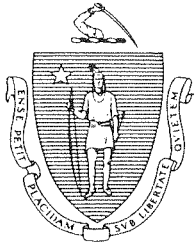




**MASSACHUSETTS WORKERS' COMPENSATION  
ADVISORY COUNCIL**

**FISCAL YEAR 1992  
ANNUAL REPORT**



MASSACHUSETTS WORKERS' COMPENSATION  
ADVISORY COUNCIL  
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JEANNE-MARIE BOYLAN  
CHAIRMAN  
EDWARD SULLIVAN, JR.  
VICE-CHAIRMAN

MATTHEW A. CHAFE  
EXECUTIVE DIRECTOR

August 1, 1993

Dear Reader:

Fiscal year 1992 marked a watershed for the Massachusetts workers' compensation system. Legislative reform in December of 1991 brought about a reorganization of the Department of Industrial Accidents, changes in workers' compensation insurance, reductions in benefits and benefit periods, modifications to health care, and many other far reaching and comprehensive reforms.

This report provides an overview of the Commonwealth's workers' compensation system from July 1, 1991 through June 30, 1992. It was prepared using information collected during the 1992 fiscal year by the Advisory Council staff. Because several Members and I were not associated with the Advisory Council during 1991 and 1992, this report does not provide the breadth of discussion nor the background of developments found in previous annual reports. Nevertheless, I am confident this report provides an accurate and thorough briefing of the major components of the workers' compensation system in Massachusetts as of June 30, 1992.

The late date on which this report has been issued is unfortunate. Nevertheless, it was prepared with celerity and issued at the earliest possible date given significant staffing changes at the Advisory Council over the past year.

I hope you find the Fiscal Year 1992 report interesting and useful. Please contact the Advisory Council with your questions, concerns and comments.

Sincerely,

A handwritten signature in cursive script that reads "Matthew A. Chafe".

Matthew A. Chafe  
Executive Director

FISCAL YEAR 1992  
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## 1. Introduction

This is the sixth Annual Report of the Massachusetts Workers' Compensation Advisory Council. The report reviews the Commonwealth's Workers' Compensation system during fiscal year 1992 (July 1, 1991 through June 30, 1992).

The 1992 fiscal year was an eventful period for the workers' compensation system and the Department of Industrial Accidents. With the passage of Chapter 398 of the Acts of 1991 midway through the year, the system was extensively reformed and significant organizational changes occurred within the agency. The most substantial changes are discussed in the body of this report.

The appointment of James Campbell as Commissioner of the agency in October, 1991 followed a lengthy period of organizational uncertainty regarding agency leadership. The Council is hopeful that immediate improvements can be made in the Commonwealth's workers' compensation system and the Department of Industrial Accidents, and it looks forward to working with the agency towards this end.

In this report, the Advisory Council has reviewed key developments in both the Department of Industrial Accidents and the Massachusetts workers' compensation system. It includes a discussion of the Chapter 398 reforms, the DIA's activities and its individual offices, the claims adjudication process, and developments in workers' compensation insurance. An outline of Chapter 398 is provided at the end of the report, along with several appendices.

## 2. Advisory Council

The Massachusetts Workers' Compensation Advisory Council was established in 1985 to monitor the workers' compensation system and make recommendations for its improvement. As an extension of the cooperative precedent set by the mid-1980's workers' compensation reform effort, the Council is comprised of representatives of the major constituencies in the workers' compensation system including business, labor, medical, legal, insurance and governmental leaders.

Ten voting members serve on the Council: five represent employers and five represent 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.

The Advisory Council meets on a monthly basis to review various issues concerning the Department of Industrial Accidents and the workers' compensation system. The Council held twelve regular meetings during the fiscal year, as well as three meetings to review candidates for Administrative Judge and Administrative Law Judge positions at the DIA, as per the Council's statutory responsibilities under c. 23E, §9.

There were several changes in Council membership during the year. Joseph Faherty of the Massachusetts AFL-CIO, whose term expired on June 25, 1991 served as Chair through October of 1991. John Marr, of Travelers' Insurance, Edward Sullivan, Jr., of SEIU Local 254, and John Gould of the Associated Industries of Massachusetts, were appointed to the Council in October. No appointment was made to the Chair position following Joseph Faherty's departure, and Vice Chair Doug Mure served as Acting Chair for the remainder of the fiscal year. A list of Council members, along with their statutory affiliations and term expiration dates, is provided in Appendix A.

### **3. Workers' Compensation Reform**

Reform of the workers' compensation system was an important priority during the past year. It was commonly perceived that sky rocketing workers' compensation costs would reach crisis proportions unless extensive changes were expeditiously implemented.

The Joint Commerce and Labor Committee began meeting with workers' compensation constituencies in the Spring of 1991 to gather information in preparation for a reform proposal. On November 5, the Committee released its bill. An alternative reform bill was subsequently submitted by the Governor on November 7. The Governor's bill was substituted on the Senate floor for the committee bill and released back to the House on November 25.

The House Ways and Means Committee attempted to adopt critical aspects of both bills and reported out House bill 6357 on December 9, 1991, which was later amended on the House floor as House 6377 on December 12. A conference committee was subsequently formed to negotiate a final bill, which was filed as House 6410 on December 18. The bill was passed and signed by the governor on December 23, 1991.

The reform law, Chapter 398 of the Acts of 1991, introduced institutional, procedural, and benefits changes to the workers' compensation system, and was implemented in coordination with Chapter 399, "An Act Establishing Certain Assessments."

To ensure the bill's immediate implementation, the Governor filed emergency declarations on December 24, 1991, thereby requiring immediate implementation.

Substantive sections of Chapter 398 apply to injuries after the bill's effective date. Sections involving claims and documentation, written offers, and arbitration took effect on February 1, 1992. Provisions involving impartial physicians and preferred provider arrangements took effect on July 1, 1992. An outline of the changes introduced by Chapter 398 is included on page 25.

#### 4. DIA Fiscal Year 1993 Budget

DIA's operating budget is funded from a Special Fund, a Private Employers' Trust Fund, and Public Employer's Trust Fund pursuant to c. 152, §65. Funding is received through annual assessments charged to employers. While DIA receives no funding from the Commonwealth's General Fund, legislative appropriations are required annually. The Advisory Council is required under c.23, §17, to review the annual operating budget of the Department of Industrial Accidents. The Council is also authorized to submit to the Secretary of Labor its own recommendation for the agency's total operating budget upon an affirmative vote of seven Council members.

The Advisory Council received a copy of the DIA fiscal year 1993 budget on January 8, 1992, and conducted a review at its monthly meeting on February 12, 1992. No recommendations were passed by the Council.

The DIA budget submission called for special fund expenditures of \$15,189,149. The budget projected 332 personnel positions allocated to the Special Fund and 17 positions to the Trust Fund. The Council was informed in January, 1992 that the fiscal year 1993 budget was to include funding for additional judges and support staff authorized by c. 398.

The FY '93 budget was executed by the legislature on July 10, 1992, and enacted into law on July 20, 1992. The DIA's appropriation was \$15,729,744, 18.1% greater than fiscal year 1992. A total of \$540,000 was added after the budget was sent to the Senate. The Council was later informed at its June meeting that the additional \$540,000 was to be used to establish medical protocols mandated by c.398 to be in place by January 1, 1993.

#### 5. Trust Funds

In addition to its administrative and adjudicatory responsibilities, the DIA has statutory and fiduciary responsibility to administer the Special Fund, the Private Employer Trust Fund and the Public Employer Trust Fund pursuant to c. 152, §65. In accordance with §65, the various funds are separately maintained by the Commonwealth's Treasurer.



The two trust funds are funded by assessments on both private and public employers. The assessment process spreads certain benefit costs among private employers who have complied with insurance mandates of the statute and public employers who have opted to accept the provisions of the law. These separate trust funds are used to provide reimbursements and payments for certain benefits set forth in c. 152, and are distinct from the Special Fund.

Funding for the operating expenses of DIA derives from employer assessments deposited into the Special Fund but is appropriated by the legislature. Additional revenues are generated through collection of fines, fees, and penalties set forth in the law.

**a. Special Fund**

Information on the Special Fund is shown in Table 1. As can be seen, the beginning balance on July 1, 1991 was more than \$650,000 greater than the ending balance on June 30, 1992. The total receipts of \$14,007,323 were slightly higher in FY'92 than the FY'91 receipts of \$12,573,994. Although the \$11,023,312 in assessments was more than \$2 million higher than the \$8,801,672 collected in FY'91, collections from both first report fines and interest were much lower than the previous year. In FY'91, late first report fines totaled \$890,330, compared to \$144,200 in FY'92. Income from interest in FY'92 came to \$323,960, while \$699,209 was collected in interest in FY'91. The total expenditures in FY'92 of \$14,665,963 were slightly greater than total FY'91 expenditures of \$14,590,062.

Table 1  
Special Fund - FY'92

Beginning Balance (7/1/91)		\$3,279,692
Assessments	11,023,312	
Filing Fees	2,511,501	
1st Report Fines	144,200	
Interest	323,960	
Section 7 Fines	4,000	
Section 14	350	
Total Receipts		\$14,007,323
 <u>Expenditures</u>		
Salary	8,616,722	
Fringe	2,331,860	
Nonpersonnel costs	3,104,131	
Indirect costs	613,250	
Total Expenditures		\$14,665,963
Ending Balance (6/30/92)		<u>\$2,621,052</u>

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**b. Public Trust Fund**

The Public Trust Fund began FY'92 with a balance of \$1,495,574 and ended with a balance of \$3,056,655. Assessments totaled \$4,896,637 in FY'92, compared to \$4,322,654 in FY'91. The expenditures of \$3,430,980 in FY'92 were lower than the FY'91 total of \$3,589,016. COLA payments in FY'92 were \$3,413,611, while they were \$3,485,966 in FY'91, and \$37 payments were \$16,628 in FY'92 and \$91,866 in FY'91. Receipts and expenditures for the Public Trust Fund appear in Table 2.

Table 2  
Public Trust Fund - FY'92

Beginning Balance (7/1/91)		\$1,495,574
Assessments	4,896,637	
Section 30H	1,875	
Interest	93,549	
Total Receipts		\$4,992,061
<u>Expenditures</u>		
Insurers		
COLAs	3,413,611	
Section 37	16,628	
OEVR Section 30H	741	
Total Expenditures		3,430,980
Ending Balance (6/30/92)		\$3,056,655

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On March 27, 1992, a formal agreement was signed with the Commonwealth of Massachusetts Public Employee Retirement Administration (PERA) in which DIA accepted \$3,908,738.25 as satisfaction for all uncollected assessments charged against the Commonwealth under c. 152 §65 and for uncollected referral fees under § 10 and § 11A, from July 1, 1987 through June 30, 1992. In turn, PERA accepted the same amount as satisfaction for reimbursements for cost of living allowance benefits owed PERA from the Public Employer Trust Fund pursuant to §65(2)(a) and §34B. It was further agreed that the Commonwealth would remain subject to and responsible for fines issued under §6 and for referral fees issued under §10 and §11A beginning July 1, 1991. The agreement did not require that PERA pay uncollected referral fees or late first report of injury fines.

The Council voiced concern about the effect that uncollected fines and fees may have had on assessments charged to private employers. Since c. 152 requires that the proceeds from any fine or fee be deposited in the §65 Special Fund, it is conceivable that employers were effectively forced

to offset the uncollected fees by paying higher assessments. §65 requires that if the balance of the special fund at the end of the fiscal year exceeds 35% of the preceding fiscal year's disbursements, then the budget (for the purpose of calculating the fund assessment rate) must be reduced by the excess. Hence, the proceeds from any fine or fee imposed affects the amount of money in the Special Fund, and excess funds could affect the rate of employer assessments. The Council expressed its concern that §65 funds be administered separately and that obligations incurred by one fund not be paid out of any other fund.

The Council recognized the difficulty of resolving questions of payments owed by PERA to the trust fund and special fund, and that the failure to collect payments predates the current administration.

#### C. Private Trust Fund

The Private Trust Fund had \$27,162,453 in total receipts and \$27,843,817 in total expenditures in FY'92. It began the fiscal year on July 1, 1991 with a balance of \$4,333,975 and ended on June 30, 1992 with a balance of \$3,652,611.

Assessments accounted for \$26,012,517 in receipts during FY'92, compared to \$14,120,932 in FY'91. The Fund was accredited with \$658,729 in interest in FY'92, compared to \$16,386 in FY'91. Receipts from stop work orders were down, from \$40,100 in FY'91 to \$28,600 in FY'92. Collections and expenditures for the Private Trust Fund in FY'92 appear in Table 3.

Of the FY'92 expenditures, the payment of \$19,627,352 for COLAs showed by far the greatest growth in comparison with FY'91 expenditures, when COLA payments totaled \$6,290,443.

Table 3  
Private Trust Fund - FY'92

Beginning Balance (7/1/91)		\$4,333,975
Assessments	26,012,517	
Interest	658,729	
\$30H	9,702	
Reimb. (Uninsured)	452,905	
Stop Work Order	28,600	
Total Receipts		\$27,162,453
<u>Expenditures</u>		
Claimants Uninsured		
\$34	2,959,303	
\$35	527,439	
\$31	113,973	
Lump Sum	1,255,442	
\$36	253,110	
COLA Adjustment	3,758	
Rehab		
Travel	15,296	
Medical	14,513	
Legal	17,253	
Books & Supplies	915	
Medical	1,497,815	
Legal	546,142	
Welfare Liens	64,370	
Burial Benefits	4,000	
Insurers		
COLAs	19,627,352	
\$37	575,652	
Tuition Legal	18,368	
Voc Rehab		
\$30H	18,700	
Travel	5,903	
Books	347	
Tuition	44,023	
Defense of the Fund		
Salary	54,577	
Fringe	15,968	
Medicaid Charge	860	
IME's	103,384	
Temp Services	52,564	
Investigators	4,446	
Translators	940	
Sheriffs	476	
Steno Services	44	
Medical Bill Review	31,340	
Medical Bill Adjustment	15,544	
Total Expenditures		27,843,817
Ending Balance (6/30/92)		<u>\$ 3,652,611</u>

#### 6. FY'93 Assessment

Since 1986, when employer funding of the DIA operating budget was introduced as a cornerstone of the Massachusetts workers' compensation system, the Advisory Council has consistently taken an active role in monitoring the employer assessment process. While agency funding requires legislative appropriation, the DIA's operating expenses are allocated from the workers' compensation Special Fund, which is managed by the State Treasurer. The primary source of revenue for the Special Fund derives from assessments levied upon private and public employers subject to c. 152. The Advisory Council reviewed the estimated assessment for fiscal year 1993 at its June 4, 1992 meeting.

The FY '93 assessment rate for the Private Employer Trust Fund was 0.03295 with an estimated budget of \$25.4 million. The Public Employer Trust Fund assessment rate was 0.00091 with an estimated budget of \$32,900.

Under the 1991 reform legislation, individual employers may opt out of the assessment mechanism. While public employers may become completely exempt, private employers may opt out from the private trust fund assessments except for costs relating to vocational rehabilitation and uninsured employers. Due to a large number of eligible employers electing to opt out, the FY' 93 budget was lower (both in dollars and in the assessment base) than in FY' 92.

#### 7. FY '93 Public Fund Budget §11A Filing Fees

The cost of independent medical examinations under §11A of c. 398, estimated in June, 1992 at \$10 million are to be borne either by the insurer or by the claimant represented by counsel, when appealing a conference order. Revenue from incoming fees will be deposited into a special revenue account, which is to be self-sustaining and will not impact the general fund or the trust fund, and which will not be part of the budget.

#### 8. DIA Personnel

The issue of vacant positions within DIA personnel once again surfaced with the passage of the early retirement bill.

The early retirement bill, designed as a cost-saving measure, provided incentives for eligible state employees to retire, while simultaneously placing restrictions on the hiring of new personnel by state agencies. It was the position of the Council that employers' assessments should not be based on a budget requesting funding for agency positions that would remain vacant throughout the fiscal year.

Furthermore, the Council felt that hiring restrictions at the DIA would not provide fiscal relief since operating expenses do not emanate from the General Fund. The Council was informed that 17 DIA employees, including five judges, had opted for early retirement. The severance portion of the plan was estimated to cost \$120,000 and was to be paid from the DIA's fiscal year 1993 budget. The Council estimated the cost of hiring employees to fill the 17 positions to total \$703,492 (with \$549,603 in salaries and \$153,889 in fringe benefits). Since these positions were funded directly through employer assessments, the Council urged that the DIA be exempt from the bill's hiring restrictions so that personnel vacancies would not contribute to agency delays in processing and resolving workers' compensation claims. While supporting the DIA's request for positions included in the DIA budget, the Council expressed concern about the disposition of monies assessed for personnel not actually retained by the agency. By the end of the fiscal year, restrictions had not yet been lifted on all positions left vacant by retirements.

#### 9. DIA Administrative Hearings

The DIA scheduled a public hearing on July 22, 1991 relative to amendments to the Department's Adjudicatory Rules (452 CMR 1.00 et seq.). The amendments defined the terms "filed" and "necessary expenses" and further regulated the payment of referral fees.

At its July 10, 1991 meeting, the Advisory Council reviewed the proposed rules changes and voted for their withdrawal from further consideration. In written testimony to Commissioner Lane, the Council expressed its concerns with the following proposed changes:

--The DIA proposed that the definition of "filed" (in 452 CMR 1.02) mandate that appeals of a decision of an Administrative Judge be filed within 13 days of a hearing order. Since c.152 provides a 30 day period for the filing of appeals, the Council was unclear if this was a typographical error or if the DIA was in direct conflict with the statutory appeal period.

--With respect to the proposed definition of "necessary expenses" paid to claimant's attorneys in 452 CMR 1.02, the Council suggested that the term "only reasonable out-of-pocket expenses" replace "all out-of-pocket costs."

--The proposed elimination of 452 CMR 1.09 (2) regarding stays of proceedings, and its replacement with new language, raised a number of constitutional, statutory, and procedural issues. The Council expressed its belief that the proposed rule was inconsistent with c. 152 since the law does not authorize a loss of defenses or penalties for failure to pay a referral fee. Additionally, the proposed rule would potentially impact employers for conditions beyond their control.

#### 10. Independent Medical Examiners

The inclusion of independent medical examiners within the statutory framework of the workers' compensation adjudicatory process represents one of the more significant reforms introduced by c. 398. While impartial physicians were formerly retained on occasion in accordance with agreements between insurers and claimants, independent examinations were not required by the DIA and often did not resolve the "duelling doctors" dilemma.

M.G.L. c. 152, § 11A now requires that when any claim involving a dispute over medical issues is the subject of an appeal of a conference order, the parties must agree on an impartial medical examiner from a roster of physicians compiled by the Senior Judge, or the administrative judge will appoint one. The impartial physician must examine the employee and make a report one week prior to the hearing. The report is to address the existence of a disability, whether the disability is total or partial and permanent or temporary, and if within a reasonable degree of medical certainty the disability was caused by an employment related injury.

In March, 1992, the Commissioner named six physicians to a medical consortium, to act as consultants and carry out other duties relating to the total range of care of injured employees. The medical consortium met on several occasions prior to the close of fiscal year 1992, and has assisted in the recruitment of independent medical examiners and the development of draft medical protocols.

Also in March, the Commissioner appointed thirteen persons to the Health Care Services Board (HCSB). The HCSB is responsible for developing written treatment protocols for the appropriate treatment of workers' compensation claimants. In addition, the HCSB has worked on developing criteria for selecting impartial physicians.



Implementing the medical examination process and developing a roster of independent physicians throughout the Commonwealth has been a critical task for the DIA. The Health Care Services Board was charged with developing criteria to assist the Senior Judge in developing a roster of qualified physicians to serve as independent medical examiners. The roster is to contain a list of certified specialists in various medical fields who are willing to make prompt reports and be deposed at hearings. Chapter 398 requires that such a network of independent physicians be established for implementation by July 1, 1992.

With the medical components of the new law so vital to its success, the medical consultant consortium and the Health Care Services Board established under §13 of c. 152 take on a special importance. Readers of the Advisory Council's study on medical access and its past annual reports are aware that the medical consulting and review functions under §13 had been largely inactive. However, there was substantial activity in these areas following passage of the new law.

#### 11. Office of Claims Administration

The Office of Claims Administration processes all incoming and outgoing claims correspondence, maintains files and records, keeps files and seeks to ensure timely entry of disputed matters into the dispute resolution process. Following passage of c. 398, the conciliation unit was transferred from the Office of Claims Administration to the Division of Dispute Resolution.

The claims processing unit manages the DIA's record room, reviews and processes incoming documents and claims, and sends out departmental forms. Processing involves the review and sorting of a wide variety of materials, and many incoming documents must be returned due to incorrect or insufficient information.

A total of 44,902 claims and discontinuances were filed in FY'92, a 6.8% decrease over FY'91. Of these, 37,307 were referred to conciliation, a 7% decrease over FY'91 referrals. As shown in Table 4 the number of First Reports of Injury filed in FY'92 dropped 8.8%, from 54,292 in FY'91 to 48,031. The number of Pay Forms filed declined 9.4%, from 45,592 in FY'91 to 42,924.

Table 4

	<u>FY'90</u>	<u>FY'91</u>	<u>FY'92</u>
Total 1st Reports.....	52,342	54,292	48,031
Total Pay Forms.....	58,180	45,592	42,924

12. Office of Education & Vocational  
Rehabilitation

The Office of Education and Vocational Rehabilitation is responsible for accommodating public information requests, ensuring the availability of vocational rehabilitation for qualified claimants, and administering the Office of Safety program.

The Office of Safety was placed within OEVR following the passage of c.398. While not mandated by the reform, the change was facilitated by more flexible organizational arrangements permitted by the statute.

Because lump sum counseling was abolished under c. 398, lump sum counselors were incorporated into the vocational rehabilitation system as disability analysts, and are responsible for conducting preliminary case review and pre-screening of vocational rehabilitation clients. FY'92 statistics for the lump sum unit prior to c.398 showed 6,817 lump sum interviews, 6,518 referrals to ALJs for approval, and 299 withdrawals.

The vocational rehabilitation unit oversees the provision of rehabilitation services to workers' compensation claimants whose injuries prevent them from returning to their prior jobs due to their current medical conditions. The unit seeks to provide expedient attention and guidance to employees needing vocational rehabilitation before returning to work, and assists in the development of an appropriate rehabilitation plan.

The overriding philosophy of the office is to facilitate voluntary agreements between insurers and employers on services designed to return the worker to suitable employment. Under c. 398, workers qualifying for vocational rehabilitation benefits are eligible for 104 weeks of vocational rehabilitation training that may be paid out of the trust fund, compared to 52 weeks under the prior statutory provisions.

During FY'92, the vocational rehabilitation office contacted 19,856 people to determine the appropriateness of rehabilitation services. From

these contacts, 6,946 mandatory meetings were scheduled with individuals, 4,437 of whom were determined to be eligible for rehabilitation services. There were 1,926 Individual Work Rehabilitation Plans (IWRPs) signed, and 1,503 returns to work following rehabilitation. In addition, 246 cases were closed unsuccessfully and 1,654 cases remained unresolved.

### 13. Office of Safety

Following the passage of chapter 398, the responsibilities of the Office of Safety was placed with the Office of Education and Vocational Rehabilitation. The affairs of this office prior to consolidation are outlined below.

Since FY'88, the DIA's Office of Safety has provided annual funding for training and education programs aimed at promoting safety and health in the workplace. During FY'92, the DIA awarded grants to 15 organizations totalling approximately \$400,000 as part of its FY'93 safety grants. The highest award was \$34,084.02. A copy of the grant recipients, along with their training programs and funding awards, is included in Appendix D.

### 14. Office of Insurance

The Office of Insurance monitors insurance coverage of employers, licenses self-insurers, and imposes penalties against employers failing to provide workers' compensation insurance in violation of c.152. The office is comprised of an insurance unit (including investigative personnel) and a self-insurance unit.

The Office's ability to monitor insurance coverage was aided by passage of c. 132 of the Acts and Resolves of 1991 which amended c. 152, §63. The Workers' Compensation Rating and Inspection Bureau (WCRIB) is now the repository for insurance coverage information previously maintained by the DIA. The Office of Insurance is now on line with the WCRIB's insurance data base, and has access to complete workers' compensation insurance information. The Office previously monitored insurance coverage through use of index cards containing information on expiring and renewed policies. The WCRIB database is believed to be the

most up-to-date information system available and should greatly improve the efficiency of the office.

The Investigative Unit ensures compliance with statutory requirements that all businesses operate with valid workers' compensation insurance policies. The Unit is authorized to issue "stop work orders" to close down uninsured businesses until proof of insurance is tendered.

During FY'92, the office issued 110 stop work orders, compared to 85 in FY'91. A total of 80 businesses were closed, and 71 criminal actions were taken. In addition, investigators undertook 604 \$65 investigations. The office collected a total of \$32,400 in fines.

The Self-Insurance unit licensed 26 new self-insurers in FY'92, up from 15 new licenses issued in FY'91.

#### 15. Division of Dispute Resolution

The Division of Dispute Resolution experienced several organizational changes upon passage of c. 398. The new law created the position of Senior Judge to oversee the Division, superceding the previous Director of Dispute Resolution position. Of note to readers, the creation of a Senior Judge position was recommended in the Advisory Council's 1991 study of the Dispute Resolution System. In January 1992, Administrative Judge Joseph Jennings was appointed as the DIA's first Senior Judge.

The new law also called for the appointment of six additional administrative judges to serve three year terms expiring February 1, 1995. Another important change was the addition of two administrative law judges. This will allow the Reviewing Board to operate two panels, effectively doubling its capacity to issue decisions. C. 398 requires that applicants for administrative law judge be attorneys, unless they are current or former members of the IAB or Reviewing Board.

Additionally, c. 398 brought the Conciliation Unit within the Division of Dispute Resolution. Previously, the Office of Claims Administration administered the conciliation process.

The responsibilities of the conciliation unit regarding the informal resolution of disputes remained largely unchanged by c. 398. However, conciliators did receive new powers to review and approve lump sum agreements when employees were represented by counsel. In addition, conciliators were empowered to withdraw a claim or complaint, subject to an appeal to the Senior Judge for referral to the Industrial Accident Board. Conciliators are also eligible under the new arbitration procedure to serve as independent arbitrators upon agreement of both parties. As of July 1, 1991, conferences and hearings could be scheduled on Fridays. Previously, Judges had utilized Fridays as writing days and meetings were not regularly scheduled on these days. The change increased scheduling by 21% for hearings and 11.2% for conferences.

#### *16. Conciliations*

During FY 1992 the Conciliation Unit scheduled 49,168 matters, down from 55,702 in FY 1991, representing a 13% decrease. Of those conferences scheduled, dispositions were entered for 38,301 cases, a decrease of 2% from FY 1991. The rate of rescheduling decreased from 29% in FY 1991 to 22% in FY 1992 (after increasing over the previous three years). 12% of cases were adjusted where an agreement was reached at conciliation in FY 1992, the same as FY 1991. A total of 19,677 cases were referred to the IAB in FY 1992. While in total numbers this represents a decrease from the FY 1991 total of 20,503, the percentage of cases referred nevertheless increased slightly from 36.8% in FY 1991 to 40% in FY 1992.

As shown in Table 5, the proportion of total cases referred to the IAB represented by claims versus complaints has remained fairly stable over the last three fiscal years, with claims representing 58% of total referrals in each of the last two fiscal years.

Table 5

FY'92			
Region	Total	Claims	Complaints
Boston	9,311	5,271	4,040
Fall River	3,302	1,865	1,437
Lawrence	2,006	1,194	812
Springfield	2,239	1,461	778
Worcester	<u>2,819</u>	<u>1,714</u>	<u>1,105</u>
	19,677	11,505	8,172

FY'91			
Boston	9,855	5,652	4,203
Fall River	3,200	1,800	1,400
Lawrence	2,176	1,204	972
Springfield	2,436	1,552	884
Worcester	<u>2,836</u>	<u>1,612</u>	<u>1,224</u>
	20,503	11,820	8,683

FY'90			
Boston	8,304	4,470	3,834
Fall River	2,757	1,583	1,174
Lawrence	2,482	1,302	1,180
Springfield	2,087	1,387	700
Worcester	<u>2,588</u>	<u>1,502</u>	<u>1,086</u>
	18,218	10,244	7,974

In FY 1992, conciliation statistics for finished cases (DIA Report 42) show that the unit handled 22,584 claims, nearly the same as last year, when the 22,624 claims represented a 14% increase over FY'90. The percentage of claims closed was 52.5% in FY'92 and has remained between 50.4% and 52.5% during the past four years.

Claims for \$36 benefits increased by 14%, from 3,228 in FY'91 to 3,687 in FY'92. The percentage of \$36 cases closed at conciliation was 92.5%, slightly higher than last year's 92% and up from 87.8% in FY'90. Discontinuance requests by insurers for finished cases fell by 5.1%, from 11,383 to 10,797, after growing by 5.4% from FY'90 to FY'91. The percent of matters referred (75.6%)

remained stable, while matters resolved when the event took place fell from 19.9% in FY'91 to 17.4% in FY'92.

Third party cases increased by 7.7% in FY'92, from 1,145 in FY'91 to 1,233. The percent of 3rd party cases referred also increased, from 11.6% in FY'91 to 17.3% in FY'92.

During the half of the fiscal year in which statutory provisions of c. 398 were in operation, there were no arbitration agreements received at conciliation. In addition, the conciliation unit had little experience with reviewing lump sum agreements and approving them as complete. Only 61 of the 38,301 finished cases were lump sum reviews and approvals. There were 553 lump sum requests received, representing 1.4% of finished cases.

#### 17. Conferences

A conference blitz was scheduled between January and April, 1992 during which several hundred conferences were held. The Council remained skeptical of this given that prior conference blitzes had created backlogs at the hearing level. Statistics for the blitz are shown in Table 7,

Table 7

Total conferences scheduled	666
Orders issued	330
Orders appealed	229
Reschedules	15
Withdrawn by moving party	71
Withdrawn by Admin. Judge	4
Referred to lump sum --	
LSR received	154
Voluntarily adjusted	44
No disposition entered	46
Withdrawn by DIA	3

As shown by the statistics, orders were issued for slightly less than 50% of the cases. Appeals normally result in the scheduling of hearings 41% of the time, which would result in the scheduling of 94 hearings as a result of the blitz.

During FY 1992 the number of cases awaiting scheduling for a conference was reduced by approximately 1,000. On July 3, 1991, there were 9,305 cases awaiting scheduling for a conference, while there were 8,324 such cases on June 3, 1992.

In fiscal year 1992, there were 21,721 conference dates scheduled, compared to 19,268 in FY 1991. Orders rose by 12% from 10,437 in fiscal year 1991 to 11,666 in fiscal year 1992. Orders and voluntary adjustments represented 61.9% of the total, compared to 63.7% in fiscal year 1991.

#### *18. Hearings*

Hearing statistics for scheduled dates in fiscal year 1992 showed 8,353 dispositions, out of which 676 decisions were filed (8.1%). In fiscal year 1991 there were 8,069 dispositions with 758 dispositions filed. The percentage of cases referred to lump sum, or for which lump sums were recommended (before December 25, 1991) or approved (after December 24, 1991), was 37.3%, up from 33.7% in FY 1991.

The number of decisions filed in FY'92 dropped by 9.2% over FY'91 from 1,545 to 1,414. Previously, there had been a 20% increase in decisions filed since FY'89. In addition, the number of cases resolved dropped in FY'92, from 16,685 in FY'91 to 16,015, a 4.2% decrease. This marked the second consecutive year in which the number of cases resolved decreased.

#### *19. Reviewing Board Hearings*

The Reviewing Board is responsible for issuing decisions on appeal from the decisions of administrative judges. Prior to enactment of c.398, the Reviewing Board was the sole authority to approve lump sum agreements, which detracted from its ability to hear the cases under review. C. 398 also expanded the Board from four members to six members, all of whom serve six-year terms.

In FY 1992, the Reviewing Board resolved 583 cases. The Board issued 248 decisions, up from 146 decisions in FY 1991. Of the decisions, there were 130 full decisions and 118 summary dispositions. There were 180 withdrawals of cases before the Reviewing Board. In addition, the Board resolved by lump sum 155 cases on appeal to the Reviewing Board. Parties appealed 39 decisions to the Massachusetts Appeals Court in FY 1992, compared to 24 appeals in FY 1991 and 7 appeals in FY 1990.



## 20. Insurance Rate Filing

The Workers' Compensation Rating and Inspection Bureau (WCIRB) submitted a rate filing to the Division of Insurance in November seeking a 45.6% percent increase in rates for 1992. As done in prior years, the Advisory Council engaged the services of a consulting firm to review the rate filing. Tillinghast, Inc. was hired to undertake this review and its analysis was made available to the WCIRB and the State Rating Bureau (SRB). Following the passage of c. 398 and c. 399 in December of 1991, this rate request was withdrawn.

The WCIRB filed a new rate request on May 29, 1992, seeking an 18.9% increase in workers' compensation premiums beginning July 1, 1992. This was to be a hotly contested issue.

## 21. Division of Insurance Administrative Hearings

On March 21, 1992, the Division of Insurance implemented emergency regulations regarding "Workers' Compensation Insurance Requirement Applicable to Employee Leasing Companies and their Client Companies" (211 CMR 111.00 et seq.). On May 21, 1992, the Advisory Council testified in favor of the proposed rules.

The rules were intended to ensure that employee leasing companies have insurance coverage at appropriate exposure and modification levels. Under employee leasing arrangements, a leasing company generally leases the employees of a client company back to the client, obtaining workers' compensation insurance with a much lower modification, since the leasing company has not yet established a loss experience.

These rules apply where employees are leased for the long term, and are applicable to arrangements for temporary help due to seasonal or unusual conditions. Leasing companies are required to purchase and maintain a separate policy for each company to which it leases workers. The experience record is to be that of the client company leasing the employees, and is to be identified on the insurance policy.

The rules apply to both new and renewed policies. Leasing companies must notify client companies if policies will not be renewed. In addition, audits are to be conducted by the insurer within 90 days, with interim audits thereafter.

Employee leasing companies that do not meet the requirements of this section are considered uninsured under §25C and also may be subject to §14 fraud sanctions.

OUTLINE OF  
CHAPTER 398  
CHANGES TO CH. 23E

I. DIA reorganization

A. Division of Administration

- under supervision of director of administration
- first deputy director of administration

- Office of Claims Administration
- Office of Education and Vocational Rehabilitation
- Office of Insurance
- Office of Administration and Data Processing
- Office of Safety

- Duties:

- receive and maintain reports required to be filed with DIA
- provide vocational rehabilitation services
- prepare annual statistical reports of DIA activities (including information on insurer practices, injury and litigation patterns and departmental productivity) and responding to other requests for data
- maintain a toll free number for workers' compensation questions
- prepare and distribute workers' compensation and occupational safety and health information
- data collection on workplace safety
- investigate employer avoidance of mandatory workers' compensation insurance and enforce stop work orders
- investigate questionable claims handling techniques and refer to Commissioner of Insurance
- licensing and oversight of self insurers
- maintenance of departmental administrative needs
- collection of assessments, fines and other monies owed to the Trust Fund and Special Fund
- analyzing information from the Department of Employment and Training (DET), Department of Revenue (DOR), Registry of Motor Vehicles (RMV), Department of Welfare (DOW), Workers Compensation Rating Bureau (WCRI), Insurance Fraud Bureau (IFB), individual insurers, self insurers, and self-insurance groups

- other duties the Commissioner may require.

B. Division of Dispute Resolution

- under the direction of senior judge
  - selected from among the existing ALJs or AJs by Commissioner
- term coterminous with the term of the governor
  - shall direct and supervise the activities of all members of the Board and the Reviewing Board
  - shall maintain a statistical list of all matters heard or conferred on by each board member with a list of conference orders and decisions filed by each member and all lump sum settlements and shall make such available for public inspection

- Powers and Duties:

- training of new AJs and ALJs
- establish "annual workers' compensation judicial training program" for AJs or ALJs for professional development
- establish (with Commissioner) criteria to perform an annual review of each AJ & ALJ
- fairly allocate a balanced and equitable caseload to each AJ & ALJ
- establish criteria for claimant "hardship" conference at first available date
- train supervise and review conciliators
- accept motions for expedited conferences relating to fraudulent behavior, illegal discontinuance, catastrophic injuries, medical emergencies, or section 15A denials; motions heard on a weekly basis; when granted, expedited motions shall be granted within 14 days
- develop a standard form for pre-conference memoranda.
- Commissioner and Senior Judge may initiate proceedings to remove a Board or Reviewing Board member when the Commissioner and Senior Judge are of the opinion that the member is guilty of:
  - misconduct
  - material neglect of duty
  - inability to perform required duties
  - incompetence.

Upon recommendation of Commissioner and Senior Judge, the Governor shall commence an investigation of such member's record and practices, and may with the advice and consent of the Governor's Council remove

such member for such violations.

- deputy director of dispute resolution
- Industrial Accident Reviewing Board
  - six members (no more than 3 from one party)
  - attorney admitted in Massachusetts or past member of Industrial Accidents' Board (IAB) or reviewing board
- Conciliation Unit
  - informal resolution of disputes, review and approve agreements and perform other functions per Senior Judge

## II. HEALTH CARE SERVICES BOARD

Responsibilities expanded to:

- receive and investigate complaints from employees, employers and insurers regarding health care providers who:
  - discriminate against w/c claimants
  - over utilization of procedures
  - unnecessary surgery/procedures
  - inappropriate treatment of w/c recipients
- render finding of pattern of abuse to appropriate state board of registration
- develop written guidelines for appropriate and necessary treatment based on diagnosis of injuries and illnesses, and review and revise annually
- develop criteria to select and maintain a roster of qualified impartial physicians to provide objective medical opinions pursuant to C.152 §'s 8 and 11A, as well as criteria to remove physicians from the roster. Senior Judge shall develop the roster based on the criteria.

## III. FRAUD investigations and data collection on workplace injuries

- DIA has right to receive information from DOR, DET, RMV, DOW, IFB, WCRIB, individual insurers, self insurers and self insurance groups and shall forward information on fraudulent activities to the same.
- requests for information shall be processed within 30 days

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- Division of Administration shall document evidence of fraud and forward such to the Attorney General's office.
- the Automobile Insurance Bureau of Massachusetts and the Workers' Compensation Rating and Inspection Bureau of Massachusetts are authorized to create an Insurance Fraud Bureau to prevent and investigate fraudulent insurance transactions.
- IFB shall be governed by a board (Secy of Exec. Office of Public Safety, Secy of Exec. Office of Labor, Registrar of Motor Vehicles, Commissioner of Insurance, Commissioner of DIA, five members of the governing board of the Automobile Insurers Bureau, and five members of governing board of Workers' Compensation Rating and Inspection Bureau (WCRIB)).
- the Executive Director of IFB shall ensure that appropriate resources of the IFB are dedicated to the investigation of fraudulent workers' compensation insurance transactions.
- all costs of IFB shall be equally borne by the Automobile Insurers Bureau and by the WCRIB through assessments.
- IFB shall have access to records kept within DIA, RMV, DOR, DOW, WCRIB, DET, insurance companies, and certain criminal offender records.
- any insurer having reason to believe that an insurance transaction may be fraudulent or that a fraudulent transaction is about to take place must within 30 days send to the IFB information regarding the fraud.
- IFB shall investigate reports it deems necessary and proper.
- the executive director shall refer to the Attorney General's office matters determined to be a material fraud, deceit, or intentional misrepresentation in an insurance transaction, or if production of records relative to an investigation are not produced.
- a person convicted for committing insurance fraud shall be ordered to make restitution to the insurer for any financial loss sustained as a result of such violation.

#### IV. Industrial Accidents Nominating Panel

- eleven members: Governor's legal counsel, Secretary of Labor, Secretary of Economic Affairs, DIA Commissioner, Senior Judge, and six members appointed by the Governor (two from business (one who is President of AIM), and two from organized labor (one who is President of AFL-CIO), one health care provider and a lawyer not practicing workers' compensation law. Serve at the pleasure of the Governor.
- Factors to consider when reviewing application for nomination:
  - skills in fact finding
  - understanding of human anatomy & physiology
  - college degree or four years of writing experience.
- Review based on application, experience, education & training, writing samples, interviews.
- Application for reappointment shall require, a performance evaluation for each year since the candidates last appointment. Evaluations shall be written reports containing:
  - average time for disposition of cases
  - three decisions written and selected by applicant
  - total number of proceedings scheduled before the applicant and total number of orders and decisions filed
  - total number of cases decided by applicant heard by an appellate body and number remanded
  - any appellate decisions specifically referencing applicant's judicial demeanor or temperament
  - written complaints from attorneys received by Commissioner regarding applicant's judicial demeanor or temperament (at Commissioner's discretion)
  - evidence of demonstrable bias against particular defendants, claimants or attorneys.

#### V. Additional appointments to Industrial Accidents Board

- A. Governor, with advice and consent of Council, shall appoint six additional members of IAB for three year terms to expire February 1, 1995.

OUTLINE OF CH. 398  
CHANGES TO CH. 152

I. Benefits

a. §1 Definitions

"Average Weekly Wage" Except as provided by §§ 26 and 27 of Ch. 149, fringe benefits such as health insurance plans, pensions, day care, or education and training programs provided by employers not to be included in employee's earnings for the purpose of calculating average weekly wage.

"Personal Injury" to include mental or emotional disabilities only where the predominant contributing cause is an event occurring within employment.

If a work related injury combines with a preexisting condition to cause or prolong a disability, the resultant condition is compensable only to the extent it remains a major but not necessarily predominant cause of disability.

b. § 13 Rate of Payment by Insurers-- A different rate for services may be agreed upon by the insurer, the employer and health care service provider than those set by the Mass. Rate Setting Commission.

c. § 13A Attorney's Fees-- Caps on attorney's fees are established follows:

- If an AJ orders the Insurer to pay benefits, the Insurer must pay \$1,000 in attorney's fee to employee's counsel plus necessary expenses.
- If an Insurer agrees to pay benefits before conference, but after the insurer has contested the benefits or has failed to commence payment within 21 days, the insurer must pay attorney fee of \$500 plus expenses.
- If insurer, after contesting a claim for benefits, either accepts the employee's claim or withdraws its own complaint within five days of the date of hearing, or the employee prevails at the hearing, the insurer must pay attorney's fee in the amount of \$3,500 plus expenses.



- When an insurer appeals a decision of an AJ and the employee prevails before the reviewing board, the Insurer must pay attorney's fee of \$1,000 plus expenses.
  - When an employee appeals a decision of an AJ and the employee prevails before the reviewing board, the employee must pay an attorney's fee sufficient to defray the reasonable costs of counsel, subject to the approval of the reviewing board.
  - If after a conference, the order of an AJ reflects the written offer submitted by the claimant, the insurer will pay an attorney's fee of \$700 plus expenses. If the order reflects the offer of the insurer, then no attorney's fee is payable.
  - Whenever an insurer contests a claim and then accepts liability or withdraws a complaint, the attorney's fee will equal two times the state average weekly wage plus expenses.
  - Whenever insurer and employee agree on a lump sum settlement, the attorney's fee will be paid from the settlement according to the following:
    - when insurer and employee agree prior to a decision of an AJ the fee may be no more than 15% of the settlement;
    - when the insurer and the employee reach a settlement subsequent to acceptance of liability or a decision of an AJ, the fee shall be no more than 20% of the settlement.
- d. § 27A-- When it is found that at the time of hire, an employee knowingly and willfully made a false representation about his physical condition and the employer relied upon the false representation in hiring the employee, and the employee knew or should have known that it was unlikely he could fulfill the duties of the job without incurring a serious injury, the employee shall not be entitled to benefits.

- e. § 29 Required period of Incapacitation-- If incapacity extends for 21 days or more, compensation must be paid from the date of onset of incapacity. If incapacity extends for at least five but less than 21 days, compensation must be paid from the sixth day of incapacity. No compensation is owed for any period any wages were earned.
- f. § 30 Medical and Hospital Services-- Insurer to provide injured employee adequate and reasonable health care services. Employee may select a treating health care professional other than and provided by the Insurer and may switch once, except for the employee's first scheduled appointment with a physician in a Preferred Provider Organization (PPO). May switch specialists once.
  - Commissioner to promulgate regulations regarding provision of adequate and reasonable health care services.
  - Any insurer may enter into a preferred provider arrangement and employees will receive care pursuant to the arrangement.
- g. § 30G Meetings with Injured Employees Requiring Vocational Rehabilitation Services-- Allows an insurer to reduce benefits by 15% when an employee determined suitable for vocational rehabilitation services refuses them. No lump sum settlements will be allowed once an employee is deemed suitable for rehabilitation unless the employee has finished the program or returned to work for six months, unless the Department agrees. An employee whose benefits have been reduced, or whose lump sum hasn't been prohibited can apply to have the restrictions removed, but must prove that no vocational rehabilitation plan is appropriate.
- h. § 30H Applications for Vocational Rehabilitation Services--This extends the length of a rehabilitation program provided by OEVR and paid by the trust fund.
- i. § 33 Burial Expenses-- Insurer must pay reasonable expenses of burial not to exceed \$4,000.
- j. § 34 temporary total disability-- Injured employee receives 60% of average weekly wage before the injury but not more than the maximum weekly compensation rate, unless the employee's average weekly wage is less than the minimum weekly compensation rate. Total number of weeks are not to exceed 156.

- k. § 34A Permanent Total Disability-- Employee receives 2/3 average weekly wage but not more than the maximum weekly rate nor less than the minimum weekly rate.
- l. § 34B Supplemental Benefits-- Cost of living allowance (COLA) increases in benefits not to exceed the lesser of (a) the percentage change in the consumer price index for the northeast region as compiled by the Bureau of Labor Statistics, U.S. Dept. of Labor, or (b) five percent. The adjusted benefit can never be greater than three times the base benefit.
- m. § 35 Partial Disability-- Employee receives 60% of the difference between the employee's pre-injury a/w/w and his post-injury wages/earning capacity, but not more than 75% of §34 total disability benefits nor two times the state's average weekly wage.  
Benefit period is 260 weeks, but may be extended to 520 weeks if the insurer agrees or an AJ finds that:
  - employee suffered a permanent loss of 75% of any bodily function (as specified in §36),
  - developed a permanently life-threatening physical condition, or
  - contracted a permanently disabling occupational disease which is of a physical nature and cause.If there is no such agreement or finding, the number of weeks the employee may receive benefits shall not exceed 364.  
§35(f) was repealed, so that the employee can never receive a COLA if are entitled to §35 benefits.
- n. § 36 Specific Permanent injuries-- No benefits paid if the employee has died within 30 days of his date of injury. If employee has purely scar-based disfigurement, employee will only be entitled to benefits if the scar is on the face, neck or hands. The maximum disfigurement award cannot exceed \$15,000.
- o. § 36A Death before full payment of compensation for specified injuries-- No § 36 benefits paid where the death of the employee occurs within 45 days of the injury.
- p. § 37 Compensation for Disability Subsequent to Physical Impairment-- When an employee with a physical impairment known to be a hindrance to his employment, receives a compensable work-related injury resulting in

a disability substantially greater because of the combined effects of the injury and the initial impairment, the employer must pay all compensation costs. Insurers, however, will be reimbursed from \$65 Trust Fund for 75% of all compensation due under §§ 31, 32, 33 and 36A death benefits, and § 34A permanent and total disability benefits after 104 weeks. No reimbursement unless the employer had personal knowledge of the existence of the physical impairment within 30 days of the date of employment.

- q. § 45 Examination by a Physician-- Compensation may be suspended during any period the employee refuses the insurer's request that the employee be evaluated by a DIA vocational rehabilitation specialist.
- r. § 48 Lump Sum Settlements-- When an employee represents himself without an attorney, when the parties seek a determination as to the fair and reasonable amount to discharge a lien for medical services under § 46A, or where the parties request that the lump sum agreement be approved prior to filing, the lump sum settlement will not be perfected until an administrative judge or administrative law judge determines it to be in the employee's best interest. In all other cases, a conciliator may approve a lump sum settlement, however, lump sum counselling is eliminated.

A fine of \$10,000 to be levied on any insurer, employee or attorney attempting to procure a lump settlement with a release barring employment with any employer, the receipt of any pay or benefits due the employee, the bringing of any workers' compensation claim, or the bringing of any wrongful discharge or breach of contract claim.

The lump sum agreement is not valid if the employee is suitable for vocational rehabilitation and has not been back to work for 6 months, completed the vocational rehabilitation plan, received approval from OEVR or an order or decision from a judge authorizing the agreement.

When a lump sum settlement is perfected, the agreement does not affect any other action or proceeding arising out of a separate and distinct injury. Perfection of a lump sum settlement for a permanent and total disability precludes the employee from any further lump settlements for such benefits.

- s. \$ 50 interest on unpaid compensation-- Whenever payments of any kind are not made within sixty days of being claimed by an employee, and an order or decisions requires payment, then interest is assessed at 10% per year.
- t. \$ 51 natural increase considered in determining weekly wages-- If an employee is of an age and experience that under natural conditions it would be expected that his wage would be expected to increase, that fact may be considered in determining his weekly wage.

## II. PROCEDURE

- a. \$6 Notice of Injuries-- Employer must send a First Report of Injury to the DIA, the employee and the insurer within seven days of receiving a notice of any workplace injury which allegedly kept the employee from earning full wages for five or more days.
- b. \$7 Commencement of Payments-- Within 14 days receipt of the first report of injury, the employer shall either begin payment of weekly benefits or notify the DIA division of administration, the employee and the employer (by certified mail) of its refusal to pay weekly benefits. An insurer's inability to defend on any issue shall not relieve an employee of the burden of proving each element of any case. When insurer fails to commence payment or to make such notification, it must pay to employee \$200 penalty. If the insurer fails to pay or make notification within sixty days it shall pay an additional penalty to the department of \$2,000 (into the \$65 Special Fund), and \$10,000 if no payments made within 90 days.
- c. \$ 7C Representation of Claimants-- The DIA Senior Judge may, for cause, deny or suspend the right of any person to practice or appear before the DIA. Such person denied has the right to appeal to the Commissioner of DIA within 14 days of receipt of notice. Commissioner will refer appeals to the Division of Administrative Law Appeals within the Executive Office of Administration and Finance, which can reverse, uphold or modify the removal or suspension after a hearing.
- d. \$ 7G Required Documentation of Claims-- the Senior Judge,

in consultation with the Commissioner must promulgate rules setting forth the required documentation to be attached to any claim for benefits or complaint for modification or discontinuance.

e. § 8 Termination or Modification of Payments; Pay without prejudice period-- An insurer may make payments for 180 calendar days from the date of disability without affecting its right to contest any issue. Insurer may not modify or discontinue such payments unless:

- compensation has been modified or discontinued by an arbitrator, administrative judge, or court;
- employee has assented to it in writing;
- employee has returned to work, but insurer will resume payments if within 21 days the disability renders employee incapable of performing the job;
- insurer has possession of a medical report from a treating or impartial physician indicating the employee is capable of returning to the job held at the time of injury or other suitable employment, and a statement from the employer that such a suitable job is open and has been made available.
- suspension/reduction is authorized by OEVR;
- benefits are exhausted;
- employee fails to provide an earnings report;
- employee is incarcerated for a felony; or
- employee has died.

Insurer may request the Senior Judge to appoint an impartial physician to examine the employee after sixty days following referral to the IAB. Within seven days, the Senior Judge must appoint a physician to conduct the exam within fourteen days. If the impartial's report contains evidence of increased capability to work, then the insurer may reduce or terminate benefits. At any time following the filing of a claim solely regarding reasonableness or necessity of medical treatment, any party may request the Senior Judge to appoint an impartial physician to determine the appropriateness of any medical treatment using guidelines developed by the Health Care Services Board.

The 180 day payment without prejudice period may be extended to exceed one year by agreement of the parties if a conciliator, administrative judge, or administrative law judge approves it as not detrimental to the employee's case.

f. §10 Claims for Benefits-- The conciliation unit within the Division of Dispute Resolution may attempt to resolve the claim or complaint by informal means and the parties must cooperate.

- Attorney's fees shall not be paid unless:
  - sent to the insurer by certified mail;
  - includes a copy of the relevant medical report;
  - including a copy of any relevant health care bill and a description from the provider of the services rendered;
  - including a copy of a letter from a physician describing the location and extent of the alleged loss of function or disfigurement and the specific amount requested for compensation under §36.
- No attorney's fee shall be due for any claim solely involving unpaid attorney's fees or expenses for past services.
- A claim will not be forwarded to the industrial accident board if the conciliator receives an agreement signed by the parties indicating they will abide by the findings of an independent arbitrator chosen by the parties. A conciliator may be chosen by the parties serve as an arbitrator.
- When a claim for compensation is referred to the industrial accident board, the insurer must pay a fee of 65% of the state's average weekly wage; if insurer fails to appear at a conciliation the fee shall be 130% of the state's average weekly wage.
- Claims for additional compensation or to discontinue or modify compensation will not be referred to the Industrial Accidents Board (IAB) until each party files a written offer of the weekly compensation it believes is due. If the claimant fails to file the offer, the conciliator will take his last best offer made by such claimant. If the Insurer fails to file such offer the conciliator will file an amount equal to the last best offer made, or if none is filed then the amount of 0.

- g. § 10A Assignment of Cases-- An administrative judge assigned to a case will retain exclusive jurisdiction over the matter and any subsequent claims or complaints related to the alleged injury.
- Whenever the subject of a conference is a claim/complaint for which written offers have been filed, the order will reflect an amount proposed by one of the parties and unless the judge provides a detailed explanation of why neither amount submitted would accurately compensate the employee. An administrative judge may allow a filing of an offer at the close of the conference if written amounts have not been filed, or are unavailable, or if a party having filed in good faith subsequently acquired new information regarding earning capacity not available at the time of conciliation.
  - At any time prior to five days before a conference the parties may agree to refer the matter to an independent arbitrator. The arbitration agreement must require that the arbitrator determine all questions regarding the claim, the decision must be binding on the parties, and the award must be binding on the parties. No further claims or complaints may be filed with the department regarding the same injury or condition until the department is in receipt of the arbitrator's award or a written withdrawal from arbitration signed by both parties.
  - At any stage of the proceedings before the DIA, the parties may agree to mediate the matter before an independent mediator selected by the parties. Agreement to mediation must not postpone or stay any proceedings before the department.
- h. § 10C-- Any employer and the bargaining representative of its employees may agree through collective bargaining to establish certain binding obligations and procedures relating to workers' compensation must be limited to:
- benefits supplemental to those provided in §'s 34, 34A, 35 and 36;
  - an alternative dispute resolution system which may include arbitration, mediation, and conciliation;
  - the use of a limited list of providers for medical treatment;
  - the use of a limited list of impartial physicians;
  - the creation of a light duty, modified job or return to work program;
  - the adoption of a 24 hour health care coverage plan;
  - the establishment of safety committees and safety procedures; and
  - the establishment of vocational rehabilitation or retraining programs.



i. § 11A Impartial Physicians-- Whenever an appeal of a conference order involves a dispute over medical issues either the parties must agree upon an impartial medical examiner from the DIA's roster of Impartial Medical Examiners to examine the employee, or the judge must appoint one. The insurer or employee represented by counsel who files the appeal must submit a fee equal to the state's average weekly wage to defray the cost of the examination. The impartial report must be made within one week prior to the beginning of the hearing. The report should determine whether:

- a disability exists;
- the disability is total or partial and permanent or temporary in nature;
- within a reasonable degree of medical certainty the disability had as its major or predominant contributing cause a personal injury arising out of and in the course of the employee's employment; and
- a medical end result has been reached and what permanent impairments or losses of function have been discovered.

The report will constitute prima facie evidence of the injury and will be admissible as evidence at the hearing, and the physician may be deposed for cross-examination. No additional medical reports or depositions will be allowed, unless the AJ finds that testimony is required due to the complexity of the of the medical issues involved or the inadequacy of the report submitted by the IME.

Failure to report to an IME or to submit all relevant medical records constitutes sufficient cause for suspension of benefits pursuant to section 45.

j. § 11C Appeals to the Reviewing Board-- The reviewing Board may reverse the decision of an administrative judge only if it determines that the decision is beyond the scope of his authority, arbitrary or capricious or contrary to law.

Employee's have an affirmative duty to report to the Insurer all earnings including wages or salary earned from self-employment. The employee may be required to file an earnings report no more than once every six months.

If an earnings report indicates that an overpayment has been made, the insurer may recover such overpayments by unilateral reduction of weekly benefits by no more than 30% per week until recoupment has been made.

k. § 14 Actions not based on Reasonable Grounds--

If in any dispute resolution proceeding any party, including an attorney or expert medical witness, knowingly commits the following acts, that party's conduct shall be reported to the General Council of the IAB.

- Failure to disclose what's required by law to be disclosed;
- Use of perjured testimony or false evidence;
- Making a false statement of fact or law;
- Participation in the creation or presentation of false evidence;

A penalty of six times the state average weekly wage shall be assessed payable to the aggrieved party.

The same fines shall be exacted against any medical expert who knowingly makes false statements in the medical report or deposition or provides testimony on behalf of a party he knows to be engaging in a fraudulent claim or defense.

Any person who commits the following acts will be subject to imprisonment in state prison for no more than five years, imprisonment in jail for six months nor more than 2½ years, or by a fine no less than \$1,000 nor greater than \$10,000. Restitution to the aggrieved party may be ordered.

- Any person who makes any false or misleading statement, representation or submission or knowingly assists, abets, solicits or conspires in the making of any false or misleading statement, or knowingly conceals or fails to disclose knowledge of the occurrence of any event affecting the payment for the purpose of obtaining or denying any payment or benefit;
- Any person or employer who knowingly misclassifies employees or engages in deceptive employee leasing practices for the purpose of avoiding full payment of insurance premiums; or
- any law firm, or health care establishment that employs or contracts persons or firms to personally coerce or encourage individuals to file compensation claims shall be punished by imprisonment for not more than five years or imprisonment for between six months and 1½ years or by a fine of between \$1,000 and \$10,000. In addition, restitution shall be ordered.

### III. INSURANCE

- a. § 25C Failure to Provide Payment of Compensation--  
Any person or firm that loses a bid for a contract for the construction or renovation of a building or roadway may bring an action for damages against another person who is awarded the contract because of cost advantages achieved by failing to provide workers' compensation insurance, by the deliberate misclassification of employees for the purpose of avoiding workers' compensation insurance premiums. Damages shall be 10% of the total amount bid on the contract or \$15,000, which ever is less. An employer who fails to provide insurance or knowingly misclassifies employees shall be immediately debarred from bidding or participating in any state or municipal contracts.

#### § 53A Classification of Risks and Premiums

- b. The Commissioner of Insurance shall make a finding on the basis of any rate increase filing that the insurer employ cost control programs, and techniques acceptable to the commissioner which have had or will have a substantial impact on fraudulent claim costs, unnecessary health care costs, and any other unreasonable costs and expenses. If the Commissioner does not so find, then the Commissioner may disapprove the filing. The Commissioner may also find that the proposed rates are excessive and the excess is due to the failure of the insurer to control costs or expenses or to collect the appropriate premium charges, and therefore disapprove the filing or limit the amount of any adjustment in premium charges. Rates must be in effect for at least one year.

The Commissioner will establish after a hearing the amounts of all agent or broker commission fees paid to licensed insurance agents or brokers in connection with policies written through the reinsurance pool.

The Commissioner must establish Loss Control Standards for employers to identify those employers that would significantly benefit from the adoption of a program to control workers' compensation costs. Loss control standards may require that an employer, in cooperation with its insurer, establish and maintain a safety committee, prepare and maintain a plan for medical evaluation and treatment, a plan for reasonable accommodation for injured workers to return to work, etc. The Commissioner may also establish a rating plan to effectuate compliance with the loss control standards, and may create financial incentives to encourage employees assistance in controlling workers' compensation costs.

C. §55A

Mid term notice of cancellation of a w/c policy will be effective only if due to nonpayment of premiums, fraud or material misrepresentation affecting the policy or insured, or a substantial increase in the hazard insured against.

Assessment Credits

Credits will be given against assessments to any insurer who insured for the first time a workers' compensation policy in Massachusetts between 1/31/91 and 3/1/91.

Comprehensive Health Plan Pilot Program

The Insurance Commissioner may initiate a pilot program allowing up to 10 employers to meet workers' compensation health coverage requirements by providing the entire costs of a comprehensive health insurance plan or policy or self funded plan. The program can only last from 7/1/92 for 3 years. Reports must be made on the program to the General Court every six months starting 1/1/93.

SECTION 65 TRUST FUND--

No private employer with a license to self-insure and no private self-insurance group will be required to pay assessments levied to pay for the special fund if it has given up an entitlement to reimbursement under the trust funds by filing a notice of non participation with the DIA on or before March 1 every year, effective July 1 of that year.

Each failure to pay an assessment within 30 days of receipt of the bill will result in a separate fine in the amount of 5% of the balance of the overdue assessment.

SECTION 65A ASSIGNED RISK POOL--

Insurance carriers, third party administrators, or claims handling companies may handle risks in the pool, and the Commissioner of Insurance may set the fee. The Commissioner may use carriers or designate third party administrators to service claims in the pool. A servicing fee is limited to 25% of the written premium, but may receive an additional 5% if evidence indicates the servicer is performing well.

Chapter 398  
Changes to Other Chapters

C. 176D Unfair & Deceptive Insurance Practices-- Allows the Commissioner of Insurance to order payment of restitution to a claimant who has suffered actual economic damage as result of unfair and deceptive acts committed by an insurer or its agent.

C. 176I Preferred Provider Organizations

- Insurers are added to the definition of organizations regulated by the preferred provider act.
- Workers' compensation preferred provider organizations must:
  - allow equivalent coverage of medical services in emergency situations;
  - have a grievance process for consumer complaints;
  - have a process for telling covered persons the names of current preferred providers by specialty and geographic area.

C. 180 Charitable Corporations-- Allows self insurance group to be classified as a charitable corporation.

C. 231 § 60 G Medical Malpractice

Allows workers' compensation insurers to receive indemnification for benefits paid for injuries sustained as the result of medical malpractice from court ordered medical malpractice awards.

Chapter 399 of the Acts of 1991

§8E of Chapter 26

This sets up workers' compensation unit within the State Rating Bureau of the Massachusetts Division of Insurance and is responsible for litigating the rate filings with the insurance industry. It will also, among other things, perform duties of SRB with respect to Workers' Compensation.

Minimum staffing and job requirements are set forth (e.g. for actuary, attorney, mathematician etc.). Unit is paid for by assessment on WCRIB, at \$500,000 for 1991 and assessments can be increased at a rate not to exceed the CPI. Unspent assessments used to offset assessments next year. WCRIB must pay assessment within 30 days and this unit is to regularly perform market conduct examinations as often as the Commissioner deems appropriate.

§65C of c. 152

This makes administrative changes in reinsurance pool and the distribution of losses in the assigned risk pool. Losses incurred in the assigned risk pool are to be distributed among all insurers authorized to transact workers' compensation insurance through a reinsurance pool. This also allows the insurance commissioner to designate a rating organization to administer the reinsurance pool. To reduce risks in pool the Insurance Commissioner established cost containment programs including requirements that carriers have comprehensive safety programs. Also, the Commission may require:

- that all insurers writing worker' compensation to participate as service carriers but allow such carriers to contract with an approved insurer or 3rd party administrator to service the claims. The Commissioner may also require the insurer to assume a percentage of losses for a risk for which it is the servicing carrier and to accept all risks, but allow insurers to cede risks to the pool, provided the commissioner may consider premium volume and the number of risks ceded to the pool.

- that no service carrier differentiating claims from the pool from the claims of voluntarily written insureds.

- The commissioner may also: establish credits, discounts and other incentives to encourage voluntary coverage; impose an assessment to pay for the costs of the pool's cost containment and anti-fraud programs; permit the use of rates which reasonably estimate the additional risk of business in the reinsurance pool; --

The commissioner is to hold a hearing by January 15, 1992 on the development of a plan to reduce the number of risks and amount of premium in the pool and may issue regulations, to be effective no later than April 1, 1992. The plan should attempt to reduce the percentage of all risks in the pool as a percentage of all risks in the state to 60% by September 1, 1992, 50% by Feb. 1, 1993, 45% by Sept. 1, 1993, and thereafter such reductions as the commissioner determines as reasonable and appropriate.

In determining whether to require an insurer to accept risks the commissioner shall consider any information presented by insurers on separate market segments.

§3 of c. 399 of the Acts of 1991

The Insurance Commissioner is directed to assess Auto and Workers' Compensation Bureaus \$100,000 each to be used by the Attorney General to investigate and prosecute Auto and Workers' compensation fraud. At least one full-time Attorney General is to work under each section and the assessment is to be paid within 30 days. Other assistants can be designated.

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**APPENDIX P**

ORGANIZATIONAL CHART

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## APPENDIX A

### MEMBERS OF THE ADVISORY COUNCIL AND STAFF FY'92

<u>Voting Members</u>	<u>Term Exp.Date</u>
Douglas Mure, Vice Chair (Business)	6/25/92
Kevin Mahar (Labor)	6/25/92
Samuel Berman (Business)	6/25/93
James Donovan (Labor)	6/25/93
Edmund Corcoran (Self-Insurer)	6/25/94
John Goglia (Labor)	6/25/94
James Farmer (Labor)	6/25/95
John Gould (Business)	6/25/95
Edward Sullivan, Jr. (Labor)	6/25/96
Antonio Frias, Sr. (Business)	6/25/96
 <u>Non-Voting Members:</u>	
John Antonakes (Insurance)	6/25/92
Emily Novick, Esq. (Claimants' Bar)	6/25/93
Edwin Wyman, Jr.MD (Medical)	6/25/94
Amy Vercillo (Rehab)	6/25/95
Christine Morris Executive Office of Labor	Ex-Officio
Stephen Tocco Executive Office of Economic Affairs	Ex-Officio
 <u>Staff</u>	
Stevens Day, Executive Director	
Richard Campbell	
Ann Helgran	

## APPENDIX B

### AGENDA Fiscal Year 1991

#### July 10, 1991

Minutes  
House 5609  
DIA Update:  
    a. Backlog in DDR.  
    b. Conciliation of §65 Cases.  
    c. Health Care Services Board.  
1991 Insurance Rate Filing  
Proposed Rules  
Review of DDR Study  
Miscellaneous

#### August 14, 1991

Minutes  
Backlog Update - DIA  
Reviewing Board Schedule - Judge Pearson  
Medical Malpractice Pass-through David Pomerantz,  
    Mass Medical Society  
Medical Reimbursement Rates  
Semi-Annual Report of Trust Funds  
Auditor's Report on Public Trust Funds  
Miscellaneous

#### September 10, 1991

Minutes- July and August  
Backlog Update - DIA  
Scope of Services - Rate Filing  
Miscellaneous

#### October 16, 1991

Minutes  
Backlog Update - DIA  
Dennen Case  
Medical Reimbursement Rates  
Legislation  
Miscellaneous

#### November 13, 1991

Minutes  
Backlog Update - DIA  
Legislation  
Miscellaneous

December 18, 1991

Minutes - October/November  
Rate Filing  
Legislation  
Backlog Update - DIA  
Discussion: Possible Symposium On Workers' Compensation  
Miscellaneous

January 8, 1992

Minutes - December/November/October  
Backlog Update - DIA  
Legislation - Update - DIA  
Rate Filing  
Symposium Outline  
Scope of Services for Studies - discussion  
Miscellaneous

February 12, 1992

Minutes - January  
Backlog Update - DIA  
Senior AJ  
FY'93 Budget  
Study Update  
Trust Fund Expenditures  
Miscellaneous  
    Information Transmittal  
    Judicial Appointments

March 11, 1992

Minutes - February  
DIA Updates - Backlog/Fraud  
Scope of Services  
Legislation - 1992  
Miscellaneous

April 8, 1992

Minutes - March  
Judicial Nominations  
DIA Updates - Backlog/Fraud/IME  
FY'93 Budget  
Assigned Risk Hearing  
Proposed Rules  
Miscellaneous

April 10, 1992

Nomination of Judges

May 4, 1992

Nomination of Judges

May 13, 1992

Minutes (3) - April 8, April 10, and May 4, 1992  
DIA Updates - Backlog/Fraud/Medical Components of New Law  
DIA Budget/Financial Figures  
OEVR Update On New Law  
Conciliation Update On New Law  
Judicial Appointments  
Miscellaneous  
Employee Leasing Rules

June 1, 1992

Nomination of Judges

June 10, 1992

Judicial Appointments  
Minutes (2) - May 13, 1992 and June 1, 1992  
Assessment Budget FY'93  
Conciliation Update On New Law  
DIA Updates - IME's/Budget/Backlog/Fraud  
Miscellaneous

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Queue Report - Total number of cases (board numbers) awaiting a conference scheduled date. Taken from report 404, scheduler queue statistics.

### Fiscal Year 1990

07/06/89 -	4609
08/07/89 -	5369
09/07/89 -	5088
10/05/89 -	5427
11/09/89 -	5895
12/07/89 -	5966
01/04/90 -	5918
02/02/90 -	6392
03/01/90 -	6012
04/05/90 -	6166
05/03/90 -	6848
06/07/90 -	7352

### Fiscal Year 1991

07/05/90 -	7513
08/09/90 -	8259
09/11/90 -	8084
10/04/90 -	8363
11/08/90 -	7972
12/05/90 -	8012
01/03/91 -	7914
02/07/91 -	8153
03/07/91 -	8441
04/04/91 -	8721
05/02/91 -	8578
06/06/91 -	9226

### Fiscal Year 1992

07/03/91 -	9305
08/07/91 -	8915
09/04/91 -	9340
10/02/91 -	9660
11/06/91 -	8873
12/04/91 -	9349
01/08/92 -	8745
02/05/92 -	7777
03/04/92 -	8302
04/01/92 -	8665
05/06/92 -	7869
06/03/92 -	8324

## APPENDIX D

### PROPOSALS FUNDED BY THE DIA'S OFFICE OF SAFETY FISCAL YEAR 1993

James O'Leary  
The Robert D. Marshall  
Carpenters Training Center  
13 Holman Road  
Millbury, MA. 01527

Title: "The Hazards of Lead Paint Exposure"  
Total Funds Awarded: \$29,880.69

Diane McLeod  
City of Lowell  
City Hall  
375 Merrimack Street  
Lowell, MA. 01852

Title: "City of Lowell Employee Health and Training"  
Total Funds Awarded: \$18,039.00

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

Title: "Basics of Ergonomics and Injury Prevention"  
Total Funds Awarded: \$29,194.44

Scott Grant  
Ind. Rehab Assoc. d.b.a., The Return to Work Center  
47 Jackson Street  
Holyoke, MA.

Title: "A Training Program to Prevent Cumulative Trauma  
Disorders"  
Total Funds Awarded: \$32,575.00

Philip Korman  
Western MassCOSH  
458 Bridge Street  
Springfield, MA. 01103

Title: "Preventing Cumulative Trauma Disorders in the  
Pioneer Valley"  
Total Funds Awarded: \$33,547.69

Chau-Ming Lee  
Chinese American Civic Association  
90 Tyler Street  
Boston, MA. 02111

Title: "Occupational Health and Safety Training for  
Chinese Restaurant Workers"  
Total Funds Awarded: \$ 7,745.07

Vincent Curley  
Ironworkers Local #357  
154 Grove Street  
Chicopee Falls, MA. 01020

Title: "Health and Safety in the Building Trades"  
Total Funds Awarded: \$19,349.00

Emi Carrigan  
Central Massachusetts Chapter,  
National Safety Council  
Wachusett Plaza, Route 12  
West Boylston, MA. 01583

Title: "Ergonomic Approach to Reducing Risk Factors  
Associated with Musculoskeletal Disorder  
of the Upper Extremities"  
Total Funds Awarded: \$29,740.00

John E. Winske  
Massachusetts Coalition of  
Citizens with Disabilities  
80 Boylston Street  
Boston, MA. 02116

Title: "The ADA and Workers' Compensation"  
Total Funds Awarded: \$31,818.00

Diane Plantamura  
Massachusetts Respiratory Hospital  
2001 Washington Street  
Braintree, MA. 02184

Title: "Center for Occupational & Environmental Medicine"  
Total Funds Awarded: \$34,084.02

Joseph J. Canty  
Town of Nahant  
334 Nahant Road  
Nahant, MA. 01908

Title: "Public Safety Training Program/Town of Nahant"  
Total Funds Awarded: \$12,316.00

Kevin C. Donahue  
Boston Guild for the Hard of Hearing  
283 Commonwealth Avenue  
Boston, Ma. 02115

Title: "Occupational Hearing Conservation Education  
Program"  
Total Funds Awarded: \$27,171.00

Jose J. Fernandez  
Centro Hispana de Chelsea  
5 Everett Avenue  
Chelsea, MA. 02150

Title: "Worksite Safety Education/Training Program"  
Total Funds Awarded: \$32,947.00

Laurie Stillman  
MassCOSH  
555 Amory Street  
Boston, MA. 02130

Title: "Increasing the Effectiveness of Joint/Labor  
Management Committees: Focus on Control of  
Chemical and Ergonomic Hazards"  
Total Funds Awarded: \$34,000.00

Stacey Clark  
Town of Brookline  
333 Washington Street  
Brookline, MA. 02146

Title: "Employee Ergonomics and Fitness Training Program"  
Total Funds Awarded: \$24,745.40



## APPENDIX E

### Lump Sum Conference Statistics For Cases Scheduled

	<u>Lump Sums Sch.</u>	<u>Lump Sums Approved</u>
7/1989	1101	914 (83%)
8/1989	1102	905 (82%)
9/1989	1558	1271 (82%)
10/1989	1211	936 (77%)
11/1989	1311	1078 (82%)
12/1989	1634	1390 (85%)
 <u>1990</u>		
1/1/90-1/31/90	1,862	1,472 (79.1%)
2/1/90-2/28/90	1,622	1,296 (79.9%)
3/1/90-3/31/90	1,585	1,233 (77.8%)
4/1/90-4/30/90	1,534	1,262 (82.3%)
5/1/90-5/31/90	1,754	1,455 (83.1%)
6/1/90-6/30/90	1,685	1,386 (82%)
7/1/90-7/31/90	1,617	1,330 (82.3%)
8/1/90-8/31/90	1,785	1,458 (82%)
9/1/90-9/30/90	1,508	1,266 (84%)
10/01/90-10/31/90	1,638	1,348 (82.3%)
11/1/90-11/30/90	1,581	1,344 (85%)
12/01/90-12/31/90	1,485	1,121 (81.5%)
 Total Cal. Year '90	 19,656	 15,971 (81%)
 <u>1991</u>		
1/1/91-1/31/91	1,660	1,438 (86.6%)
2/1/91-2/28-91	1,648	1,403 (85.1%)
3/1/91-3/31/91	1,804	1,550 (85.9%)
4/1/91-4/30/91	1,536	1,328 (86.5%)
5/1/91-5/31/91	1,722	1,436 (83.4%)
6/1/91-6/30/91	1,487	1,237 (83.2%)
 Total FY'91	 19,471	 16,259 (83.5%)
7/1/91-7/31/91	866	748
8/1/91-8/31/91	1,508	1,266 (84%)
9/1/91-9/30/91	1,600	1,355 (84.7%)
10/1/91-10/31/91	1,727	1,470 (85.1%)
11/1/91-11/30/91	1,654	1,054 (63.7%)
12/1/91-12/31/91	1,515	968 (63.9%)
 Total Cal. Year '91	 18,727	 15,253 (81%)
 <u>1992</u>		
1/1/92-1/31/92	1,608	691 (43%)
2/1/92-2/29/92	1,370	953 (69.6%)
3/1/92-3/31/92	1,436	1,143 (79.6%)
4/1/92-4/30/92	1,572	1,170 (74.4%)
5/1/92-5/31/92	1,390	1,070 (77%)
6/1/92-6/30/92	964	791 (82.1%)
 Total FY'92	 17,210	 12,679 (74%)

# APPENDIX F

## CLAIMS AND DISCONTINUANCES

### History

	<u>Claims/Disc</u> <u>Prior to Review</u>	<u>Referrals Conciliation</u>
1987	36,831	28,618
1988	39,200	29,332
1989	42,488	34,855
1990	44,974	37,420
1991	48,302/52 (929)	40,494/52 (779)

## REQUESTS FOR ADJUDICATION

1991/1992

	<u>#of Claims</u> <u>/Dis</u>	<u>AverPerWk</u> <u>PerMo.</u>	<u># Refer.</u> <u>Concil.</u>	<u>Aver.PerWk</u> <u>PerMo.</u>
Monthly Totals:				
July 1991 Total:	3272/4	818	2851/4	713
August '91 Total:	4446/5	889	3716/5	734
September '91 Total:	4011/4	1002	3252/4	813
October '91 Total:	3793/4	948	3153/4	788
November '91 Total:	4603/5	921	3840/5	768
December '91 Total:	3470/4	866	2870/4	718
January '92 Total:	4367/5	873	3479/5	696
February '92 Total:	3088/4	772	2733/4	683
March '92 Total:	3273/4	818	2667/4	667
April '92 Total:	3133/4	783	2564/4	641
May, '92 Total:	4042/5	808	3406/5	681
June, '92 Total:	3404/4	851	2776/4	694
FY'92 Totals:	44902/52	864	37307/52	717
FY'91 Totals:	47948/52	922	39906/52	767

**APPENDIX G**  
**MASSACHUSETTS WORKERS' COMPENSATION**  
**ADVISORY COUNCIL**  
**600 Washington Street**  
**Boston, Massachusetts 02111**  
**(617) 727-4900 EXT. 378**

**Chairman**  
Joseph Faherty  
**Vice-Chairman**  
Douglas V. Mure

**Executive Director**  
Stevens M. Day

**ADVISORY COUNCIL TESTIMONY**  
**JOINT COMMERCE AND LABOR COMMITTEE APRIL 10, 1991**

Good morning. My name is Joseph Faherty and I am here today as the chairman of the Massachusetts Workers' Compensation Advisory Council. I serve on the Council as a representative of employees, whose interests I also represent as the president of the Massachusetts AFL-CIO. Appearing with me is Douglas Mure, vice chairman of the Advisory Council and a representative of construction employers. On behalf of all the members of the Council, we wish to thank you for the opportunity to make a few brief remarks to your committee.

Let me emphasize at the outset that the joint appearance of labor and management representatives from the Advisory Council is a reflection of both the spirit and the structure of this volunteer body, which was created by the 1985 amendments to monitor the workers' compensation system and make recommendations for the system's continued improvement. Labor interests and employer interests may not be in accord on every issue which comes before the Council, but the voting membership is evenly constituted of five labor and five employer representatives, and any action taken by the Council requires an affirmative vote of at least 70% of the voting membership. We are therefore speaking to you with a united voice.

The Council has reviewed all bills available to it that are before the Joint Commerce and Labor Committee. The Council has indicated its position on each of these bills as a whole and as proposed, on a separate document. The Council has only taken positions on bills which had the requisite statutory support of the voting membership. Some bills, or sections of bills, on which the Council has taken no position may have the support of individual Council members. In addition, we have noted concepts in a number of the bills that the Council voted to support that may merit your consideration, even though as drafted there was not a requisite amount of support for the bill taken in its entirety.

In its capacity as an oversight and monitoring body, the Advisory Council has taken an active role in attempting to research weaknesses in the workers' compensation system and proposing corrective measures. The Council has benefited in this activity from the representation of all parties in the system. Additionally, the

Council has been aided by ongoing contact with the Department of Industrial Accidents. On the basis of its observations, the Advisory Council has gone on record on numerous occasions with suggestions for legislative or administrative change. Attached to our positions on the bills is a series of administrative recommendations that we offer for your consideration. We also wish to share some of our foremost concerns regarding prospective reforms.

---The costs of the system and the delays in administrative proceedings must be brought under control. Cost and delay are invariably intertwined and cast a determining influence on other aspects of the system. Without resolution of these fundamental problems, the system will remain in chaos.

---Workers must have access to quality medical care in an expeditious fashion. While medical costs as a percentage of workers' compensation premiums approach 40% nationally, in Massachusetts recent data shows our state in the 20% range. If we approach the national average, what then will happen to our costs?

---Abuse of the system cannot be tolerated. There is no way to calculate the extent of practices which either casually or deviously attempt to reap unwarranted reward. Abuse may take many forms and involve any of the system's actors. There is a real danger in allowing even minor abuses to go unchecked, since they can contribute to an overall workers' compensation culture in which misuse of the system may be construed as tolerable or even legitimate. Accordingly, we strongly support any efforts to identify and curtail abuse.

---The cost of workers' compensation insurance must be brought under control and a comprehensive solution must be implemented toward this end. The prohibitive and skyrocketing cost of insurance is a significant contributor to the fragile business climate in which we find ourselves. We fear that a failure to implement fair insurance rates will encourage more business entities to unlawfully operate without insurance and further erode the commonwealth's competitive edge. The livelihoods of employers and employees depend on the ability to bring insurance costs under control.

---More attention must be devoted to improving the day-to-day operation of the system. To date, concern with costs and delays has tended to concentrate upon large-scale and visible phenomena, such as budgets, medical costs, insurance costs, and so on. With the introduction of a new administration at the DIA, this is a fruitful time to appraise smaller scale practices and procedures, and perhaps pilot projects, and make necessary improvements. We look forward to working with the new administration.

---In examining the way we do things at the most basic level, we must make an effort to reduce the extent of litigation. As a start, we look forward to receiving information from the insurance industry regarding expenditures for plaintiff and defense attorney fees.

---The backlog of cases awaiting settlement at the DIA must not be allowed to increase. To this end, we support the return of backlog judges to the DIA's FY'92 budget.

The law was initially enacted in 1911. In the 80 years many things have changed. Some remain the same. I would like to share the following quotes which many here might agree with.

--- "The difficulty under the new law will not be so much in the determination of matters of legal liability as in the ascertained of physical incapacity of the injured man."

--- "The successful administration of the act requires the assistance of skillful physicians and surgeons of the highest integrity."

--- "The Industrial Accident Board can render invaluable service to employers by co-operating with them in the practical study of accident prevention."

--- "In regard to industrial accidents, with which this report is concerned, the lack of definite and reliable information is particularly marked. Every one who is at all acquainted with modern industrial operations knows that disabling accidents are frequent and often distressing in their results, but in the absence of carefully compiled statistics no real measurement of this element in the cost of production is possible."

Report on the Commission for Compensation for Industrial Accidents  
Published in 1912.

---"Malingering by the industrial workers of this state is inconsequential.... A regrettable fact is that in the few such cases which occur the workman is seldom alone in his attempted deception; he too is often the misguided victim of unscrupulous professional advisors or persons with abnormal desires to debase others."

2ND Annual Report of the Industrial Accident Board

I would like to make an additional observation to the Committee. My own concerns regarding the state of the workers' compensation system in the commonwealth do not stem solely from my ties to the labor movement or to the Advisory Council. I also find myself in a third role--that of an employer. The Massachusetts AFL-CIO, like other employers, is required under Massachusetts law to provide workers' compensation insurance coverage for its employees and to pay assessments levied under Section 65 of M.G.L. c.152. Over the last several years, my organization has noted with alarm the rapidly escalating costs associated with workers' compensation. We share the concerns of other employers that the prohibitive and seemingly uncontrolled increases in insurance premiums and assessment payments will hinder our organization's effectiveness.

Of course, outright costs are only part of the problem. All parties in the workers' compensation system agree that fundamental and widespread corrections are necessary in order to stabilize the system. The severity and breadth of current problems, from lengthy delays in case settlement to inconsistent medical treatment for injured employees, have by most accounts resulted in a crisis situation, and this is reflected in the large number of bills that have been filed to amend the workers' compensation statute and related laws. The sense of urgency is quite clear. However, there is not likely to be full agreement on where change should be made or how it is to be implemented.

In closing, I would be remiss if I did not express our dismay and concern at the recent actions of government with respect to the reversion of employer paid assessment funds at the DIA. The Council would never presume to speak for all employees and employers, and there are many here today who I am sure will articulate their own frustrations. However, on no issue has the Council ever been more united. When the employers agreed to pay for the operating expenses of the department, it was with both the statutory protection and explicit trust that employer funds would not become a petty cash fund for the state. The law has been circumvented and the trust has been broken.

In the labor movement, as in other areas of endeavor, a party's word is law. It is a contract. Employers believed that they had both a law and a good faith agreement to protect them. A conscious and deliberate choice has been made to breach the trust engendered by the 1985 changes. Reversion of employer funds is nothing more than a tax--potentially a double tax if future assessment must assume the costs of the furlough/deferred compensation program. We ask the consideration of each of you to do your best to prevent such actions from happening again.

I thank all members of the Committee for their energetic efforts and time on behalf of the workers' compensation system. For the Advisory Council, I sincerely thank you for this opportunity to share our concerns with you.

## Workers' Compensation Advisory Council: Administrative Recommendations

In its role as overseer of the workers' compensation system, the Advisory Council has undertaken research which has sought to identify trouble spots in the system that might be improved through either administrative or legislative action. The Council has shared its recommendations from these studies with appropriate parties, both in the Department of Industrial Accidents and in the legislature.

Among the reports issued by the Advisory Council are: a comprehensive study of the workers' compensation system (prepared by Peat Marwick Main and Company); a study of friction costs in the workers' compensation system and Department of Industrial Accidents (prepared by Milliman & Robertson, Inc. and John Lewis); a study of medical access for work-injured employees (prepared by Lynch Ryan & Associates and the Boylston Group); and studies of a "mark up" form of case scheduling, occupational diseases, and competitive rating prepared primarily by the Council.

In issuing recommendations from its research, the Advisory Council has been careful to distinguish between those which would have to be implemented by legislative action and those which could be put in place by administrative decision at the Department of Industrial Accidents.

Several recommendations targeted practices or procedures within the Department of Industrial Accidents while some are systemic in nature. A sample of some of those suggestions include the following:

--The report on the "mark up" system suggested that a motion session could act as an administrative mechanism which would cut down on fraud and abuse, as well as resolve disputes over whether information is discoverable prior to the scheduled date. Motion sessions were seen as a potential means for expediting case flow by allowing attorneys needing to withdraw from cases to do so before a hearing and by alerting parties to sanctions against fraud or other abusive practices.

--The study by Peat Marwick Main and Company of the overall workers' compensation system included several suggestions that could be carried out at the department level. One recommendation was to automate the Insurance Register in the DIA's Office of Insurance. Through the cooperation of the Workers' Compensation Rating and Inspection Bureau, this is currently being done. This should allow for a better use of staff, improved investigatory efforts, and elimination of the register's entry backlog. The report also recommended that remittances and assessments be audited, and that support for the Office of the Legal Counsel be enhanced. Another recommendation was to modify the DIAMETER software program to permit the processing and tracking of multiple claims and to validate and edit existing data and purge inaccurate information. This would improve access to information and cut down on system abuse.

--The study by Lynch Ryan and the Boylston Group on medical access recommended that the DIA make better use of the Health Care Services Board in order to improve medical services and identify abuses. Among the specific tasks recommended for the Board were: promotion of the development and use of standard protocols for the treatment of lower back injuries; development of a database on workers' compensation medical practice; and improvement of provider perceptions of work-injured individuals. It was also recommended that provider reimbursement procedures be streamlined, that a prototype coordinated care initiative be established, and that there be a greater application of stress management techniques to workplace injuries.

--The Council has recommended in its Report on Occupational Diseases that greater attention should be devoted to industrial diseases and illnesses, particularly in surveillance, diagnosis, treatment, education and training.

-- The Council has recommended in its competitive rating study that before consideration of a competitive rating system for insurance pricing is implemented market conditions must improve. There have been changes intended to depopulate the assigned risk pool which will hopefully assist in this area.

The Advisory Council has itself made a number of suggestions in its annual reports and elsewhere that would not necessarily require legislative action in order to be implemented.

--The Council has recommended the use of a formal performance appraisal to evaluate judicial personnel. This would provide the appointing authority with relevant information in the appointment process inasmuch as the law mandates that the a review by the department be provided to the Nominating Committee. It is especially critical since the majority of judicial terms expire in the next year. Delays in the appointment process exacerbate the backlog of cases.

--The Council has recommended that relevant medical information be attached to claims/complaints in order to provide parties with the necessary information which could decrease litigation.

--The Council has recommended the promulgation of rules to monitor claims handling techniques, as set forth in M.G.L. c.23E 11(4). This would provide a more active oversight capacity in order to discourage unwarranted claims and litigation by insurers.

--The Council suggested increasing settlement agreement information for the lump sum process in order to allow more rapid evaluation and approval.

--The Council has encouraged the administration to provide conciliators with the flexibility and tools for enhancing their effectiveness.



--The Council requested that the insurance industry provide information on legal costs in the workers' compensation system, and in his December 27, 1990 decision on insurance rates, the Commissioner of Insurance urged the parties to explore the issue.

--The Council urged that steps be taken to educate governmental entities regarding workers' compensation insurance requirements and to publicize the enforcement authority of the DIA.

--The Council suggested the provision of greater in-house training for DIA staff in order to improve productivity and morale and also recommended on-going training for judicial staff.

--The Council identified misuse of Section 65 funds drawn from assessments on employers and sought to explain to appropriate authorities the rationale and structure for the assessment mechanism. The Council strongly emphasized the need to maintain the integrity of the assessment process in relation to its original purposes.

--The Council has urged the DIA to notify the CEOs of insurance companies of the obligation to file "pay" forms. The filing of these forms may provide the system with more accurate data on not only the pay without prejudice process, but attorney fees as well.

--A mechanism exists for parties to formalize complaints where they believe the system has been abused. The DIA received a total of three complaints in FY'90. Parties should exercise their rights if they believe the system has been abused.

--The Council has supported the adoption of a Qualified Loss Management Program to depopulate the assigned risk pool. This program is intended to provide incentives for employers to lessen costs. This program is in its infant stages but may in time decrease costs.

--The Council has raised the problem concerning parties appearing before the agency with "apparent", but not perhaps "actual" authority to resolve cases. There may be additional administrative mechanisms that could be employed to curtail this activity.

--The Council has supported in the past additional resources for the DIA to function as envisioned by the 1985 changes. Funds alone are not the sole answer to problems which exist but can complement a sound administrative format to enforce the law.

--The Council has supported the development and dissemination of accurate data. Major strides have been made to improve information collection. One additional improvement, which required legislation to accomplish, is the sharing of relevant data by the Department of Employment and Training with and DIA. To date, this has not been fulfilled. We have also supported the coordination of research capabilities within the agency.

--We have supported working with the Health Care Services Board to improve the medical care aspect of the system and working with the DIA rules Committee to discuss possible statutory changes to the law. With respect to the former we hope that with the appointment of a medical advisor to the department the expertise of this board can be utilized to its fullest. We have attempted to expand our knowledge in this area by reaching out to educational facilities. On the latter subject we would again welcome the opportunity discuss possible improvements.

Improvements have been made in many areas of the administration of the system, including some of the areas listed above, while others may be in process. It is the Council's belief that some improvements are available without changing the law and where possible these alternatives should be explored. There should be no need to micro-manage the system from the outside. A pro-active approach and the will to experiment can not only offer, at a minimum, the hope for improvement but can also identify the effectiveness of concepts before amending the law. In addition there are numerous groups and individuals who have in the past indicated their willingness to provide their insights and expertise for effectuating the law. They may possess alternatives, perhaps more effective ones, and we encourage the tapping of these resources in order to provide a complete dialogue on the problems of the system.

# APPENDIX H

## ADMINISTRATIVE JUDGE DECISIONS MAILED OUT BY MONTH FY'92

### SUMMARY OF NUMBER OF DECISIONS MAILED OUT

NAME	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	TOTAL
Beard	5	7	5	3	N/A	6	10	3	3	2	3	4	51
Brooker	16	0	0	7	9	17	10	10	7	14	10	19	119
Cleary	3	N/A	3	N/A	12	6	4	3	0	7	5	3	46
Coleman	4	3	5	1	2	9	2	5	4	3	2	2	42
Cox	2	5	5	5	3	5	5	0	6	0	5	4	45
D'Esti	3	0	0	1	N/A	0	2	0	4	4	0	2	16
Elliott	7	4	N/A	4	0								15
Ferin	3	2	4	8	2	0	9	4	9	12	7	19	79
Fischel	5	6	3	5	5	10	5	5	5	4	4	4	61
Gallo	4	2	5	2	4	0	2	1	2	0	0	3	25
Gromelski	2	3	3	3	2	4	0	3	3	4	1	4	32
Heffernan	8	3	4	6	5	4	3	11	12	4	3	7	70
Jackson	3	5	1	4	1	1	3	0	2	2	5	2	29
Jennings	5	3	7	5	5	8							33
Lee	4	4	6	4	5	0	0	16	4	7	6	13	69
Leroy	6	1	0	2	8	3	8	7	8	15	5	2	65
McGuinness	5	5	1	10	5	2	5	1	1	7	2	5	49
McKenna						1	0	3	3	9	1	1	18
McKinnon	6	5	7	3	8	3	6	6	1	13	7	8	73
Moreschi	4	12	0	3	8	2	3	11	6	2	8	8	67
Rogers	6	7	3	8	7	7	5	4	19	2	6	21	95
Ryan	8	3	8	4	5	6	8	4	4	11	1	0	62
Solomon	5	5	4	5	5	0	7	7	0	6	0	7	51
St. Amand	2	5	4	2	2	2	3	4	4	4	3	2	37
Taub	6	5	3	4	5	10	3	3	9	12	7	4	71
Thompson						0	0	2	1	0	0	2	5
Tirrell	9	7	9	8	9	6	4	8	9	8	8	4	89
Totals:	131	102	90	107	117	112	107	121	126	152	99	150	1414

N/A - Statistics not submitted

As of 12/91 Decision filed is from computer report 346 and cases resolved is taken from computer reports 45B, 319B, and 346. Prior to that date figures were submitted by judges.

# APPENDIX I

## CASES RESOLVED BY ADMINISTRATIVE JUDGES FY'92 (lump summed, withdrawn, adjusted, others)

NAME	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	TOTAL
Beard	171	58	70	86	N/A	40	65	55	70	43	41	84	783
Brooker	66	19	2	44	63	62	56	48	79	74	40	32	585
Cleary	45	N/A	51	N/A	N/A	10	0	3	4	3	1	4	121
Coleman	60	56	93	49	88	62	58	59	79	95	57	99	855
Cox	50	25	60	55	65	33	31	76	26	57	43	62	583
D'Esti	30	14	84	37	N/A	90	36	85	65	49	49	43	582
Elliott	62	21	N/A	4	0	-----	-----	-----	-----	-----	-----	-----	87
Ferin	45	62	79	44	69	65	39	43	78	26	53	43	646
Fischel	67	77	53	77	54	45	17	79	41	57	53	52	672
Gallo	68	11	33	33	28	16	5	14	7	11	1	8	235
Gromelski	35	60	48	31	61	49	74	63	41	77	48	55	642
Heffernan	56	67	40	54	79	28	44	82	39	71	69	45	674
Jackson	34	67	8	53	27	31	38	57	58	45	53	74	545
Jennings	38	69	49	55	78	76	-----	-----	-----	-----	-----	-----	365
Lee	55	65	47	60	36	80	48	26	77	38	49	46	627
Leroy	71	50	68	90	72	59	41	52	73	80	60	64	780
Levine	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	3	3
McGuinness	72	57	54	106	57	33	41	88	61	55	77	45	746
McKenna	-----	-----	-----	-----	-----	18	4	63	24	49	75	27	260
McKinnon	53	91	67	68	22	89	35	48	71	43	56	40	683
Moreschi	58	63	70	72	46	54	58	50	61	41	79	45	697
Rogers	116	62	59	113	60	38	58	54	53	34	64	32	743
Ryan	70	39	58	107	81	39	58	56	86	24	1	4	623
Solomon	47	51	73	67	63	109	54	66	96	56	87	97	866
St.Amand	20	80	60	87	74	39	78	47	58	90	67	66	766
Sumner	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	1	1
Taub	55	29	61	56	47	84	29	40	113	86	51	58	709
Thompson	-----	-----	-----	-----	-----	51	47	43	54	58	53	72	378
Tirrell	74	62	62	62	58	62	45	32	96	66	57	82	758
Woodward	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	2	2
Totals:	1518	1255	1347	1510	1228	1362	1059	1329	1510	1328	1284	1285	16015

APPENDIX J  
MASSACHUSETTS WORKERS' COMPENSATION  
ADVISORY COUNCIL  
600 Washington Street  
Boston, Massachusetts 02111  
(617) 727-4900 EXT. 378

**Chairman**  
Joseph Faherty  
**Vice-Chairman**  
Douglas V. Mure

**Executive Director**  
Stevens M. Day

April 10, 1991

The Honorable Lois Pines  
Senate Chair  
Commerce and Labor Committee  
State House - Room 421  
Boston, Massachusetts 02133

The Honorable Susan Bump  
House Chair  
Joint Commerce and Labor Committee  
State House - Room 43  
Boston, Massachusetts 02133

RE: Proposed Legislation in the Joint Commerce and Labor  
Committee-Spring 1991

Dear Senator Pines and Representative Bump:

The Advisory Council, at its last two meetings, reviewed the following bills currently before your committee, in compliance with our charge under the statute. Each bill has been reviewed exactly as proposed with respect to the current statute. The Council has taken positions to support or not support based upon the requisite number of votes. Where the Council has indicated a neutral position it means that there were not the requisite number of votes to take an position on the bill as proposed. In addition action by the Council does not indicate what individual Council members may, on their own, feel about any of the proposed legislation.

As a result of our review, we would like to offer the following:

**House Bills**

**House 154**

The Council took a neutral position on this bill as proposed. While we recognize that the fines may be high as a result of a lack of clarity in the law at present, the Council felt that the proposed bill left future fines too much to the discretion of the Commissioner.

**House 310**

The Council felt that this bill, and the concept it seeks to address, needed further study to determine if it impacts other industries. In addition there is nothing in the current law that would implicitly or explicitly make the law elective for health care facilities.

**House 692**

Council took a neutral position on this bill as proposed.

**House 924**

The Council believes that §35B of the current act requires clarification with respect to its interpretation and supports the concept. This may be accomplished through regulations as the DIA has done with §35C and perhaps should be considered for §51A as well.

**House 1130**

This bill has already been enacted as Chapter 462 of the Acts of 1990 and was signed on December 29, 1990.

**House 1318**

The Council took a neutral position on this bill. It was felt that rules mandated by c.23E §11(4) should be promulgated before any changes are made to §25D.

**House 1474**

The Council does not support this bill as proposed. The Council believes that the insurance market must improve before initiating a state mutual fund. Most existing state funds have a long history, and it may be instructive to monitor the performance of the more recently created state funds in Rhode Island and New Mexico before considering action in this area. In addition current events establish that despite legislative mandates that funds be earmarked for specific purposes there are no iron clad guaranty's that such mandates will not be abandoned in periods of fiscal distress.

**House 1699**

The Council took a neutral position on this bill. The Council does recognize the need to reduce litigation, particularly in the area of earning capacity. However, one concern deals with the constitutional questions raised by the proposed bill, as dealt with by the Massachusetts Supreme Judicial Court in Meunier's Case, 319 Mass 421, 66 NE 2d 198 (1946). It also raises questions as to the determination of legal issues and may impact the current law with respect to the holding in Lettich's Case, 403 Mass 389, 530 NE 2d 159 (1988).

**House-1710 and House-2233**

The Council does not support these bills as proposed. The Council believes that the preclusion of fines, penalties,

and loss of rights should not be done by regulations. Consideration of changing the pay/deny period should take account of the 30 day period for filing a claim, which was initiated to give first report notices and the pay/deny process time to work. Any alteration of first report and pay/deny procedures must also consider the 30 day period or risk a return to the pre-1987 practices wherein claims were often filed before the pay/deny period ended. The Council supports lump sum approvals by Administrative Judges or Administrative Law Judges, but would also like to see Conciliators receive authority to approve lump sums.

The Council supports the receipt of statistical lists and this may be able to be accomplished without a statutory change.

#### **House-2242**

The Council does not support this bill as proposed. The Council has concerns with the elimination of language regarding judicial responsibility during ordinary business hours, as well as potential conflict regarding statutory authority over the Division of Dispute Resolution. The bill proposes potential increases for certain judicial personnel which is unclear under the given statutory formula. Additionally, the Council is concerned about its ability to conduct appropriate judicial reviews in light of its mandate under the open meeting law. The Council also believes that removal of any Council member should not be automatic, and that members should be afforded an opportunity to explain absences, with the Council voting on continuation of membership. The Council believes that the current terms for members is appropriate and has concerns over the possible costs for a newsletter.

The Council does support the concept of having a more defined and qualitative review of judicial performance and would welcome the opportunity to have input into the selection of the Commissioner, inasmuch as we believe that Council's function in its oversight responsibility is predicated upon the fact that it represents the parties which are most directly affected by the system and which pay for it. We also believe that the establishment of a quality data system would improve the functions of the Office of Safety.

#### **House-2248 and House 2259**

The Council supports these bills as proposed.

#### **House 3168**

The Council voted to not support this bill as proposed. However, the intent to remove competitive advantages that parties obtain from circumventing the workers' compensation law is a concept that merits attention. As proposed, this language may not encompass certain abuses which take place and may cover other areas which perhaps could be clarified.

**House-3179**

The Council did not support this bill as proposed. It is unclear how much information would be required in order to comply with proposed bill and as stated might create confusion with other laws, such as ERISA, COBRA etc.

**House-3358**

The Council took a neutral position on this bill.

**House-3361**

The Council did not support this bill as proposed. This may lead to workers' compensation becoming an alternative medical care policy and it is unclear what impact it would have in terms of the licensing requirements for insurance carriers.

**House-3911**

The Council took a neutral position on this bill. The Council recognizes that while inequities may arise in reimbursements, the proposed bill permits a public entity to opt out up to the day before the assessment must be promulgated. It also permits retroactive application of non-participation if notice was given by June 30, 1990, potentially offering advantages to some public entities since no such right existed at that time.

**House-3915**

The Council took a neutral position on this bill, which is the same as House 215 currently before the Public Service Committee.

**House-4096**

The Council did not support this bill as proposed.

**House-4273**

The Council did not support this bill as proposed. We concur with the premise that pre-approval should not be required, but the proposed bill requires submission of an invoice, not a report or diagnosis as to injury, for which payments must be made within a specific timeframe.

**House-4459**

The Council did not support this bill as proposed. Deductibles may provide employers with some cost savings and encourage a greater awareness of their workers' compensation costs. However, if the non-payment of the deductible is treated in the same manner as the non-payment of premium, this could result in exposure for the trust fund when a deductible is not paid and the insurance cancelled. It could open up civil liability as well. It is also unclear from the proposed legislation which laws it seeks to repeal.

**House-4462**

The Council did not support this bill as proposed. Fraud by any party in the system, be it by an employee, insurer, employer, provider, or advocate, is not condoned. Our concern



is with the possibility that "attempts" to claim benefits may promote excessive litigation because it is unclear to what it refers.

**House-4465**

The Council supports this bill as proposed. In addition the Council would welcome the opportunity to take part in any such study and believes that it could provide a positive role in effectuating an examination of this issue.

**House-4646**

The Council did not support this bill as proposed. Any change in the notice requirements should take into account the 30 day period enacted in 1987 for the filing of claims. The proposed language could extend the time for insurers to make their decision well beyond the waiting period for the filing of a claim.

**House-4650**

The Council did not support this bill as proposed. Since its inception, pursuant to §24, the act has been elective for employees, although it is unclear how this proposed exemption from the policy, and not the act, would be handled. This may create issues under the laws regulating insurance, such as Chapter 175 which would appear to not be encompassed by the bill. It is unclear if this would allow civil actions for a potential work related injury and if the private coverage envisions that paid by the executive or the corporation. It is unclear how such an exemption would interact with §46, which bars agreements by employees to waive their rights to compensation. At the current time, the corporate officer rate is often the under the clerical classification which is \$.37 per \$100 of payroll. Even with the increase in the payroll cap for corporate officers from \$26,000 to \$52,000 this year, it would appear to require a premium of about \$192. It is unclear as to what becomes of the premium obligation if an officer exempts himself/herself from coverage and when such an exemption must take place.

**House-4853**

The Council did not support this bill as proposed. Under the current format there is a differentiation on the amounts based upon the placement of the scar. In addition, the use of the phrase "daily dress" may create confusion as to application of the proposed changes.

**House-4854**

The Council did not support this bill as proposed.

**House-4856**

The Council did not support this bill as proposed. The Council firmly believes in the effective use of vocational rehabilitation but feels that the proposed bill would place administrative burdens on the system with its mandated weekly meetings.

**House-4859**

The Council did not support this bill as proposed. The current law permits employers to bring such actions (§14), as well as insurers and employees. The current law requires reimbursement to an insurer while the proposed bill is unclear how such reimbursement would take place.

**House-4860**

The Council did not support this bill as proposed.

**House-4861**

The Council did not support this bill as proposed.

**House-5138**

The Council did not support this bill as proposed inasmuch as variances already exist for risk classifications and there is an appeal mechanism in place for parties who wish to question a classification.

**House 5139**

The Council did not support this bill as proposed. This bill may create confusion in the determination of earning capacity and may encourage cost shifting of health care insurance.

**House 5348**

The Council supports this bill as proposed.

**Senate Bills****Senate-38 and Senate 64**

The Council took a neutral position on each of these bills. Each of these bills proposes far-reaching changes to the current system. The Council agrees with the premise that there should be a more qualitative review of performance but believes that the current law, if applied, could accomplish this. It agrees that additional information included with matters before the agency would be beneficial. The authority of judges to increase attorney fees should be accompanied by a corresponding authority to decrease such fees. The scope of review of the reviewing board should be clarified in order to minimize the number of issues appealed. Application of any changes should be viewed in terms of the effect of §2A of the act. The Council agrees with the concept of providing more personnel with the authority to approve lump sums, but feels that such authority should be delineated specifically in the law. We agree that lump sum interviews should be mandatory for pro se employees only and that approval by affidavit may expedite the process.

There is an absolute necessity to improve the daily operation of the system in order to not only reduce litigation, but to ensure that justice is expended in a fair and expeditious manner. The Council feels that steps should be taken to ensure that the second injury fund operate effectively. The binding nature of disability determinations, as noted

previously, raises certain constitutional issues. A complete data base for use in directing safety programs could be useful in preventing injuries. Reviewed exactly as proposed under the existing law, there was not a requisite number of votes to express support or non-support, but the some of the perceived intentions may merit further discussion.

**Senate-51 and Senate-53**

The Council did not support this bill as proposed. We do not believe the proposed language would accomplish the intent of the bill.

**Senate-54**

The Council did not support this bill as proposed.

**Senate-55**

The Council did not support this bill as proposed.

**Senate-56**

The Council did not support this bill as proposed. The Medical Access study published by the Council indicated that the issue of reimbursements, while a factor, is not the sole area of concern in the treatment of injured employees. The treatment and payment for treatment is an issue that should be addressed. However, as proposed, there is concern how such language may be employed under the current system.

**Senate-59**

The Council did not support this bill as proposed. The experience rating of an insured is determined by the size of the premium, not solely by classification.

**Senate-62**

The Council did not support this bill as proposed. The Council supports the concept of a more qualitative review for judges but believes that the current law can be utilized to provide such information. The Council is at present working on a study to analyze the dispute resolution process and would prefer to withhold comment on the efficacy of alternative mechanisms until such is completed. The compilation of an accurate data base could be useful in the work of the Office of Safety in designing programs to prevent future injuries.

**Senate-63**

The Council did not support this bill as proposed.

**Senate-65**

The Council supports the concept, as noted above, of improving the data base on injuries. It also supports the concept of using the investigators as effectively as possible in order to reduce the number of scofflaws which are creating administrative and economic costs and placing workers in potential jeopardy. The Council has explored with the DIA the publication of the booklet in other languages and which would not require a statutory change to accomplish.

**Senate-66**

The Council strongly supports this bill as proposed. The computerization of insurance policy cancellations would make the system far more efficient and effective. The Council has supported these efforts for a number of years. The cooperation of the Massachusetts Workers' Compensation Rating and Inspection Bureau should be noted in achieving this goal.

**Senate-103 and Senate 104**

The Council did not support these bills as proposed.

**Senate-117**

The Council did not support this bill as proposed for the same reasons enumerated in its position to House 4459.

**Senate-121**

The Council took a neutral position on this bill.

**Senate-1005**

The Council took a neutral position on this bill. It would appear that the current holding of the Supreme Judicial Court in Kszepka's Case, 408 Mass 843 (1990) may make this bill moot.

The Council agrees that the current system needs improvement. The Workers' Compensation System is not operating as envisioned when the previous large scale changes were enacted in 1985. There are a number of areas that may be receptive to administrative changes that would not necessitate amendments to the law. Some may be effective, while others may not be. We will never know whether any will be an improvement until they are tried.

We taken the liberty of providing for your consideration some proposals we have offered in the last few years that could conceivably be implemented without changing the law. This list by no means exhausts all of the possibilities, but it may offer an opportunity to experiment, in order to ascertain if something works, before changing the law.

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 matter. We look forward to working with the legislature in the coming months in order to achieve the necessary changes to improve our workers' compensation system.

Sincerely

Joseph Faherty  
Chairman

Douglas Mure  
Vice-Chairman

CC: Advisory Council Members  
Commissioner, Department of Industrial Accidents

**APPENDIX K**  
**MASSACHUSETTS WORKERS' COMPENSATION**  
**ADVISORY COUNCIL**  
**600 Washington Street**  
**Boston, Massachusetts 02111**  
**(617) 727-4900 EXT. 378**

**Chairman**  
Joseph Faherty  
**Vice-Chairman**  
Douglas V. Mure

**Executive Director**  
Stevens M. Day

April 10, 1991

The Honorable Linda Melconian  
Senate Chair  
Insurance Committee  
State House Room 254  
Boston, MA 02133

The Honorable Francis Mara  
House Chair  
Insurance Committee  
State House Room 254  
Boston, MA 02133

RE: Proposed Legislation for 1991 before the Joint Insurance Committee

Dear Senator Melconian and Representative Mara:

The Advisory Council, at its last two meetings, reviewed the following bills currently before your committee, in compliance with our charge under the statute. Each bill has been reviewed exactly as proposed with respect to the current statute. The Council has taken positions to support or not support based upon the requisite number of votes. Where the Council has indicated a neutral position it means that there were not the requisite number of votes to take an position on the bill as proposed. In addition action by the Council does not indicate what individual Council members may, on their own, feel about any of the proposed legislation.

As a result of our review, we would like to offer the following:

**House 1351**

The Council did not support this bill as proposed.

**House-1769**

The Council voted to take a neutral position on this bill.

**House 4707**

The Council did not support this bill as proposed. There is a credit program which has been approved by the Commissioner of Insurance which will provide incentives for smaller risks, whose premiums were previously too small to be experienced rated (about 36% of the market) to control their costs. If all insureds were experienced rated it would appear to have the most dramatic impact upon small businesses, where one severe accident would increase payments significantly.

We thank you for the opportunity to express our thoughts in these areas and if we can be of any assistance to your committee please do not hesitate to contact us.

Sincerely

Joseph Faherty  
Chair

Douglas V. Mure  
Vice-Chair

CC: Advisory Council  
Commissioner, Department of Industrial Accidents

APPENDIX L  
MASSACHUSETTS WORKERS' COMPENSATION  
ADVISORY COUNCIL  
600 Washington Street  
Boston, Massachusetts 02111  
(617) 727-4900 EXT. 378

Chairman  
Joseph Faherty  
Vice-Chairman  
Douglas V. Mure

Executive Director  
Stevens M. Day

May 8, 1991

The Honorable Lois Pines  
Senate Chair  
Commerce and Labor Committee  
State House - Room 421  
Boston, Massachusetts 02133

The Honorable Suzanne M. Bump  
House Chair  
Joint Commerce and Labor Committee  
State House - Room 43  
Boston, Massachusetts 02133

RE: Proposed Legislation in the Joint Commerce and Labor  
Committee-Spring 1991: Changes In Advisory Council  
Positions on H-1474 and S-63

Dear Senator Pines and Representative Bump:

The Advisory Council, at its May 8, 1991 meeting, agreed to reconsider the position it had taken on H-1474 and S-63. The initial position taken was to not support the bills as proposed. After reconsideration the Council has agreed to take a neutral position on those bills as proposed. I would be grateful if your records could note the change in our position.

Thank you again for your assistance in this matter, and I apologize for any inconvenience or confusion.

Sincerely,

Stevens M. Day  
Executive Director

**APPENDIX M**  
**STATEMENT OF THE WORKERS' COMPENSATION**  
**ADVISORY COUNCIL**

December 2, 1991

The Advisory Council is statutorily charged with reviewing and making recommendations on all aspects of the workers' compensation system. To facilitate openness and broad inclusion, all parties to the workers' compensation system are represented on the Council. Since the Council's creation by the 1985 amendments, it has continuously sought out ways to strengthen a faltering system, and our participation here is motivated by a fundamental concern with the stability of the workers' compensation system in Massachusetts.

At the outset, the Advisory Council wishes to acknowledge the State Rating Bureau and the Workers' Compensation Rating and Inspection Bureau (WCRIB) for their cooperation with our efforts to review the filing and prepare analysis for this hearing. We sincerely thank both parties for their generous assistance in this regard.

In our reading of the present state of the workers' compensation system, costs and delays remain the most compelling problems in need of resolution. It is clear that the ambitious aims behind the 1985 amendments--an equitable, efficient, and expeditious system at a reasonable cost to employers--have fallen woefully short of expectations. Creative efforts to stabilize and invigorate the system must thus take up the new challenges towards this same goal.

As part of the Advisory Council's limited statutory role, as set forth in Massachusetts General Law Chapter 152 §53A(6), we are presenting an independent and objective analysis of the rate filing submitted by the WCRIB. To assist the Council in this effort, Tillinghast, Inc. is providing an actuarial review of the filing. As in the past, we will share Tillinghast's report of its findings with all parties in order to assist in the analysis of the issues. The report will include a reconciliation with the 1991 filing and a review of what the authors feel are the most substantive aspects of the current filing.

All parties are affected by the problems found in virtually every sector of the workers' compensation system. During the past year, for instance, the already restrictive market for insurance showed an even greater reluctance to write policies on the voluntary market. As noted in the rate filing, the assigned risk market is one of the two largest in the country in terms of premium volume. Approximately 50 cents of every premium dollar written in the voluntary market must be paid in assessments by insurers to make up losses in the pool.



Meanwhile, injured employees continue to face undue hardships as a result of lengthening delays. These same delays also create difficulties for employers striving to maintain efficient business costs. Insurance carriers, health care providers, attorneys and others have experienced their own frustrations with the current system.

Problems in workers' compensation are unavoidably aggravated by the recession. In that regard, it must be noted that the impact of the requested rate increase in the prevailing economic climate could be disastrous for many businesses. The constricted economy has already forced layoffs in many large firms, and driven numerous small and medium sized firms out of the marketplace altogether. Moreover, the number of marginal firms that cut costs by illegally operating without workers' compensation insurance can be expected to rise with steep increases in premium rates.

It can also be anticipated that there will be greater incentive for companies to misclassify their risks if premium costs threaten solvency, thereby leading to further disruptions of the insurance market. Litigation may also increase as businesses seek to cut costs. The Advisory Council is hopeful that such factors are taken into account by the Division of Insurance in assessing the reasonableness of the rate filing.

The Advisory Council expressed similar concerns at the last rate hearing. The Council also stressed the importance of developing data relative to the litigation costs of the workers' compensation system in order to provide an empirical basis for targeting change. In his subsequent decision on the 1991 insurance rates, the Insurance Commissioner noted these concerns and urged the parties to explore these and related issues early in the year. Unfortunately, the information available from state sources is based upon voluntary compliance, and to date this has not provided reliable data. Despite the good faith efforts of the insurance industry and the WCRI, the data on litigation has thus still not been developed.

We have noted that the aspirations of the 1985 reform have fallen short of expectation. New legislation should soon be in place which will again seek to correct the weaknesses of the current system. However, the focus on legislating change must not detract from the simple fact that real change must be realized through a combination of individual behaviors. Without such behavioral change, the underlying potential of legal and procedural mechanisms will be consistently frustrated. As an example, the 1985 reform provided parties with an easy on/easy off mechanism. Many insurance carriers have chosen not to take advantage of this opportunity to delay entry into the time-consuming and costly dispute

resolution proceedings.

We are not seeking to scapegoat the insurance industry or overstate the practices of individual insurers. The insurance industry, and particularly the WCRI, must be commended for the active efforts they have made in attempting to bring stability to the market and help depopulate the pool. We find the development and implementation of such programs as the All Risk Adjustment Program and the Qualified Loss Management Program as extremely encouraging signs of a commitment to decreasing losses and revitalizing the workers' compensation market. In addition, we believe that the cooperative relations which contributed to these and other initiatives are a positive foundation that merit encouragement and expansion.

We nevertheless have some concerns with the filing itself that range beyond its potential impact on the larger economy. We are not completely confident that the size of the request is justified by the data and methodology employed in the filing. To cite just one example here, while the filing indicates that losses are growing, the actual rate of annual growth, as indicated by the filing on pages 419--422, appears to be decreasing. It thus appears that losses are actually moderating. The message of the industry, in contrast, is that losses are escalating at a dangerous rate. We hope that this, as well as other issues developed more fully in the Tillinghast analysis, will be fully explored in the hearing process.

In concluding, a note of historical reference is in order. The Massachusetts legislature acknowledged the critical importance of a viable insurance market in 1911. The initial law on workers' compensation created a mutual company, The Massachusetts Employers Insurance Association, which was envisioned as a stable mechanism to provide insurance. We know that entity today as Liberty Mutual Insurance, the largest private writer of workers' compensation in the nation.

The Advisory Council believes that the issues we raise here merit consideration. The criteria by which the requested rates are to be judged are that they not be excessive, inadequate or unfairly discriminatory for the risks to which they respectively apply and that they fall within a range of reasonableness. In assessing the filing, there is much we do not know about the data upon which the request is based. We cannot tell, for instance, whether losses are incurred through reasonable claims practices. We also cannot verify the accuracy of supporting documentation or be certain if the calculations are based upon a thorough understanding of M.G.L. c.152.

The law states that the Division of Insurance can require sufficient information to support the filing. Where

uncertainty remains, we encourage that this authority be exercised. It is of vital importance that all questions be answered before a decision is rendered as a result of this proceeding. We are confident that the Division will assess all the relevant data and supporting documents in its deliberations. We recognize that the Division must ultimately give consideration to both the health of the insurance industry and the market which the industry services. It is our hope that the rates are adequate to meet the level of benefits, while also allowing for the competitive viability of the state's economic actors.

Stevens M. Day  
Executive Director

## APPENDIX N

### Written Statement of the Massachusetts Workers' Compensation Advisory Council Division of Insurance Docket No. G 92-6

March 9, 1992

We thank the Commissioner for the opportunity to offer these brief comments on the Insolvency Fund filing. We are cognizant of the division's decision in G 89-34, issued on 11/22/89, which found the methodology used by the WCRI to be reasonable for the recoupment of payments for the insolvency fund. The onetime loading approved by the last two filings has been .5% and .6% of current workers' compensation rates, and this year the filing requests .5%.

In reviewing the filing, it appears that the net assessment has decreased \$4,385,354, or 38%, from last year's filing. While the assessment total has dropped significantly, after increasing 38.9% last year, the factor to load assessment has decreased only .1%. This would appear to be related, in part, to the decrease in expected written premium and the assumption of a -1% annual growth premium rate without a rate level increase, over two years. This is a change from the last filing (G 90-35, Exh. 1), which estimated an annual premium growth rate of 5%.

We have noted in previous filings the necessity of a process to review assessments passed into premiums in order to avoid any unreasonable burdens on insureds and insurers. We have also noted the necessity of a process with respect to recoupment of expenditures from the assets of insolvent carriers which are in the hands of the receiver. The returns noted on pages 4 and 5 of the filing appear to indicate that this has occurred and been calculated to offset assessments. In that vein we are confident that measures will be available to take into account other possible avenues of recoupment which recent published accounts have noted. If culpability exists for which recovery is available, it is imperative that an appropriate mechanism be available to offset the burden on those who ultimately pay, the employers of Massachusetts.

In comparison with last year's filing, there are seven new insurers listed, while there are three carriers for which assessments were not applied in this filing. If this is in any manner indicative of problems in the insurance market, it heightens the necessity of accurate audits in order to ensure that additional economic burdens are not passed on to Massachusetts businesses.

The Council supported the establishment of an insolvency fund for workers' compensation and it certainly does not expect that costs will not be shared and passed on in premiums. In a market where carriers have left the state and where the percentage of the residual market continues to grow dramatically, the Council is concerned that any cost be fair and reasonable.

Again, we would like to note the ongoing cooperation of the State Rating Bureau and the WCRIB in assisting us to understand these matters. We look forward to continuous and productive relationships. Despite differences of opinion on some issues, it is encouraging to note their cooperation in efforts to improve the system.

Stevens M. Day  
Executive Director

**APPENDIX O**  
**MASSACHUSETTS WORKERS' COMPENSATION**  
**ADVISORY COUNCIL**  
**600 Washington Street**  
**Boston, Massachusetts 02111**  
**(617) 727-4900 EXT. 378**

**Vice-Chairman**  
Douglas V. Mure

**Statement of the Workers' Compensation Advisory Council**  
**October 13, 1992**

Good afternoon. My name is Douglas Mure and I am here today as acting chairman of the Massachusetts Workers' Compensation Advisory Council. I serve on the council as the representative for Construction Employers, as I am the Vice President of Human Resources for Perini Corporation, one of the largest construction employers in the commonwealth.

I'd like to point out at the outset that the Advisory Council, as created by the 1985 Workers' Compensation reform legislation and virtually unchanged by the 1991 legislation, is a volunteer body whose voting membership is comprised of five representatives from labor and five employer representatives, an explicit recognition that the workers' compensation system represents a pact between employers and workers and is fundamentally intended to serve these two constituencies. The principle of broad participation on the council is enhanced by the further inclusion of representatives from the medical community, the plaintiffs' bar, vocational rehabilitation providers, and insurers, while the commonwealth's Secretary of Labor and Secretary of Economic Affairs serve as ex officio members. Our role is to monitor, recommend, give testimony and report on all aspects of the workers' compensation system.

On behalf of the Advisory Council, I wish to thank the members of the Joint Committee on Commerce and Labor for the opportunity to testify before you today. We commend the members for their efforts to seek improvements in the workers' compensation system and to monitor the progress of c. 398.

The changes introduced by the reform at the end of last year were significant and wide-reaching. Several aspects of the reform continue to be controversial. Individually, the various constituencies comprising the Advisory Council have different positions on the reform. However, the position of the Council as a body has been that the reforms should be given a chance to work. For example, we have heard that there has been discussion about changing the new Independent

Medical Examiner system. We feel that attempts to tinker with the new system at this early stage will only undermine its overall effectiveness. Our position reflects the belief that there is a lot of work to be done in institutionalizing the new processes and procedures, many of which are absolutely critical to the reform's success.

Given the importance of the current post-reform period and the Advisory Council's mandate, we have become increasingly concerned with our ability to carry out the responsibilities with which the Council has been entrusted.

I stand before you today as Acting Chair of the Advisory Council. In the past, the Council's Chair and Vice Chair -- which rotate between employee and employer representatives -- would have appeared jointly at this proceeding. It is perhaps symptomatic of our current frustrations that the Council has operated without a Chair since November of 1991 and that we have received no responses to requests that appointment to this important position be made. Further, appointment or reappointment to two voting memberships which expired in June, including that of Vice Chair, have also not been made at this time. Since a quorum of seven voting members is necessary for the Council to take any action, delays in appointments can needlessly complicate the Council's ability to act.

The Advisory Council since its inception has endeavored to attentively carry out its responsibilities for monitoring the system. In recent times, we have experienced some difficulties in performing this function. As a case in point, the Council received no notice of a hearing on proposed rule changes at the Department of Industrial Accidents which was to be held on September 22 because it received no prior notification of the hearing. We understand that the hearing has been rescheduled, although we have still received no formal notification of the hearing. We are obtaining information from third parties rather than through direct communication with the Department. The Council has traditionally made an effort to review and comment upon proposed rules or rule changes, and it is a disservice to the Council if the failure to provide simple notification preempts it from making such review.

The Council has also been frustrated in obtaining accurate information that would allow it to monitor various aspects of the new law or the workers' compensation system. One area of organizational activity which the Council has sought to follow is the hiring for vacant positions at the DIA. The Council was told in June that flags had been lifted on 5 judicial positions that were vacated due to early retirement. The Council was then informed in July that flags had not been lifted. Similarly, the Council was told in August that approximately 25 agency positions had not been filled, but was then told in September that there were 71

total vacancies. We will note that all of these vacant slots had been budgeted and that assessments were made against employers to fund them. Vacancies at the DIA concern us not just because they impact how well the agency can function, but also because unfilled positions represent an unnecessary financial drain on employers for which there is no payoff.

During the last two years, the Advisory Council has additionally been denied the opportunity to review the annual operating budget of the DIA, a responsibility that is specified in the statute. The agency has failed to provide the Council with its proposed annual operating budget in these instances despite requests from the Council that it do so. The Council in the past has conducted this review and exercised its right to submit its own recommendation for the total operating budget to the Secretary of Labor. It is our hope that this opportunity is provided in the future.

Despite our frustrations, we hasten to add that the Advisory Council overall feels that we are seeing positive signs, prompted both by the new law and the new DIA administration. These include reduction of the backlog and the increased emphasis on curtailing fraud by all parties. We continue to urge patience in allowing the new law to work and vigorous action in ensuring its full implementation. We also strongly oppose any rate adjustments until the true savings under the new legislation can be properly evaluated.

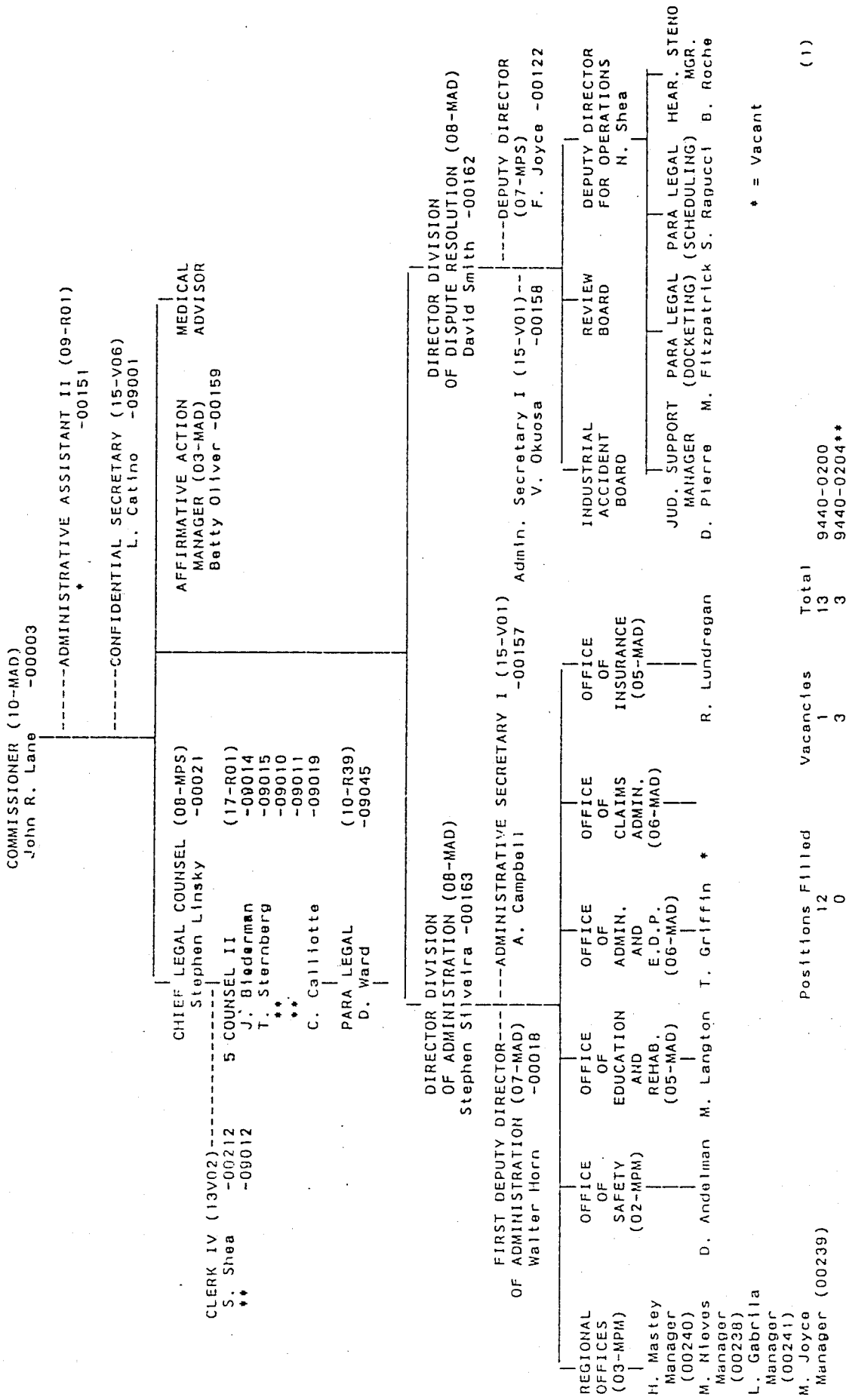
I close by reiterating that, during its seven year existence, the Workers' Compensation Advisory Council has served an important role as watchdog, assessor and advisor to the system, representing both employers and employees in a non-adversarial fashion. We believe that we can continue to provide this valuable resource to the administration and the Department of Industrial Accidents, but only if we are included in the communications loop regarding areas over which we can and should be providing input. We sincerely hope that the administrative issues regarding appointments and the overall role of the Advisory Council are addressed as soon as possible so that we can continue to carry out our statutory role within the system.

I thank the members of the Committee for your efforts on behalf of the workers' compensation system and, on behalf of the Advisory Council, I thank you for the opportunity to share our concerns with you.



# APPENDIX P

9/08/91



\* = Vacant

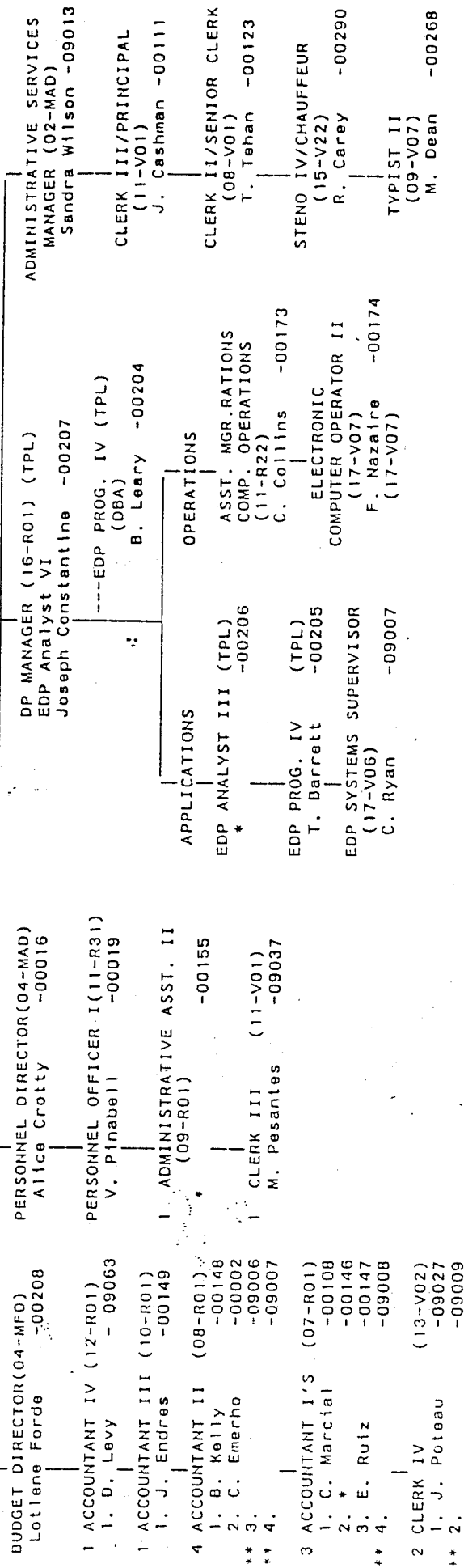
Positions Filled	Vacancies	Total
12	1	13
0	3	3
		9440-0200
		9440-0204**

(1)

# OFFICE OF ADMINISTRATION & EDP

DIRECTOR (06-MAD)  
Thomas Griffin III -00015

-----DISABILITY ANALYST (08-R17)  
D. Callejas -00022



\*=Vacant

OFFICE OF ADMINISTRATION & EDP (CONTINUED)

DIRECTOR

CLAIMS MANAGER (M-3)  
\*\* S. Morong -09000

1 ADMINISTRATIVE ASST. I (08-R01)  
\*\* M. Henderson -09005

1 CLERK IV  
\*\* 13-V02  
-09001

3 CLAIMS ADJUSTER (08-R03)

\*\* 1. -09002  
\*\* 2. -09003  
\*\* 3. -09004

Positions Filled	Vacancies	Total
24	3	27
2	8	10
		9440-0200
		9440-0204**

# OFFICE OF CLAIMS ADMINISTRATION

DIRECTOR (06-MAD)  
-00017

ADMINISTRATIVE ASSISTANT II (09-RO1)  
P. Donoghue -00153

## PROCESSING UNIT

CLAIMS PROCESSING MANAGER (02-MAD)  
Janine Senatore - 09018

APPEALS REVIEW EXAMINER II (14R10)  
E. Mancino -00262

1 EDP II (10V04)

1. W. Farebee -00195

1 STENO. II (10-V12)

1. F. Hurley -00132

1 CLERK IV/HEAD CLERK (13V02)

J. Slack -00024

1 TYPYST II/SEN. CLK. TYPYST (09-V07)

R. Flaherty -09006

CONCILIATION  
MANAGER (04-MPM)  
D. Candia -00242

## RECORD ROOM-----PROCESSING-----DATA ENTRY

1 ADMINISTRATIVE ASST. I (07-R02)

G. Davis -00027

1 CLERK III/PRINCIPAL CLERKS (11-V01)

1. C. Lugo -00113

2. \* -00120

1 TYPYST II/SR.CLK.TYPYST (09-V07)

1. R. Chen -00180

2. O. Thompson -00182

3. M. Rowell -00269

4. N. Levine -00175

5. S. Steed -00176

6. M. Ivery -00178

7. E. Gugenheim -00177

8. H. McGlothlin -00143

9. M. Albert -00138

1 ADMINISTRATIVE ASST. II (09-R01)

1. E. Lydston -00154

1 CLERK III/PRINCIPAL CLERK (11-V01)

1. E. Salamone -00110

6 TYPYST II/SR.CLK.TYPYST (09-V07)

1. J. Kilburn -00179

2. \* -00140

3. \* -00181

4. B. Carpmann -00137

5. P. Howard -00136

6. I. Prieto -00267

1 ADMINISTRATIVE ASST. I (07-R02)

B. Zeogas -00150

16 EDP II'S (10-V04)

1. J. Bell -00074

2. \* -09050

3. T. Courage -00191

4. \* -00192

5. G. Smith -00193

6. D. Drinkwater -00189

7. I. McGulire -00079

8. J. Saunders -09049

9. Y. Leung -00198

10. S. Dillon -09052

11. E. Campbell -00135

12. B. Peake -09048

13. N. Reyes -00199

14. A. Arroyo -00197

15. M. Fils-Aime -09051

16. R. Ponnudurai -00196

07 REVIEW EX. II'S (14-R10)

1. S. Conte -00256

2. K. Walsh -00258

3. N. Mann -00259

4. J. Runkal -00260

5. C. Rubbico -00255

6. L. Delaney -00263

7. C. Casella -00265

1 EDP III (12-V04) -00203

1. S. PEREZ

1 CLERK III/PRINCIPAL CLK. (11-V01)

1. V. Coleman -09039

1 STENO II/SEN.CLK.STENO. (10-V12)

1. J. Keogh -00134

3 REVIEW EX. I'S (12-R14)

1. P. Whelton -00252

2. S. DeMarco -00253

3. L. Sullivan -00246

\* = Vacant

Positions Filled 53  
Vacancies 06  
Total 59

(4)

# DIVISION OF DISPUTE RESOLUTION

DIRECTOR (08-MAD)  
David Smith -00162

(07-MPS) DEPUTY DIRECTOR-----ADMINISTRATIVE SECRETARY I (15-V01)  
-00122 Francis J. Joyce V. Okwuosa -00158

-----TYPYST II/SEN. CLK. TYPYST  
(09-V07)  
\* -00142

## REVIEW BOARD

DEPUTY DIRECTOR  
FOR OPERATIONS  
Noreen Shea (05MAD)  
- 09020

----- (Cont'd on next page)

## INDUSTRIAL ACCIDENT BOARD

17 ADMIN. JUDGES (09-MAD)

1. J. Ryan -00168
2. L. Gallo -00008
3. \* -00013
4. W. Cleary -00005
5. J. McKinnon -00004
6. J. McGuinness -00011
7. J. Jennings -00012
8. C. Fischel -00165
9. L. Jackson -00167
10. J. Cox -00164
11. T. Evers -00006
12. V. Male -09024
13. H. Moreschi -09025
14. D. Solomon -09026
15. \* -X0004
16. R. Tirrell -X0003
17. J. D'Esti -X0005

## JUDICIAL SUPPORT MANAGER (01-MAD)

Deborah Pierre -09021

- 18 ADMIN. SECRETARY I (15-V01)
1. E. Lauzon -00215
2. K. Magnotta -00211
3. D. Dellolaccono -09034
4. S. Aleo -00214
5. V. Falella -00231
6. P. Donelan -00026
7. M. Guerin -00221
8. C. Sullivan -00216
9. T. Holes -00219
10. \* -00220
11. N. Nunes -00213
12. S. Williams -09029
13. C. Shidler -09030
14. D. Cavanaugh -09032
15. K. Ivers -X0008
16. J. Samuel -X0010
17. \* -X0012

## 3 CLERK III/PRINCIPAL CLERKS

(11-V01)

1. \*
2. \*
3. \*

-X0015  
-X0016  
-X0017

## 2 ADMIN. SECRETARY I (15-V01)

1. B. Ciullo -00234
2. J. Scallely -00218

## 4 ADMINISTRATIVE LAW JUDGES

(10-MAD)

1. W. McCarthy -00169
2. \* -00171
3. W. Pickett -00172
4. B. Pearson -00170

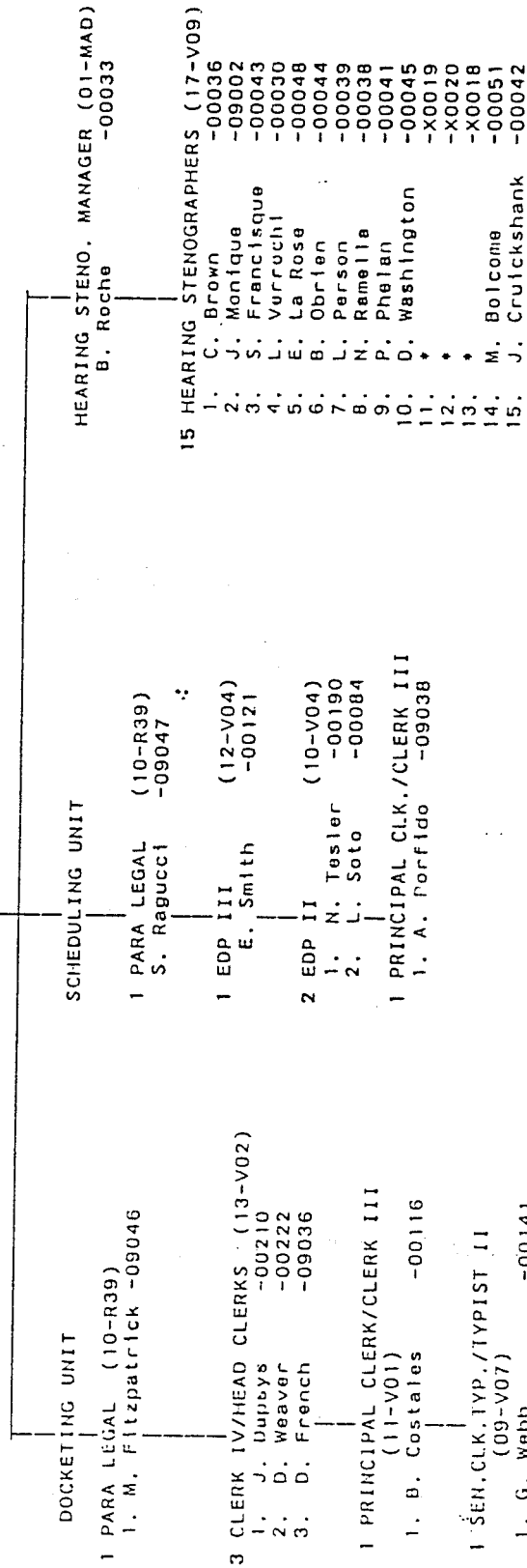
## 6 ADMIN. SECRETARY I (15-V01)

(15-V01)

1. E. Wallace -09033
2. \* -00233
3. L. Pray -00227
4. R. Boykin -00229
5. E. McLaughlin -00209
6. L. Thomas -09035

DIVISION OF DISPUTE RESOLUTION

DEPUTY DIRECTOR  
FOR OPERATIONS



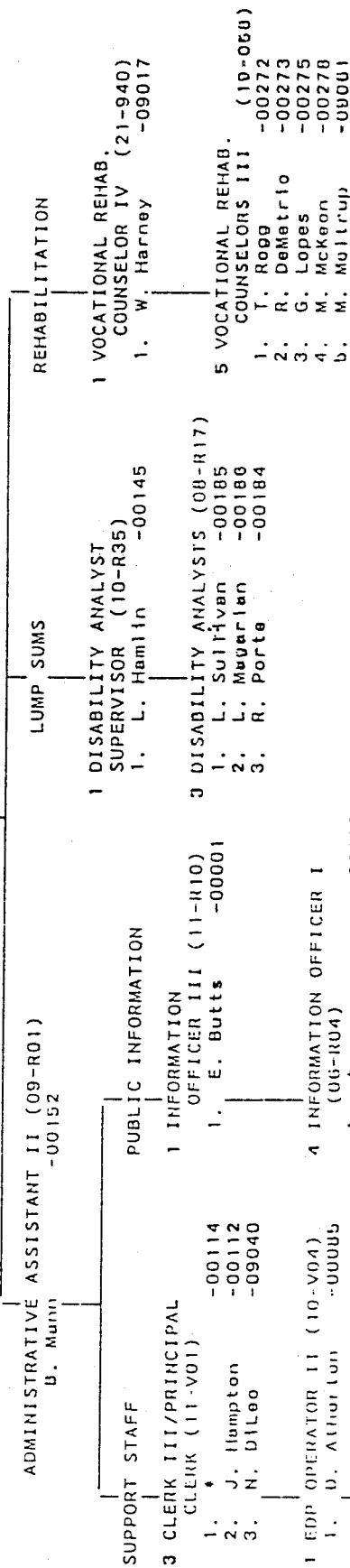
Positions Filled 69      Vacancies 13      Total 82

(6)

\* = Vacant

# OFFICE OF EDUCATION AND REHABILITATION

DIRECTOR (05-MAD)  
Maryanne Langton -00161



Positions Filled	Vacancies	Total
22	2	24

(7)

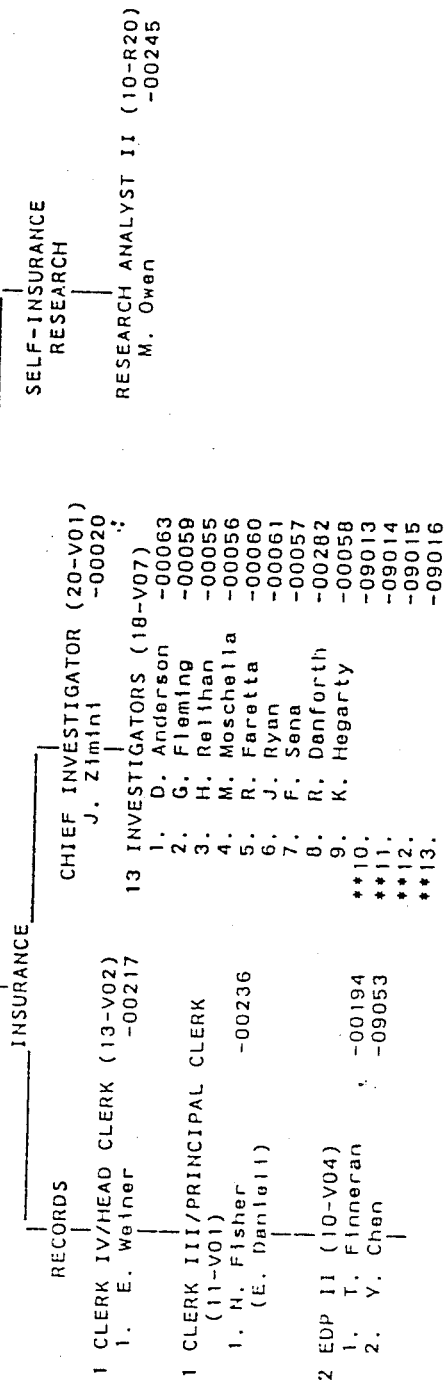
\* = Vacant

# OFFICE OF INSURANCE

DIRECTOR (05-MAD)  
Richard Lundregan -00281

MANAGER (03MAD)  
James O'Dea -09016

-----ADMINISTRATIVE ASST. II (07-R02)  
M. Vacirca -00280



Positions Filled	Vacancies	Total
20	2	22
0	4	4
		9440-0200
		9440-0204

+ = Vacant



OFFICE OF SAFETY

DIRECTOR (M-11) (02-MPM)  
D. Andelman -00237

CONTRACT SPECIALIST I (6,6) (06-R02)  
E. Granberry -00183

INDUSTRIAL SAFETY & HEALTH INSPECTOR I  
(19,1) (19-V10) -00235

Positions Filled	Vacancies	Total
2	1	3

TOTAL DIA POSITIONS FILLED	TOTAL VACANCIES	TOTAL POSITIONS
269	32	302
** 02	15	17
		9440-0200
		9440-0204

(10)

\* = Vacant

# ADVISORY COUNSEL

EXECUTIVE DIRECTOR OF ADVISORY COUNSEL (04-MAD)  
-00160

S. Day

INVESTIGATOR (16V07)

R. Campbell

-00062

RESEARCH ANALYST I (09-R18)

A. Helgran

-00243

ADM. SECRETARY I (15-V01)

-00156

Positions Filled	Vacancies	Total
3	1	4

## DIA REGIONAL OFFICES

FALL RIVER			LAWRENCE			WORCESTER			SPRINGFIELD		
MANAGER (04-MPM) Henry Mastey -00240			MANAGER (04-MPM) Maritza Nieves -00238			MANAGER (04-MPM) Leonard Gabriella -00241			MANAGER (04-MPM) Marc Joyce -00239		
3 ADMIN. JUDGE (09-MAD) 1. R. Brooker -09027 2. H. Lee -X0001 3. R. Rogers -00009			2 ADMIN. JUDGE (09-MAD) 1. N. Coleman -X0002 2. N. Elliott -00010			3 ADMIN. JUDGE (09-MAD) 1. R. Heffernan -00166 2. F. Gromelaki -00014 3. F. Taub -X0006			3 ADMIN. JUDGE (09-MAD) 1. J. St. Amand -00007 2. F. Ferlin -X0007 3. J. Leroy -09023		
3 HEARING STENO'S (17-V09) 1. B. Gomes -00046 2. S. Hill -00037 3. T. Parker -00040			2 HEARING STENO (17-V09) G. Stenorelli -00031 J. Karas -00032			3 HEARING STENO (17-V09) 1. M. Allen -00050 2. N. Adair -00047 3. C. Nelsnik -00035			2 HEARING STENO (17-V09) 1. L. DeMarco -00049 2. L. King -00034		
1 ADMIN. ASSIST. I (07R02) M. Quintal -00226			1 ADMIN. ASST. I (07R02) I. Gonzalez -00228			1 ADM. ASST. I (07R02) C. Rafferty -00225			1 ADMIN. ASST. I (07R02) M. Sullivan -00029		
3 ADMIN. SEC. I (15-V01) 1. L. Baptiste -00025 2. D. Briggs -X0011 3. F. Moniz -00232			2 ADMIN. SEC. I (15-V01) 1. L. Kuntamukkala -X0009 2. * -00230			3 ADM. SEC. I (15-V01) 1. P. O'Mella -00224 2. D. Layton -09031 3. B. Morris -X0013			3 ADMIN. SEC. I (15-V01) 1. G. Gosselein -00028 2. M. Valentine -X0014 3. D. Lemanski -09028		
1 CLERK III/PRINC. CLERK (11-V01) M. Pacheco - 09041			1 CLERK III/PRINC. CLERK (11-V01) M. Concomi -09042			1 CLERK III/PRINC. CLK. (11V01) D. Miller -09043			1 EDP II (10-V04) * -00080		
1 LDP OPERATOR II (10-V04) D. Tripp -00202			1 EDP OPERATOR II (10-V04) * -00200			1 EDP OPERATOR II (10-V04) P. Vincoquero -00201			1 VOC. REHAB. COUNSELOR IV (21-940) 1. E. Bajgler -09060		
1 DISABILITY ANALYST (08-R17) P. Dowd -09057			1 VOCATIONAL REHAB. COUNSELOR III (19-058) I. Gerrish -00271			2 VOCATIONAL REHAB. COUNSELORS III (19-058) 1. K. Fleming -00270 2. K. Grady -00277			1 VOCATIONAL REHAB. COUNSELOR III (19-058) R. Fitzgerald -00274		
2 VOCATIONAL REHAB. COUNSELOR III (19-058) 1. A. Gonsales -00276 2. U. Maranhas -00279			1 REVIEW EX. II (14-R10) R. Hefler -00254			2 REVIEW EX. I (12-R14) 1. W. Russell -00248 2. J. Brunelle -00251			2 REVIEW EX. II (14-R10) 1. N. Hicks -00257 2. T. Sullivan -00261		
2 REVIEW EX. I (12-R14) 1. S. Sharok -00247 2. Y. Cardoza -00250			1 REVIEW EXAMINER I (12-R14) T. Johnson -00249			1 DISABILITY ANALYST (08-R17) A. Tavano -09058			1 DISABILITY ANALYST (08-R17) G. Bradshaw -09059		
1 REVIEW EXAMINER II (14-R10) J. Phelps -00264			1 DISABILITY ANALYST (08-R17) L. Connolly -00187			Total 64			Total 67		
			Positions Filled			Vacancies			(9)		