it was determined that a spouse could not recover for injuries that had been fully litigated and denied in the administrative process. In Di Martino v. Quality Industrial Propane, Inc., et al, 407 Mass 171 (1990), the court stated that in a third party suit filed by an employee under §15, an insurer was an aggrieved party entitled to appeal a Superior Court approval of a settlement, but was not entitled to a review of the judge's decision of the fairness of the settlement beyond the court's satisfaction that the insurer would be reimbursed.

A final case, although a wrongful death action, looked extensively at chapter 152 and its interrelationship with chapter 156B, the business corporation statute. One issue in the case raised the negligent maintenance of machinery by two previous employers. The question concerned the liability to an employee injured at work as a result of the employer's predecessor actions, and was a matter of first impression in the Commonwealth. The Court held that the suit could be maintained, and that to insulate a successor employer from liability for negligence, as a result of a merger, would subvert both the workers' compensation system and the business corporation law. Gurry v. Cumberland Farms, Inc., 406 Mass. 615 (1990).

In terms of procedural changes in appeals beyond the reviewing board, the Supreme Judicial Court promulgated rule 2.04 concerning appeals in workers' compensation cases to the Appeals Court on 11/22/90. The effective date of the rule was 1/1/90 and any appeal was to proceed in the same manner as in Superior Court, only it would be entered on the single justice docket of the Appeals Court. The rule bars appeals from any interlocutory order and permits further appellate review of a final order of a single justice by a panel of the court. The Appeals Court issued a Standing Order governing such appeals.

Legislation Affecting The Workers' Compensation System

Bills Enacted

During the past fiscal year, a number of legislative proposals which affect the workers' compensation system were enacted by the General Court.

Chapter 455 of the Acts of 1989 (originally House Bill 3709) was signed by the Governor on October 27, 1989. This bill (see Appendix M) allows municipalities to establish reserve funds to pay for their workers' compensation claims. It provides an option to those cities and towns which have elected to self-insure to carry over funds between fiscal years in such reserve accounts, rather than revert the funds to the municipality's general fund. This concept was supported by the Council because it was believed that it would permit municipalities to address some aspects of their long term liability.

Chapter 565 of the Acts of 1989 (originally Senate Bill 135) was enacted on November 29, 1989. It does not amend any specific portion of Chapter 152 but this legislation further regulates certain effective dates in the statute.

Chapter 529 of the Acts of 1989 added to section 5 of the law the requirement that proposed rules shall comply with the state Administrative Procedures Act.

Several changes affecting workers' compensation were included in the Budget Control and Reform Act of 1989, enacted as Chapter 653 of the Acts of 1989 (originally House 6472). The most important amendment for the Department of Industrial Accidents was the passage of language which allowed the reasonable and necessary costs of representing the trust fund to be paid from the trust fund (Section 97, outlined in Appendix M). In light of the projected impact that second injury reimbursement would have upon the staff of the Attorney General and the Department of Industrial Accidents, this legislation was seen to be necessary in order to avoid future problems.

Section 231 established a special commission to examine the workers' compensation system including, but not limited to, the impact on public employees, business, the current caseload and backlogs at the Department of Industrial Accidents. The commission was empowered to examine the DIA's management system, as well as the potential efficiency of managed health care.

Other portions of the bill did not directly amend Chapter 152, but may nevertheless affect the system. One section (§10) appears to cap the Rate Setting Commission's reimbursement rates to the upper limits of Titles XVIII or XIX of the Social Security Act. Section 84 of the Law gave the Department of Public Welfare the authority to review and approve or disapprove any change in the rates or rate methodology proposed by the Rate Setting Commission. While it appears to deal with medical care and assistance provided by the state under Chapter 118E, it is unclear how this affects workers' compensation rates, which are also set by the Commission.

Section 209 of the bill established criteria for the Rate Setting Commission to follow in setting payment levels under Chapter 6A, §32. While the rates for Medicaid are set under this section, it also sets the reimbursement rates for health care providers under workers' compensation. If the intent of the entire bill is to limit state payments, this legislation may inhibit the ability of the Rate Setting Commission to set rates for

medical reimbursements under Chapter 152. In addition, the rates are tied to a federal statute, which may present problems in the future if the federal law is amended. Similar language directly amending §32 of chapter 6A was passed as §207 of Chapter 150 the Acts of 1990 (FY'91 Budget).

A number of additional pieces of legislation which also have a bearing on the workers' compensation system were enacted just after the start of the fiscal year. The DIA has finally been provided with access to information maintained by the Department of Employment and Training (DET) where the data is necessary for the performance of the agency's official duties (Chapter 154 of the Acts of 1990, §31, listed in Appendix M). This concept has been supported by the Council over the last few years, both in communication with the legislature and the DET. The information should assist the DIA in developing a more accurate list of employers in the state and improve compliance with the insurance requirements of the act. In an outside section (§324) of the FY'91 budget, an offset provision was enacted which amended Chapter 161A, §19J for employees of the Massachusetts Bay Transit Authority.

A piece of federal legislation signed recently was the Americans with Disabilities Act, Public Law 101-336. This law takes effect 24 months after enactment, so it should be operative in the summer of 1992. It establishes a clear and comprehensive prohibition of discrimination on the basis of disability. Disability is defined as (a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (b) a record of such impairment; or (c) being regarded as having such an impairment. Since it applies to the employment arena and creates a civil rights cause of action for its enforcement, it will have a potential impact on the relationship between injured workers and their employers.

Bills Proposed

One of the responsibilities of the Council is to

offer comments on proposed legislation. During the past year, the Council reviewed various bills and submitted comments to the Legislature. In addition, the Council submitted its own proposed changes through Representative Marilyn Travinski, Joint Chair of the Joint Commerce and Labor Committee. These are attached as Appendix N.

More than 47 pieces of proposed legislation were submitted this year for discussion by the Legislature, indicating continued interest by many parties in the system. The Chair and Vice Chair of the Advisory Council testified on the Council's behalf at the Legislative Hearing held on March 26, 1990. A copy of the Advisory Council's position on the bills that were available for review prior to the hearing and its testimony is attached as Appendix O.

In reviewing the summary supplied by the Secretary of State's Office concerning initiative petition 89-13 (Question 3), questions arise whether passage of the petition would impact the administration of chapter 152. The petition would require the approval of the General Court to increase or decrease any fee, and it would roll back fees imposed by state agencies to the amount in effect on June 30, 1988. If applied to the fees under the law, it would require adjustments to the trust funds, and perhaps to premium rates. Since a number of fees are tied to the average weekly wage in the state, it is unclear whether increases or decreases in that amount could be used in the future.

Medical Reimbursement Rates

The Massachusetts Rate Setting Commission promulgated new reimbursement rates for services provided under Chapter 152 that became effective on September 1, 1989.

Due to the size and complexity of the medical fee reimbursement schedule, the impact of fee changes has been difficult to determine. In its

premium rate filing during the past year, the Workers' Compensation Rating and Inspection Bureau of Massachusetts estimated that the 50% increase implemented in February of 1986 had a 22.7% effect on medical costs. Revisions in reimbursement rates promulgated on July 1, 1988 and September 1, 1989 resulted in average increases in the schedule of 31.2% and 1.9% respectively, and they increased total losses by 3.6% and .2%. The percentage of total losses paid for medical benefits for the 1988 experience was noted as 21.46%.¹⁸

Prior to promulgating rates this year, the Rate Setting Commission initiated a survey of 2,663 health care practitioners, with assistance from various representatives of the medical community and the DIA. The study attempted to identify patient management characteristics differentiating workers' compensation cases from other cases. More than 60% of respondents to the survey indicated that workers' compensation cases involved more paperwork and information requests than other patients. Over 50% indicated that payment was less prompt and reimbursement less satisfactory with workers' compensation cases.

In response to its study of rates, the Rate Setting Commission added a new procedure code, #9157 Initial Industrial Accident Office visit, setting the reimbursement rate at the same level as the Comprehensive Consultation procedure, \$90.00. The Commission also proposed rate changes which reintegrate the industrial accident rates with those of the appropriate general regulation rates. As the general regulations are reviewed each year, more of the industrial accident rates will be replaced by the general rates.

State Auditor's Report

As noted in last year's report, the DIA was the subject of an audit by the state auditor. The audit reviewed fiscal years 1987 and 1988, and the official report was available at the end of 1989. The report outlined three specific issues, and responses from the Department were included in the report.

The first issue raised by the report was the delay in the processing of cases, noting that an excess of 119 days over the statutory maximum was necessary for processing cases as of March 31, 1989. The recommendation was for the DIA to take the appropriate steps to resolve delays. It also quoted from a consultant's report, prepared for the Department, on the impact of certain scheduling policies.

The Department's response noted improvements made since 1987. It noted its progress since the consultant report and addressed the problem of the continuing increase in disputed cases filed with the agency. The auditors replied that the DIA should address the causes for ongoing increases in conference requests and plan staffing needs to address both these causes and the current delays in processing claims.

The auditor stated that the DIA did not collect \$3,117,000 in eligible fees, fines and late charges during FY'87 and FY'88. The DIA's response referred to insufficient staff and also noted that the process was brand new in FY'87 and that demands on the agency far exceeded expectations. New systems had to be established and additional staffing was not approved. The agency stated that it is making every effort to comply with the law. The Advisory Council is awaiting a response as to whether the funds have been collected. A final point raised by the report concerned a substitution in a scope of services for a consultant contract and was an administrative oversight which has been corrected.

A matter of concern which must be noted is that a comparison of the treasurer's report with the auditor's report (and with certain budget documents) reveals divergent figures on various department funds. Each of these documents is prepared pursuant to statute by a different institution in state government. Records maintained by the DIA are based upon standards established by the Commonwealth, and the auditor's report stated that, except as noted above, all tested items in the audit complied with applicable laws and

regulations. In addition, while the audit expressed no opinion on the system of internal accounting control, no condition believed to be a material weakness was found.

The completion of these reports at different points in time is one factor in the discrepancies, and the use of different administrative mechanisms may also affect the results. Nevertheless, it is imperative that there be a full, accurate, and responsible accounting of the operations of the various funds at all times. Although each report may be correct given the use of different accounting mechanisms, it is worrisome when reports for the same agency over the same period do not come close to agreement, and this is especially significant in light of the intense scrutiny of the workers' compensation system in recent years.

It is important that an independent oversight and accounting of the various funds be undertaken as often as necessary. The funds in question are paid by employers who have an obvious interest in their assessments being used wisely. Injured employees, who receive benefits from the funds, share an interest in the funds' efficient use. To this end, it may be preferable to produce one report on the funds, using the method and time period which can produce the most current data. This should not only eliminate possible duplication, but would reduce confusion regarding the status of the accounts.

SECTION 3
Ongoing Concerns
Of the Advisory Council _____

_____ Delays in the Resolution of Cases _____

An issue that impacts all participants is the delay in resolving the adjudication of disputed cases. Unless the timeframes established by the 1985 reform are met, it is clear that the dispute resolution process will not stabilize.

There has been a 23% increase in the number of claims/complaints referred to Conciliation between calendar year 1989 and calendar year 1990. The number of incoming requests for adjudication (claims and complaints) also continues to grow at an alarming rate, far in excess of the projections initially offered. Estimates for FY'91 show the possibility of an additional 7.5% increase in referrals to conciliation over FY'90. While the system has been able to meet the statutory timeframes for conducting conciliations, the delay between referral from conciliation to conference continues to grow. These delays add unacceptable costs to workers and employers.

In September of 1989, the backlog included 4,039 cases awaiting scheduling, down from 5,410 at the end of FY'89. The time between conciliation referral and scheduled conference at the close of the previous fiscal year was 14 weeks in Boston, 20 weeks in Fall River, 17 weeks in Springfield, 18 weeks in Worcester, and 18 weeks in Lawrence. At the close of the first quarter of the year, these figures had increased to 16.5 weeks in Boston, 28 weeks in Fall River, 24 weeks in Springfield, 25 weeks in Worcester, and 25 weeks in Lawrence.

The current delays are similar. The statewide average, as of 3/31/90, was 24.8 weeks. However, the extent of delay differs in the various regions.

While in Boston the wait is 19.1 weeks, it is 28.4 in Fall River, 35.5 in Lawrence, 29.2 in Springfield, and 32.8 in Worcester. It would appear that the concentration of cases in Boston has lowered the statewide average. Since the Boston office was receiving its lowest percentage of disputed cases in the past three and one-half years, one likely result would be that the statewide average would increase as it began to reflect more of the cases in the regional offices.

The distribution of cases in the regional offices will change as a result of a realignment implemented by the DIA on May 29, 1990. This was done to address the inequality in the periods between referral from conciliation to conference date. The change moved a total of 10 communities from Lawrence to Boston, four from Worcester to Boston, and one from Worcester to Springfield. Cases already in progress would remain in the region to which it was initially assigned. These changes, along with additional changes made in September of 1990, should alter the regional totals for FY'91.

Delays for parties reaching a hearing also are growing. In 1984, it took 510 days before a hearing was held, 379 days beyond the statutory timeframe. By 1988, the delay had improved, but was still 70 days in excess of the law. By 1989, using projections with data as of 9/30/89, the total time was 207 days, 109 days beyond statutory requirements. For the year ending 3/31/90, it took an average of 265 days to get a hearing, 167 days beyond the statutory timeframe.

Improvement was noted in the timeliness of action in the dispute process. For the nine month period ending 8/31/89, the statewide statistics show a mean of 50.8 days and a median of 28 days for 456 cases from the close of hearing to decision. During the period from the beginning of April 1989 to the end of August, the mean was 33.4 days and the median was 10 days for 194 cases. However, the most recent available figures show that for the year ending 3/31/90, for 1,020 cases, the mean was 80.4 days and the median was 53 days. While the time from the close of the conference to

the issuance of the order was less than the statutory requirement, the total time from referral to DDR was far in excess of the legislative language.

Current delays are already sufficiently serious to merit grave concern. However, in looking to the immediate future, there is reason to expect conditions to worsen still further. One complicating factor is that the judicial scheduling rolls are going to increase as a result of a DIA decision to send all second injury cases directly to conference. The impact of this decision will likely not be known until next year.

A second factor which could exacerbate delays in the future is the expiration of nine judicial terms in 1992. As noted in the comprehensive study of the workers' compensation system by Peat Marwick and Main, Inc., failure to streamline the appointment process will greatly increase the backlog.¹⁹ Such appointments have historically proceeded slowly, and persistent vacancies have already contributed to delays. With the expiration of over 40% of the regular administrative judge terms in a single year, the need for expeditious appointments will assume even greater significance.

An issue that may impact the resolution of matters before the DIA is the use of the direct payment process enacted in the 1985 changes. The direct pay procedure and the pay without prejudice process were meant to reduce litigation. Some data on these procedures are available, although the information is imperfect since pay forms frequently aren't filed with the DIA, despite legal mandates to do so. Filing is voluntary, and this information only captures actions where there has been compliance with the law. There are cases where claims are paid, but no form is filed, and these will not be reflected in available data. A summary of first report and pay/deny statistics from the past three fiscal years is provided in Table 5.

TABLE 5

	FY'88	FY'89	FY'90
# of FR w/o			
pay or deny:	20,767	19,571	23,815
% of FR w/o			
pay or deny:	33.6	33.3	52.0
# of FR w/			
pay or deny:	40,966	39,115	21,998
% of FR w/			
pay or deny:	66.4	66.7	48.0
# of FR			
with pay:	38,561	35,591	18,815
% of FR			
with pays:	94.1	91.0	85.5
# of FR			
with deny:	2,405	3,524	3,183
% of FR			
with deny:	5.9	9.0	14.5

For the first two fiscal years, the numbers are very similar in most of the categories. The number of first reports with a pay or deny has decreased in the last year and the data indicates that more cases are being denied where a first report is filed and that fewer pay forms are filed. What is disturbing is that the numbers here not only show a decreasing number of first reports, which are to be filed by employers, but that pay or deny forms--which are to be filed by insurers--aren't filed in the majority of cases where reports are filed.

The number of requests for adjudication (claims and complaints) continues to increase. To date, the DIA has kept up with scheduling these matters for conciliations, but the delays between referral from conciliation to conference continue to be a major stumbling block to the statute's effectiveness. Since there are no delays at this stage to date, every effort within the realm of reasonable caseload scheduling should be explored to prevent backlogs from developing here.

As was noted earlier in this report, the number of requests for adjudication continues to

outpace initial projections. During the past fiscal year, a total of 35,582 requests were referred to conciliation, an average of 684 per week. This is an increase of 10% (from 32,339) over the prior fiscal year. In calendar year 1989, the number of requests increased to 34,855, up 23% from calendar 1988. Whether assessed by calendar or fiscal year, the increase places a strain on the system's ability to process and resolve matters quickly. Totals for this calendar year, indicate an additional 7.4% increase.

While requests for adjudication have steadily increased, there are indications that, based upon information available to the DIA, the number of alleged work-related incidents has decreased. Incidents includes all first reports filed, plus pay forms, deny forms, or claims where no first report has been filed. The numbers available for the past three calendar years appear in Table 6.

TABLE 6

Request For Proceedings vs. Incidents

Note: The report provides statistics on claim types and incidents based on the date of injury and date entered.

<u>Year</u>	<u>Total Requests (A)</u>	<u>Total Incidents (B)</u>	<u>Ratio A/B</u>
1987	29,618*	90,627	32.6%
1988	28,232*	91,845	27.8%
1989	34,855	88,223	39.5%

*Includes lump sum requests entered prior to 6/21/88

**Request For Proceedings - Percentage of
Claims To Complaints**

<u>Year</u>	<u>Total Request</u>	<u>Claims</u>	<u>%</u>	<u>Disc.</u>	<u>%</u>
1987	25,107*	17,928	71.4	7,179	28.6
1988	25,610*	18,279	71.4	7,341	28.6
1989	34,855	24,155**	69.3	10,688	30.7

*doesn't include reopened claims;

**doesn't include §37 requests

Requests For Proceeding* With
Lump Sums vs. Incidents

Year	Total Requests (A)	Total Incidents (B)	Ratio A/B
1987	29,618	90,627	32.7%
1988	33,389	91,845	36.4%
1989	44,131	88,223	50.0%

*Requests = Claims, \$36, Lump Sum Requests,
Third Party Claims, \$37, and Discontinuances

The data indicates that requests are now 50% of total incidents, up from 32.7% two years ago. This leads to the conclusion that either there may be more litigation at present or that workers are more aware of their rights. The ratio of claims to complaints has not increased greatly (2.1%), but it is reasonable to assume that it will increase if more employees are receiving benefits. Reopened claims are not included in this category because there is no way to determine if they represent claims or complaints.

A review of all requests versus incidents not only shows a 4% drop in the number of incidents, but a 32% increase in requests. One half of the incidents in 1989 generated a request for some sort of action by the DIA, even though one incident could result in multiple requests. There was a potential for multiple counts in each of the years. The Council is extremely concerned about the alarming rates of increase in cases and the growing delays in the dispute resolution process. An analysis of these factors is expected to be a priority in the 1991 fiscal year.

Increases in Judicial Requests

Since the 1985 reform, requests for adjudication have risen from 14,103 in 1984 to 37,420 in 1990, an increase of 165%.¹⁹ In the 1986 calendar year, 21,817 requests for adjudication were entered by the DIA. Annualized projections following the first eight months of 1990 indicate a potential for 36,572 requests, a 7.4% increase over calendar year 1989 and far in excess of projections.

Increased requests necessitate additional

resources. While it is not known what steps the insurance industry has taken to address this concern, anecdotal evidence suggests that high turnover and overwork are prevalent, and classified ads continue to seek experienced and qualified workers' compensation claims adjusters.

There were approximately 5,763 attorneys on the list maintained by the DIA in FY'89, and the list had grown to approximately 6,865 at the end of FY'90. While each of these lists may contain duplications, it would appear that the extent of legal practice at the agency is growing.

Workers' Compensation Costs

The overall cost of any workers' compensation system has always been difficult to accurately quantify.²¹ In calendar year 1988, private insurers paid \$813,107,821 in losses. Losses of \$59,024,311 by private self-insurers and \$3,363,310 by group self-insurers were noted in the same period. These figures don't include expenditures by political subdivisions which choose to pay benefits without insurance. These latter costs continue to grow.

As noted earlier, premium increases will always outpace rate increases, inasmuch as premiums are coordinated with payrolls in Massachusetts. Since 1985, the average weekly wage has grown from \$360.50 to \$474.47, an increase of 31.6%.²² These increases have occurred despite the economic contraction of the last few years. Published estimates state that a 20% increase in benefits creates a 7% upsurge in indemnity claims and a 2-4% increase in duration of disability.²³

The increased cost of workers' compensation is not solely a Massachusetts concern. Published accounts by the Social Security Administration in the Social Security Bulletin track trends nationally on an annual basis.²⁴ The size of estimated workers' compensation payments increased 14.2% from 1984-1985, 11.3% from 1985-1986 and 11.1% from 1986-1987. The increase for the last period is the smallest since 1982-1983, when wage inflation, computed as the change in average yearly wages, registered its lowest increase in 25 years.

Total payments in Massachusetts have increased from \$509,661,000 in 1985 to \$638,420,000 (+25% over 1985) in 1986, and \$734,088,000 in 1987 (+15% over 1986). In each year, the percentage of payments attributed to carriers and self-insurers has remained consistent at 92% and 8%, respectively.

During the last few years, the relationship of costs to benefits has slightly moderated increases in premiums. The ratio of benefits paid per \$1 in cost (loss ratio) indicates the percent of premium paid out in benefits. These ratios from 1982 are as follows: .67 in 1982; .70 in 1983; .73 in 1984; .72 in 1985; .70 in 1986, and .69 in 1987. During the same period, the cost per \$100 of payroll (which can provide a perspective in terms of labor costs) has increased. The cost for each \$100 of payroll was \$1.75 in 1982; \$1.67 in 1983; \$1.66 in 1984; \$1.80 in 1985; \$1.98 in 1986, and \$2.06 in 1987. This would indicate that as costs have increased, the percent going to benefits has dropped slightly.

The National Foundation for Unemployment Compensation and Workers' Compensation publishes cost data, using information obtained from the Social Security Administration, for individual state jurisdictions and for national coverage. This data shows that payment of weekly and medical benefits rose nationally by 203.1% between 1978 and 1987. Wage rates remained steady between 1984-1987, while medical costs, which have a far greater impact on benefit payments and benefit costs per worker, have grown.

Between 1978 and 1987, indemnity and medical payments increased by 283.3% in Massachusetts. The total payout reached \$734,088,000 in 1987, a 15% increase over 1986, while the national average was 12.5%. This followed a 25.3% increase in 1985-1986, the second highest (to the 26.3% in Maine) in the country. The national average that year was 12.2%. Rates in Massachusetts since the 1985 reform are clearly rising faster than the national average.

The percentage increase in the payments of benefits for insurers and self-insurers has varied

over the ten year period. For self-insurers, the increase was 361.5%, much higher than the national average of 244.4%. Insurer payments grew 277.7%, compared to a national average of 194%. This has occurred at a time when the number of self-insurers has decreased dramatically and the size of the assigned risk pool has risen.

Massachusetts has the sixth highest percentage of payments made by private insurance in the country, ranging from 91.6% to 91.9% between 1981-1987, with the other payments attributed to self-insurers. The national trend indicates a slight decrease in the percentage of private insurance payments and a much higher (about 21%) percentage of benefits paid by self-insurers in the 1978-1987 period.

The average benefit cost per covered employee (benefits paid/estimated covered employment) was \$300 in 1987 (up 11.9%) and \$268 in 1986 (up 22.9%) for Massachusetts. The national figures were \$289 and \$264, respectively, with percentage increases of 9.5% and 10%. Massachusetts didn't exceed the national figure prior to 1986, and as of 1985 it was 9.2% below the national average.

The benefit cost rate (the total payments as a percentage of estimated total wages of covered employees) was 1.34% for Massachusetts, slightly less than the national average of 1.40%. Except for a 15.2% jump between 1985-1986, the change has been almost identical to the national average in the last few years. These costs are reflected not only in rising premium rates, but also in rising assessments. The total assessment collection has increased for private employees, although the rate has been made more dramatic by the depletion of year-end balances in the last year. Projections for increased payments for injured employees of uninsured employers and potential second injury liability continue to present very serious concerns.

At the same time, budgetary constraints at the state level have limited the growth of the DIA, despite its source of funding in the private

sector. While authorized for 302 positions, the department managed to fill only 282 positions by the end of the year. In addition, legislation requiring state employees to pay a greater portion of their health insurance has slightly decreased the fringe benefit costs for the agency.

Medical costs have increased both nationally and in the Commonwealth over the last few years. These costs are escalating faster than indemnity costs and account for an estimated 40% of all losses nationally in 1988.²⁵ The cost of medical benefits in Massachusetts is much lower than national figures and amounts to just over 20% of incurred benefits.²⁶ The average annual growth rate for 1980-1985 in cost per claim was 9.3%, one of the lowest in the nation, and below the national average of 14.7%.²⁷ Since medical costs are an integral component of any workers' compensation system, increases in this area will have to be carefully studied.

One point suggested by the Medical Access study was the possibility of involving the Health Care Services Board of the DIA in utilization review. The report recommended using the Board to plan improvements in medical aspects of the workers' compensation system. Given the serious implications of rising medical costs for the entire system, the Board would appear uniquely positioned to lead efforts to resolve cost problems in ways which would be acceptable to all parties.

Many proposals for dealing with the economic costs of workers' compensation have been offered, but in order to address the social costs, delays within the dispute resolution process must be resolved. Social costs increase, for instance, when workers become disillusioned with the prospect of returning to the workplace as productive members of society. There is broad agreement that the longer an employee is out of work, the more difficult a return to work becomes. This problem is not only felt by injured employees, but also by their families.

While there may be no perfect system to address work-related injuries, it is clear to

the Advisory Council that expeditious action at the Department of Industrial Accidents is a critical factor here. The lower the delay, the lower the economic costs will be for employers who pay for the system and the better off will be workers who the system is designed to protect.

During the course of the research for the Friction Costs Study, many interested parties noted that during the initial period of the new law, when the statutory timeframes were being met, the new system worked well. However, the goal of expeditious case resolution was soon hampered by pre-reform backlogs, and then further eroded by subsequent caseload increases. The 1985 changes have thus not been fully exercised. Until such time as the changes operate as envisioned, costs and delays will continue, and pessimism about the 1985 changes will increase.

Uninsured Employers

The continued high incidence of employers operating without insurance remains a very serious concern. Computerization of the records of insurance coverage would facilitate the prompt identification of this illegal activity. The use of index cards by the Insurance Register of the DIA to document this complex series of transactions is obsolete. As of August of 1987, there were 100,724 policies in the state, which clearly shows the potential difficulties with such an administrative process. We believe the technology is available to remedy this problem.

In order to monitor insurance coverage, the DIA needs access to a reliable list of employers in the state. The recently enacted legislation which permits the Department of Employment and Training to share this data with the DIA should aid in determining which companies are committing these illegal acts.

In order to encourage compliance with workers' compensation insurance requirements, section 25 of the workers' compensation statute requires that recipients of public contracts demonstrate workers'

compensation coverage as a condition of acceptance. This is accomplished with the submission of a copy of the contractor's certificate of insurance. Although state government is enforcing this requirement, it is uncertain whether each of the municipalities is putting sufficient effort into enforcement.

Finally, since these are criminal acts, we believe that steps should be maintained to enforce this law. While failure to secure workers' compensation insurance may not be considered among the most serious crimes, the law essentially has lost its teeth. If uninsured employers anticipated the threat of such sanctions as criminal conviction and jail, they might be hesitant about violating the law. Jails today are overcrowded, but if violators were sentenced to jail time for one or two weekends, they could continue to work in their businesses during the week. This may be a simplistic approach, but stiffer penalties and increased fines might be in order to highlight the seriousness with which this activity is regarded.

Premium Rates

The rising cost of workers' compensation insurance has generated much discussion in the last few years. Business leaders have voiced opposition to the approved increases in premium rates of over 70% since 1988, while the insurance industry has pointed out that no rate request was approved between January of 1983 and June of 1988. The cumulative change in premium level from 1978-1989 was 153.5% in Massachusetts while the countrywide change was 66.8%.²⁸

At the same time, labor representatives have raised concerns over the impact of manual rate increases on high wage employees and have questioned whether the unlimited payroll method is an equitable formula for determining premiums. This issue has not been addressed in the last three filings, despite what appears to be a statutory mandate to do so.

It is evident that the unlimited payroll cap is an important issue. The insurance market must remain a viable source of business that does not drain carrier resources in grossly unprofitable areas. A brief example of the percentage increases

in the manual rate for certain limited construction classifications can be seen by examining Appendix P.

In a number of classifications the percentage change has jumped by well over 100%. As payrolls increase, these costs present obvious problems. When manual rates approach labor costs (e.g. \$83.51 for each \$100 of payroll in iron steel erection), the impact on the economic climate is likely to be destabilizing.

Attempts to compare jurisdictions must always acknowledge the impact of benefit structures upon rates. However, as indicated in Appendix P, the disparity may not only present competitive disadvantages in certain classifications, but as Appendix R attempts to show, between states as well. It will take a concerted effort between all parties--business, insurers, labor, regulators, and administrators--to address these issues equitably and efficiently.

Backlog

During the past fiscal year, significant progress has been achieved in reducing the backlog of cases. When the backlog was initially defined on June 21, 1988 as constituting those cases which had already been filed with dates of injury before November 1, 1986, there were 12,202 such cases to be scheduled. Cases with a pre-November 1, 1986 injury which were filed after the June 1988 date were processed in the same manner as all other post-November 1, 1986 date of injury matters.

Despite lengthy delays in the appointment of judicial personnel, the resolution of backlog cases has progressed to the point where all cases in the original backlog should soon be purged from the system. On the basis of totals for the beginning of FY'91, the scheduling of matters will end early in the fiscal year. The remaining months can be utilized for administrative judges to reschedule cases and issue decisions.

System Abuse

Reports of abuse of the workers' compensation system have been repeatedly raised in the last few years. While no system is likely to foil all potential abusers, effort should nevertheless be made to rid the system of abuse.

Abuse of the system can occur in many ways. As noted earlier, employers operating without insurance increase costs for those who abide by the law. The misclassification of employees to insurers also increases costs, since it results in the collection of an inadequate premium, making the practice tantamount to insurance fraud.

Workers who falsify claims not only profit unjustly, but also add to the delays presently faced by workers with legitimate injuries. Providers who create overutilization impair the system by increasing costs and delays. Practitioners who allegedly abuse the system and process must be sanctioned.

Despite the reports of abuse, the DIA has received only three formal complaints concerning the practices of individuals in the past year. The numerous complaints that are verbalized about parties abusing the system are thus contradicted by the evidence. If abuse is known but not reported, the question turns to why more formal complaints are not made.

Authority exists within certain regulatory bodies to take action against alleged abuses. The DIA also has certain authority, both within the judicial process and administratively, to curtail abuses. A rule of the DIA (452 CMR 1.18(5)) states that the agency may, for cause, deny or suspend the right of any person to practice before it.

Since due process must be applied before rights are foreclosed, abuses will have to be reported before sanctions can be applied. Any abuse of authority or discretion should be dealt with to the fullest extent. Rather than contribute to innuendo, parties who know of abuse should present their information to the proper authorities so that appropriate measures can be taken.

Employee Leasing

A growing concern, both at state and national levels, is the practice of employee leasing. Through employee leasing, an employer with a high experience modification terminates its employees and then leases them back for a fee paid to a leasing company. The practice benefits the original employer by decreasing payroll costs and lowering experience modifications. However, it also causes confusion regarding the manual classification listed for the leased employees by the new employer.

A major concern is that the practice effectively passes on costs to employers whose premiums reflect their true loss experience. This may not be true for businesses engaging in employee leasing. Another concern is that when workers are injured, determining the actual employer may result in litigation. Further, the long-term impact of deflated premiums is likely to be reflected in higher premium requests.

The practice of employee leasing undermines the employer-employee relationship that is central to workers' compensation, inasmuch as employees, in waiving their rights for tort damages, only do so in relation to their employers. Some sources have classified employee leasing as rate fraud, and a number of jurisdictions are attempting to curtail its practice.

It would appear that efforts to address the problem will have an administrative rather than legislative focus. In Massachusetts, the insurance industry has taken steps to remove the economic incentive to engage in employee leasing. In addition, the Division of Insurance approved an amendment by the WCRIB to the Experience Rating Plan Manual, effective June 15, 1990, which states that if an employer terminates all or substantially all of its employees and leases them back, the experience of the initial employer will be used in the ratings of the leased employer. If more than one employer is involved with the leasing employer, the experience incurred by such employers shall be

used until the leasing employer develops its own experience modification.

In light of the other issues surrounding the insurance market, it is hoped that this is a positive step in curtailing cost shifting between employers. The long-term effect should assist companies in remaining competitive. It may also protect workers, since attempts to circumvent the system raise the question of whether other legal requirements, such as health and safety protections, are also being met.

In a related matter, the California State Fund filed a civil action against seven labor contractors, citing violations of the Racketeer Influence and Corruption Organization Act (RICO) in alleging that the defendants had avoided \$19.5 million in payments to the state fund by inappropriately describing employee pools. The NCCI recently won a settlement in Florida which recovered more than \$700,000 in damages and forced the leasing company to yield \$2 million worth of premium.²⁹

Information and Data Collection

DIA reports which offer some insight into the operation of the system are now available to the Advisory Council on a biannual basis. These reports provide data on a number of different areas of the Department of Industrial Accidents. Reports available include the following:

- 07 First Report & Paid Statistics for Forms Entered
- 16 Conciliation Statistics For Scheduled Dates
- 17 Conciliation For All Finished Cases
- 27 Case Tracking and Scheduling System Summary of Unscheduled Meeting Pre Nov. 1st Pro Nov. 1st
- 28 Case Tracking and Scheduling System Statistics for sections of the law being claimed for Cases Entered
- 29 Case Tracking and Scheduling System Statistics for sections of the law being claimed for cases with conciliations held
- 39 Conciliation Statistics for all finished cases by injury category claim with returned to work date

- 42 Conciliation Statistics for all Finished Cases
- 45 Conference Statistics All Judges for scheduled dates
- 46 Hearing Statistics For All Judges for scheduled dates
- 49 Case Tracking and Scheduling System list of conferences with an impartial physicians report ordered and no report received
- 56 Office of Safety Weekly Fatal Report for Date of Death
- 83 Lump Sum Interview All Counselors
- 86 Lump Sum Conference Statistics all Judges for Scheduled dates
- 306 Fees & Penalties Awarded AC, PC, RC
- 316 Referrals from Conciliation to Dispute
- 354 Statistics for Payments & Denials by Insurer/Self Insurer for First Reports received
- 390 Conciliation Dispositions by Insurers/Self-Insurers
- 391 Case Timeframes Statistics
- 394 Conciliation Dispositions by Worker Attorney

In addition, the Council receives information from the various divisions of the DIA on a regular basis. The improvement of data is noteworthy and important for analysis of the system. While some of the information is subject to administrative caveats, the dissemination of data was a crucial component of the 1985 amendments.³⁰ Major strides have been implemented in this area and the outlook for monitoring the system's effectiveness is much improved as a result.

Another reporting responsibility with which the DIA will apparently soon be in compliance is the mandate under §28 to maintain statistical records on injuries at sheltered workshops. Under this section, if a pattern of injuries does develop, the office of claims administration is to notify the Department of Mental Retardation so that it can take appropriate action. Due to the obvious social intent behind this language, the Council has inquired a number of times in the last few years about the state of the monitoring procedure. It is hoped that this surveillance protection will be available in the near future.

Section 4 Possible Future Issues

Alternative Dispute Resolution

At the beginning of June 1990, a "working paper" was produced in order to generate discussion on revision of some aspects of the statute. One change envisioned in the working paper is the use of an alternative dispute resolution mechanism to reduce case backlogs. Although no specific process or mechanism was elucidated, alternative dispute resolution is a concept that warrants attention.

Alternative dispute resolution models are already in place elsewhere. The use of arbitration to resolve collective bargaining disputes is almost universal in the United States. It provides a formalized contractual process that has been sanctioned by the United States Supreme Court. It is intended to be expeditious, slightly informal and a means of preventing relationships from deteriorating. Additionally, it has been employed in "lemon law" cases, divorce actions, and security and stock disputes. As delays in civil trials increase, it has enabled parties to have their rights vindicated without the costly and time-consuming process necessary for a full trial. Massachusetts was the first state to formally establish a state agency to provide such service for labor disputes when it created the Massachusetts Board of Conciliation and Arbitration in 1886.

Other jurisdictions have begun to utilize this format in workers' compensation disputes. Connecticut has established such a system on a voluntary basis, while Michigan has enacted a process to resolve matters with arbitration. California recently enacted legislation that will require arbitration for the next few years on

certain cases. Any alternative mechanism will require an examination of the appropriate incentives to encourage participation. Allowing parties to mutually agree to use a neutral and binding dispute process at the Department of Industrial Accidents, outside of the current administrative format, may be an option that the legislature and interested parties will look at closely. As stated earlier, the Advisory Council will be examining this area more closely in FY'91, and hopes to be able to make some meaningful recommendations for reform measures.

Health Care

The medical treatment of injured workers is a concern for virtually all workers' compensation systems. Disputes over new methods or protocols often engender debate among health care practitioners and researchers. As research takes place, the system must avail itself of all pertinent data to assess the relative effectiveness of potential treatments.

The issue of how health care itself is to be provided is also important. The state enacted legislation that was intended to provide health insurance for much of the working population in the state. Due to budgetary constraints, that effort has been hampered. However, the focus of "managed compensation" programs may hold promise for improving cost effectiveness. Managed compensation seeks to establish a structured process for medical treatment, return to work and cost containment.

Discussion has begun on a national level concerning the efficacy of "24 hour coverage".³¹ In essence this concept attempts to limit adjudication over the medical claims of disabled employees by detaching disagreements over the extent of disability from the issue of medical care. It would require one premium payment for health care, as opposed to the current process in which it is also a part of workers' compensation and disability insurance premiums. Theoretically, it would eliminate medical care issues from workers' compensation since there should be no contests over treatment. It raises certain issues such as who, if anyone, should pay for deductibles in a no fault system, and whether this is another

mechanism for creating some form of universal health care.

General health care costs rose 55% nationally between 1982 and 1987, while workers' compensation health care costs rose 96%.³² The higher rate of workers' compensation cost increases may stem from more effective cost containment in other health care systems or result from cost shifting to workers' compensation systems. Workers' compensation may also be inherently more expensive, since it emphasizes expeditious treatment in order to encourage an early return to work. Both litigation and reliance upon disability assessments place a different set of priorities in workers' compensation cases.

Studies have shown that Massachusetts workers' compensation health care costs have been below average in comparison to other jurisdictions. The trend of increased costs in health care has been documented by a number of studies.³³ In one study, the average annual growth rate (adjusted for inflation) for the period 1980-1985 was 4.1% in Massachusetts, which was 20th out of 21 jurisdictions studied.³⁴ Massachusetts was consistently ranked in the lower third of the states examined in health care costs, and was 14th out of 21 in the mean total cost for back cases.³⁵ This appears to indicate that the overall growth in medical costs for Massachusetts has not been as large a factor in the increased cost of workers' compensation as in other states.

Insurance Market

The growth of the assigned risk pool and increases in manual classification rates are of concern to many parties in the workers' compensation system. The rapid expansion of the residual market is often perceived to result from inadequate premium levels. In 1984, the pool represented 10.4% of the premium in Massachusetts, while in 1989, it was estimated at about 39%. The number of policies in the pool increased by 49.4% from 1985 to 1986. It is now not only the single largest writer of workers' compensation insurance in the state but, according to the most recent premium rate filing, it is the largest in the nation with respect to premium volume.

While efforts have already been made to reduce the size of the residual market, continued action will be necessary. To that end, the insurance industry filed plans aimed at diminishing the market's reliance on the pool. One proposal called for establishing a Qualified Loss Management Program. This program of scheduled credits would offer cost relief to employers who obtain the services of Qualified Loss Management Programs. It is intended to provide not only more immediate cost reductions, but also to assist in fostering a more cooperative environment for reducing injuries and expediting the treatment and payment process. Massachusetts, by approving this plan on 11/1/90, became the first state in the nation to allow such a program.³⁶

The Council believes that this program may provide employers with the education, training and resources necessary to manage and minimize compensable losses in the workplace. It may also offer workers the guarantee of consistent, fair and compassionate treatment and recovery following on the job injuries. This may be a positive step towards improving the system.

Other steps recently taken to improve the insurance market include the elimination of premium discounts for the assigned risk pool and the implementation of a more equitable experience rating plan. However, the overall market is influenced by other factors, such as auto insurance. Prompted by what they viewed as inhospitable economic conditions, several major carriers--with prior claims to 12% of the workers' compensation market--have left the Massachusetts market during the last few years.

An interagency agreement between the DIA and the Division of Insurance, requiring non-domestic insurers to keep 125% of its current obligations on deposit if it no longer writes or services policies in Massachusetts, should lessen the impact of insurer withdrawals from the Massachusetts market. The establishment of an insolvency fund, which this year resulted in a loading factor of .6% of current rates, also provides stability to the market.

The current rate filing by the insurance industry seeks an average increase of 21.6% for

workers' compensation premium rates, to be effective 1/1/91. It notes a loss deficiency of 304 million dollars in 1989, up from 30 million dollars in 1985. The residual market burden is estimated at 37 cents of each premium dollar. The filing, and its resulting impact on the economy, raises serious concerns for the workers' compensation system.

System Concerns

The increase in the number of requests for adjudication is a very serious development with profound implications for the administration of the Massachusetts system. The possible addition of more complex cases and increased litigation adds to this burden. As the workforce ages, claims may also tend to have longer durations.

Due to claims by employees of uninsured employers, the Department is being placed in the position of acting as an insurer for an increasing number of claims. This role must meet the administrative guidelines of government while addressing the legal mandates of the law. It has been a difficult task and one which does not appear to have been intended in the 1985 changes. Employees have worked diligently to address this aspect of the law. In addition to discovering uninsured employers, it is hoped that new language in §65 will permit the trust fund to recoup more in reimbursements in the coming year.

Monitoring the fund and claims against it must remain an integral aspect of oversight efforts in order to ensure that it is administered in the most effective manner. Pursuant to chapter 7, §30T, the Executive Office of Administration and Finance has examined the DIA's files for employees of uninsured employers and has identified compensation claimants being compensated by the trust fund who have continued to receive other state benefits in violation of state law.

No reimbursement requests for COLAs for the

Public Trust Fund have been received by the Commonwealth as of June 30, 1990. The size of any due COLA reimbursement could present problems in the balances of the funds. In addition, the assessment rate (§65 4(d)) uses the assessment base amounts, which are losses paid for the preceding twelve months by all employers. Although no method exists, we assume that only workers' compensation losses, and not other losses payable for employees injured at work, are used in calculations.

The implementation and administration of a new funding source has created questions and problems, some of which remain. The DIA has the authority to monitor and establish procedures under §65(12) for all aspects of the assessment process. Occasional audits of filings to verify accuracy has been suggested to the DIA. No method exists to check certain indemnity losses where statutory provisions may permit payments in excess of those set forth in chapter 152, and this is one area where an audit could help. At the beginning of 1990, the Council asked the agency if it monitored reimbursement requests and assessment receipts from carriers which insure political subdivisions in order to ensure that the proper fund is used. As part of the actuarial review of the self-insurers' imputed premiums, a cross reference of data provided by public employers and their insurers has been performed, and the results will finally be available soon.

In addition, there has been a wide disparity, with respect to the public trust fund, between collections and payouts for certain political subdivisions. While some payments exceeded collections, others received more than they paid.

The law states that the failure to pay the assessment will result in a fine of 10% of the unpaid assessment every 30 days. Only \$5,272.34 has been charged in fines for late assessments, all in FY'88. A commonwealth lien can also be established for failure to pay promptly. These fines are payable into the special fund, which provides for the operating expenses of the agency.

In one case, this would have resulted in a possible fine of \$311,668 over 12 months, an amount 20% greater than the actual assessment.³⁷

While the fines would supplement the special fund, the harshness of the fine has resulted in a decision not to assess the fines for the last two fiscal years. Imposition of the fines may also create legal questions. As a result, the Council has recently been informed that the DIA has filed legislation to remedy this problem. To date there have been no fines imposed, pursuant to 452 CMR 1.13(1), for failure to submit medical reports within the statutory mandate set by §30A, which would also go into the special fund.

Serious consideration should be considered for the use of \$14 penalties to prevent parties bringing or defending cases in a frivolous manner. At present, both the payor and the recipient of such costs are determined by administrative judges on a case by case basis.

The conciliation process is one area where frivolous use of the system appears to warrant attention. In order to expedite case resolution, parties who are not present at conciliation are supposed to authorize individuals to represent them. It appears, however, that parties with written statements that purport to extend authorization frequently do not actually possess such authority, and it instead resides with an adjuster who has not attended the conciliation.

The law (§10(3)) is clear that when a respondent neither appears nor sends an authorized representative, the case is to be referred to the Division of Dispute Resolution. A failure to appear may result in a higher referral fee or a lower attorney fee. In FY'89, there were 1,280 penalty fees levied, totaling \$685,055. However, it is difficult in practice to establish that the required authority does not exist. Conciliators are often placed in the difficult position of either sending the matter forward or working with the representative to see if, upon checking with

the individual having the requisite authority, the matter can be resolved.

The DIA was to have promulgated rules establishing guidelines for insurers and self-insurers concerning behavior that can be construed as questionable claims handling techniques. The fact that this has not been done has perhaps contributed to the difficulty of imposing sanctions on frivolous use.

Conciliators have the discretion to extend the conciliation period if they believe it will facilitate the process. Matters are often rescheduled if a party indicates that the case may be resolved upon further investigation or discussion. While this is a useful tool and is used effectively, it is unclear if the situation is caused by statutory timeframes or inadequate preparation. The creation of a 30 day filing period has not improved the incentive for resolution that was intended by the amendment, despite the increasing number of disputes.

The inappropriate use of conciliation hinders the efficient operation of the system. Some parties send adjusters to conciliations who have complete background on the case, and others send attorneys who have authority to resolve cases. However, some companies send attorneys who appear to need the approval of an adjuster to resolve matters. Conciliation works far better when the attending parties possess decision-making authority. Anything less trivializes the system, the agency, and the other parties who fulfill the law's intent. It also adds to costs and delays which, in the long term, are paid by all. Again, this is an area within the dispute resolution process that bears further analysis and recommendations for change in the future.

The administrative judges (as one example) have not received a pay increase since July 6, 1986. During the last four years, the state income tax has risen 19% and will increase again in 1991, for a total increase of 25%. The rate of inflation, as evaluated by the Consumer Price Index, has risen 21% from 1986 to 1990 in Boston. Other deductions, such as the cost

of health insurance, have also increased. At a time when state government is contracting severely, the appropriateness of salary adjustments goes beyond the scope of this report. However, in light of the attention paid to the dispute resolution process and due to the fact that judicial workloads have increased, it is fair to note this point in any examination of the system.

The judicial appointment process can have a direct relationship with the delays in the system. In 1992, over a three month period, the terms of 9 administrative judges and all 4 administrative law judges expire. The potential impact of delays in the appointment process was noted in the Peat Marwick report published last year.

In addition, the law mandates that the reappointment process entail a review of the conduct of the employee by the nominating panel (See Executive Order #258), which includes a report by the commissioner. The report has been based upon statistical data as well as overall job performance. A strong reliance on statistical data may not present as balanced an appraisal as a known and documented evaluation process, since numbers alone will never tell a complete story.³⁸ The use of performance evaluations for professional employees has been used for many years throughout the state and country for employees such as teachers, social workers, and registered nurses. It is a process that may be constructive for both the employees and the administration and is an idea that the state should consider. The Advisory Council has recommended that the commissioner institute a formal performance appraisal process for the judges. To date, this has not been implemented.

A brief analysis of a closed case survey prepared in June of 1990, covering a random sample of 396 cases which were conciliated between July, 1987 and May, 1989, as well as 68 cases for which there was a decision, indicated some interesting results.³⁹ Where there was both a conciliator's recommendation and an administrative judge's order, three-fourths match. Conciliator recommendations

favor the employee's position $3\frac{1}{2}$ as often, while administrative judges' orders favor the employee less than $1\frac{1}{2}$ as often.

In the group of 396 randomly selected cases, the following occurred:

- about 23% resulted in orders, none in a decision;

- about 43% were concluded by lump sum and neither the type of conciliation recommendation nor conference result seemed to affect this result.

In the group of 68 decisions, 24% were subsequently lump summed, while 62% dealt with continuing disability issues. Issues dealing with continuing disability were resolved at conciliation about 30% of the time, and more than 50% were lump summed. This presents serious concerns because most of the cases dealt with an issue that is almost eternal. Even the day after a decision, a new claim could be filed with a recent medical and the process would begin anew. This may explain why so many were lump summed.

The average lump sum amounts in the three years prior to reform, with the corresponding average weekly wage, are shown below:

<u>Year</u>	<u>Avg. LS Amount</u>	<u>Average Wkly. Wage</u>
1982	\$14,552	\$297.85
1983	\$13,901	\$320.29
1984	\$15,243	\$341.06.

For fiscal year 1989, the total average was \$15,877. The amount incorporates an average settlement of \$18,241 for pre-11/1/86 injuries and \$14,378 for post-11/1/86 injuries. Lump sums of pre-11/1/86 injuries could include future medicals, which may account for the increase. The FY'89 average for post-11/1/86 injuries, not including future medicals, is less than the 1982 average, despite increases in the average weekly wage for

the period covered of 29-49% over the 1982 average weekly wage. Many of the 1982 settlements were based upon an even lower average weekly wage. In FY'90, the average settlement was \$17,176. For cases with injuries prior to 11/1/86, the average was \$18,488, up 1% from the previous year. Settlements for post-11/1/86 injuries average \$16,667, up 16%. The gap has closed dramatically. Older cases, particularly where liability has not been established, may create a greater incentive to settle and may explain the small increase. New law settlements may be including more partial claims which, due to the 11 year benefit period, may produce larger settlements.

Analysis of incoming requests for FY'90 and outcomes suggests that, with the current referral rate to DDR and 28 judicial slots, nearly all incoming matters could be met by the DIA. However, this includes resolutions from the seven backlog judges who did not address pro-log cases. It takes into account matters still pending before DDR which include, as of 8/29/90, 146 cases which had scheduled hearing dates in FY'89 for which no disposition is entered.

The success rate of cases where a conciliation has been held has increased somewhat at the same time that incoming cases have also increased. The percentage of overall referrals has increased slightly. In reviewing statistics for the last few years, referral rates have changed slightly, but just over 50% of the cases continue to be referred. Referral rates have been little affected by changes in the law that sought to enhance case resolution at conciliation, such as changes in attorney fees and filing periods and the expansion of conciliator authority. The rates have remained fairly stable even with a dramatic increase in workload.

In FY'90, finished conciliations resulted in 18,351 referrals. The total number of scheduled conferences over a full year for a complete 21 person Industrial Accident Board is presently 14,868. Even with 28 judges at 708 scheduled conferences per year, the schedule would allow

19,824 referrals to be handled. By factoring in the current rate of incoming requests for adjudication, 19,709 referrals can be projected to take place this year. While this provides a minor cushion, it assumes there will be no delays in any appointments and that all judges will be on-line for a full year. Such assumptions have proven unrealistic to date.

The judges' workload has increased significantly in the last few years. More cases are resolved and more decisions and orders are being issued. However, it is clear that the earlier cases resolve, the better the system operates, since fewer conferences are necessary. Since there is no way to control the number of requests that are filed, one possible solution is to encourage earlier resolution of disputes. If more matters were resolved at conciliation and prior to conference, the need for scheduling conferences would be eliminated and delays and judicial workloads could be reduced.

The statute created new bureaucratic institutions within the DIA. Major strides have been made in reducing backlogs in many of the areas within claims administration, particularly when compared to pre-1985. Over 11,000 appeals of first report fines were received and almost 7,900 administrative reviews completed. A total of 58% of the fines were waived at this step and 62% of the total appeals were waived after a hearing by the Commissioner. Thus, significant time and personnel commitments are being devoted to a process in which many of the fines are ultimately waived.

While the number of self-insurers has steadily decreased in the last fourteen years (216 in 1976), to a current total of 123, the statute permits coverage of subsidiaries under the self-insurer's license. The inclusion of subsidiaries has created new areas that must be examined.

In 1984, it took 510 days to get a hearing. The waiting periods in 1988 and 1989 were 168 and 207 days, respectively. For the year ending in April of 1990, the figure had risen to an average of 265 days. While still representing a great improvement over 1984, the latest figures provide some indication of how the backlog of cases has impacted the law's effectiveness.

Delays alter the parameters of disputed matters for all parties while they wait for the scheduling of a case or its finalization in the dispute resolution process. There is no mechanism within the workers' compensation statute for insurers to recoup payments or for workers to receive interest on compensation awarded at a conference. The interests of the litigants, and the costs involved, are clearly affected by the timeliness of the system.

There are legitimate and beneficial reasons to provide parties with additional time to resolve a dispute when agreement is likely to be reached. Many matters are resolved in this manner. During FY'90, statistics show that 17,734, or 23%, of 78,172 scheduled dates for conciliations, conferences, and hearings were rescheduled. If this is an efficient approach for the parties and the agency, then it is worthwhile. However, if rescheduling uses resources ineffectively and delays the goals of the system, it must be examined in order to assess whether it is beneficial for all concerned, or whether it results from structural inadequacies in the system.

One possible way to reduce rescheduling, and perhaps claims, is to have medical information included with claims. There is no such requirement at present, and not all claims require medical information. Although administrative problems may inhibit the inclusion of medical information, such reporting merits consideration if it would provide documentation that could produce more voluntary payments, while reducing the caseload of the DIA.

The level of litigation must decrease. Figures indicate that the appeal rate of conference orders is higher than a few years ago. Many ideas for reducing litigation have been offered, but solutions have not yet been found. Some proposals may merit consideration for implementation on a voluntary or a trial basis. The possibility of trial or experimental procedures has been suggested by numerous sources, including DIA judicial personnel and the friction cost study. The administrative adoption of a practice, within the confines of statutory authority, allows the system to verify whether suggestions are both feasible and effective and provides the legislative process with actual data on which to base its decision.

Quality medical care and the return of the injured employee to work as a useful member of the workforce are imperatives of any workers' compensation system. Efforts to streamline the transmission of necessary medical data must continue to be explored. The system must utilize all of its resources in encouraging parties to return employees to work. No method has yet been found for completely achieving these ends.

As in previous years, the Council raised certain points with the budgetary process during the 1990 fiscal year. Before finalization of the budget, it communicated with the legislature to express concerns over the impact of the FY'90 budget on the DIA's operation. It sought to ascertain where the assessment payment from the Commonwealth was allocated. The Council also stated its position to the administration on the importance of ensuring that the backlog funding remain a part of the budget and again offered its assistance to deal with this issue. Each year this topic has been a source of discussion and concern, despite the perception that the assessment process was intended to limit problems in this area.

The development and dissemination of information to the public by the Department of Industrial Accidents has improved with the use of professional information staff to handle incoming requests and questions. The consideration of improvements in the telecommunication system would benefit both employees and parties attempting to contact the agency. Preparations are underway to utilize video equipment to enhance information outreach services.

During the last few years, the Advisory Council has inquired about the feasibility of publishing information booklets in non-English languages. If feasible administratively and economically, this may help in providing necessary information to parties that need to avail themselves of the system. However, while considerable thought has been given to this idea, it would appear that the DIA's understanding of its obligations in this area could create administrative concerns.

Finally, many knowledgeable individuals have stated that during the initial operation of the 1985 reform, the system appeared to operate effectively. The large backlog eventually eroded the gains. Some aspects of the reform are not working as intended. For instance, while the payment without prejudice period was intended to reduce scheduling and controversion, data indicates that parties are filing to discontinue within the period allowed for the payment and extension. Department statistics over a 2 1/2 year period show that 3,107 of 25,824 discontinuances were filed prior to the 120th day of disability. Since the vast majority of these cases do not resolve at conciliation, the potential exposure can easily be millions of dollars by the time the case is heard at a conference.

While such matters might not have to be resolved if the process was utilized, they instead must wait months in order to reach a conference. At the same time, it is unknown how frequently extension offers are refused and whether this causes cases to be adjudicated. Analysis has shown that matters involving initial liability may be a much smaller percentage of referrals than requests to discontinue.

CONCLUSION

FY'90 represented the fifth year of operation of the reformed workers' compensation system in Massachusetts. While important progress was made during the year, notably in the near elimination of the pre-reform backlog, the balance of activity suggests an administrative and legislative period which was largely uneventful. Indeed, it is apparent to the Advisory Council that the lack of direction in the face of many serious problems indicates a level of complacency and uncertainty which cannot continue and that all parties must address.

The problems facing the workers' compensation system are widespread. To anyone versed in the intricacies of the Massachusetts system, they are also exceedingly familiar. In fact, if one reads any of the early published reports of either the Industrial Accident Board or the General Court, identical concerns, issues and complaints were voiced from the earliest years of the system.

As this report attempts to make clear, a number of aspects of the workers' compensation system are falling short of their expected operation, with differing degrees of severity. This was also the case with the pre-reform system, and the inter-relatedness of many of the problems adds to the familiarity of the current situation. Similar in tone and substance to complaints levied against the pre-reform system, criticisms are again arising from key actors throughout the workers' compensation environment. They cite the high cost of insurance, inferior medical treatment, administrative delays and other problems as needing correction. Once again, as well, there is no clear direction in which to proceed. However, the impetus for a comprehensive solution seems to be growing.

The influential backdrop to the state of the workers' compensation system is quite obviously formed by the economic and political conditions in which the commonwealth is situated. The economic downturn of recent times has unleashed substantial economic pressures on many businesses, and the cost of workers' compensation is singled out as a

critical factor in the struggle to remain competitive. Meanwhile, insurance companies have begun to withdraw from the Massachusetts market. Plotting a comprehensive course of action in the face of economic instability and uncertainty is not an easy task. But the current strains on the workers' compensation system would seem to demand just such a concerted strategy.

Some people who work closely with the workers' compensation system have begun to feel fatalistic about the prospects for real change. With old problems recurring or continuing unchecked, the sense that some aspects of the system cannot be reformed may be growing. This is in marked contrast to the anticipation which greeted the new system in 1986. At that time, the realization that different interest groups could collectively design and support a wide-ranging workers' compensation reform disproved the notion that nothing could be done. The continued existence of traditional problems should not be allowed to dissuade renewed efforts to improve the system.

One of the major impediments to the effective administration of the 1986 reform law should be removed during the coming year with the elimination of the pre-reform backlog. With administrative judges and support staff freed up to concentrate upon incoming cases, there will soon be a truer opportunity to test dispute resolution processing capabilities and the viability of current statutory timeframes.

The Department of Industrial Accidents has cited the backlog and a heavy volume of incoming claims as factors beyond its control which it has lacked the resources to deal with. While the Department has admittedly lacked control over its funding, and funding has been less than the level requested, it is unlikely that the answer to administrative and processing problems is wholly financial. New solutions will have to be found to expedite the resolution of disputed cases.

Even with the backlog's disruptive effects taken into account, administrative mechanisms within the department can undoubtedly be improved.

For instance, the Advisory Council studies by Peat Marwick & Main and Milliman and Robertson, Inc. have pointed out areas of operation that may be improved through organizational or administrative change, and not merely through the addition of human or financial resources. Similarly, the medical access study by Lynch Ryan & Associates cited an important resource--the Health Care Services Board--that could be an important actor in forging action on medical issues, but which has been largely inactive to date. Like other aspects of the workers' compensation system, effective direction could prompt the Board to spearhead improvements that would otherwise be unrealized.

The problems facing the workers' compensation system make this an important time for its various caretakers and actors. Coincidentally, it is also a time when many new figures will be assuming positions of influence. A new governor and executive staff will soon be taking office, and new administrators may be appointed to lead the Department of Industrial Accidents. Meanwhile, the Advisory Council has itself been experiencing changes in its membership. Such wide-scale change in important personnel is a source of both challenge and opportunity. Opportunities arise from the fresh perspectives that new actors may bring to the evaluation of old problems. Challenge results from the need to incorporate past experience and new solutions into an effective plan of action. As in 1985, many parties will have to be involved in this process as the proper direction for the system is developed. The Workers' Compensation Advisory Council welcomes the opportunity to work with others in the problem-solving effort.

APPENDIX A

Members of the Advisory Council and Staff FY'90

Voting Members

Term Exp. Date

Chairman Linda L. Ruthardt	6/25/91
Vice-Chairman Arthur R. Osborn	6/25/91
Edmund Corcoran (Self-Insurer)	6/25/95
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

Non-Voting Members:

Dr. Edwin Wyman, Jr.	6/25/94
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 Alden Raine Executive Office of Economic Affairs	Ex-Officio

Staff

Richard Campbell
Stevens Day
Ann Helgran
Elaine Lydston

APPENDIX B

AGENDA FY 1990

August 9, 1989

Audit Prioritizing
Competitive Rating
Deerfield Plastics Co., Inc. vs. The Hartford Decision
Assigned Risk Pool - Discussion

September 13, 1989

Annual Report
Budget FY'91
Department Update- Commissioner Pressman
E.G.-Backlog, Computer
Deerfield Plastics Case
Compensation Rates
Office of Safety
Miscellaneous

October 11, 1989

Suggestive Legislative Changes
M.E.I.A.
Self-Insurance Proposed Rules
Temporary Judges
Assigned Risk Plan - Sub Group Update
Phase II
Miscellaneous

November 8, 1989

Unlimited Payroll Cap
Health Care Services Board
Backlog - Administration
Continuances
Section 37
Publication of Review Board Decisions
Mini Reports
2 Year Judicial Appointments

December 13, 1989

No Meeting

January 10, 1990

Plan for Solving Backlog(s)
State Auditor's Report on the DIA
Budgets - DIA's and an alternative
Allocation of funds for reports on
Medical Access and Friction Costs (Phase II)
Mini Reports - Distribution
Rate Hearing Report
Rules - Self-Insurance Hearing

February 14, 1990

Roy Stewart, President, WCRI of Massachusetts
Administrative Judges
California Backlog Solutions
Mini Reports - Markup and Occupational Disease
Phase II - Subcommittee, Scoresheets
Rules Committee Report

March 5, 1990

Subcommittee reviewing proposals for Friction Costs Study

March 7, 1990

Subcommittee reviewing proposals for Medical Access Study

March 14, 1990

Second Injury Fund - Gary Mena, Asst. Atty. General
Legislation
Scheduled Credits
Phase II

April 18, 1990

Safety and Training - John Gatti (MOSES)
Second Injury Fund
Mini Reports

May 9, 1990

No Meeting

June 13, 1990

Phase II - Draft Reports
Proposed Rules
Prolog-Backlog
Senate Bill #1598

June 27, 1990

Final Reports - Medical Access/Friction Costs
FY'91 Trust Fund Budget and Assessment

APPENDIX C
 REPORTS OF THE STATE TREASURER
 FILED PURSUANT TO M.G.L. CHAPTER 152 § 65(9)
PUBLIC (1) PRIVATE (2) SPECIAL (3)
FISCAL YEAR 1987

STARTING BALANCE	0	21,940	0
COLLECTIONS	<u>541,465</u>	<u>6,088,110</u>	<u>7,130,943</u>
TOTAL	541,465	6,110,050	7,130,943
EXPENDITURES	0	672,249	0
ENDING BALANCE	<u>541,645</u>	<u>5,437,801</u>	<u>0</u>

FISCAL YEAR 1988

STARTING BALANCE	541,465	5,437,801	0
COLLECTIONS	<u>857,706</u>	<u>12,641,672</u>	<u>12,049,532</u>
TOTAL	1,399,171	18,079,473	12,049,532
EXPENDITURES	<u>1,364,992</u>	<u>8,741,647</u>	<u>0</u>
ENDING BALANCE	34,179	9,337,826	0

FISCAL YEAR 1989

STARTING BALANCE	34,179	9,339,313	0
COLLECTIONS	<u>1,050,742</u>	<u>8,750,125</u>	<u>15,548,851</u>
TOTAL	1,084,921	18,089,438	15,548,851
EXPENDITURES	<u>889,481</u>	<u>7,419,273</u>	<u>13,961,549</u>
ENDING BALANCE	195,440	10,670,165	1,587,302

FISCAL YEAR 1990

STARTING BALANCE	195,440	10,670,165	1,586,503
COLLECTIONS	<u>3,351,648</u>	<u>6,251,235</u>	<u>17,420,635</u>
TOTAL	3,547,088	16,921,400	19,007,138 (4)
EXPENDITURES	<u>2,758,153</u>	<u>14,310,060</u>	<u>13,711,377</u>
ENDING BALANCE	788,935	2,611,340	5,295,761

- (1) This trust fund is utilized for Public Entities (the Commonwealth and its political subdivisions.
- (2) This trust fund is utilized for Private Employers.
- (3) Pursuant to M.G.L. c. 152, revenues collected for the Special Fund are expended to support the DIA's operational costs and its related fringe/indirect costs
- (4) Includes a FY'90 receipt of \$9,471.65 processed in FY'91.

	<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	Public
	\$7,419,273	\$889,481
COLA Payments FY89	Private	Public
	\$4,229,911	\$889,481
COLA Payments FY88	Private	Public
	\$7,052,778	\$1,364,992
Balance 6/30/89	Private	Public
	\$10,670,165	\$195,440
Balance 7/1/88	Private	Public
	\$9,339,313	\$34,179

* \$10,356 not credited as of report, but has been since.

COMPARISON - Section 65 Payments

FY'88 expenditures - \$ 65 cases for uninsured employers	FY'89 expenditures - \$ 65 cases for uninsured employers
Indemnity 1,208,344	Indemnity 1,951,217
Medical 266,536	Medical 731,084
Legal Fees 138,819	Legal 204,764
\$ 36 75,170	\$ 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: \$1,688,869	Total: \$3,119,362

FY'90 TRUST FUNDS
RECEIPTS & EXPENDITURES

SPECIAL FUND

BEGINNING BALANCE 7/1/89		1,586,503
Assessment	\$14,526,153	
Filing Fees	1,471,197	
Late 1st Report Fine (\$6100. from IV's)	910,492	
Interest	<u>512,793</u>	<u>17,420,635</u>
TOTAL RECEIPTS		\$19,007,138

PUBLIC TRUST FUND

BEGINNING BALANCE 7/1/89		195,440
Assessment	3,341,291	
Interest (1989)	<u>10,357</u>	<u>3,351,648</u>
TOTAL RECEIPTS		3,547,088

PUBLIC TRUST FUND EXPENDITURES

COLA PAYMENTS		<u>2,785,153</u>
ENDING BALANCE		761,935

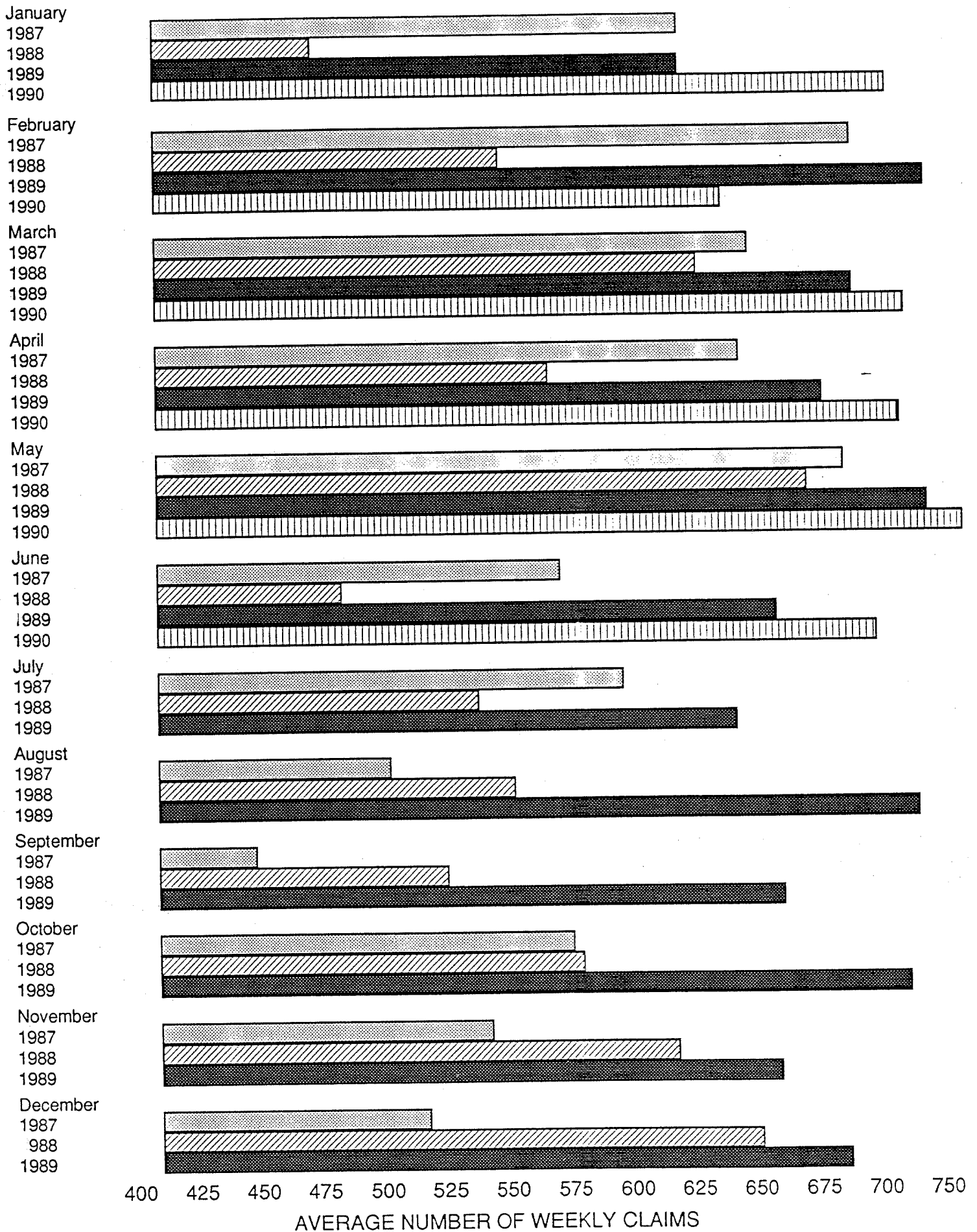
PRIVATE TRUST FUND

BEGINNING BALANCE 7/1/89		10,670,166
Assessment	5,483,883	
Reimbursement	217,438	
Stop Work Order	16,000	
Interest	<u>533,914</u>	<u>6,251,235</u>
TOTAL RECEIPTS		16,921,401

PRIVATE TRUST EXPENDITURES

SEC. 65 PAYMENTS	\$2,452,444	
MEDICAL	474,103	
EMPLOYEE REIMB. (MEDICAL)	8,409	
LEGAL	265,081	
SEC. 36	109,872	
VOC. REHAB. EXP.	56,482	
TRAVEL EXP.	7,288	
BURIAL EXP.	6,000	
WELFARE LIENS	22,460	
CLAIMS ADJUSTER	3,732	
MEDITROL	<u>5,390</u>	
TOTAL SEC. 65 PAYMENTS		\$3,411,261
COLA PAYMENTS		<u>10,909,277</u>
TOTAL PAYMENTS		14,320,538
ENDING BALANCE PRIVATE TRUST		2,600,863

APPENDIX D CLAIMS/DISC REFERRED TO CONCILIATION AFTER REVIEW



APPENDIX E

FISCAL YEAR 1989

STATISTICS FOR SECTIONS OF THE LAW BEING CLAIMED FOR CASES ENTERED ON 7/1/88 THRU 6/30/89

CLAIM TYPE	SECTIONS OF THE LAW	NUMBER OF CASES	PERCENT OF TOTAL (ROUNDED)
EMPLOYEE CLAIM	34+	13173	31.68
	34A+	887	2.13
	35+	531	1.28
	31+	145	0.35
	28+	153	0.37
	13 or 30+	2302	5.54
	30 w/letter	50	0.12
	13A+	143	0.34
	34B+	54	0.13
	35B	25	0.06
	7+	100	0.24
	8+	106	0.25
	33+	5	0.01
	35A+	36	0.09
	1+	452	1.09
	Nothing	54	0.13
	Other	42	0.10
(CLAIM SUBTOTAL)		18258	43.91
INJURY CLAIM (§36)		3063	7.37
INS REQUEST FOR DISC		9766	23.49
LUMP SUM REQUEST		9859	23.71
THIRD PARTY CLAIM		637	1.53
TOTAL NUMBER OF CASES:		41583	100.00

FISCAL YEAR 1990

STATISTICS FOR SECTIONS OF THE LAW BEING CLAIMED
FOR CASES ENTERED
ON 7/1/89 THRU 6/30/90

CLAIM TYPE	SECTIONS OF THE LAW	NUMBER OF CASES	PERCENT OF TOTAL (ROUNDED)
EMPLOYEE CLAIM	34+	14206	31.23
	34A+	1071	2.35
	35+	610	1.34
	31+	171	0.38
	28+	134	0.29
	13 or 30+	2789	6.13
	30 w/letter	43	0.09
	13A+	191	0.42
	34B+	59	0.13
	35B	25	0.05
	7+	157	0.35
	8+	143	0.31
	33+	7	0.02
	35A+	34	0.07
	1+	555	1.22
	Nothing	41	0.09
	Other	56	0.12
(CLAIM SUBTOTAL)		20292	44.61
INJURY CLAIM (§36)		3790	8.33
INS REQUEST FOR DISC		10974	24.13
LUMP SUM REQUEST		9514	20.92
THIRD PARTY CLAIM		903	1.99
SECTION 37 REQUEST		12	0.03
TOTAL NUMBER OF CASES:		45485	100.00

APPENDIX F

CONCILIATION STATISTICS

DISPOSITION	FISCAL YEAR 1989		FISCAL YEAR 1990	
	# OF CASES (Scheduled Dates) (7/1/88 - 6/30/89)	%	# OF CASES (Scheduled Dates) (7/1/89 - 6/30/90)	%
NO DISPOSITION ENTERED			552	1.1
CLAIM REFERRED TO DISPUTE RESOLUTION AFTER CONCILIATION	7,847	18.6	9,011	18.1
CLAIM REFERRED TO DISPUTE RESOLUTION WITHOUT CONCILIATION	1,255	3.0	1,190	2.4
COMPLAINT REFERRED TO DISPUTE RESOLUTION AFTER CONCILIATION	5,971	14.2	7,164	14.4
COMPLAINT REFERRED TO DISPUTE RESOLUTION WITHOUT CONCILIATION	774	1.8	847	1.7
CONCILIATED - PAY WITHOUT PREJUDICE	97	0.2	149	0.3
CONCILIATED - ADJUSTED	4,641	11.0	5,759	11.6
REFERRED TO LUMP SUM	880	2.1	1,404	2.8
RESCHEDULE FOR CONCILIATION	11,383	27.0	14,315	28.8
WITHDRAWN PRIOR TO CONCILIATION	2,238	5.3	1,881	3.8
WITHDRAWN AT CONCILIATION	3,341	7.9	3,598	7.2
WITHDRAWN BY DEPARTMENT FOR NO SHOW	649	1.5	841	1.7
ADJUSTED PRIOR TO CONCILIATION	2,425	5.8	2,231	4.5
LUMP SUM REQUEST RECEIVED	589	1.4	757	1.5
TOTALS:	42,090		49,699	

CONCILIATION STATISTICS

For ALL Finished Cases
7/1/88 - 6/30/90

DISPOSITION	CASES		CLOSED		REFERRED		ACCEPTED		REJECTED	
	FY'89	FY'90	FY'89	FY'90	FY'89	FY'90	FY'89	FY'90	FY'89	FY'90
101 Claim ref. to DR after Conc.	7847	9006			25.6	25.9			25.6	25.9
102 Claim ref. to DR w/o Conc.	1255	1190			4.1	3.4				
103 Complaint ref. to DR after Conc.	5971	7161			19.4	20.6			19.4	20.6
104 Complaint ref to DR w/o Conc.	774	847			2.5	2.4				
105 Conciliated - Pay w/o Prejudice	97	148	0.3	0.4			0.3	0.4		
106 Conciliated - Adjusted	4641	5755	15.1	16.5			15.1	16.5		
107 Referred to Lump Sum Counselor	880	1404	2.9	4.0			2.9	4.0		
109 Withdrawn prior to Conciliation	2238	1881	7.3	5.4						
110 Withdrawn at Conciliation	3341	3588	10.9	10.3			10.9	10.3		
111 Withdrawn by Dept. for No Show	649	841	2.1	2.4						
112 Adjusted prior to Conciliation	2425	2231	7.9	6.4						
114 Lump Sum Request Received	589	755	1.9	2.2			1.9	2.2		
TOTALS	30707	34807	48.4	47.7	51.6	52.3	31.1	33.5	45.0	46.4

APPENDIX G

Proposals Funded by the DIA's Office of Safety Fiscal Year 1990

Safety Council of Western Massachusetts
90 Berkshire Avenue
Springfield, MA. 01109
Title: "Materials Handling...The Safe Way"
Category of Applicant: Non-Profit Organization
Target Population: Employees
Total Funds Awarded: \$29,924.36

Massachusetts Respiratory Hospital
2001 Washington Street
Braintree, MA. 02184
Title: Occupational Safety and Health Training
Program For Hospital and Museum and Library
Conservators On The Hazards Of Ethylene Oxide Gas
Category of Applicant: Non-Profit Organization
Target Population: Employees/Employers/Supervisory
Total Funds Awarded: \$32,614.28

Local 369, Utility Workers Union of America
AFL-CIO
120 Bay State Drive
Braintree, MA. 02184
Title: P.C.B. Awareness
Category of Applicant: Labor Organization or
Federation
Target Population: Employees
Total Funds Awarded: \$32,758.90

Robert D. Marshall Carpenters Training Center
13 Holman Road
Millbury, MA. 01527
Title: Health And Safety Training For
Carpenters
Category of Applicant: Employee Organization/
Trade Association/Educational Institute/ Labor
Organization/Federation
Target Population: Employees, Employers/Supervisory
Total Funds Awarded: \$29,343.66

Springfield, MA Area Local
American Postal Workers Union
1124 Berkshire Avenue
Springfield, MA. 01152

Title: Training On Repetitive Motion Syndrome
Category of Applicant: Labor Organization or Federation
Target Population: Employees, Employers/Supervisory
Total Funds Awarded: \$30,788.07

Massachusetts Coalition For Occupational Safety
And Health (MASSCOSH)
241 St Botolph Street, Room 227
Boston, MA. 02115

Title: "Reducing And Eliminating Exposures To
Occupational Carcinogens And Other Hazards"
Category Of Applicant: Nonprofit Organization
Target Population: Employees
Total Funds Awarded: \$32,469.36

MA. Dept. Of Labor And Industries
1001 Watertown Street
W. Newton, MA. 02165

Title: Occupational Safety and Health In
Hospitals: OSHA Regulations And Policies
Category Of Applicant: Public Employer
Target Population: Employers/Supervisory Personnel
Total Funds Awarded: \$13,644.46

American Lung Association of Mass.
803 Summer Street
Boston, MA. 02127

Title: Occupational Safety And Health Education
And Training Program For Pesticide Applicators
Category Of Applicant: Non-Profit Organization
Target Population: Employees and Employers/
Supervisory Personnel
Total Funds Awarded: \$32,700.75

Coalition For A Better ACRE
741 Merrimack Street
Lowell, MA. 01854

Title: Health And Safety Issues In The Workplace
As An Integrated Element Of Community Development
Category Of Applicant: Nonprofit Organization
Target Population: Employees
Total Funds Awarded: \$19,104.22

Somerville Educational Media Services

22 Jackson Road

Somerville, MA. 02145

Title: Preventing Cumulative Trauma Disorders:
An Employee Training Program And Video On
Ergonomics

Category Of Applicant: Other/Sole Proprietorship

Target Population: Employees

Total Funds Awarded:

\$31,606.50

Carney Hospital

2100 Dorchester Avenue

Dorchester, MA. 02124

Title: Carney Hospital Back Injury Prevention
Program

Category of Applicant: Nonprofit Organization

Target Population: Employees/Employers/
Supervisory Personnel

Total Funds Awarded:

\$31,859.05

Center For The Study Of Public Policy/
Office Technology Education Project

186 A South Street

Boston, MA. 02111

Title: Office Technology Education Project (OTEP)

Category of Applicant: Nonprofit Organization

Target Population: Employees

Total Funds Awarded:

\$32,646.00

APPENDIX H

SCHEDULED MEETING STATISTICS 07/01/89 TO 6/30/90

	BOS	FR	LAW	SPR	WOR	TOTAL
Hearings	4,067	1,414	819	996	1,431	8,727
Conferences	9,216	3,247	2,296	2,371	2,615	19,745
Lump Sum Conf.	9,002	2,985	2,318	1,514	2,334	*18,153

UNSCHEDULED BACKLOG MEETINGS As of 6/29/90

	BOS	FR	LA	TOTAL
Conferences	156	137	186	479

Total Conference Orders Issued 7/1/89-6/30/90	10,261
Total Conference Orders Issued 7/1/88-6/30/89	9,216
Total Conference Orders Issued 1984	7,105

Continuances for Hearings	Jan-March 1990	Apr-June 1990	Total
Number submitted to scheduling unit	82	144	226
Parties unable to attend	21	24	45
Stays granted as reported to scheduling unit	0	5	5
Cont. Meeting-Held but not completed	23	38	61
Other	38	77	115
Total:	164	288	452

* Please note that this figure for scheduled lump sums differs by 2 from the other figure used due to a difference in when the report was run. Since the difference is only 2, and due to the different nature of the information we have used the two figures.

CONFERENCE STATISTICS FOR SCHEDULED DATES

	FY'89	% TOT.	FY'90	% TOT
TOTAL	17,917		19,745	
ORDERS ISSUED	9,216	51.4	10,261	52.0
WITHDRAWN	1,780	9.9	1,690	8.5
VOLUNTARILY ADJUSTED	2,159	12.1	2,314	11.7
DISMISSED	188	1.0	159	.8
REFERRED TO LUMP SUM	1,570	8.8	1,999	10.1
LUMP SUM REQ. RECEIVED	700	3.9	634	3.2
LUMP SUM RECOMMENDED	778	4.3	856	4.3
RESCHEDULED	1,472	8.2	1,375	7.0

APPENDIX I

ADMINISTRATIVE JUDGE DECISIONS MAILED OUT BY MONTH FY 90

SUMMARY OF NUMBER OF DECISIONS MAILED OUT

NAME	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	TOTAL
Brooker	7	5	5	9	7	8	10	5	8	5	4	7	80
Cleary	4	8	3	9	6	11	5	5	-	13*	6	6	76
Coleman	2	5	2	4	3	0	5	1	5	4	2	4	37
Cox	1	0	5	7	3	10	1	8	11	5	6	2	59
DaDalt	5	3	2	4	2	3	2	1	3	3	3	3	34
Demeter	0	0	-	-	-	-	-	-	-	-	-	-	0
Elliott	-	-	-	0	0	0	1	1	1	0	0	3	6
Evers	1	1	1	3	3	7	5	3	1	5	3	4	37
Ferin	7	4	2	3	5	4	8	1	12	6	4	1	57
Fischel	6	5	4	5	6	6	8	4	7	4	5	5	65
Gallo	7	6	6	7	6	8	6	5	7	6	8	7	79
Gromelski	1	2	3	2	4	3	0	4	4	4	4	3	34
Heffernan	5	8	5	7	6	6	5	3	7	5	7	6	70
Jackson	0	0	0	0	7	3	8	5	7	13	11	6	60
Jennings	8	5	4	6	5	3	5	5	5	4	10	5	65
Joyce	2	0	1	2	4	1	0	0	4	5	6	4	29
Lee	-	0	0	0	0	0	0	4	5	4	4	4	21
Leroy	1	0	0	1	4	4	9	10	10	7	3	8	57
Male	0	0	0	1	4	1	2	4	2	7	3	2	26
McGuinness	2	18	11	4	2	6	0	3	1	11	4	3	65
McKinnon	6	4	4	4	14	6	6	9	8	7	7	6	81
Moreschi	1	4	3	3	6	6	3	3	6	9	6	2	52
Pickett	10*	0	0	1	4	0	0	2	4	0	0	0	21
Rogers	10	10	3	2	5	3	0	7	13	8	10	7	78
Romm	4	0	11*	9	5	2	3	0	3	5	6	3	51
Ryan	3	9	6	7	6	8	9	8	8	4	12	6	86
St. Amand	5	7	5	5	5	4	6	4	3	5	3	5	57
Solomon	4	3	4	8	10	3	4	7	5	4	-	6*	58
Taub	0	0	1	2	2	3	2	7	6	4	3	2	32
Tirrell	-	-	-	-	0	0	0	0	0	1	1	0	2
<u>Totals</u>	102	107	91	115	134	119	113	119	156	158	141	120	1475

Judge Demeter's term ended 8/24/89

Judge Jackson on leave as of July 24th.

Judge William A. Pickett was appointed to the Review Board 8/3/89

Judge Richard S. Tirrell started with the department on 10/4/89

Judge Nancy Elliott started with the department on 10/2/89

Judge Howard Lee started with the department on 8/25/89

* Two month total - includes previous month

APPENDIX J

CASES RESOLVED BY ADMINISTRATIVE JUDGES FY'90 (lump summed, withdrawn, adjusted, others)

NAME	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	TOTAL
Brooker	52	32	54	35	46	60	65	35	139	49	67	116	750
Cleary	18	40	26	21	28	35	29	60	-	70*	87	34	448
Coleman	50	43	27	80	37	20	46	56	40	61	61	44	565
Cox	20	37	66	46	201	19	46	60	65	59	49	74	742
DaDalt	41	57	43	53	27	87	73	29	70	57	39	49	625
Demeter	0	0	-	-	-	-	-	-	-	-	-	-	0
Ellriott	-	-	-	0	44	26	44	46	46	38	53	54	351
Evers	21	59	18	43	45	25	71	75	10	61	32	31	491
Ferin	37	42	67	9	68	30	24	49	45	28	81	84	564
Fischel	23	53	49	44	78	75	61	63	72	50	81	51	700
Gallo	29	46	48	42	50	30	53	51	53	56	67	86	611
Gromelski	21	61	24	161	58	31	52	45	35	48	79	83	698
Heffernan	20	45	29	95	68	31	82	47	45	80	48	27	617
Jackson	-	-	-	-	-	9	12	7	4	8	10	11	61
Jennings	42	13	51	45	119	53	51	38	32	62	41	50	597
Joyce	72	50	74	-	92*	70	26	57	28	38	77	85	669
Lee	-	-	9	67	51	5	99	32	67	52	58	59	499
Leroy	26	12	33	54	41	123	83	67	67	55	81	81	723
Male	32	41	20	64	71	169	146	78	40	96	65	40	862
McGuinness	24	28	25	87	24	117	93	86	54	39	68	51	696
McKinnon	44	35	26	62	37	146	96	74	68	74	61	47	770
Moreschi	56	39	11	61	41	23	51	45	27	66	32	42	494
Pickett	46*	0	0	5	-	-	-	-	-	-	-	-	51
Rogers	37	42	32	34	106	33	83	44	52	52	72	42	629
Romm	38*	0	91	42	44	171	42	25	89	61	56	38	697
Ryan	43	39	31	26	40	59	51	59	51	43	106	49	597
St.Amand	80	24	72	30	195	66	58	64	38	62	61	70	820
Solomon	45	34	41	33	64	105	45	73	41	33	-	122	636
Taub	14	39	24	42	54	55	63	58	82	54	51	92	628
Tirrell	-	-	-	0	25	73	26	61	60	55	79	32	411
Total	931	911	991	1281	1754	1746	1671	1484	1420	1507	1662	1644	17002

Judge Harry Demeter, Jr.'s term ended 8/24/89

Judge Leonard Jackson on leave 7/14/89

Judge William A. Pickett was appointed to the Review Board 8/3/89

Judge Richard S. Tirrell started with the department on 10/4/89

Judge Nancy Elliott started with the department on 10/2/89

Judge Howard Lee started with the department on 8/25/89

* Two month total - includes previous month

APPENDIX K

Case Timeframe Statistics For Events Starting From 4/1/89 To 9/30/89

	DAYS TO FIRST SCHEDULED EVENT								
	STATEWIDE			BOSTON			FALL RIVER		
EVENTS	COUNT	MEAN	MED	COUNT	MEAN	MED	COUNT	MEAN	MED
CLAIM receipt to CONC.	9783	21.6	21	4593	21.5	21	1481	21.2	21
§36 CLAIM receipt to CONC.	1780	21.3	21	663	21.0	21	271	20.5	20
DISC. receipt to CONC.	5418	21.2	21	2738	21.1	21	757	20.7	20
TPC receipt to CONC.	507	21.9	21	294	21.9	21	104	21.3	21
CONC. meeting to CONF.	8074	172.8	176	3851	125.7	120	1161	196.7	197
CONF. close to Order	4417	4.8	2	2135	4.7	1	654	4.0	2
AH to receipt to HEAR.	3346	60.2	48	1600	58.0	49	480	56.8	47
HEAR. close to Decision	445	105.4	84	226	114.1	83	86	59.2	9
LSR receipt to LUMP	1358	48.0	51	551	55.7	57	227	51.9	52
LSR receipt to LSI	3132	29.6	28	1541	31.8	31	515	29.3	28
LSR recv to LSI to LUMP	2976	51.2	54	1455	58.5	58	498	53.3	53

	DAYS TO FIRST SCHEDULED EVENT								
	LAWRENCE			SPRINGFIELD			WORCESTER		
EVENTS	COUNT	MEAN	MED	COUNT	MEAN	MED	COUNT	MEAN	MED
CLAIM receipt to CONC.	1217	22.0	21	1130	21.7	20	1362	21.8	21
§36 CLAIM receipt to CONC.	160	21.0	21	301	21.4	20	385	22.5	21
DISC. receipt to CONC.	786	21.4	21	362	21.0	20	775	21.8	21
TPC receipt to CONC.	36	22.7	21	37	21.5	21	36	23.6	22
CONC. meeting to CONF.	996	237.7	240	938	201.6	202	1128	227.9	232
CONF. close to Order	558	6.2	5	562	4.9	2	508	5.0	2
AH to receipt to HEAR.	354	56.9	37	356	53.4	42	556	75.8	59
HEAR. close to Decision	42	140.0	143	36	91.5	93	55	124.7	121
LSR receipt to LUMP	194	36.1	35	187	42.0	43	199	39.7	35
LSR receipt to LSI	454	24.8	23	242	27.4	26	380	28.4	25
LSR recv to LSI to LUMP	439	36.9	36	225	42.6	43	359	41.5	42

KEY: AH = Appeal to Hearing
 CONC. = Conciliation
 CONF. = Conference
 DISC. = Discontinuance

HEAR = Hearing
 LSI = Lump Sum Interview
 LSR = Lump Sum Request
 LUMP = Lump Sum Conference

MED = Median
 TPC = Third Party Claim

Case Timeframe Statistics
For Events Starting From 10/1/89 To 3/31/90

EVENTS	DAYS TO FIRST SCHEDULED EVENT								
	STATEWIDE			BOSTON			FALL RIVER		
	COUNT	MEAN	MED	COUNT	MEAN	MED	COUNT	MEAN	MED
CLAIM receipt to CONC.	9840	21.3	21	4482	20.7	20	1619	20.9	20
§36 CLAIM receipt to CONC.	1896	21.2	21	716	20.6	20	285	20.7	20
DISC. receipt to CONC.	5361	20.9	21	2594	20.3	20	821	20.6	20
TPC receipt to CONC.	407	21.1	21	282	20.9	21	57	20.8	21
CONC. meeting to CONF.	6093	175.1	153	3587	142.2	141	783	201.6	208
CONF. close to Order	5330	4.3	1	2809	5.0	1	693	3.0	1
AH to receipt to HEAR.	3952	69.9	54	2022	78.0	75	566	50.7	42
HEAR. close to Decision	379	62.4	44	179	66.2	47	86	20.9	10
LSR receipt to LUMP	984	40.1	43	410	35.0	30	160	44.2	45
LSR receipt to LSI	3503	24.9	23	1714	24.5	22	608	25.6	27
LSR recv to LSI to LUMP	3375	41.1	42	1660	37.0	34	584	45.6	45

EVENTS	DAYS TO FIRST SCHEDULED EVENT								
	LAWRENCE			SPRINGFIELD			WORCESTER		
	COUNT	MEAN	MED	COUNT	MEAN	MED	COUNT	MEAN	MED
CLAIM receipt to CONC.	1238	22.7	21	1071	20.7	20	1430	23.0	21
§36 CLAIM receipt to CONC.	176	22.4	21	332	20.4	20	387	22.9	21
DISC. receipt to CONC.	789	22.1	21	462	20.3	20	695	22.7	21
TPC receipt to CONC.	23	24.0	21	30	21.4	21	15	22.9	22
CONC. meeting to CONF.	386	275.0	287	730	207.4	210	607	232.7	251
CONF. close to Order	515	4.5	3	612	2.5	1	701	4.2	2
AH to receipt to HEAR.	395	62.6	37	448	54.4	43	521	77.9	61
HEAR. close to Decision	21	93.7	98	36	84.8	86	57	87.3	87
LSR receipt to LUMP	130	39.6	39	134	44.6	46	150	46.3	46
LSR receipt to LSI	531	24.2	23	250	23.3	21	400	27.2	27
LSR recv to LSI to LUMP	516	41.1	42	235	45.2	45	380	49.7	49

KEY: AH = Appeal to Hearing HEAR = Hearing MED = Median
 CONC. = Conciliation LSI = Lump Sum Interview TPC = Third Party Claim
 CONF. = Conference LSR = Lump Sum Request
 DISC. = Discontinuance LUMP = Lump Sum Conference

Case Timeframe Statistics
For Events Starting From 4/1/89 To 3/31/90

EVENTS	DAYS TO FIRST SCHEDULED EVENT								
	STATEWIDE			BOSTON			FALL RIVER		
	COUNT	MEAN	MED	COUNT	MEAN	MED	COUNT	MEAN	MED
CLAIM receipt to CONC.	19623	21.5	21	9075	21.2	20	3100	21.0	21
§36 CLAIM receipt to CONC.	3676	21.3	21	1379	20.8	20	556	20.6	20
DISC. receipt to CONC.	10779	21.1	21	5332	20.7	20	1578	20.7	20
TPC receipt to CONC.	914	21.6	21	576	21.4	21	161	21.1	21
CONC. meeting to CONF.	14166	173.8	159	7438	133.7	131	1944	198.6	204
CONF. close to Order	9812	4.5	1	4977	4.9	1	1357	3.5	2
AH to receipt to HEAR.	7298	65.4	50	3622	69.2	56	1046	53.5	44
HEAR. close to Decision	1020	80.4	53	500	86.8	57	204	36.7	10
LSR receipt to LUMP	2342	44.7	46	961	46.8	51	387	48.7	50
LSR receipt to LSI	6635	27.1	26	3255	27.9	27	1123	27.3	27
LSR recv to LSI to LUMP	6351	45.8	46	3115	47.0	50	1082	49.2	50

EVENTS	DAYS TO FIRST SCHEDULED EVENT								
	LAWRENCE			SPRINGFIELD			WORCESTER		
	COUNT	MEAN	MED	COUNT	MEAN	MED	COUNT	MEAN	MED
CLAIM receipt to CONC.	2455	22.4	21	2201	21.2	20	2792	22.4	21
§36 CLAIM receipt to CONC.	336	21.8	21	633	20.9	20	772	22.7	21
DISC. receipt to CONC.	1575	21.8	21	824	20.6	20	1470	22.2	21
TPC receipt to CONC.	59	23.2	21	67	21.5	21	51	23.4	22
CONC. meeting to CONF.	1382	248.2	255	1667	204.1	208	1735	229.6	237
CONF. close to Order	1081	5.2	4	1180	3.6	1	1217	4.6	2
AH to receipt to HEAR.	749	59.9	37	804	54.0	42	1077	76.9	60
HEAR. close to Decision	85	114.3	105	99	76.8	77	132	104.2	101
LSR receipt to LUMP	324	37.5	36	321	43.1	44	349	42.6	45
LSR receipt to LSI	985	24.5	23	492	25.3	23	780	27.8	26
LSR recv to LSI to LUMP	955	39.1	38	460	43.9	44	739	45.7	46

KEY: AH = Appeal to Hearing
 CONC. = Conciliation
 CONF. = Conference
 DISC. = Discontinuance

HEAR = Hearing
 LSI = Lump Sum Interview
 LSR = Lump Sum Request
 LUMP = Lump Sum Conference

MED = Median
 TPC = Third Party Claim

APPENDIX L

Lump Sum Conference Statistics For Cases Scheduled FY'90

The Monthly totals show those matters scheduled and acted on. The yearly totals beneath include actions where disposition were not initially entered.

	<u>Lump Sums Sch.</u>	<u>Lump Sums Approved</u>
July	1,101	914 (83%)
August	1,102	905 (82%)
September	1,558	1,271 (82%)
October	1,211	936 (77%)
November	1,311	1,078 (82%)
December	1,634	1,390 (85%)
January 1990	1,862	1,472 (79%)
February	1,622	1,296 (80%)
March	1,585	1,233 (78%)
April	1,534	1,262 (82%)
May	1,754	1,455 (83%)
<u>June</u>	<u>1,685</u>	<u>1,386 (82%)</u>
Totals	17,959	14,598 (81%)
<u>Total Lump Sums</u>		
FY'90	18,155	15,386 (85%)
FY'89	14,704	12,177 (83%)
1984		9,369

Claims For Review Filed

	<u>FY'90</u>	<u>FY'89</u>	<u>FY'88</u>
Pre 11/1/86 Inj.			
1st Half	112	88	201
2nd Half	115(227)	112(200)	149(350)
Post 11/1/86 Inj.			
1st Half	117	146	43
2nd Half	122(239)	131(277)	104(147)
Total	465	477	497
Decisions Issued	79	120	192
Memoranda of Disposition	92	110	210
Rev. Board Decisions Appealed	7	10	29
Lump Sums of Cases on Appeal to Rev. Brd.	70	85	

APPENDIX M

Legislation Enacted In Fiscal Year 1990

Chapter 341 of the Acts of 1989 Enacted August 15, 1989

Section 82. Subsection (1) of section 25C of chapter 152 of the General Laws, as appearing in section 10 of chapter 691 of the acts of 1987, is hereby amended by striking out, in line 5, the word "or and inserting in place thereof the following words:- of.

Chapter 455 of the Acts of 1989 Enacted October 27, 1989

Chapter 40 of the General Laws amended
Section 13C. In any city or town which accepts the provisions of this section that has elected to self insure its worker's compensation may establish reserves to pay worker's compensation claims until said claims are fully paid. Said claims reserves shall be segregated by fiscal year and all funds so reserved shall be managed by designated fiscal officer of such city or town. Any funds remaining after all claims are paid for a particular year, may be placed in another fiscal year's claim reserve fund, if needed, or returned to general funds. Costs of reinsurance, if used, and outside claims and safety services may be disbursed from said funds.

Chapter 529 of the Acts of 1989 Enacted November 17, 1989

An Act relative to the filing requirements for regulations adopted by certain state agencies.

Chapter 565 of the Acts of 1989 Enacted November 29, 1989

An Act further regulating certain effective dates in the workers' compensation law.

Notwithstanding the provisions of section two A of chapter one hundred and fifty-two of the General Laws, section sixty-five of said chapter one hundred and fifty-two shall apply to an injury occurring on or after December tenth, nineteen hundred and eighty-five, except said section sixty-five shall apply to an injury for which compensation is payable under section thirty-four B and thirty-five C of said chapter one hundred and fifty two, regardless of the date of such injury.

Chapter 653 of the Acts of 1989
Enacted January 4, 1990

Section 97. Subsection (2) of section 65 of chapter 152 of the General Laws, as appearing in the 1988 Official Edition, is hereby amended by inserting after the first sentence the following two sentences:- The reasonable and necessary costs of representing the Workers' Compensation Trust Fund may be paid out of said trust fund. These costs include, but are not limited to, the taking of depositions, the hiring of private investigators, and filing and service of summons and subpoenas and other associated court costs, the retention of outside legal counsel, and the hiring of various medical providers.

Chapter 154 of the Acts of 1990
Enacted August 2, 1990

Section 31 amended Chapter 151A §46 by adding, in part the following:

(c) The department[The Department of Employment and Training] shall disclose, upon request, such information in the following circumstances:
.....to the commissioners of public welfare, revenue, veterans' services, medical security and industrial accidents, information necessary in the performance of their official duties;

APPENDIX N

House #2070

By Miss Travinski of Southbridge, petition of Marilyn L. Travinski for legislation to make certain changes in the workers' compensation law. Commerce and Labor

Section 1. Subsection (1) of section 11 of chapter 23E of the General Laws, as appearing in the 1988 Official Edition, is here by amended by striking out the last sentence.

Section 2. Subsection 1 of section 1 of chapter 152 of the General Laws, as appearing in the 1988 Official Edition, is hereby amended by striking out in the third sentence, lines 19 and 20 the word "insured".

Section 3. Subsection 6 of section 1 of chapter 152 of the General Laws, as appearing in the 1988 Official Edition, is hereby amended by adding after the word "of" in line 106 the word "a".

Section 4. Subsection 7A of section 1 of chapter 152 of the General Laws as appearing the 1988 Official Edition, is hereby amended by striking out in line 128 the word "in" and inserting in place thereof the word:--is.

Section 5. Section 25E of chapter 152 of the General Laws, as appearing in the 1988 Official Edition, is hereby amended by adding after the word "commissioner" in line 4 the words:--
-of insurance.

Section 6. Section 25K of chapter 152 of the General Laws, as appearing the 1988 Official Edition is hereby amended by striking out in line 238 the word "terminate" and inserting in place thereof the word: --terminated.

Section 7. Section 25R of chapter 152 of the General Laws, as appearing in the 1988 Official Edition, is hereby amended by striking out in line 10 after the word "approve" the word "of" and inserting in place thereof the word:--or, and by striking out at the beginning of line 24 the word "in" and inserting in place thereof the word:--an.

Section 8. Section 26A of chapter 152 of the General Laws, as appearing in the 1988 Official Edition, is hereby amended by striking out after the word "chapter" the phrase, "nor shall the insurance company be relieved from making payment to the commonwealth under section sixty-five".

Section 9. Section 32 of chapter 152 of the General Laws, as appearing in the 1988 Official Edition, is hereby amended by inserting in line 9 after the word "death" the words:--or from whom, at the time of her death, the department shall find the husband was living apart for justifiable cause or because she had deserted him. The findings of the department upon the questions of such justified cause and desertion shall be final.

Section 10. Section 52C of chapter 152 of the General Laws, as appearing in the 1988 Official Edition, is hereby amended by striking out in lines 22 and 23 the words "commissioner of administration" and inserting in place thereof the words:--secretary of administration and finance.

Section 12. Section 65B of chapter 152 of the General Laws, as appearing in the 1988 Official Edition, is hereby amended by striking out in line 12 the words "section eight" and inserting in place thereof the words:--section eleven C.

Section 13. Section 65M of chapter 152 of the General Laws, as appearing in the 1988 Official Edition, is hereby amended by striking out in line 2 the word "division" and inserting in place thereof the word:--department.

Section 14. Subsection two of section 53A of chapter 152 of the General Laws, as appearing in the 1988 Official Edition is hereby amended by striking out in lines 15 and 17 the word "department" and inserting in place thereof the word:--division.

Section 15. Subsection eight of section fifty-three A of chapter 152 of the General Laws, as appearing in the 1988 Official Edition, is hereby amended by striking out in line 75 the word "or" and inserting in place thereof the word:--of.

Section 16. Sections 52B, 55, 60C, 60D, 61 and 62 of chapter 152 of the General Laws, as appearing in the 1988 Official Edition, is hereby amended by striking out the word "workmen's" before the terms "compensation insurance" in each section and inserting in place, thereof the word:--workers'.

APPENDIX O

ADVISORY COUNCIL POSITIONS

March 26, 1990

The Honorable Lois Pines
Senate Chair
Commerce and Labor Committee
State House - Room 421
Boston, Massachusetts 02108

The Honorable Marilyn L. Travinski
House Chair
Joint Commerce and Labor Committee
State House - Room 43
Boston, Massachusetts 02108

RE: Proposed Legislation in the Joint Commerce and Labor
Committee-Spring 1990

Dear Senator Pines and Representative Travinski:

The Advisory Council, at its last meeting reviewed the following bills currently before your committee in compliance with our charge under the statute. As a result of our review, we would like to offer the following:

Senate Bills

Senate 57

The Council does not support this bill as proposed.

Senate 66

The Council does not support this bill as proposed.

Senate 67

The Council does not support this bill as proposed. We do not believe that the proposed bill would accomplish the intent of the law.

Senate 68

The Council does not support this bill as proposed.

Senate 73

The Council does not support this bill as proposed.

Senate 74

The Council took no position on this bill at this time pending additional research as to how this legislation would operate.

Senate 76

Our position on each of these bills was to research them further to ensure clarity and consistency. This was due to its possible effects on staffing and because the scope of review was one of the core reforms of 1985. The Council has voted general support for the concept and note that (S1894, S97, H1418, H3659, S76) all attempt to resolve the same problem.

Senate 77

The Council does not support this bill as proposed.

Senate 80

The Council does not support this bill as proposed.

Senate 81

The Council felt that this bill as proposed could be difficult to implement and therefore could not support it.

Senate 83

The Council takes a neutral position on this bill.

Senate 88

The Council took a neutral position on this bill.

Senate 97

With respect to this bill, the Council does support some of the concepts contained therein, but in terms of the complete proposal, the Council did not take a position on the bill. The support for some of these concepts is related to ongoing research into some of the issues raised by this bill, but is not related to the actual proposed language. The first phase of our audit of the system indicated that attorney fees were detrimental to the process.

The Council supports the concept of providing administrative judges with the authority to reduce attorney fees where appropriate. We are in the process of conducting further research into the friction costs of the system and will be looking at the attorney fees at the various levels of the process. We believe that the amounts should be coherent and conducive to an equitable and expeditious resolution of disputed matters. We also hope with our

ongoing research to explore how to fully utilize the conciliation process and to make lump summing more efficient and not a detraction from the Administrative Law Judge's primary responsibility. The research report is due June 30 and will be shared with the committee.

The Council also voted to support the AIM concern of providing quality medical treatment. It is also currently funding a study of medical access. That report is due June 30, as well and will be shared. The Council felt it inappropriate to vote on the specifics of the AIM bill pending the receipt of the research. We did not discuss the benefit provisions of the bill.

Senate 103

The Council, in light of the fact that it is unclear what this bill is intended to accomplish, and due to the fact that for public employees in particular, this area of the law is extremely unclear, took a neutral position on this bill.

Senate 114

The Council does not support this bill as proposed.

Senate 119

The Council supports the concept of this bill.

Senate 120

This bill was not reviewed by the Council at its 3/14/90 meeting.

House Bills

House 164

The Council supports this bill.

House 165

The Council took no position on this bill. As a part of its last meeting a subgroup was established to explore all aspects of the current Second Injury Fund since the DIA indicated its concern that managing and funding a Second Injury Fund might present far more problems than solutions to the issue of encouraging hiring employees with pre-existing medical conditions. This subgroup will also discuss this bill.

House 166

This bill was not reviewed by the Council. However, the Council has expressed support for House 2069.

House 310

The Council does not support this bill as proposed.

House 508

The Council does not support this bill as proposed.

House 1472

The Council supports keeping the backlog judges until the backlog is finished. The Council is not opposed to an appropriate number of judges, however we believe that the current party affiliations of the "backlog judges" would not permit the mathematical requirement to be met.

House 1488

See Senate 97

House 1660

The Council does not support this bill as proposed. We have contracted for a study on medical access which we hope might address some of the issues raised by this bill.

House 1661

The Council supports the concept of this bill.

House 1666

This bill was not reviewed by the Council at its 3/14/90 meeting.

House 1841

The Council does not support this bill.

House 1846

The Advisory Council could not support this bill unless it was perfectly clear that the Public Employer Trust Fund, which was not designed for such payments, would not be put at risk.

House 2069

The Council supports this bill.

House 2070

The Council supports this bill.

House 2416

The Council took a neutral position on this bill.

House 2601

The Council took a neutral position on this bill.

House 2602

The Council took a neutral position on this bill.

House 2603

The Council took a neutral position on this bill.

House 2604

The Council took a neutral position on this bill.

House 2605

The Council's action is to support this bill as the clarification appears necessary to meet the intent of the 1985 changes.

House 2621

The Council does not support this bill as proposed.

House 2944

The Council does not support this bill as proposed.

House 3655

The Council does not support this bill as proposed.

House 3656

The Council felt this bill needs further study to determine if the issue impacts other industries.

House 3658

The Council does not support this bill. COLAs are already a part of the statute.

House 3659

See Senate 76

House 4151

The Council took no position on this bill.

House 4152

The Council supports sections one and two but does not support section three as proposed.

House 4713

This bill was not reviewed by the Council at its 3/14/90 meeting.

House 4717

This bill was not reviewed by the Council at its 3/14/90 meeting.

We thank you both, and all the other Committee members for your time. Please do not hesitate to contact us if we can be of any assistance in this, or any other matter.

Sincerely,

Linda L. Ruthardt
Chairman

cc: Advisory Council Members
Commissioner Joel Pressman

ADVISORY COUNCIL TESTIMONY

March 26, 1990

STATEMENT BEFORE THE JOINT COMMERCE AND LABOR COMMITTEE

Good morning. My name is Linda Ruthardt and I am the chairman of the Massachusetts Workers' Compensation Advisory Council. I wish to thank you for the opportunity to make a few brief remarks today on behalf of the Advisory Council.

The Advisory Council has reviewed all the bills available to it which are before the Joint Committee on Commerce and Labor. The Council has indicated its position on each of these bills on a separate document, and I will not review these positions here. I do, however, wish to emphasize some outstanding concerns which the Advisory Council respectfully submits for your attention.

Last year, in the first phase of a comprehensive audit of the workers' compensation system funded by the Advisory Council, Peat Marwick Main & Company identified a number of problems in the system. These and other weaknesses in the system continue to demand resolution.

One problem cited in the auditor's report is the role of attorney's fees in complicating the claims flow process within the Department of Industrial Accidents. Another problem identified by the auditor is the need for improvement in the day to day operation of the Department. Additionally, the audit found lump sum procedures to often be untimely and inconsistent, and it concluded that the system does not adequately discourage lump sum settlements. The audit also pointed to the inadequate number of Administrative Law Judges for the existing workload, and this was reiterated by the Advisory Council in its recommended budget for FY'91 for the Department of Industrial Accidents, which called for an additional Administrative Law Judge position. We hope that some improvements may be made in this process so that the Reviewing Board can dedicate its valuable time to the issues of law confronting it.

Two additional issues of concern to the Advisory Council deserve mention. The operation of the Second Injury Fund is effectively nonexistent, with no reimbursements being made from the Fund since its effective date of November 1, 1988. In this, Massachusetts is virtually alone. All other states, as well as Washington D.C., Guam and the Virgin Islands, have operable Second Injury Funds.

The second issue demands our immediate and full attention. The Advisory Council has heard reports for some time of injured workers experiencing difficulty in receiving expeditious medical treatment for their injuries. The Advisory Council is not certain of the extent of this problem or its causes, but it is presently funding a second phase of research which will hopefully provide more information on the issue. We will be happy to share our information with you when the study is complete.

I don't wish to leave you with the impression that the Advisory Council believes that the new workers' compensation system is no better than that which preceded the reform. Progress has definitely been made. However, for the law to work effectively, the statutory timeframes must be met and delays must be eliminated.

I would like to conclude by thanking all members of the Committee for their energetic efforts on behalf of the workers' compensation system. I also wish to thank Representative Travinski for her support for the workers' compensation system during her tenure, and I wish her additional success in her future endeavors.

Again, on behalf of the entire Advisory Council, I sincerely thank you for this opportunity to share our concerns with you.

APPENDIX P

MASSACHUSETTS W.C. CLASSIFICATION	CODE	1987 RATE	1988 RATE	% CHANGE 87 - 88	1989 RATE	% CHANGE 88 - 89	% CHANGE 87 - 89	1990 RATE	% CHANGE 89 - 90	% CHANGE 87 - 90
Boiler Installation or Repair - Steam	3726	\$ 9.65	\$14.33	48%	\$19.07	33%	98%	\$25.34	33%	163%
Building Moving	5703	\$19.66	\$29.21	49%	\$35.49	21%	81%	\$44.18	24%	125%
Carpentry - Cabinet Interior Trim & Floors	5437	\$ 4.77	\$ 7.08	48%	\$ 9.42	33%	97%	\$12.04	28%	152%
Carpentry - N.O.C	5403	\$19.00	\$28.23	49%	\$26.89	-5%	42%	\$30.31	13%	60%
Carpentry - Private Residences	5645	\$ 8.83	\$12.98	47%	\$12.60	-3%	43%	\$14.16	12%	60%
Construction - in construction of dwellings - not exceeding three stories in height	5651	\$ 8.83	\$12.98	47%	\$12.60	-3%	43%	\$14.16	12%	60%
Clerical Employees	8810	\$.25	\$.31	24%	\$.29	-7%	16%	\$.39	34%	56%
Concrete or Cement Work - Floors, driveways, yards or sidewalks	5221	\$ 5.85	\$ 8.69	49%	\$11.56	33%	98%	\$15.36	33%	163%
Concrete Construction - Bridges or Culverts	5222	\$14.78	\$21.96	49%	\$29.22	33%	98%	\$34.42	18%	133%
Concrete Construction - N.O.C	5213	\$13.33	\$19.80	49%	\$25.38	28%	90%	\$33.73	33%	153%
Conduit Construction	6325	\$ 9.71	\$14.42	49%	\$15.48	7%	59%	\$18.04	17%	86%
Contractors - Executive Supervisors - not in immediate charge of construction or erection work	5606	\$ 4.81	\$ 5.41	12%	\$ 5.94	10%	23%	\$ 6.29	6%	31%
Contractors' Permanent Yards	8227	\$ 2.73	\$ 4.05	48%	\$ 5.39	33%	97%	\$ 6.98	29%	156%

MASSACHUSETTS W.C. CLASSIFICATION	CODE	1987 RATE	1988 RATE	% CHANGE 87 - 88	1989 RATE	% CHANGE 88 - 89	% CHANGE 87 - 89	1990 RATE	% CHANGE 89 - 90	% CHANGE 87 - 90
Door, Door Frame or Sash Erection - Metal	5102	\$ 8.29	\$12.31	48%	\$16.38	33%	98%	\$16.23	-1%	96%
Electric Light or Power Line Construction	7538	\$ 4.41	\$ 6.55	49%	\$ 8.71	33%	98%	\$11.57	33%	162%
Electric Wiring within Buildings	5190	\$ 3.64	\$ 4.99	37%	\$ 4.99	0%	37%	\$ 6.21	24%	71%
Elevator Erection or Repair	5160	\$ 5.43	\$ 6.77	25%	\$ 5.63	-17%	4%	\$ 6.48	15%	19%
Excavation and Grading of Land - N.O.C.	6217	\$ 5.54	\$ 8.23	49%	\$ 9.76	19%	76%	\$ 9.34	-4%	69%
Gas or Water Mains or Connections	6319	\$ 7.85	\$ 9.06	15%	\$ 7.53	-17%	-4%	\$ 8.89	18%	13%
Glaziers - away from shop	5462	\$ 8.74	\$12.98	49%	\$17.27	33%	98%	\$21.21	23%	143%
Iron, Brass or Bronze Work - ornamental - erection within buildings	5102	\$ 8.29	\$12.31	48%	\$16.38	33%	98%	\$16.23	-1%	96%
Iron or Steel Erection - erecting iron or steel frame structures	5040	\$32.06	\$47.22	47%	\$62.84	33%	96%	\$83.51	33%	160%
Iron or Steel Erection - iron or steel frame structures not riveted or welded and not over two stories in height	5059	\$30.28	\$37.63	24%	\$50.08	33%	65%	\$48.66	-3%	61%
Iron or Steel Erection - metal bridges	5040	\$32.06	\$47.22	47%	\$62.84	33%	96%	\$83.51	33%	160%

[illegible]

MASSACHUSETTS W.C. CLASSIFICATION	CODE	1987 RATE	1988 RATE	% CHANGE 87 - 88	1989 RATE	% CHANGE 88 - 89	% CHANGE 87 - 89	1990 RATE	% CHANGE 89 - 90	% CHANGE 87 - 90
Roofing - Built-up - including Yard Employees - Drivers	5547	\$21.29	\$31.63	49%	\$42.09	33%	98%	\$39.19	-7%	84%
Roofing - N.O.C. - including Yard Employees - Drivers	5545	\$55.36	\$82.26	49%	\$86.25	5%	56%	\$79.41	-8%	43%
Salesman	8742	\$.65	\$.78	20%	\$.83	6%	28%	\$.86	4%	32%
Sand or Gravel Digging	4000	\$ 6.28	\$ 6.65	6%	\$ 7.49	13%	19%	\$ 9.19	23%	46%
Sewer Construction - all operations	6306	\$ 7.89	\$11.04	40%	\$12.54	14%	59%	\$12.56	0%	59%
Sheet Metal Work Erection - shop & outside	5538	\$ 7.63	\$11.28	48%	\$10.81	-4%	42%	\$13.85	28%	82%
Snow Plowing - Street Cleaning	9402	\$ 6.83	\$ 5.93	-13%	\$ 5.42	-9%	-21%	\$ 7.43	37%	9%
Street or Road - Paving or Repairing	5506	\$13.45	\$17.44	30%	\$16.40	-6%	22%	\$21.79	33%	62%
Street or Road - Subsurface work	5507	\$ 4.31	\$ 4.81	48%	\$ 9.50	33%	98%	\$12.62	33%	162%
Tile, Stone or Mosaic work	5348	\$ 5.88	\$ 8.73	48%	\$ 9.94	14%	69%	\$13.21	33%	125%
Truckmen - N.O.C.	7219	\$ 8.48	\$11.60	37%	\$13.76	19%	62%	\$18.85	37%	122%
Wrecking or demolition of Buildings or Structures	5701	\$27.54	\$40.92	49%	\$49.11	20%	78%	\$65.27	33%	137%

APPENDIX Q

MASSACHUSETTS W.C. CLASSIFICATION	MASS. CODE	CONN. (AR*)	MAINE (VOL./APA)	NEW HAMPSHIRE	RHODE ISLAND(AR)	MASS.
Boiler Installation or Repair - Steam	3726	20.52	24.14/ 22.52	14.78	25.49	25.34
Building Moving	5703	62.74	60.66/ 56.59	37.86	58.37	44.18
Carpentry - Cabinet Interior Trim & Floors	5437	23.99	11.70/ 10.90	9.68	9.40	12.04
Carpentry - N.O.C.	5403	30.70	41.12/ 38.36	18.51	16.25	30.31
Carpentry - Private Residences	5645	19.62	11.89/ 11.09	11.02	12.29	14.16
Construction - in construction of dwellings - not exceeding three stories in height	5651	22.00	13.00/ 12.13	15.51	20.48	14.16
Clerical Employees	8810	.42	.47/ .44	.35	.52	.39
Concrete or Cement Work - Floors, driveways, yards or sidewalks	5221	17.90	11.78/ 10.99	13.21	21.76	15.36
Concrete Construction - Bridges or Culverts	5222	31.21	30.81/ 28.74	15.73	33.84	34.42
Concrete Construction - N.O.C.	6325	7.28	17.28/ 16.10	9.98	17.26	33.73
Conduit Construction	6325	7.28	17.28/ 16.10	9.98	17.26	18.04
Contractors - Executive Supervisors - not in immediate charge of construction or erection work	5606	7.05	4.04/ 3.77	2.27	6.80	6.29

*AR = Assigned Risk

MASSACHUSETTS W.C. CLASSIFICATION	MASS. CODE	CONN. (AR*)	MAINE (VOL./APA)	NEW HAMPSHIRE	RHODE ISLAND(AR)	MASS.
Contractors - Permanent Yards	8227	11.16	7.85/ 7.32	4.77	8.07	6.98
Door, Door Frame or Sash Erection - Metal	5102	20.01	18.72/ 17.46	11.94	13.36	16.23
Electric Light or Power Line Construction	7538	45.03	31.76/ 29.63	34.04	32.47	11.57
Electric Wiring within Buildings	5190	10.48	8.98/ 8.38	5.16	8.20	6.21
Elevator Erection or Repair	5160	12.27	12.57/ 11.72	8.23	10.97	6.48
Excavation and Grading of Land - N.O.C.	6217	15.08	17.72/ 16.53	12.90	17.01	9.34
Gas or Water Mains or Connections	6319	14.97	23.03/ 21.48	19.31	12.17	8.89
Glaziers - away from shop	5462	25.74	19.67/ 18.35	10.28	23.81	21.21
Iron, Brass or Bronze Work - ornamental - erection within buildings	5102	20.01	18.72/ 17.46	11.94	13.36	16.23
Iron or Steel Erection - erecting iron or steel frame structures	5040	60.37	55.81/ 52.06	31.55	102.92	83.51
Iron or Steel Erection - iron or steel frame structures not riveted or welded and not over two stories in height	5059	48.49	63.16/ 58.92	53.70	95.39	48.66
Iron or Steel Erection - metal bridges	5040	60.37	55.81/ 52.06	31.55	102.92	83.51

MASSACHUSETTS W.C. CLASSIFICATION	MASS. CODE	CONN. (AR*)	MAINE (VOL/APA)	NEW HAMPSHIRE	RHODE ISLAND(AR)	MASS.
Iron or Steel Erection - N.O.C.	5057	31.51	61.67/ 57.53	16.57	53.16	48.66
Iron or Steel Works - Shop - Structural	3030	46.43	17.16/ 16.01	16.33	25.26	21.44
Iron or Steel Works - Shop - Ornamental	3040	16.95	14.71/ 13.72	12.78	18.94	19.56
Iron or Steel Works - Shop - Decorative	3041	10.53	12.52/ 11.68	8.44	13.66	10.81
Landscaping Gardening	0042	13.31	11.38/ 10.62	9.14	15.41	11.85
Lathing	5443	18.31	14.30/ 13.34	11.62	14.85	15.19
Masonry - N.O.C.	5022	33.75	20.75/ 19.36	14.47	19.71	23.65
Millwright Work - N.O.C.	3724	17.89	20.26/ 18.90	10.36	13.47	12.00
Painting, Decorating or Paper Hanging - Interior work	5474	21.07	20.65/ 19.26	13.26	23.58	14.05
Painting Metal Bridges Shopmen & Drivers	5037	74.97	87.59/ 81.66	75.20	75.51	69.27
Pile Driving	6003	50.57	46.38/ 43.24	52.73	40.51	26.22
Plastering - N.O.C.	5480	25.19	20.89/ 19.49	18.31	19.85	15.99
Plumbing - N.O.C.	5183	11.93	13.15/ 12.27	9.06	6.19	9.21

MASSACHUSETTS W.C. CLASSIFICATION	MASS. CODE	CONN. (AR*)	MAINE (VOL./APA)	NEW HAMPSHIRE	RHODE ISLAND(AR)	MASS.
Rigging - N.O.C. - Including drivers	9534 9530	19.52	18.96/ 17.69	14.67	14.25	N/A
Roofing - Built-Up - Including Yard Employees - Drivers	5551 5547	61.10	47.30/ 44.12	60.55	41.25	39.19
Roofing - N.O.C. - Including Yard Employees - Drivers	5551 5545	61.10	47.30/ 44.12	60.55	41.25	79.41
Salesman	8742	1.03	1.61/ 1.50	.92	1.40	.86
Sand or Gravel Digging	4000	10.31	14.82/ 13.82	10.15	13.25	9.19
Sewer Construction - all operations	6306	33.18	20.09/ 18.74	10.11	18.93	12.56
Sheet Metal Work Erection - shop & outside	5538	18.27	14.40/ 13.43	11.19	8.97	13.85
Snow Plowing - Street Cleaning	9402	16.71	8.42/ 7.85	8.37	10.87	7.43
Street or Road - Paving or Repairing	5506	37.50	17.24/ 16.08	15.64	19.29	21.79
Street or Road - Subsurface Work	5507	32.18	26.84/ 25.04	16.06	15.01	12.62
Tile, Stone or Terrazzo Work - Interior Construction Work only	5348 5343	11.62	14.43/ 13.46	8.96	12.24	13.21
Truckmen - N.O.C.	7219	19.52	18.96/ 17.69	14.67	14.25	18.85

FOOTNOTES

¹Circular letter #250 was essentially superseded by circular letter #244, which was issued in July 1990 after the close of FY'90.

²These proposed rules included changes to the following sections of 452 Code of Massachusetts Regulations (CMR): 1.02 Definitions; 1.04 Insurer's Notice of Refusal to Pay Compensation; 1.05 Payment of Compensation; 1.06 Modification, Discontinuance or Suspension of Compensation; 1.09 Assignment to Division of Dispute Resolution; 1.11 Hearings; 1.15 Reviewing Board; 1.24 Recoupment of Overpayment; 2.02 Adjusted Benefits for Permanent and Total Disabilities; 3.06 Reimbursement of Cost of Living Adjustments; and 3.07 Reimbursement of Benefits for Second Injuries.

³Other than information published in previous Advisory Council Annual reports, we are aware of no other source of information on the level of claim activity by employees of uninsured employers. We receive many requests for data in this area. As a result, some historical data on the number of claims is outlined below. The fund covers injuries after 12/10/85 and first payments were made in January of 1987. The initial assumption for the purpose of the assessment process anticipated 10-20 claims per year. However, there was no way to accurately estimate the number. Since this activity had both criminal and civil sanctions, there was no realistic mechanism to gauge the true number. Information on civil suits was also unavailable. As of April of 1987, 130 claims had been filed with the DIA. By the Fall of 1987, 15-20 claims a week were being filed. Other figures illustrating the growth in claims are as follows:

- 9/15/87 - Claims filed	213	
- 10/16/87 - Claims filed	249	
Claims paid	53	
\$370,652.57 paid out		
- 3/8/88 - Claims filed	370	
\$963,977.72 paid out (approx. \$7,900 medical)		
- 5/17/88 - Claims filed	398	
Claims denied (closed)	134	
Cases paid (closed)	76	
Cases paid (open)	62	
Cases pending	162	
- 10/7/88 - Claims paid	177	
Payments discontinued	110	
Payments continuing	67	
FY'88 Average weekly wage		\$191.81
Average number claimants weekly		50
7/1/89-10/1/89 Average weekly wage		\$204.62
Average weekly claimants weekly		64

Section 65 Expenses, 7/1/87 thru 5/20/88

	Amount	No.
Approved Lump Sums	\$ 80,700.12	6
Number Death Cases		3
Amt. Paid-Attorney Fees	95,406.64	
Total Spent by Fund		
on Compensation	784,714.66	
Medical Payments	124,633.18	
AccMed Cost	1,990.00	
Section 36 Payments	84,440.31	9
Total Claims Paid by Fund		143
Total Claimants Presently Receiving w/c		61
Total:	\$1,171,884.91	

⁴Section 65 (4)(c) states that if the balance of any of the funds at the end of the fiscal year exceeds 35% of the previous year's disbursements from that fund, the budget for that fund, for the purpose of calculating the fund assessment rate, shall be reduced by that portion of the balance in excess of the 35% of the previous year's disbursement. The disbursements and the corresponding 35% figures are as follows: Special Fund-\$13,961,549/\$4,886,542; Private Trust Fund-\$7,419,273/\$2,596,746; Public Trust Fund-\$889,481/\$311,318. Through fiscal year 1990 a total of \$31,143,229 has been expended by the Private Trust Fund and \$5,012,626 by the Public Trust Fund.

⁵In FY'89, in cases where descriptions were provided on the report, 60 listed the injury as heart condition and 15 listed asbestosis. FY'90 data indicated 30 with heart conditions and 3 with asbestosis. While the report only addresses fatalities, the numbers appear to support published reports which have concluded that many employees allegedly injured by asbestos exposures seek alternative remedies for their injuries.

It should also be noted that M.G.L. c.37, §7 requires medical examiners in their opinions to report to the DIA when the death of the employee was caused or related to the occupation of the deceased. No record of any such reports are on file at the DIA. In addition, §6 states that when a person has died from a disease resulting from injury or infection relating to occupation, any person with that knowledge should notify the medical examiner.

⁶For purposes of this analysis, the computer collects data and collates by a hierarchical structure by the sections of the law being claimed. The data for the claim are counted under the highest ranked category. For example, a claim listing benefits under sections 34, 13 & 30, and 7 would be counted under §34. A claim listing benefits due under sections 13 & 30 and 7 would be listed under §13 & 30. In this way, each matter is counted once.

⁷Some information is available on the success rate of resolving certain types of claims at conciliation. In claims where the injury category was "heart", 24.4% were closed at conciliation in FY'89 and 28.3% were closed in FY'90. There were similar totals for cases finished in these years.

For claims involving infections, 44.8% were closed in FY'89 and 45.2% in FY'90. In matters where the claim concerned a mental injury, the resolution rate was 18% in FY'89 and 26.3% in FY'90. Only 2 of the 332 cases were adjusted prior to conciliation in these years. In toxic claims, 33.8% were closed through conciliation in FY'89 and 25.8% in FY'90. The rest of these matters were referred to DDR. Of these injury types, only claims involving infections approached the average resolution rate.

In finished cases with a return to work date, the number of closed claims is much higher. For FY'89, 71.2% were closed, with 86.8% closed in FY'90. At least 20% of these matters were adjusted prior to conciliation.

Conciliation success rates can be ascertained, with some limitations, for cases (excluding reschedules) with a scheduled date during the fiscal year by the section of the law being claimed. Referral rates for the various types of requests remained fairly stable from FY'89 to FY'90, with the largest change in the 6 categories (claim, \$36, discontinuance, third party claim, \$37/37A, other) being 2%.

The percentage changes in employee claims for cases held rose 12% overall. There were some sections noted by DIA statistics that diverged from the average. Claims listed under §28 (willful misconduct by the employer), dropped 15.8%. Claims for medical and attorney fees increased 75%, and \$8 penalties increased 46%. While \$8 claims were 10% higher than in FY'89, there were 10% more \$7 claims in FY'90. The reviewing board decision in Grant's Case may have been a factor in this change. Cases claiming benefits under §31, which are primarily average weekly wage issues, increased 37%. The decision in Barofsky's Case, while still on appeal, may impact this area of dispute.

⁸By way of comparison, the yearly totals for the previous three fiscal years are shown below.

	<u>1987*</u>	<u>1988</u>	<u>1989</u>
Referrals:	5,491	35,486	40,193
Contacts:	2,872	19,214	16,110**
Mandatory meetings:	185	2,703	2,984
Referrals to rehab:	73	1,066	1,598
IWRPs:	22	386	718
Placements:	9	171	252
Rehabilitations:	0	119	292

*FY'87 totals reflect only a six month period because the first referrals entered the system in January.

**Contacts declined in 1989 because only one full-time support person was available to make contacts for counselors during the year.

⁹Information on the average costs from the pre-1985 changes vary. One document from the Governor's Task Force subcommittee on benefits shows an average cost at \$2,350 per case. Meanwhile, a cost and savings analysis dated June 11, 1984 uses a figure of \$4,300.

¹⁰Totals of self-insurance licences since 1975:

1975	209	1983	193
1976	216	1984	175
1977	209	1985	162
1978	202	1986	156 (+ 6 subsidiaries)
1979	209	1987	131 (+ 19 subsidiaries)
1980	196	1988	120 (+ 72 subsidiaries)
1981	194	1989	123 (+ 84 subsidiaries)
1982	191	1990	123 (+ 70 subsidiaries)

¹¹By comparison, 48 applications were approved and 11 denied in FY'88. In FY'89, 44 were approved and 11 denied, and at that time there were 123 licences which, when subsidiaries were included, covered 207 employers.

¹²According to the DIA, the original conference schedule was set for 461 because the administration's original suggestion of 8 conferences a day was seen as unrealistic since cases did not have to be appealed at that time in order to go to hearing. All cases were automatically scheduled for a hearing unless both parties requested otherwise. It was not until subsequent changes to the law eliminating this format that it was possible to substantially increase the conference load without creating problems at the hearing level.

In addition, while the decision to have the same judge retain jurisdiction over a matter for both conference and hearing was disliked by some parties, this aspect of the statute has been well received since its implementation. Both the Massachusetts AFL-CIO and the Associated Industries of Massachusetts strongly supported this provision.

¹³Statistics in this category include both ongoing cases and matters recently closed. This report was run within two months of the close of the fiscal year and therefore many cases didn't have a disposition.

¹⁴The report which provides this information shows only those lump sums for which a lump sum request is filed. Matters which are referred for a lump sum at a point in the dispute resolution process are not included. Given the volume of lump sum activity, the total of just over 6000 on the report indicates that there are approximately twice as many matters which are referred for a lump sum during one of the various stages that are not captured as part of this report.

¹⁵This may be partially explained by the more detailed level of statistics provided by the DIA this year. For instance, the inclusion of rescheduled conferences, while small (1.3%), may deflate the approval rate if a case is rescheduled and later disposed of during the same fiscal year.

¹⁶This projection may have been still more accurate since the Commonwealth made no requests as of the FY'90 assessment, and in that projection a loading factor was included for that possibility.

¹⁷Information on the Fund taken from a document produced by the Governor's Task Force indicated the following:

	FY'83	FY'82	FY'81
Total dollars available	\$1,203,644.21	\$1,217,356.59	\$1,161,944.95
Expenditure	\$943,460.26	\$959,122.86	\$887,307.27
In Securities	\$247,000.00	\$247,000.00	\$217,000.00
Number of cases	121	150	147
Average claim paid	\$7,074.08	\$6,245.29	\$5,589.51
Median claim paid	\$4,500.00	\$4,000.00	\$4,000.00
Range of claims paid	\$200 - \$37,800	\$29 - \$48,500	\$60 - \$30,000

This data was compiled after comprehensive review and analysis of the individual invoices on file with the Second Injury Fund. Cost analysis of the proposed changes was difficult to calculate because the Fund was regularly depleted midway through the fiscal year and was always 2 to 3 years behind in payments. Consequently, many eligible insurers didn't use the fund. In addition, \$22,234 in interest was earned in FY'83 and \$54,633 was earned in FY'84.

¹⁸This information is set forth on pages 200-202 of the November 17, 1989 rate filing submitted to the Division of Insurance by the Workers' Compensation Rating and Inspection Bureau of Massachusetts (WCRIB).

¹⁹See Assessment of the Department of Industrial Accidents and Workers' Compensation System, pp. V-II and Exhibits VII-4 and VII-5. (June 1989), a study prepared for the Advisory Council by Peat Marwick Main & Co.

²⁰The DIA report, Reforming the System (1989), listed 14,103 claims in 1984. There were 21,817 reported entries in 1986, with 17,402 claims and 4,415 complaints. The reported number of referrals to conciliation was 29,618 in 1987, 28,332 in 1988, 34,858 in 1989, and 37,420 in 1990.

²¹Costs have also been difficult to predict. For instance, the projected costs and savings of the 1985 amendments were reviewed at various times during the legislation's discussion stages. Projections varied widely, often depending on the stage at which the bill was situated. Task Force documents variously estimated: increased costs of \$132 million/increased savings of \$56 million; increased costs of \$38 million/increased savings of \$65.5 million; increased costs of \$47 million; increased savings of \$69.5 million; increased costs of \$61.6 to \$96.5 million/increased savings of \$77.5 million; and increased costs of \$49 million/increased savings of \$64 million.

²²In addition, in looking at disposable income available to workers, a trend toward cost sharing of medical insurance has diminished purchasing power.

²³ Donald DiCarlo, Risk and Insurance p. 14, June/July 1990.

²⁴See "Workers' Compensation: Coverage, Benefits, and Costs 1986 and 1987", in The Social Security Bulletin, March 1989, pp.34-41 and April 1990, pp.2-11.

²⁵See Dicarlo, Donald, Risk and Insurance, June/July 1990, p.14. This article estimates that the medical portion of losses has increased about 10% since the mid-1970's. Statistics published by the Social Security Bulletin, Social Programs in the United States, v. 49, No. 1, January 1986, pp.5 and 29, show the percentage of medical paid of total benefits: 1940-37.1%; 1950-32.5%; 1955-35.5%; 1960-33.5%; 1965-33%; 1970-34.6%; 1975-30.7%; 1980-28.9%; 1981-27.5%; 1982-29.8%; 1983-30.5%. The Social Security Bulletin of April 1990, v.53, No.4, p.5, Workers' Compensation: Coverage, Benefits and Costs, by William J. Nelson, Jr., lists medical payments as 34% in 1985, 35% in 1986, and 36% in 1987. A study published in the Indiana Medical and Surgical Journal by Leavitt in the early 1970's found that medical costs were about 1/3 of workers' compensation payments, which is borne out by the Social Security Bulletin. One-third of those costs were associated with treatment, hospitals and doctors. One possible estimate of the amount that goes to physicians may be arrived at by using figures from the administration of Chapter 351 of the Acts of 1986, whereby the Massachusetts Rate Setting Commission administers the Medical Malpractice Adjustment. The amounts set forth in 114.3 CMR 42.00 would indicate a revenue estimate of \$62,494,286 for the adjustment period 7/1/88-6/30/89 and \$98,902,703 for the period 7/1/89-6/30/90. The May 25, 1990 Bulletin of The National Foundation for Unemployment and Workers' Compensation has a chart (p.1) of selected cost measures which indicates an increase of about 110% in CPI Medical care and 50% in wages for workers' compensation for the ten year period 1978-1987.

²⁶This figure is gleaned from a number of sources. The Annual Statistical Bulletin of the National Council on Compensation Insurance, 1989 edition, page 326, lists Massachusetts as having the lowest percentage, 21.4%, of incurred benefits going to medical out of the 46 jurisdictions listed for the period of 7/84-6/85. This excludes the effects of Chapter 572. At that time, the state's cost for temporary total benefits was the highest at 35.1% (the closest figure to it was 20.1% in Delaware). The average cost per case for medical was \$719, the eleventh lowest of the 46 jurisdictions listed. A recent report published by the Workers' Compensation Research Institute, Medical Cost Containment in Workers' Compensation, A National Inventory, by Leslie Boden, Joan DeFinis, and Charles Fleischman (November 1990), lists the national average for 1984 at \$751, which would put the \$719 total at about 4% less. Data for total market incurred losses in the state from the Workers' Compensation Rating and Inspection Bureau of Massachusetts, published in the Massachusetts Workers' Compensation Reform Act, as amended, 1990 edition, by Leonard Y. Nason and Richard A. Wall, by West Publishing, indicate on pages 780-782 that the percentage of medical was 21% in 1984; 21.6% in 1985; 20.2% in 1986; and 19.8% in 1987. The recent rate filing by the WCRIB of 11/2/90 indicates the renormalized weights of the trend factors in workers' compensation costs, post chapter 572, as 21.37% (page 209). Aggregate data for an NCCI trending method, compiled after the above referenced numbers, show losses, developed to the fifth report on page 297, as indicating the following percentages: 1984-21.9%; 1985-22.3%; 1986-21.6%; 1987-20.8%; and 1988- 21.7%.

²⁷See Medical Costs in Workers' Compensation by Boden, Leslie and Charles A. Fleishman. Cambridge, MA: Workers' Compensation Research Institute, p.14 1989.

²⁸The idea for this comparison comes from the John Burton Workers' Compensation Monitor, July/August 1990 volume at p.2. Timothy Schmidle, Associate Editor graciously provided assistance in an explanation of the chart. The Massachusetts figure comes from both the NCCI Annual Statistical Bulletin of 1989, with additions for subsequent rate approvals. The national figure is from the NCCI Annual Statistical Bulletin, p. 7, through the first nine months of 1989. The Burton Monitor article notes Florida with a cumulative increase of 133.5 from 1978-1990. Applying the latest figure from the recent average increase of 11.3% of 1/1/91, the comparable Massachusetts figure is 186.6%. If applied to rates requested (highest figure in any multiple filing) as noted by the WCRIB filing of 11/17/89 (p. 517) the cumulative requests between 1978--90 over the 1978 base amount to 543.7%.

²⁹William D. Hager, Loss Costs and Beyond, Best's Review, page 48, August 1990.

³⁰For an example of data from a different administrative and legislative perspective, see Georgia State Board of Workers' Compensation, Statistical Supplement, 1989-1990. This document notes that there were 41,737 accidents covering 3,587,438 lost work days as of August 1986. In addition, \$179,307,397 was spent on indemnity payments (average \$4,296) and \$193,954,886 was spent on medical payments. These figures cover 80% of the work incidents. The report also distributes injuries by nature of injury, body part, source of injury, county where injury occurred, age, sex and occupation of the employee, and industry.

³¹See Healthy Worker-Healthy Workplace: The Productivity Connection, Senate Committee On Industrial Relations, California Legislature, 1990.

³²Report to the Legislature on Health Care Costs and Cost Containment in Minnesota Workers' Compensation, Minnesota Department of Labor and Industries, p.iii, 1990. The same report, citing John F. Burton, Jr., "Benefits and Costs Continue to Climb Led by Health Care Payments in Workers' Compensation", in Workers' Compensation Monitor, (March/April 1990) states that between 1980 and 1987, general national health care expenditures rose 101.7%, while workers' compensation health care expenditures rose 150.5%.

³³Report to the Legislature on Health Care Costs and Cost Containment in Minnesota Workers' Compensation. Minnesota Department of Labor. March 1990.

³⁴ibid. pp. 40 and 44, citing "The Cost of Compensable Lower Back Pain" by Webster, Barbara S. and Stover Snook in The Journal of Occupational Medicine, vol. 32. no. 1, pp. 13-15.

³⁵See Medical Costs in Workers' Compensation, by Boden, Leslie and Charles A. Fleishman, Workers' Compensation Research Institute, Cambridge, MA. 1989.

³⁶See The Lynch Ryan Report, v. 1, Special Edition, p.1, 1990.

37 This was not dissimilar to information received by the Council in July of 1987. At that time, based on a \$100 per day fine, employers would have been assessed at least \$10.8 million for the period from January 1, 1987 to May 1, 1987. Such assessments were not made. The entire issue was reconsidered, and now the fines are not assessed daily, pursuant to 452 CMR 103 (3).

38 For example, in one four month period numbers supplied to the Council by the DIA indicated that one person mailed out 179 decisions.

39 This analysis was conducted by the DIA and provided to the Advisory Council by Deputy Director of Administration Walter Horn.