

# ANNUAL REPORT

## FISCAL YEAR 1996

### Massachusetts Workers' Compensation Advisory Council

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Massachusetts Workers' Compensation Advisory Council

THE STATE OF THE  
MASSACHUSETTS WORKERS' COMPENSATION SYSTEM

Table of Contents

SECTION 1: INTRODUCTION

<b>FISCAL YEAR 1996 IN REVIEW .....</b>	<b>3</b>
<b>ADVISORY COUNCIL.....</b>	<b>5</b>
STUDIES .....	5
<b>LEGISLATION.....</b>	<b>7</b>
BILLS ENACTED .....	7
BILLS WITH A "FAVORABLE RATING" .....	8
BILLS RECOMMENDED "NOT TO PASS" .....	9
OTHER BILLS REVIEWED BY THE ADVISORY COUNCIL.....	9
<b>REORGANIZATION PLAN .....</b>	<b>10</b>
<b>STATUTORY PROVISIONS TO RESOLVE DISPUTES .....</b>	<b>11</b>
WORKERS' COMPENSATION CLAIMS .....	11
DISPUTE RESOLUTION PROCESS .....	12
LUMP SUM SETTLEMENTS .....	13
ALTERNATIVE DISPUTE RESOLUTION MEASURES .....	13
<b>SUMMARY OF BENEFITS UNDER CHAPTER 152.....</b>	<b>14</b>
INDEMNITY AND SUPPLEMENTAL BENEFITS .....	14
ATTORNEY'S FEES .....	15
<b>JUDICIAL APPOINTMENTS .....</b>	<b>17</b>

SECTION 2: CASE DEMOGRAPHICS

<b>OCCUPATIONAL INJURIES AND ILLNESSES .....</b>	<b>21</b>
FATAL WORK INJURIES .....	22
<b>CASE CHARACTERISTICS .....</b>	<b>23</b>

SECTION 3: DISPUTE RESOLUTION

<b>CASES AT THE DIA.....</b>	<b>29</b>
<b>ADMINISTRATIVE JUDGES .....</b>	<b>30</b>
ADMINISTRATIVE JUDGES .....	30
SCHEDULING CYCLE .....	30
<b>CONCILIATION .....</b>	<b>31</b>

## Massachusetts Workers' Compensation Advisory Council

THE CONCILIATION PROCESS .....	31
VOLUME AT CONCILIATION.....	31
CONCILIATION OUTCOMES.....	32
RESOLVED CASES- CONCILIATED.....	33
CASES RESCHEDULED .....	34
<b>CONFERENCE.....</b>	<b>35</b>
VOLUME OF CONFERENCES .....	35
CONFERENCE OUTCOMES.....	35
CONFERENCE QUEUE .....	37
<b>HEARINGS.....</b>	<b>38</b>
ADMINISTRATIVE JUDGES .....	38
HEARING QUEUE.....	38
VOLUME OF HEARINGS .....	38
HEARING OUTCOMES .....	39
<b>CASE TIME FRAMES.....</b>	<b>41</b>
CASE TIME FRAMES GUIDE .....	41
<b>REVIEWING BOARD .....</b>	<b>46</b>
APPEAL OF HEARING DECISIONS.....	46
LUMP SUM CONFERENCES.....	47
THIRD PARTY SUBROGATION ( §15).....	47
COMPROMISE AND DISCHARGE OF LIENS ( §46A) .....	48
<b>LUMP SUM SETTLEMENTS.....</b>	<b>49</b>
<b>IMPARTIAL MEDICAL EXAMINATIONS .....</b>	<b>51</b>
IMPARTIAL UNIT .....	51
THE <u>NEFF</u> DECISION.....	52

## SECTION 4: ADMINISTRATION

<b>OFFICE OF CLAIMS ADMINISTRATION .....</b>	<b>57</b>
CLAIMS PROCESSING UNIT / DATA ENTRY UNIT.....	57
FIRST REPORT COMPLIANCE OFFICE & FRAUD DATA .....	57
RECORD ROOM.....	58
<b>OFFICE OF EDUCATION AND VOCATIONAL REHABILITATION .....</b>	<b>59</b>
PROCEDURE FOR VOCATIONAL REHABILITATION.....	59
USE OF VOCATIONAL REHABILITATION .....	60
TRUST FUND PAYMENT OF VOCATIONAL REHABILITATION .....	61
<b>OFFICE OF SAFETY.....</b>	<b>62</b>
<b>OFFICE OF INSURANCE.....</b>	<b>63</b>
SELF INSURANCE.....	63
INSURANCE UNIT .....	64
<b>OFFICE OF INVESTIGATIONS.....</b>	<b>65</b>
<b>WORKERS' COMPENSATION TRUST FUND .....</b>	<b>67</b>

## Massachusetts Workers' Compensation Advisory Council

SECOND INJURY CLAIMS (SECTIONS 37, 37A, AND 26).....	67
UNINSURED EMPLOYERS.....	69
VOCATIONAL REHABILITATION (SECTION 30H) .....	69
LATENCY CLAIMS (SECTION 35C).....	69
COST OF LIVING ADJUSTMENTS (SECTION 34B) .....	69
<b>OFFICE OF HEALTH POLICY.....</b>	<b>71</b>
HEALTH CARE SERVICES BOARD .....	71
UTILIZATION REVIEW.....	72
MEDICAL UTILIZATION TRENDING AND TRACKING SYSTEM.....	73
<b>THE REGIONAL OFFICES.....</b>	<b>73</b>
ADMINISTRATION AND MANAGEMENT OF THE OFFICES.....	74
RESOURCES OF THE OFFICES .....	74

### SECTION 5: DIA FUNDING

<b>DIA FUNDING .....</b>	<b>79</b>
THE FUNDING PROCESS.....	79
<b>PRIVATE EMPLOYER ASSESSMENTS .....</b>	<b>80</b>
<b>PUBLIC EMPLOYER ASSESSMENTS .....</b>	<b>84</b>
<b>THE DIA OPERATING BUDGET .....</b>	<b>86</b>
LEGISLATIVE APPROPRIATIONS, FY 1997 .....	86
BUDGET SUBSIDIARIES.....	87
THE BUDGET PROCESS .....	89

### SECTION 6: INSURANCE

<b>INSURANCE COVERAGE .....</b>	<b>95</b>
PRIVATE EMPLOYERS .....	95
PUBLIC EMPLOYERS .....	95
ENFORCEMENT .....	95
<b>THE COMMERCIAL INSURANCE MARKET.....</b>	<b>97</b>
THE CLASSIFICATION SYSTEM .....	97
ALL RISK ADJUSTMENT PROGRAM.....	100
LARGE AND SMALL DEDUCTIBLES .....	100
RETROSPECTIVE RATING PLANS.....	101
PREMIUM DISCOUNTING.....	102
DIVIDEND PLANS .....	102
CAPTIVE INSURANCE.....	103
TAKE OUT CREDIT PROGRAM .....	104
REVISED QUALIFIED LOSS MANAGEMENT PROGRAM (QLMP).....	104
<b>ASSIGNED RISK POOL .....</b>	<b>106</b>
<b>SELF INSURANCE AND SELF INSURANCE GROUPS (SIGS).....</b>	<b>109</b>

## Massachusetts Workers' Compensation Advisory Council

SELF INSURANCE.....	109
SELF INSURANCE GROUPS (SIGS) .....	109
ADVANTAGES OF SELF INSURANCE AND SIGS .....	110
DISADVANTAGES OF SELF INSURANCE AND SIGS .....	110
RECIPROCAL OR INTER- INSURANCE EXCHANGE.....	111
<b>WORKERS' COMPENSATION RATES .....</b>	<b>112</b>
INSURANCE RATE FILING .....	112
1996 RATES .....	112
RATE STABILIZATION .....	113
WORKERS' COMPENSATION COSTS.....	113
ENFORCEMENT OF MANDATORY COVERAGE .....	114
<b>INSURANCE FRAUD BUREAU OF MASSACHUSETTS.....</b>	<b>116</b>
THE INVESTIGATIVE PROCESS .....	116

## SECTION 7: CONCERNS & RECOMMENDATIONS

<b>CONCERNS &amp; RECOMMENDATIONS .....</b>	<b>121</b>
EMPLOYER FINES FOR VIOLATION OF INSURANCE MANDATE .....	121
YEAR END BALANCES.....	122
APPROPRIATE NUMBER OF JUDGES .....	122
AUDIT OF INSURANCE CARRIER PAYMENTS .....	123
REGIONAL OFFICES .....	123
DIA BUDGET.....	124

## Tables and Figures

TABLE 1: INDEMNITY BENEFITS .....	14
TABLE 2: INJURY INCIDENCE RATES BY INDUSTRY .....	22
TABLE 3: CLAIM COUNTS .....	23
TABLE 4: AVERAGE CLAIM COST - "INDEMNITY + MEDICAL" .....	23
TABLE 5: AVERAGE INDEMNITY COST.....	24
TABLE 6: AVERAGE MEDICAL COST PER CLAIM.....	24
TABLE 7: INCURRED LOSSES DISTRIBUTION .....	24
TABLE 8: INCURRED LOSSES DISTRIBUTION - "MEDICAL" .....	25
TABLE 9: INCURRED LOSSES DISTRIBUTION - "INDEMNITY" .....	25
TABLE 10: CLAIM FREQUENCY (NUMBER OF CLAIMS PER MILLION OF MAN- WEEKS).....	25
TABLE 11: CONCILIATION OUTCOMES, FY'96 AND FY'95 .....	33
TABLE 12: REGIONAL TIME FRAMES .....	45
TABLE 13: HEARING DECISIONS APPEALED .....	46
TABLE 14: LUMP SUM CONFERENCE STATISTICS .....	49
TABLE 15: LUMP SUM SETTLEMENTS PURSUED, FY'96.....	50
TABLE 16: FEE SCHEDULE.....	52
TABLE 17: UTILIZATION OF VOC. REHAB. SERVICES, FY'92 - FY'96.....	61
TABLE 18: PRIVATE TRUST FUND EXPENDITURES FOR §30H VOC. REHAB SERVICES .....	61
TABLE 19: DIA OPERATING BUDGET - APPROPRIATIONS.....	86
TABLE 20: SPECIAL FUND EXPENDITURES, FY'96 .....	86
TABLE 21: MASSACHUSETTS WORKERS' COMPENSATION RESIDUAL MARKET INFORMATION .....	107
TABLE 22: AVERAGE RATE CHANGES FOR GENERAL CLASSIFICATIONS .....	113

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FIGURE 1: REORGANIZATION PLAN--DEPT. OF LABOR & WORKFORCE DEVELOPMENT .....	10
FIGURE 2: SCHEDULE OF EVENTS .....	11
FIGURE 3: DISPUTE RESOLUTION PROCESS.....	12
FIGURE 4: INJURY AND ILLNESS INCIDENCE RATES .....	21
FIGURE 5: PERCENT DISTRIBUTION OF FATAL OCCUPATIONAL INJURIES BY EVENT IN N.E. ....	22
FIGURE 6: TOTAL CASES .....	29
FIGURE 7: VOLUME OF CASES SCHEDULED FOR CONCILIATION .....	32
FIGURE 8: FISCAL YEAR 1996, CONCILIATION STATISTICS.....	33
FIGURE 9: FISCAL YEARS 1993-1996, CONFERENCES HELD.....	35
FIGURE 10: FISCAL YEAR 1996, CONFERENCE OUTCOMES .....	36
FIGURE 11: FISCAL YEARS 1996 AND 1995, CONFERENCE OUTCOMES .....	36
FIGURE 12: CONFERENCE AND HEARING QUEUES; FISCAL YEARS 1991 -1996 .....	37
FIGURE 13: CONFERENCE AND HEARING QUEUE; FY'96 .....	37
FIGURE 14: FISCAL YEARS 1993-1996, VOLUME OF HEARINGS .....	39
FIGURE 15: FISCAL YEAR 1996, HEARING OUTCOMES.....	39
FIGURE 16: FISCAL YEARS 1996 AND 1995, HEARING OUTCOMES.....	40
FIGURE 17: DIA FUNDING PROCESS .....	80
FIGURE 18: THE MASSACHUSETTS' BUDGET PROCESS.....	89

## **List of Appendices**

**APPENDIX A:** ADVISORY COUNCIL MEMBERS IN FISCAL YEAR 1996

**APPENDIX B:** AGENDA OF ADVISORY COUNCIL MEETINGS, FISCAL YEAR 1996

**APPENDIX C:** DIA ORGANIZATIONAL CHART, FISCAL YEAR 1996

**APPENDIX D:** COLLECTIONS AND EXPENDITURE REPORT

**APPENDIX E:** ROSTER OF JUDGES AND APPOINTMENT DATES

**APPENDIX F:** INDUSTRIAL ACCIDENT NOMINATING PANEL

**APPENDIX G:** HEALTH CARE SERVICE BOARD

**APPENDIX H:** MEDICAL CONSULTANT CONSORTIUM

**APPENDIX I:** OFFICE OF SAFETY PROPOSALS RECOMMENDED FOR FUNDING

**APPENDIX J:** JOINT COMMITTEE ON COMMERCE AND LABOR

**APPENDIX K:** GOVERNOR'S EXECUTIVE COUNCIL

**APPENDIX L:** WORKERS' COMPENSATION ORGANIZATIONS

SECTION

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INTRODUCTION

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<i>Fiscal Year 1996 in Review.....</i>	<i>3</i>
<i>Advisory Council.....</i>	<i>5</i>
<i>Legislation.....</i>	<i>7</i>
<i>Reorganization Plan.....</i>	<i>10</i>
<i>Statutory Provisions to Resolve Disputes.....</i>	<i>11</i>
<i>Summary of Benefits Under Chapter 152.....</i>	<i>14</i>
<i>Judicial Appointments.....</i>	<i>17</i>





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***FISCAL YEAR 1996 IN REVIEW***

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Fiscal year 1996 marked a relatively stable year for the workers' compensation system. The downward trend -- in disputed claims filed and adjudicated, in workers' compensation insurance rates and the market share of the assigned risk pool -- continued as it has in recent years. These improvements in the Massachusetts workers' compensation system were the focus of two major studies released in 1996, one by the Workers' Compensation Research Institute, the other by the Pioneer Institute. After much detailed analysis, both studies stated what the parties to the system have predicted -- that the major reforms instituted by chapter 398 in 1991 have positively impacted the system. Other factors, such as the use of loss sensitive insurance products (large deductible policies, retrospective rating plans, and dividend policies) have also contributed and should be credited with much of the success, as well.

The agreement between the insurance industry and regulators to reduce average insurance rates by 12.2% was much heralded in May, 1996. Public officials and business owners alike point to reductions in the insurance rates as a sure sign of improvements in workers' compensation. Labor and employee representatives are less enthusiastic as their concerns rest in ensuring that injured employees receive fair and adequate benefits in a timely manner. Nevertheless, the labor representatives of the Council viewed lower workers' compensation rates as a sign of enhanced business conditions which translate into more jobs, higher wages and better benefits for all workers.

A smaller assigned risk pool is a sign that insurance carriers can offer insurance products at reasonable rates to businesses that otherwise would have been considered too risky or so small that coverage was not economical. The residual market continued to decline in fiscal year 1996. In March, estimates held that 26% of the market was in the assigned risk pool. Also, the pool operated at a "profit" in fiscal year 1996.

The DIA continued to experience marked reductions in its case load. The department received 28% fewer First Reports of Injury than it did in fiscal year 1995. Requests for adjudication declined yet again -- another 8% -- for a total decline of 46% since 1991.

In light of the decrease in the work load, in 1996 the Council questioned increases in the operating budget of the DIA. In fiscal year 1997, the operating budget of the agency increased 7%. In response to a request for a 19% increase, the Council's subcommittee met extensively throughout the year to discuss the request. Subcommittee members received unprecedented cooperation from the agency when reviewing the details of the budget. Ultimately, the Council voted to support the DIA's request with concern expressed over a 34% increase in the

## **Massachusetts Workers' Compensation Advisory Council**

budget since 1991, growing year end balances totaling more than \$12 million in fiscal year 1995, frequent inter-subsidary budget transfers, and the lack of a comprehensive budget for the agency's Medical Utilization Trending and Tracking System (MUTTS).

On February 7, 1996, Governor Weld issued Executive Order 384, requiring that all agencies reduce, simplify and eliminate unnecessary, duplicative, and unreasonable regulations. Each regulation was to be reviewed and subjected to a cost/benefit analysis. Any regulation with a less costly alternative is required to be revised. Any deemed unnecessary must be rescinded. This effort to abbreviate the vast inventory of state regulations impacted the Department of Industrial Accidents, the Division of Insurance and the Rate Setting Commission (Division of Health Care Finance & Policy). The agency's proposed amendments to utilization review regulations mandating electronic submission of insurance claims data were withdrawn after issuance of this executive order. All agencies, including the DIA, began the process of evaluating existing regulations in the fiscal year.

In fiscal year 1996, Governor Weld announced a plan to reorganize and downsize state government. Under his plan, six of eleven cabinet secretaries were to be eliminated, several agencies were to be consolidated, and agency missions were to be revised. A comprehensive plan was submitted to the legislature in June as part of the fiscal year 1997 budget. The legislature substantially altered this plan. The most substantive element remaining was the elimination of five Executive Secretariats. These were replaced with agencies assuming many of the same functions previously exercised by the Secretariats. Of particular note to the Advisory Council was the elimination of the Executive Secretary of Labor and the Executive Secretary of Economic Affairs. They were replaced with a Director of Labor & Workforce Development and a Director of Economic Development & Business Affairs, respectively. Each assumes virtually the same functions as their predecessors.

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## ***ADVISORY COUNCIL***

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The Massachusetts Workers' Compensation Advisory Council was created by the Massachusetts General Court on December 10, 1985 with passage of Chapter 572 of the Acts of 1985. Its function is to monitor, recommend, give testimony, and report on all aspects of the workers' compensation system, except the adjudication of particular claims or complaints. The council also periodically conducts studies on various aspects of the workers' compensation system.

The Advisory Council is mandated to issue an annual report evaluating the operations of the Department of Industrial Accidents and the Massachusetts workers' compensation system. In addition, members are required to review the annual operating budget of the Department of Industrial Accidents, and, when necessary, submit an independent recommendation.

The Advisory Council is comprised of leaders from labor, business, the medical profession, the legal profession, the insurance industry and government. Its sixteen members are appointed by the governor for five year terms and include: five employee representatives (each of whom is a member of a duly recognized and independent employee organization); five employer representatives (representing manufacturing classifications, small businesses, contracting classifications, and self-insured businesses); one representative of the workers' compensation claimant's bar; one representative of the insurance industry; one representative of the medical providers; and one representative of vocational rehabilitation providers. The Director of Labor & Workforce Development and the Director of Economic Development serve as ex officio members.

The employee and employer representatives comprise the voting members of the council, and the council cannot take action without at least seven affirmative votes. The council's chairperson and vice-chairperson rotate between an employee representative and an employer representative.

The Advisory Council is required by law to meet when the chairperson calls for a meeting or upon the petition of a majority of members. It usually meets on the second Wednesday of each month at 9:00 a.m. at 600 Washington Street, 7th Floor Conference Room, Boston, Massachusetts.

Meetings are open to the general public pursuant to the Open Meeting Laws (G.L., ch. 30A, sec. 11A ).

## **Studies**

The Advisory Council over the years has conducted a number of studies on workers' compensation, some of which were performed at the request of the legislature.

## Massachusetts Workers' Compensation Advisory Council

The following are studies conducted by the council:

The Analysis of Friction Costs Associated with the Massachusetts' Workers' Compensation System, Milliman & Robertson, John Lewis, (1989).

Analysis of the Massachusetts Department of Industrial Accidents' Dispute Resolution System, Endispute, Inc., B.D.O. Seidman, (1991).

Assessment of the Department of Industrial Accidents & Workers' Compensation System, Peat Marwick Main, (1989).

Competitive Rating of Workers' Compensation in Massachusetts, J.H. Albert, (1995).

Medical Access Study, Lynch-Ryan, The Boylston Group (1990).

Report on Competitive Rating, Tillinghast, (1989).

Report to the Legislature on Competitive Rating, Massachusetts Workers' Compensation Advisory Council, (1989).

Report to the Legislature on the Mark-up System for Case Scheduling, Massachusetts Workers' Compensation Advisory Council, (1990).

Report to the Legislature on Occupational Disease, Massachusetts Workers' Compensation Advisory Council, (1990).

Report to the Legislature on Public Employees, Massachusetts Workers' Compensation Advisory Council, (1989).

Study of Workers' Compensation Wage Replacement Rates, Tillinghast; Professor Peter Kozel, (1994).

Study of Workers' Compensation Insurance Rate Methodology, The Wyatt Company, (1994).

The Advisory Council's studies are available for review Monday through Friday, 9:00 a.m. - 5:00 p.m. at the Massachusetts State Library, State House, Room 341, Boston, Massachusetts, 02133 or by appointment at the offices of the Advisory Council, 600 Washington Street, 2<sup>nd</sup> Floor, Boston, Massachusetts (617) 727-4900 ext. 378.

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## **LEGISLATION**

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During the 1995-1996 legislative session, over sixty-five bills were filed by legislators seeking to amend the workers' compensation system.<sup>1</sup> Most bills concerning workers' compensation matters are referred to the Joint Committee on Commerce & Labor. Once legislation is referred to the committee, public hearings are held on the individual bills. The committee then issues a report, with recommendations that a bill either receive a favorable rating of "ought to pass" or an unfavorable rating of "ought not to pass."

During the session, proposals ranged in scope from exempting holding companies and corporate officers from the requirement of workers' compensation insurance to re-examining the definition of exclusive remedy. By the end of the fiscal year, the legislature enacted two bills concerning workers' compensation.

For a list of members of the Joint Committee on Commerce and Labor, see appendix J.

### **Bills Enacted**

#### **Industrial Accident Nominating Panel** (H.6039--filed by Rep. Bosley)

This bill amends the membership of the Industrial Accidents Nominating Panel (G.L. Ch. 23E, §9). Currently, one of the 11 members of the nominating panel is required to be an attorney who does not practice workers' compensation law. H.6039 will replace this member with two attorneys: one who represents claimants before the board and another who represents employers or insurers. Governor Weld did not sign this legislation, but sent it back to the legislature for technical corrections. The bill did not account the reorganization plan made by the government.

#### **Nonprofit Entities** (H.5587--filed by Rep. Brewer, Enacted with Amendment)

This bill amends the definition of employer in section 1 of the workers' compensation act so that nonprofit entities, as defined by the IRS Code, that are exclusively staffed by volunteers are exempt from the requirement of carrying workers' compensation insurance.

Section Two of this bill seeks to require that the DIA's regulations be amended regarding the discovery process (whereby each party requests from the other party relevant documents and evidence relating to issues in controversy).

Prior to the amendments, the regulation allowed any party to serve on "any other party" a request for documents. The bill expands who can be served with a request for documents to "any party, employer or medical provider rendering medical treatment to the claimant."

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<sup>1</sup> Due to a change in the Senate and House Rules, the legislative session included calendar years 1995 and 1996.

## Massachusetts Workers' Compensation Advisory Council

Moreover, the regulation had allowed for “any medical report, or record of wages earned subsequent to the alleged injury” to be inspected and copied by the party making the request. This legislation expands the rule by requiring that “any medical notes, treatment reports and employment records” be inspected and copied by the party making the request.

### Bills with a “Favorable Rating”

#### **Health Care Services Board** (S.35--filed by Sen. Berry)

This bill would add one person representing occupational therapists and another representing an occupational health nurse to the membership of the Health Care Services Board at the Department of Industrial Accidents.

#### **Lump Sum Agreements** (S.2195--filed by Sen. Morrissey)

This bill would further regulate lump sum agreements in workers' compensation settlements by changing Section 48(1) of Chapter 152. The bill would not allow lump sum agreements to be perfected “until reviewed and approved as complete” by a conciliator, administrative judge or administrative law judge “as being in the claimant's best interest.” Currently, the law reads “until reviewed and approved” as appropriate.

#### **Old Age Benefits** (H.1061--filed by Rep. Brewer)

Under §35E, employees who are 65 years old or older cannot receive workers' compensation benefits if they have been out of the labor force for two years and they are eligible for old age benefits (social security, private or public pensions), unless they can prove they would have remained in the labor force had they not been injured. H.1061 would bring this section into conformity with federal prohibitions against age discrimination by removing the requirement that the employee be 65 years old or older. Any employee, regardless of age, would be ineligible to receive workers' compensation benefits if they have been out of the labor force for two years and are eligible for old age benefits, unless they can prove they would have remained in the labor force.

#### **Code of Judicial Conduct** (H.1065--filed by Rep. Cabral)

This bill would subject the AJs, ALJs and Senior Judge to the terms of the Code of Judicial Conduct. The cannons of the code are:

- 1. A Judge should uphold the integrity and independence of the judiciary.*
- 2. A Judge should avoid impropriety and the appearance of impropriety in all his activities.*
- 3. A Judge should perform the duties of his office impartially and diligently.*
- 4. A Judge may engage in activities to improve the law, the legal system, and the administration of justice.*

## Massachusetts Workers' Compensation Advisory Council

5. *A Judge should regulate his extra-judicial activities to minimize the risk of conflict with his judicial duties.*
6. *A Judge should regularly file reports of compensation received for quasi-judicial and extra-judicial activities.*
7. *A Judge should refrain from political activity.*

### **Bills Recommended “Not to Pass”**

#### **Vocational Rehabilitation** (S.31--filed by Sen. Antonioni)

This bill would prohibit vocational rehabilitation providers owned, operated or affiliated by any workers' compensation insurance carriers, from providing services to workers' compensation claimants.

#### **Exemption** (H.680--filed by Rep. Thompson)

This bill exempts Registry of Motor Vehicle employees from the requirement that five working days be missed before becoming eligible for workers' compensation benefits.

### **Other Bills Reviewed by the Advisory Council**

#### **Average Weekly Wage** (S.1785--filed by Sen. Wetmore)

#### **Exclusive Remedy** (S.2012 & S.2013--filed by Sen. Swift)

#### **Voluntary Payment** (S.2194--filed by Sen. Morrissey)

#### **Holding Companies** (S.2214--filed by Sen. Antonioni)

#### **Third Party Lawsuits** (H.3131--filed by Rep. DiMasi)

#### **Employee Welfare Fund** (H.4139--filed by Rep. Brewer)

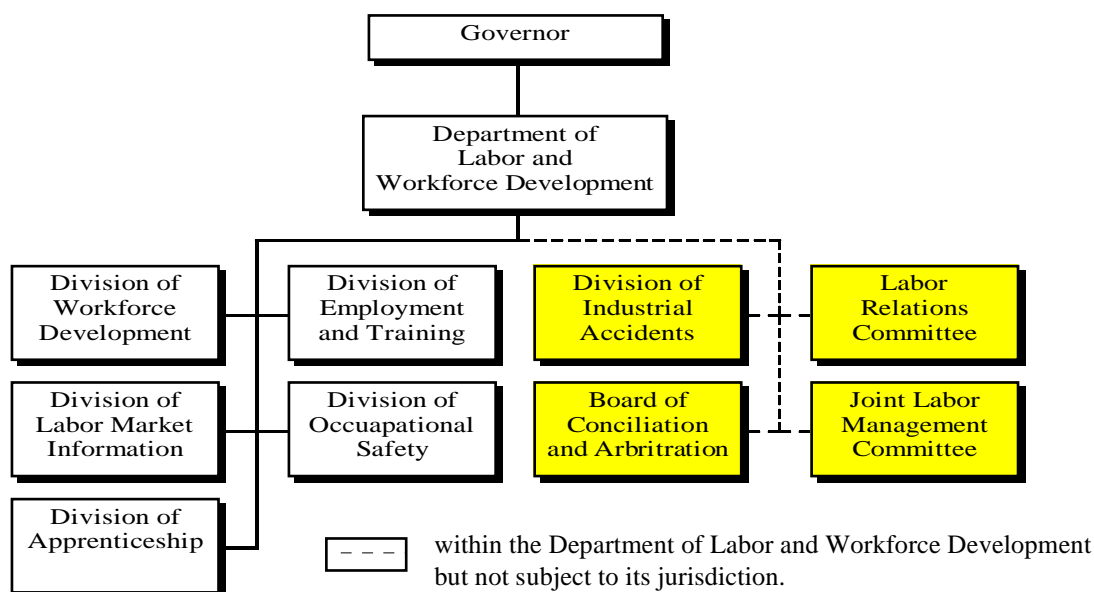
#### **Sole Proprietors** (H.5337--filed by Rep. Sprague)

#### **Benefits** (H.5713--filed by Rep. Klimm)

#### **Exemption** (H.5726--filed by Rep. Resor)



Governor Weld vetoed a provision calling for the creation of an Office of Labor, Education and Economic Development, to be governed by a Coordinating Council. This Council would have overseen the new Departments of Education, Consumer Affairs and Business Regulation, Economic Development, and Labor and Workforce Development.



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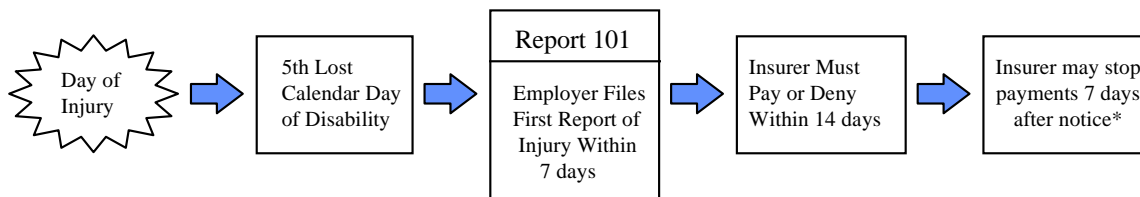
## ***STATUTORY PROVISIONS TO RESOLVE DISPUTES***

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Figure 2: Schedule of Events

### **Schedule of Events:**



\*The insurer may stop payments unilaterally (with seven days notice) only if the case remains within the 180 day "pay without prejudice period," and the insurer has not been assigned or accepted liability for the case. Otherwise, the insurer must file a "complaint" and go through the dispute resolution process.

## **Workers' Compensation Claims**

When an employee is disabled or incapable of earning full wages for five or more calendar days, or dies, as the result of a work related injury or disease, the employer must file a First Report of Injury. This form must be sent to the Office of Claims Administration at the DIA, the insurer and the employee within seven days of notice of the injury. If the employer does not file the required First Report of Injury with the DIA, it may be subject to a fine.

The insurer then has 14 days upon receipt of an employer's first injury report to either pay the claim or to notify the DIA, the employer, and the employee of refusal to pay.<sup>2</sup> When the insurer pays a claim, it may do so without accepting liability for a period of 180 days. This is the "pay without prejudice period" that establishes a window where the insurer may refuse a claim and stop payments at its will. Up to 180 days, the insurer can unilaterally terminate or modify any claim as long as it specifies the grounds and factual basis for so doing.<sup>3</sup> The purpose of the pay without prejudice period is to encourage the insurer to begin payments to the employee instead of outright denying the claim.

After a conference order is issued or the pay without prejudice period expires, the insurer may not stop payment without an order from an AJ. The insurer must request a modification or termination of benefits based on an impartial medical exam and other statutory requirements. A discontinuance or modification of benefits may take place no sooner than 60 days following referral to the division of dispute resolution.

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<sup>2</sup> If there is no notification or payment has not begun, the insurer is subject to a fine of \$200 after 14 days, \$2,000 after 60 days, and \$10,000 after 90 days.

<sup>3</sup> The pay without prejudice period may be extended up to one year under special circumstances. The DIA must be notified seven days in advance.

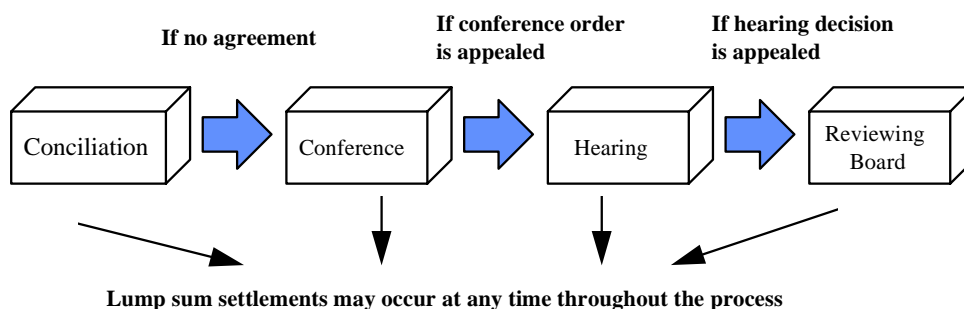
## Dispute Resolution Process

Requests for adjudication may be filed either by an employee seeking benefits, or an insurer seeking modification or discontinuance of benefits following the payment without prejudice period.

Figure 3: Dispute Resolution Process

### Dispute Resolution:

**START:** 30 days after the onset of disability, or immediately following an insurer's "deny", the employee may file a claim with the DIA and Insurer.



A dispute not resolved at conciliation will then be referred to a conference where it is assigned to an AJ who retains the case throughout the process if possible. The insurer must pay an appeal fee of 65% of the state average weekly wage (SAWW), or 130% of the SAWW if the insurer fails to appear at conciliation. The purpose of the conference is to compile the evidence and to identify the issues in dispute and the AJ may require injury and hospital records. This order may be appealed to a hearing within 14 days.

At the hearing, the AJ reviews the dispute according to oral and written documentation. The procedure at a hearing is formal and a verbatim transcript of the proceedings is recorded by a stenographer. Witnesses are examined and cross-examined according to the Massachusetts Rules of Evidence. The AJ may grant a continuance for reasons beyond the control of any party. Either party may appeal a hearing decision within 30 days.

This time limit for appeals may be extended up to one year for reasonable cause. A fee of 30% of the state average weekly wage must accompany the appeal. The claim will then proceed to the reviewing board where a panel of ALJs will hear the case.

At the reviewing board, a panel of three ALJs will review the evidence presented at the hearing and may ask for oral arguments from both sides. They can reverse the AJs decision only if they determine that the decision was beyond the scope of authority, arbitrary, capricious, or contrary to law. The panel is not a fact finding body, although it may recommit a case to an AJ for further findings of fact.

All orders from the dispute resolution process may be enforced by the Superior Court of the Commonwealth. Reviewing Board cases may also be appealed to the Appeals Court. The cost of appeals are reimbursed to the claimant (in addition to the award of the judgment) if the claimant prevails.

## Lump Sum Settlements

A case can be resolved at any point during the DIA's three step dispute resolution period by settlement or by the decision of an administrative judge (AJ) or administrative law judge (ALJ).

Conciliators may "review and approve as complete" lump sum settlements, a standard that allows the conciliator to review a completed lump sum settlement. Conciliators or the parties at conciliation may also refer a case to a lump sum conference where an administrative law judge will decide if a lump sum settlement is in the best interest of the parties.

AJs at the conference and hearing may approve lump sum settlements in the same manner that an ALJ approves a settlement at the lump sum conference. AJs and ALJs must determine whether settlements are in the best interest of the employee, and a judge may reject a settlement offer if it appears to be inadequate. Dispute resolution begins at conciliation, where a conciliator will attempt to resolve a dispute by informal means.

## Alternative Dispute Resolution Measures

**Arbitration & Mediation** - At any time prior to five days before a conference, a case may be referred to an independent arbitrator. The arbitrator must make a decision whether to vacate or modify the compensation pursuant to §12 and §13 of G.L. Chapter 251.

The parties involved may agree to bring the matter before an independent mediator at any stage of the proceeding. Mediation shall in no way disrupt the dispute resolution process and any party may proceed with the process at the DIA if they decide to do so.

**Collective Bargaining** - An employer and a recognized representative of its employees may engage in collective bargaining to establish certain binding obligations and procedures related to workers' compensation. Agreements are limited to the following topics: supplemental benefits under §§34, 34A, 35, 36; alternative dispute resolution (arbitration, mediation, conciliation); limited list of medical providers; limited list of impartial physicians; modified light duty return to work program; adoption of a 24 hour coverage plan; establishing safety committees and safety procedures; establishing vocational rehabilitation or retraining programs.

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## ***SUMMARY OF BENEFITS UNDER CHAPTER 152***

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An employee who is injured during the course of employment, or suffers from work-related mental or emotional disabilities, as well as occupational diseases, is eligible for workers' compensation benefits. These benefits include weekly compensation for lost income during the period the employee cannot work. Indemnity payments vary, depending on the average weekly wage of the employee (AWW) and the degree of incapacitation. The statute dictates that the maximum benefit be set at 100% of the State Average Weekly Wage (SAWW), and that a minimum benefit of at least 20% of the SAWW.<sup>4</sup>

In addition, the insurer is required to furnish medical and hospital services, and medicines if needed. The insurer must also pay for vocational rehabilitation services if the employee is determined to be suitable by the DIA.

Below is a list of the SAWW's since 1991 and the maximum (SAWW) and minimum benefit levels for §34 and §34A claims:

*Table 1: Indemnity Benefits*

	<u><b>Maximum Benefit</b></u>	<u><b>Minimum Benefit</b></u>
<b>10/1/91-</b>	<b>\$515.52</b>	<b>\$103.10</b>
<b>10/1/92-</b>	<b>\$543.30</b>	<b>\$108.66</b>
<b>10/1/93-</b>	<b>\$565.94</b>	<b>\$113.19</b>
<b>10/1/94-</b>	<b>\$585.95</b>	<b>\$117.19</b>
<b>10/1/95-</b>	<b>\$604.03</b>	<b>\$120.81</b>
<b>10/1/96-</b>	<b>\$631.03</b>	<b>\$126.21</b>

### **Indemnity and Supplemental Benefits**

The following are the various forms of indemnity and supplemental benefits employees may receive depending on their average weekly wage, state average weekly wage, and their degree of disability.

**Temporary Total Disability (§34)** - Compensation will be 60% of the employee's average weekly wage (AWW) before injury while remaining above the minimum and below the maximum payments that are set for each form of compensation. The maximum weekly compensation rate is 100% of the state average weekly wage (**\$631.03**), while the minimum is 20% of the SAWW (**\$126.21**) if claims

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<sup>4</sup> The Statewide Average Weekly Wage (SAWW) is determined under subsection (2) of Chapter 151A §29 and promulgated by the Director of Employment and Training. As of October 1, 1996, the SAWW is \$631.03.

## Massachusetts Workers' Compensation Advisory Council

involve injuries occurring on or after October 1, 1996. The limit for temporary benefits is 156 weeks.

**Partial Disability (§35)** - Compensation is 60% of the difference between the employee's AWW before the injury and the weekly wage earning capacity after the injury. This amount cannot exceed 75% of temporary benefits under §34 if they were to receive those benefits. The maximum benefits period is 260 weeks for partial disability, but may be extended to 520 weeks.

**Permanent and Total Incapacity (§34A)** - Payments will equal 2/3 of AWW following the exhaustion of temporary (§34) and partial (§35) payments. The maximum weekly compensation rate is 100% of the state average weekly wage (**\$631.03**), while the minimum is 20% of the SAWW (**\$126.21**) if claims involve injuries that occurred on or after October 1, 1996. The payments must be adjusted each year for cost of living allowances (COLA benefits).

**Death Benefits for Dependents (§31)** - The widow or widower that remains unmarried shall receive 2/3 of the worker's AWW, but not more than the state's AWW or less than \$110 per week. They shall also receive \$6 per week for each child (this is not to exceed \$150 in additional compensation). There are also benefits for other dependents. Benefits paid to all dependents cannot exceed 250 times the state AWW plus any cost of living increases (COLA). Children under 18 may, however, continue to receive payments even if the maximum has been reached.

Burial expenses may not exceed \$4000.

**Subsequent Injury (§35B)** - An employee who has been receiving compensation, has returned to work for two months or more, and is subsequently re-injured, will receive compensation at the rate in effect at the time of the new injury (unless the old injury was paid in lump sum). If the old injury was settled with a lump sum, then the employee will be compensated only if the new claim can be determined to be a new injury.

### Attorney's Fees

The dollar amounts specified for attorney's fees are listed in G.L.152 §13A(10). As of October 1, 1996 subsections 1 through 6 were updated to reflect adjustments to the State Average Weekly Wage. Below is a summary of the attorney's fee schedule.

(1) When an insurer refuses to pay compensation within 21 days of an initial liability claim, but prior to a conference agrees to pay the claim (with or without prejudice), the insurer must pay an attorney's fee of **\$803.45** plus necessary expenses. If the employee's attorney fails to appear at a scheduled conciliation, the amount paid is **\$401.79**.

## Massachusetts Workers' Compensation Advisory Council

(2) When an insurer contests a liability claim and is ordered to pay by an administrative judge at conference, the insurer must pay the employee's attorney a fee of **\$1,148.01**. The administrative judge can increase or decrease this fee based on the complexity of a case and the amount of work an attorney puts in. If the employee's attorney fails to appear at a scheduled conciliation, the fee may be reduced to **\$ 574.01**.

(3) When an insurer contests a claim for benefits other than the initial liability claim as in subsection (1) and fails to pay compensation within 21 days yet agrees to pay the compensation due, prior to conference, the insurer must pay the employee's attorney fee in the amount of **\$574.01** plus necessary expenses. This fee can be reduced to **\$287.01** if the employee's attorney fails to appear at a scheduled conciliation.

(4) When an insurer contests a claim for benefits or files a complaint to reduce or discontinue benefits by refusing to pay compensation within 21 days, and the order of the administrative judge after a conference reflects the written offer submitted by the claimant (or conciliator on the claimant's behalf), the insurer must pay the employee's attorney a fee of **\$803.58** plus necessary expenses. If the order reflects the written offer of the insurer, no attorney fee should be paid. If the order reflects an amount different from both submissions, the fee should be in the amount of **\$401.79** plus necessary expenses. Any fee should be reduced in half if the employee's attorney fails to show up to a scheduled conciliation.

(5) When the insurer files a complaint or contests a claim and then either a) accepts the employee's claim or withdraws its own complaint within 5 days of a hearing, or b) the employee prevails at a hearing, the insurer shall pay a fee to the employee's attorney in the amount of **\$4,017.99** plus necessary expenses. An administrative judge may increase or decrease this amount based on the complexity of the case and the amount of work an attorney puts in.

(6) When the insurer appeals the decision of an administrative judge and the employee prevails in the decision of the Reviewing Board, the insurer must pay a fee to the employee's attorney in the amount of **\$1,148.01**. An administrative judge may increase or decrease this amount based on the complexity of the case and the amount of work an attorney puts in.

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## ***JUDICIAL APPOINTMENTS***

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DIA administrative judges and administrative law judges are appointed by the Governor with the advice and consent of the Governor's Council. Candidates for the positions are first screened and recommended by the Industrial Accidents Nominating Panel.

**Nominating Panel** - The nominating panel is comprised of eleven members, including the governor's legal counsel, the secretary of labor, the secretary of economic affairs, the DIA commissioner, the DIA senior judge, and six members appointed by the governor (two from business, two from labor, a health care provider, and a lawyer not practicing workers' compensation law).<sup>5</sup>

When a judicial position becomes available, the nominating panel convenes to review applications for appointment and reappointment. The panel considers an applicant's skills in fact finding, and understanding of anatomy and physiology. In addition, an AJ must have a minimum of a college degree or four years of writing experience. All ALJs must either be an attorney admitted to the Massachusetts bar, or be a current AJ or ALJ, or have served as an AJ or ALJ. Consideration of sitting judges applying for reappointment includes a review of their written decisions, an evaluation written by the senior judge reviewing the judge's judicial demeanor, average time for disposition of cases, total number of cases heard and decided, and appellate record.

**Advisory Council Review** - The Advisory Council reviews and rates those candidates approved by the Nominating Panel. Once Council members receive all information the candidates, they are invited for an interview before Council. On the affirmative vote of at least seven voting members, the Advisory Council may rate any candidate either "qualified," "highly qualified," or "unqualified." The Council may wish to take "no position" on a candidate if consensus cannot be reached. Once a rating has been issued, it is then sent to the Governor.

For a list of the appointment and expiration dates of the 30 administrative judges and the 6 administrative law judges, see appendix E.

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<sup>5</sup> An amendment was made to the makeup of the nominating panel in FY'95. See "Legislation."





SECTION

2

CASE DEMOGRAPHICS



*Occupational Injuries and Illnesses.....21*

*Case Characteristics.....23*

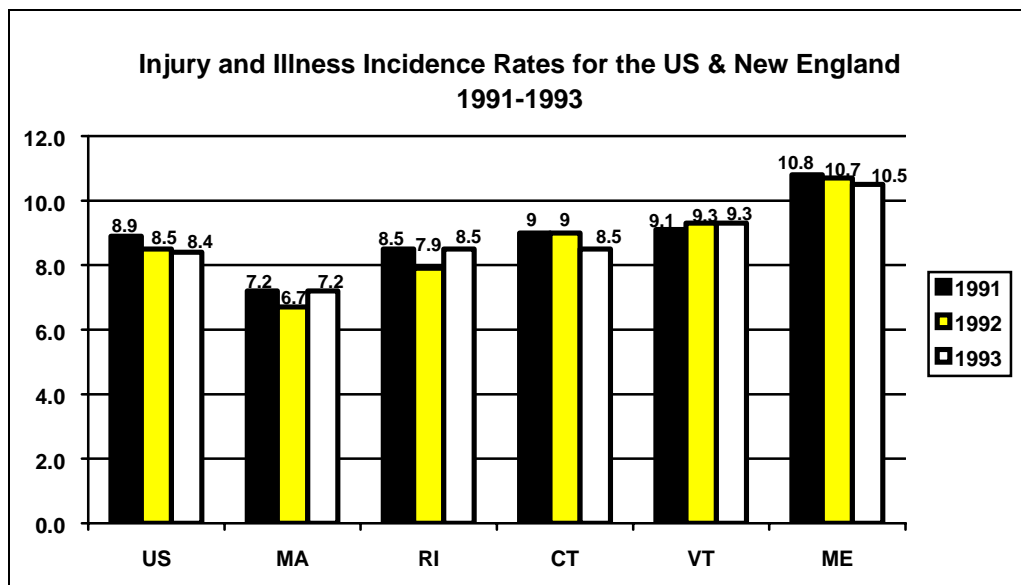


## ***OCCUPATIONAL INJURIES AND ILLNESSES***

Every year the Massachusetts Department of Labor & Industries in cooperation with the U.S. Department of Labor, Bureau of Labor Statistics, conducts an *Annual Survey of Occupational Injuries and Illnesses* in Massachusetts. This study surveys non-fatal injuries that occurred in the private sector workforce (not including the self-employed, farms with fewer than 11 employees, private households, and employees in Federal, State and local government agencies). A sample of 250,000 employer reports nationwide and 10,000 in Massachusetts are examined, in an effort to represent the total private economy for 1994.

The initial results of the 1994 annual survey were released in May of 1996. In 1994 the Commonwealth averaged 2,473,300 workers in the private sector workforce. Of these workers, 143,500 experienced some sort of job-related injury or illness. This means that for every 100 full-time workers, 7.2 were injured in 1994 (incidence rate) well below the national average of 8.4. Out of the 143,500 cases, 69,500 were serious enough to keep workers from their jobs for at least a day (or required restricted work activity).

Figure 4: Injury and Illness Incidence Rates



Source: *Labor and Industries News*, May 10, 1996

Note: No state-specific data for N.H.

For the third year in a row, Massachusetts displayed the lowest overall rate of workplace injuries in New England with an incidence rate of 7.2. This makes the Commonwealth the only New England state to remain below the national average for three consecutive years.

## Massachusetts Workers' Compensation Advisory Council

Table 2: Injury Incidence Rates by Industry

Industry Division (Massachusetts)	1992	1993	1994
Private Industry	7.2	6.7	7.2
Agriculture, forestry, and fishing	10.1	9.2	10.9
Construction	11.9	10.5	11.2
Manufacturing	7.3	7.3	8.1
• Durable goods	6.6	6.8	7.3
• Nondurable goods	8.6	8.4	9.4
Transportation and public utilities	8.3	9.0	9.3
Wholesale and retail trade	7.9	7.6	7.5
• Wholesale trade	6.3	7.1	7.5
• Retail trade	8.7	7.9	7.6
Finance, insurance, real estate	5.9	2.1	2.3
Services	6.3	6.1	6.8

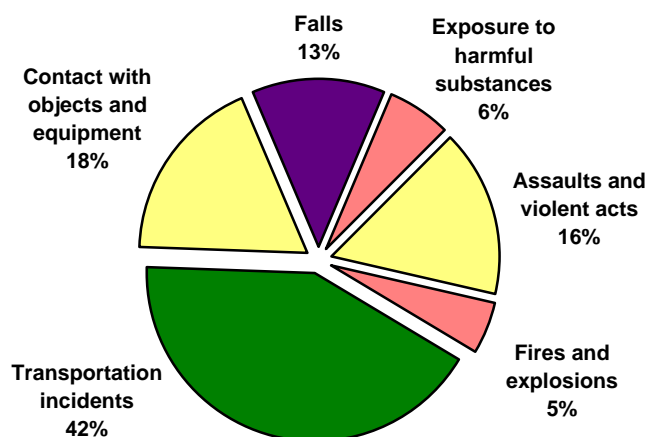
The survey also categorized incidence rates according to Massachusetts industry. The construction industry clearly had the highest overall incidence rate in 1994 with 11.2 injuries for every 100 full time workers. Finance, insurance and real estate had the lowest incidence rates, with 2.3 injuries per 100 workers.

Source: *Labor and Industry News*, May 10, 1996

### Fatal Work Injuries

Fatal work injuries in New England are calculated each year by the U.S. Department of Labor, Bureau of Labor Statistics. Data is taken from various state and federal administrative sources including death certificates, workers' compensation reports and claims, reports to various regulatory agencies, and medical examiner reports. In 1995 a total of 153 fatal work injuries occurred in New England. This calculates to be 2.5% of the 6,210 fatal work injuries nationally. Transportation incidents were the leading cause of workplace deaths in New England at 42% of the total cases in 1995.

Figure 5: Percent Distribution of Fatal Occupational Injuries by Event in N.E.



Source: Bureau of Labor Statistics, *News* 9/2/96

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## ***CASE CHARACTERISTICS***

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The following tables and statistics illustrate trends, by injury type<sup>6</sup> in claims, average claim cost, distribution of losses, and frequency for the five most recent years of available data. This data is derived from insurance claims paid by commercial insurers writing policies in the state and does not include data from self insured employers or self insurance groups (SIGs). Insurance data is not considered reliable until several years from the policy year in which the claims occurred. For this reason, the most recent year to which we may look for reliable data is the 1992/1993 policy year. Each year of the data is developed to the fifth report so the years can be compared equally.

The number of claims for all injury types have been declining for the last five years. This corresponds with data from the DIA indicating a major decline in its case load. The average claim cost has risen steadily over a five year trend. In the 1988/89 policy year, 78% of the losses were paid in indemnity (wage replacement) benefits, while 22% paid for medical benefits. A shift occurred by the 1992/93 policy year to 68% for indemnity benefits and 32% medical.

### **Case Data By Injury Type**

*Table 3: Claim Counts*

<b>Composite Policy Year</b>	<b>Fatal</b>	<b>Permanent Total</b>	<b>Permanent Partial</b>	<b>Temporary Total</b>	<b>Medical Only</b>
<b>1988/89</b>	67	51	15,098	51,338	115,073
<b>1989/90</b>	77	28	14,254	44,201	99,655
<b>1990/91</b>	68	24	10,585	39,020	87,194
<b>1991/92</b>	56	12	6,643	31,479	80,541
<b>1992/93</b>	57	16	5,539	27,174	72,267

*Table 4: Average Claim Cost - "Indemnity + Medical"*

<b>Composite Policy Year</b>	<b>Fatal</b>	<b>Permanent Total</b>	<b>Permanent Partial</b>	<b>Temporary Total</b>	<b>Medical Only</b>
<b>1988/89</b>	233,251	616,240	56,070	6,098	221
<b>1989/90</b>	314,194	829,672	57,404	6,806	259
<b>1990/91</b>	220,064	726,558	58,671	7,234	290
<b>1991/92</b>	253,746	976,185	56,039	7,188	330
<b>1992/93</b>	305,488	1,143,890	59,480	7,026	348

<sup>6</sup> It is important to note that the WCRB claim categories do not correspond to specific sections of the workers' compensation act. For example, the permanent total category includes predominantly section 34A benefits, but may also include benefits under section 30 and section 36.

## Massachusetts Workers' Compensation Advisory Council

*Table 5: Average Indemnity Cost*

<b>Composite Policy Year</b>	<b>Fatal</b>	<b>Permanent Total</b>	<b>Permanent Partial</b>	<b>Temporary Total</b>
<b>1988/89</b>	224,209	338,870	46,111	4,596
<b>1989/90</b>	295,937	506,495	46,863	5,056
<b>1990/91</b>	215,358	541,327	47,106	5,175
<b>1991/92</b>	239,645	552,770	42,533	4,721
<b>1992/93</b>	296,424	538,511	44,293	4,523

*Source: WCRB, schedule z data by injury type (developed to 5th report)*

*Table 6: Average Medical Cost per Claim*

<b>Composite Policy Year</b>	<b>Fatal</b>	<b>Permanent Total</b>	<b>Permanent Partial</b>	<b>Temporary Total</b>	<b>Medical Only</b>
<b>1988/89</b>	9,042	277,370	9,959	1,502	221
<b>1989/90</b>	18,257	323,177	10,541	1,750	259
<b>1990/91</b>	4,706	185,231	11,565	2,059	290
<b>1991/92</b>	14,101	423,415	13,506	2,467	330
<b>1992/93</b>	9,064	605,379	15,187	2,503	348

*Source: WCRB, schedule z data by injury type (developed to 5th report)*

### Distribution of Paid Claims (Incurred losses)

*Table 7: Incurred Losses Distribution*

<b>Composite Policy Year</b>	<b>Indemnity</b>	<b>Medical</b>
<b>1988/89</b>	78.28	21.72
<b>1989/90</b>	77.87	22.13
<b>1990/91</b>	75.77	24.23
<b>1991/92</b>	69.31	30.69
<b>1992/93</b>	67.74	32.26

*Source: WCRB, schedule z data by injury type (developed to 5th report)*

## Massachusetts Workers' Compensation Advisory Council

Table 8: Incurred Losses Distribution - "Medical"

<b>Composite Policy Year</b>	<b>Fatal</b>	<b>Permanent Total</b>	<b>Permanent Partial</b>	<b>Temporary Total</b>	<b>Medical Only</b>	<b>Total</b>
<b>1988/89</b>	0.05	1.15	12.20	6.26	2.07	21.73
<b>1989/90</b>	0.12	0.76	12.60	6.49	2.17	22.14
<b>1990/91</b>	0.03	0.46	12.74	8.36	2.63	24.22
<b>1991/92</b>	0.12	0.78	13.78	11.93	4.08	30.69
<b>1992/93</b>	0.09	1.67	14.47	11.70	4.33	32.26

Source: WCRB, schedule z data by injury type (developed to 5th report)

Table 9: Incurred Losses Distribution - "Indemnity"

<b>Composite Policy Year</b>	<b>Fatal</b>	<b>Permanent Total</b>	<b>Permanent Partial</b>	<b>Temporary Total</b>	<b>Total</b>
<b>1988/89</b>	1.22	1.40	56.50	19.15	78.27
<b>1989/90</b>	1.91	1.19	56.02	18.74	77.86
<b>1990/91</b>	1.52	1.35	51.88	21.01	75.76
<b>1991/92</b>	2.06	1.02	43.40	22.83	69.31
<b>1992/93</b>	2.91	1.48	42.21	21.15	67.75

Source: WCRB, schedule z data by injury type (developed to 5th report)

## Claim Frequency

Table 10: Claim Frequency (Number of Claims per Million of Man- Weeks)

<b>Composite Policy Year</b>	<b>Fatal</b>	<b>Permanent Total</b>	<b>Permanent Partial</b>	<b>Temporary Total</b>	<b>Medical Only</b>
<b>1988/89</b>	0.614	0.468	138.44	470.74	1055.16
<b>1989/90</b>	0.760	0.276	140.71	436.33	983.75
<b>1990/91</b>	0.724	0.255	112.68	415.38	928.21
<b>1991/92</b>	0.664	0.142	78.76	373.23	954.92
<b>1992/93</b>	0.710	0.199	68.96	338.31	899.70

Source: WCRB, schedule z data by injury type (developed to 5th report)





SECTION

3

DISPUTE RESOLUTION

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<i>Cases at the DIA.....</i>	<i>29</i>
<i>Administrative Judges.....</i>	<i>30</i>
<i>Conciliation.....</i>	<i>31</i>
<i>Conference.....</i>	<i>35</i>
<i>Hearings.....</i>	<i>38</i>
<i>Case Time Frames.....</i>	<i>41</i>
<i>Reviewing Board.....</i>	<i>46</i>
<i>Lump Sum Settlements.....</i>	<i>49</i>
<i>Impartial Medical Examinations.....</i>	<i>51</i>

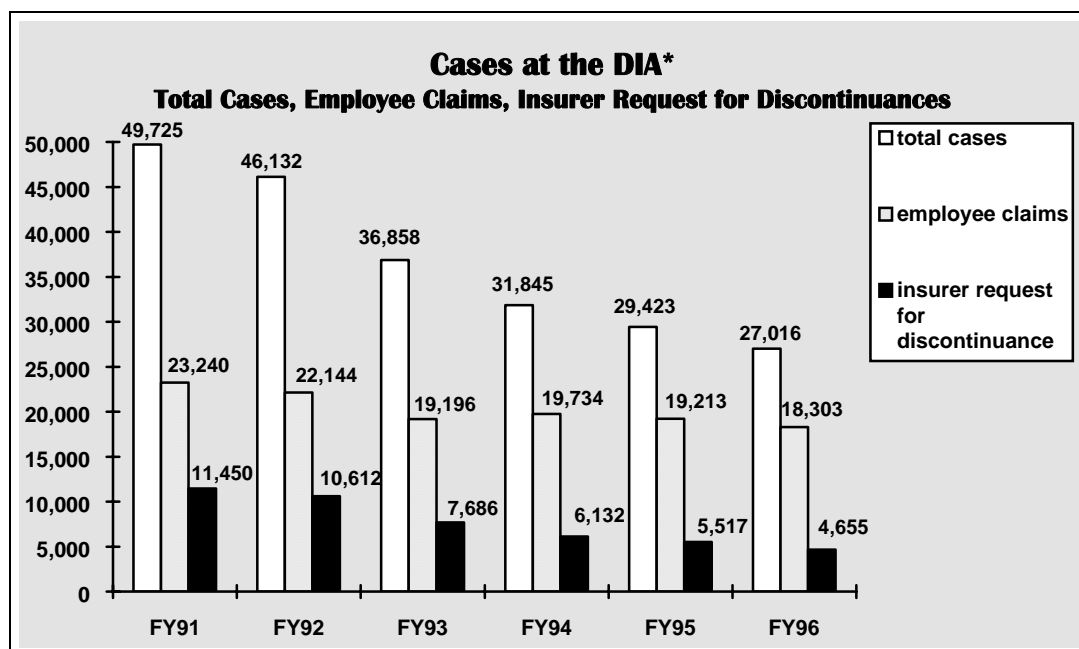


## ***CASES AT THE DIA***

Cases originate at the DIA when any of the following are filed: an employee's "claim" for benefits, an insurer's "complaint" for reduction of benefits, a third party claim, or request for approval of a lump sum settlement.

As demonstrated in Figure 6, there has been a significant decline in cases (46%) at the DIA since implementation of the 1991 reform act. Employee's claims, which account for 68% of the total cases, declined slightly in 1996 to 18,303 and have decreased 17% since 1991. Most noticeably, insurer requests for discontinuances have declined by 59% since 1991.<sup>7</sup>

Figure 6: Total Cases



Source: DIA report 28

\*Note: Total Cases include employee claims, insurer request for discontinuance, lump sum request, third party claims, and section 37/37A requests.

<sup>7</sup> DIA report 28: Statistics for sections of the law being claimed (indicates cases that are received at the DIA for litigation).

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## ***ADMINISTRATIVE JUDGES***

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### **Administrative Judges**

At the close of FY'96 there were 29 administrative judges (AJs) in Boston and the regions presiding over the conference and hearing stages of dispute resolution. Of these, 21 serve six year terms, and eight were appointed for one year re-call terms. The statute provides for the appointment of 21 AJs, but allows the governor to recall AJs whose terms have expired for one year terms.

The Senior Judge may refuse to assign new cases to AJs with an inordinate number of hearing decisions outstanding. This is one method of sanctioning judges, while also providing them an opportunity to catch up on their personal backlog of cases. At the same time, however, a judge that is taken "off-line" is no longer available to hear new cases. This could become problematic if a large number of cases were awaiting a conference or hearing. The administrative practice of taking a judge off-line is relatively rare and occurs for limited amounts of time.

The Senior Judge typically will take an AJ off-line near the end of a term until reappointment is made. This enables the judges to complete their assigned hearings, thereby minimizing the number of cases that must be re-assigned to other judges after their term expires. This becomes problematic when approximately 1/3 of the AJ's are subject to reappointment each year.

### **Scheduling Cycle**

In FY'96 the 30 Administrative Judges at the Department of Industrial Accidents worked in 12 week scheduling cycles (this cycle was reduced from 13 weeks as the result of decreasing caseloads). The first three weeks of the cycle are devoted to conferences, the next two weeks are for continuances and writing, the next five weeks are devoted to hearings, and the final two weeks are set aside for continuances and writing.

<b>Week 1</b>	Conferences
<b>Week 2</b>	Conferences
<b>Week 3</b>	Conferences
<b>Week 4</b>	Continuances
<b>Week 5</b>	Writing
<b>Week 6</b>	Hearings
<b>Week 7</b>	Hearings
<b>Week 8</b>	Hearings
<b>Week 9</b>	Hearings
<b>Week 10</b>	Hearings
<b>Week 11</b>	Continuances
<b>Week 12</b>	Writing

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## ***CONCILIATION***

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The main objective of the conciliation unit is to remove from the dispute resolution system those cases that can be resolved without formal adjudication. At this stage, cases are reviewed for documentation substantiating the positions of both sides of the dispute. Conciliators are empowered to withdraw or reschedule a case until adequate documentation is presented. Approximately half of the cases that proceed through conciliation are "resolved" as a result of this process. Such resolved cases take on a broad range of dispositions including withdrawals, lump sums, and conciliated cases. The other half of the cases are referred from conciliation to a conference.

### **The Conciliation Process**

Conciliations are scheduled automatically by computer at the Office of Claims Administration (OCA). Attendance of both the insurer and the employee is required. The employer may attend, as well as other interested parties with permission of the parties. All relevant issues (including causal relationship, disability, medical condition, etc.) are reviewed at the meeting.

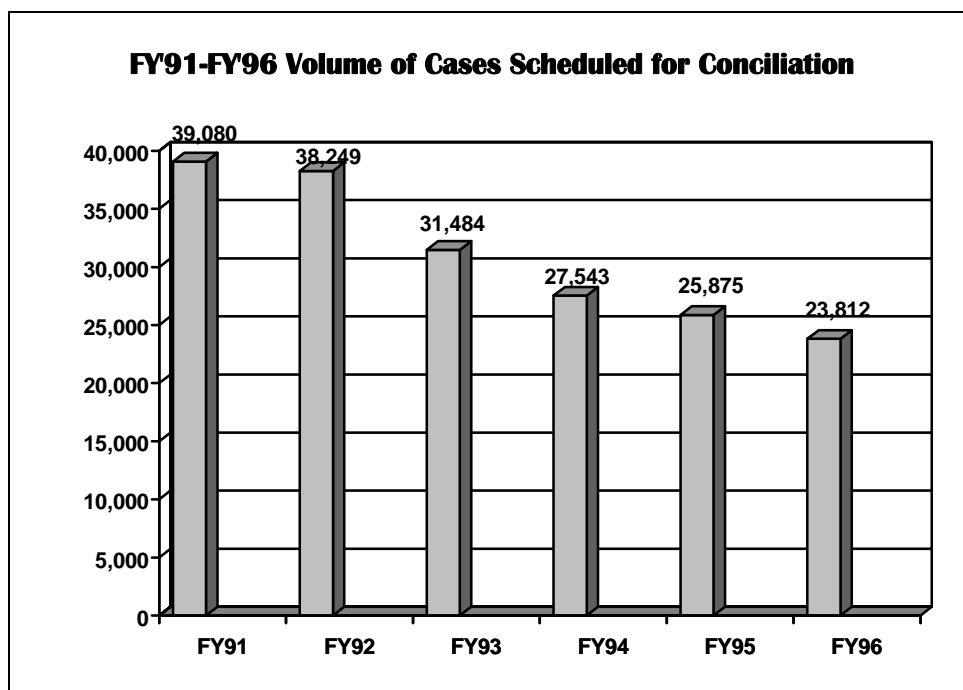
When liability is not an issue but modification or discontinuance of benefits is sought, both parties are required to submit written settlement offers. If the employee fails to file, the conciliator must record either the last offer made by the employee or the maximum compensation rate. If the insurer fails to file, then the conciliator must record the last offer made by them or zero. In an effort to promote compromise, the last best offer should indicate what each party believes the appropriate compensation rate should be.

A conciliator's recommendation is written for the case file, and the conciliator's disposition is recorded in the Diameter system.

### **Volume at Conciliation**

The number of cases reviewed at conciliation is indicative of the total volume of disputed claims because nearly every case to be adjudicated must first go through conciliation. The case load at conciliation peaked in 1991 at 39,080 cases. After the 1991 reforms, the volume decreased each year to the current low of 23,812 cases in fiscal year 1996 (39% less than 1991 levels).

Figure 7: Volume of Cases Scheduled for Conciliation



Source: DIA report 17

Figure 7 indicates the number of conciliations scheduled in FY'96. Out of the 23,812 conciliations scheduled in FY'96, 19,816 conciliations actually occurred.<sup>8</sup>

## Conciliation Outcomes

**Cases Referred to Conference** - Conciliation outcomes may be divided into two major categories: "referred to conference," or "resolved." In FY'96, 55% of the 23,812 cases scheduled for conciliation were referred to conference, the next stage of dispute resolution. This compares very closely to the prior year's referral rate of 54%.<sup>9</sup>

As in previous years, 2.2% of the cases scheduled for a conciliation were referred to conference without conciliation. This occurs when the respondent (or party that is not putting forth the case) does not appear for the conciliation.

**Resolved Cases** - The remaining 45% of conciliation cases in FY'96 are considered to be resolved (that is they were not referred on to conference). Numbers for FY'96 are similar to previous years (FY'95 - 47%, FY'94 - 45%,

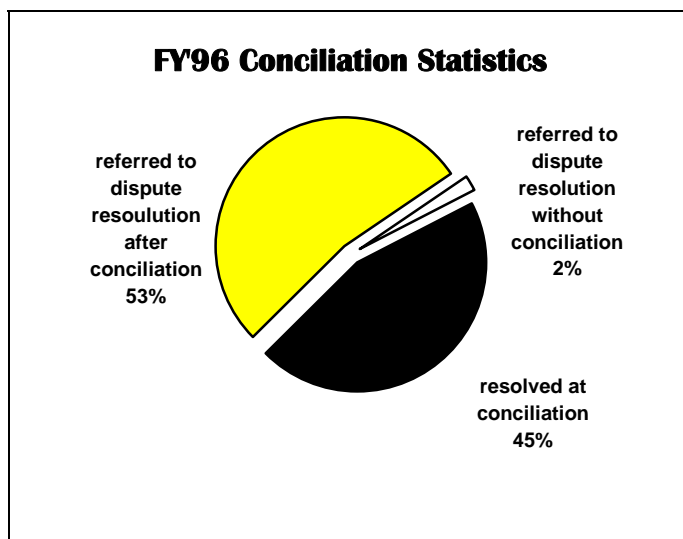
<sup>8</sup> This figure accounts for those cases withdrawn or adjusted prior to the actual conciliation. "Referred to conference" (12,552), "conciliated - adjusted" (4,122), "conciliated- pay without prejudice" (130), "withdrawn at conciliation" (2,193), "lump sum approved as complete" (276), "referred to lump sum" (543) = 19,816

<sup>9</sup> DIA report 17 (Finished cases, not including reschedules).

## Massachusetts Workers' Compensation Advisory Council

FY'93 - 46%, FY'92 - 49%, FY'91 - 48%). While the case load has decreased since the 1991 reforms, the percentage of cases resolved at conciliation has remained around 50%. Cases may be withdrawn or rescheduled when information is deficient or the procedure is not followed properly, thereby removing incomplete cases from proceeding to conference.

Figure 8: Fiscal Year 1996, Conciliation Statistics



Source: DIA report 17

Table 11: Conciliation Outcomes, FY'96 and FY'95

Conciliation Outcomes FY'96 and FY'95	Number of Cases		Percentage	
	FY'96	FY'95	FY'96	FY'95
Referred to Dispute Resolution	13,069	13,854	54.8%	53.5%
Withdrawn	4,628	5,158	19.4%	19.9%
Adjusted Prior to Conciliation	878	1,136	3.6%	4.3%
Lump Sum	985	1,151	4.1%	4.4%
Conciliated-Adjusted	4,122	4,414	17.3%	17.0%
Conciliated-Pay Without Prejudice	130	162	0.5%	0.6%
<b>Totals</b>	<b>23,812</b>	<b>25,875</b>	<b>100%</b>	<b>100%</b>

Source: DIA Report 17

### Resolved cases- conciliated

Cases may be "conciliated" in two ways. 38% of the resolved cases (or 17% of all cases) were "conciliated-adjusted" meaning an agreement was reached at conciliation between the parties to initiate, modify, or terminate the compensation. This is relatively the same as last year's percentage of "conciliated-adjusted" cases (37% of "resolved" cases, and 17% of all cases).

Cases may also be "conciliated - pay without prejudice" (1% of resolved cases in both FY'96 and FY'95) meaning the pay without prejudice period has



## Massachusetts Workers' Compensation Advisory Council

been extended and the insurer may discontinue compensation without DIA or claimant approval.

### Cases Rescheduled

Conciliators cannot render a legal judgment on a case, but can make sure the parties have the necessary medical documentation and other sources of information to facilitate the resolution of the case. The purpose of rescheduling a case is to allow for further discussion to occur or to allow for a continuation of the case so all the documentation can be gathered. Out of all the cases at conciliation, 37% were rescheduled in FY'96. This is an increase from the 35% rescheduled in FY'95, 31% rescheduled in FY'94, 28% in FY'93, and 22% in FY'92.<sup>10</sup> An upward trend can be seen in regard to cases rescheduled at conciliation. This trend is likely a result from the greater emphasis placed on "completeness" of documentation in case's moving forward. If documentation is missing from a case at the conciliation level it could preclude resolution later on in the dispute resolution process.

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<sup>10</sup> DIA report 16

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## **CONFERENCE**

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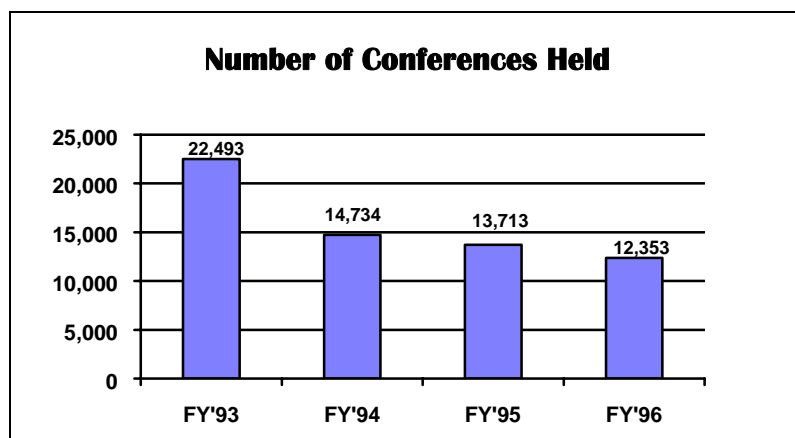
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Each case referred to a conference is assigned an administrative judge who must retain the case throughout the entire process if possible. The conference is intended to compile the evidence and to identify the issues in dispute. The administrative judge may require injury and medical records as well as statements from witnesses. In FY'96, conference orders were issued on average within 8 days of the close of the conference. The judge's conference order may be appealed within 14 days to a hearing.

### **Volume of Conferences**

The number of conferences held in FY'96 decreased to 12,353 from 13,713 in FY'95.<sup>11</sup> Historically, the number of conferences held has represented approximately half of the cases scheduled for conciliation. FY'96 numbers are in this range, whereas in FY'93 the volume of conferences (22,493) was well above 50% of conciliations, as the backlog of cases began to be resolved.

*Figure 9: Fiscal Years 1993-1996, Conferences Held*



*Source: DIA Report 45B*

### **Conference Outcomes**

When a case is withdrawn, directed to lump sum conference, or voluntarily adjusted, it may never actually reach the conference as it could be settled before review by the administrative judge. A case may be withdrawn at or before the conference either by the moving party or the department even though it was scheduled for a conference.

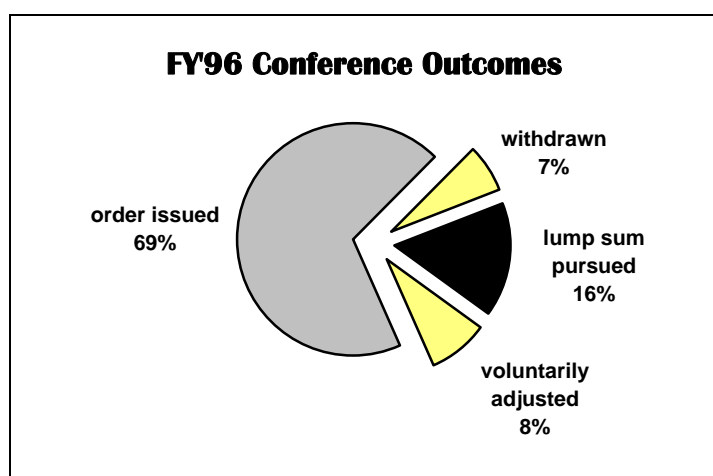
<sup>11</sup> The "order issued" disposition and the "settlement approved by judge" disposition are both final ones that conclude the case. "Referred to lump sum" and "voluntarily adjusted" may also be included in this category. Together they number 12,353 conferences which took place and were completed in the year.

## Massachusetts Workers' Compensation Advisory Council

In a majority of conferences (69% in FY'96) the administrative judge will issue an order to modify, terminate or begin indemnity medical benefits. This is a slightly higher percentage than the last fiscal year. In fiscal year 1996, 83.8% of conference orders were appealed, a slight increase from 81.2% in FY'95.

Lump sum settlements may be approved either at the conference or a separate lump sum conference. The procedure is the same for both meetings, but at the lump sum conference an ALJ (or a former AJ whose sole purpose is to review settlements) will preside over the meeting. Most lump sum settlements are approved directly at the conference or the hearing rather than scheduling a separate meeting. The pursuit of lump sum settlements comprised a slightly lower percentage of the dispositions in FY'96 (15.6%) than in FY'95 (16.2%).

Figure 10: Fiscal Year 1996, Conference Outcomes



Source: DIA report 45B

Figure 11: Fiscal Years 1996 and 1995, Conference Outcomes

Conference Outcomes FY'96 and FY'95	Number of Cases		Percentage	
	FY'96	FY'95	FY'96	FY'95
Withdrawn	891	1,175	6.6%	7.8%
Lump Sum Pursued	2,106	2,450	15.6%	16.2%
● Settlement Approved by Judge	1,900	2,256		
● Referred to Lump Sum <sup>12</sup>	53	62		
● Lump Sum Request Received <sup>13</sup>	153	132		
Voluntarily Adjusted	1,126	1,316	8.3%	8.7%
Order Issued	9,272	10,079	68.7%	66.7%
Other	100	97	0.7%	0.6%
<b>Total</b>	<b>13,495</b>	<b>15,117</b>	<b>100%</b>	<b>100%</b>

Source: DIA Report 45B; Conference statistics, for disposition dates (not including reschedules)

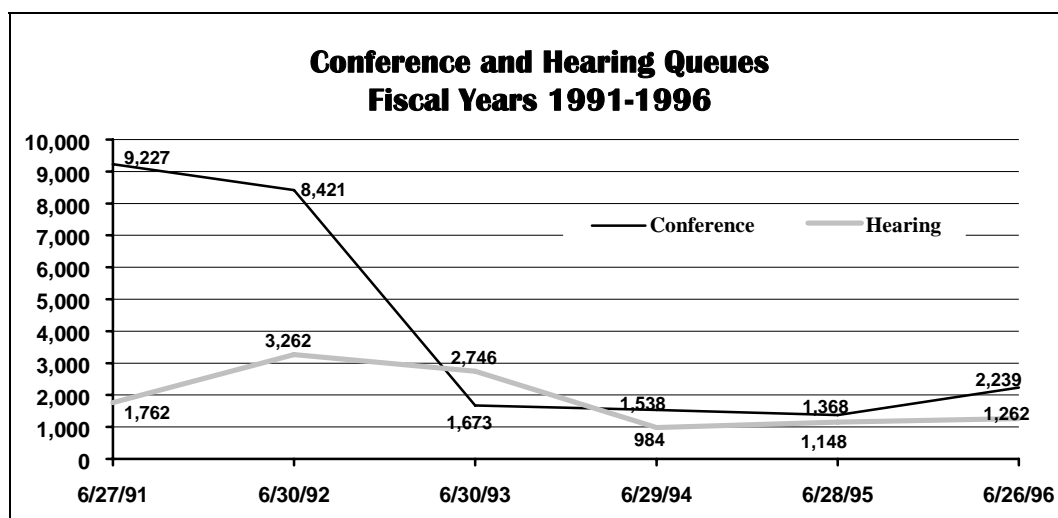
<sup>12</sup> Administrative Judges may enter this disposition to hold their won lump sum conference.

<sup>13</sup> Directed to separate lump sum conference before ALJ.

## Conference Queue

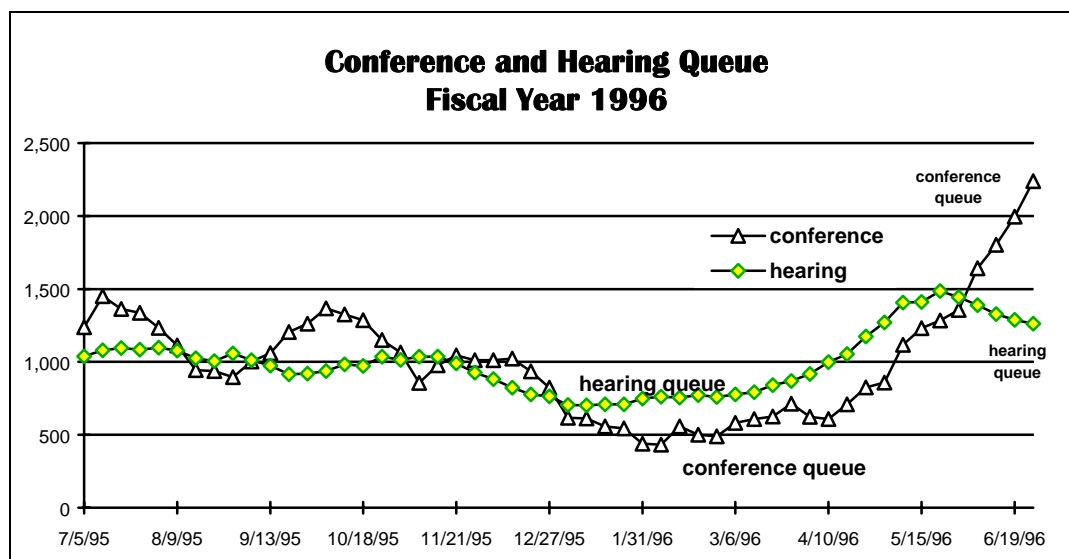
The Senior judge has explained that a conference queue of 1,500 cases or less can be scheduled within the 12 week scheduling cycle. A queue much lower than 1,500 will not provide enough cases for the scheduling cycle and a queue higher than that will likely produce a backlog. The conference queue remained relatively stable throughout FY'96, ending about one thousand cases above the start of the year (1,237 on 7/5/95 and 2,239 on 6/26/96). The queue fluctuated throughout the year, responding to the scheduling cycle of the judges. The queue reached a high of 2,239 on 6/26/96 and a low of 433 on 2/7/96.

Figure 12: Conference and Hearing Queues; Fiscal Years 1991 -1996



Source: DIA Report 404

Figure 13: Conference and Hearing Queue; FY'96



Source: DIA report 404

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## ***HEARINGS***

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According to the department's regulations, the administrative judge that presided over the conference will review the dispute at the hearing. The procedure is formal and a verbatim transcript of the proceedings is recorded. Written documents are presented and witnesses are examined and cross-examined according to Massachusetts rules of evidence. In FY'96, the average time from the beginning of a hearing to the issuance of the decision was 178 days.<sup>14</sup> This is 36 days quicker than the average of 214 days last fiscal year. Any party may appeal a hearing decision within 30 days. This appeal time may be extended up to one year for reasonable cause. A fee of 30% of the state average weekly wage must accompany the appeal. The claim will then be sent to the Reviewing Board.

### **Administrative Judges**

The 30 administrative judges and 12 week cycle are also utilized for hearings. The scheduling of hearings is more difficult than conferences because the hearing must be assigned to the judge who heard the case at conference. This is especially problematic since judges have different conference appeal rates. A judge with a high appeal rate will generate more hearings than a judge with a low rate of appeal. This can create difficulties in evenly distributing cases, since hearing queues may arise for individual judges with high appeal rates.

### **Hearing Queue**

It is difficult to compare the hearing queue with the conference queue because of differences in the two proceedings. Hearings must be scheduled with the same judge who presided over the conference, whereas conferences are scheduled according to availability (when judge ownership is not yet a factor). Since hearings are also more time consuming than conferences it takes more time to handle a hearing queue than a conference queue. The hearing queue in FY'96 increased, beginning the year at 1,038 (7/5/95) and ending the year at 1,262 (6/26/96), a 22% increase. In the last seven years, the hearing queue has been as low as 409 cases in September 1989 and as high as 4,046 in November 1992.

### **Volume of Hearings**

In FY'96 4,953 cases were appealed to the hearing stage of dispute resolution (53% of the 9,272 conference orders) but approximately 5,611 hearings were held.<sup>15</sup>

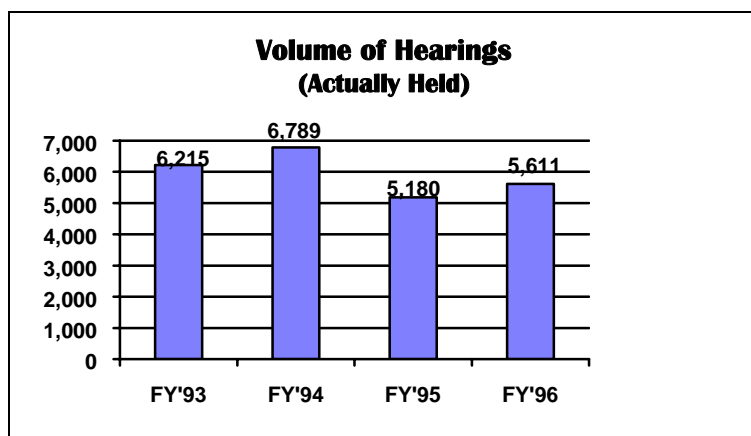
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<sup>14</sup> DIA report 591

<sup>15</sup> Dispositions included: "Voluntarily Adjusted," "Referred to Lump Sum," "Decision Filed," "Lump sum Approved/Recommended," and "Administrative Withdrawal."

## Massachusetts Workers' Compensation Advisory Council

Figure 14: Fiscal Years 1993-1996, Volume of Hearings

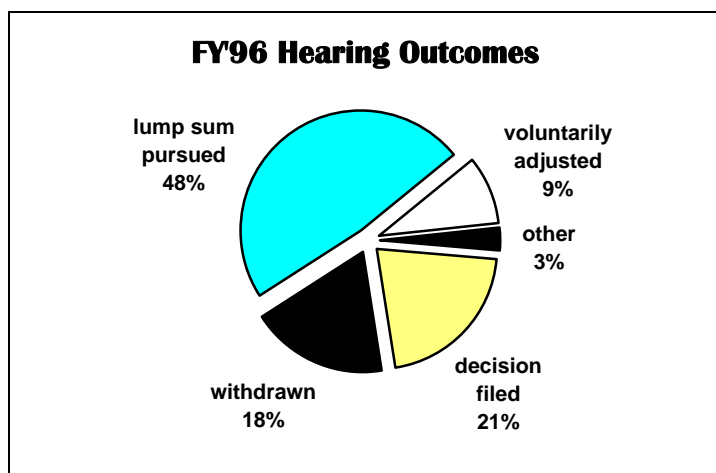


Source: DIA Report 346

### Hearing Outcomes

The number of hearing dispositions entered in FY'96 totaled 7,051, decreasing slightly from last fiscal year's total of 7,801 dispositions.<sup>16</sup> "Lump sums" consists of almost half of all the cases while "decision filed" accounts for only 21%, virtually the opposite of the situation at conference.

Figure 15: Fiscal Year 1996, Hearing Outcomes



Source: DIA Report 346

<sup>16</sup> There is usually a greater number of dispositions than the actual number of hearings because some cases have more than one disposition and others are withdrawn before the hearing. For instance, "Lump sum request received" does not conclude a case but refers it to a separate meeting. If categories such as these are subtracted from the total number of dispositions of 7,801, it leaves 6,275 final dispositions. This number is further reduced if cases with a "withdrawn" disposition are subtracted.

# Massachusetts Workers' Compensation Advisory Council

Figure 16: Fiscal Years 1996 and 1995, Hearing Outcomes

<b>Hearing Outcomes FY'96 and FY'95</b>	<b>Number of Cases</b>		<b>Percentage</b>	
	<b>FY'96</b>	<b>FY'95</b>	<b>FY'96</b>	<b>FY'95</b>
Withdrawn	1,282	1,095	18.1%	14.0%
Lump Sum Pursued	3,407	2,881	48.3%	36.9%
• Settlement Approved by Judge	3,198	2,685		
• Referred to Lump Sum <sup>17</sup>	51	64		
• Lump Sum Request Received <sup>18</sup>	158	132		
Voluntarily Adjusted	649	528	9.2%	6.8%
Decision Filed	1,469	1,629	20.8%	20.9%
Schedule Medical Hearing	0	1,364	N/A	17.9%
Other	244	274	3.4%	3.5%
<b>Total</b>	<b>7,051</b>	<b>7,801</b>	<b>100%</b>	<b>100%</b>

Source: DIA Report 346

As in conference, lump sums may either be approved by the administrative judge at the hearing or referred to a lump sum conference that is conducted by an administrative law judge. In FY'96, 3,198 lump sum settlements were approved by the judge at hearing. The remaining 209 cases with lump sum dispositions will most likely also be approved by an ALJ in the next fiscal year. The majority of lump sum settlements are approved by the AJ at conference or hearing because the judge knows most of the facts of the case and can decide if the settlement is in the best interest of the employee. Parties may also request to move directly to a lump sum conference rather than proceed through the conference or hearing process. This is usually indicated with a "settlement approved by judge" disposition.

<sup>17</sup> Administrative Judges may enter this disposition to hold their own lump sum conference.

<sup>18</sup> Directed to separate lump sum conference before ALJ.

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## ***CASE TIME FRAMES***

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For many years, the Advisory Council has been concerned about the length of time it takes disputed workers' compensation claims to proceed through the Department of Industrial Accidents' dispute resolution process. In 1991 when the Department faced a backlog approaching 10,000 cases, there was serious concern among the participants of the system as to whether a meaningful resolution of cases could occur when substantial delays in the system kept cases from reaching a judge at conference. For an injured worker awaiting benefits wrongfully denied, or for an insurer awaiting the go ahead to discontinue benefits, delays were found to have serious and profound economic consequences.

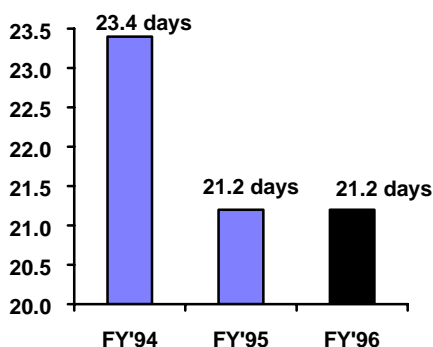
Since 1993 the DIA has been able to eliminate its backlog of cases. This was achieved by adding more judges to the DIA's division of dispute resolution, appointing a Senior Judge to manage the caseloads and assignments of the judges, utilizing management techniques to improve the functioning of the division of dispute resolution, and a lot of hard work and effort from the judges and their staffs.

Given the stable flow of cases and the elimination of the backlog, the DIA now has a unique opportunity to evaluate time frames between each step of dispute resolution.

### **Case Time Frames Guide**

**Claim to Conciliation** - When an employee files an Employee's Claim form (Form 110), or the insurer files an Insurer's Notification of Denial form (Form 104), an Insurer's Notification of Acceptance, Resumption, Termination or Modification of Weekly Compensation form (Form 107), or an Insurer's Complaint for Modification, Discontinuance or Recoupment of Compensation form (Form 108), a conciliation is automatically scheduled.

#### **Claim to Conciliation**



**Start --** The day the department receives the employee's claim for benefits, measured by the time stamp on the correspondence when the department receives it (if there is no time stamp, the date that it is entered is used, however most claims have the date stamped).

**End --** The day the conciliation starts.

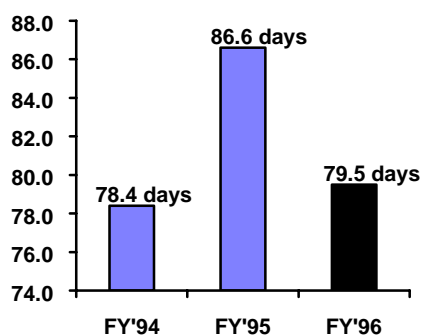


## Massachusetts Workers' Compensation Advisory Council

**Conciliation to Conference** - After the conciliation, the conciliator has the option of either referring the case to conference, withdrawing the case (either for lack of adequate evidence supporting the claim or if the claim has settled), or rescheduling the conciliation to allow either party to gather adequate evidence or pursue settlement further.

When the conciliator refers a case to conference, the computer scheduling system automatically assigns the case to an administrative judge who must maintain exclusive jurisdiction over the case throughout the conference and hearing stages.<sup>19</sup>

### Conciliation to Conference



**Start** -- The day the conciliator enters a referral disposition for a conference.

**End** -- The start of the conference.

Administrative judges agree that this time frame will vary substantially from case to case. It is critical that enough time elapse so that the parties are able to develop the elements of their case. For example, a case involving complex medical issues will require substantiation of technical issues and of medical reports. Availability of expert's statements is a factor requiring adequate amounts of time.

Moreover, a conference resulting from an insurer's request for discontinuance will require that the same judge who presided over the conference at the outset of the claim again preside over the discontinuance conference. The availability of the particular judge will affect the time frame.

**Scheduled Conference (Conference Start) to Conference Order** - At the conclusion of the conference, the administrative judge must issue a determination in the form of a conference order. The conference order is a short written document requiring an administrative judge's initial impression of compensability based on a summary presentation of facts and legal issues at the conference meeting. Conference orders give the parties an understanding as to how the judge might find at a full evidentiary hearing. It often provides incentives for the parties to pursue settlements or return to work arrangements.

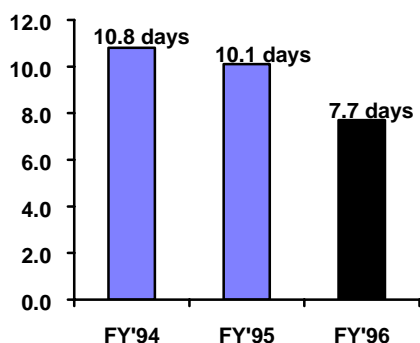
It is critical to recognize that, on occasion, judges may decide to delay from issuing an order while the parties attempt to implement return to work

<sup>19</sup> Judge ownership may increase time frames because of the administrative requirements it creates, but it does have positive benefits according to the judges. It creates continuity for litigants, accountability for case development, and it prevents "judge shopping".

## Massachusetts Workers' Compensation Advisory Council

arrangements. An administrative judge may also require that the parties define the legal and evidentiary issues by submitting written briefs. These measures may occur as an attempt to encourage resolution of the case prior to a full evidentiary hearing and may serve to lengthen the time frame in any given case. Nevertheless, successful resolution of a case will save time in future proceedings.

### Conference Scheduled (start) to Order



**Start --** The first actual conference that takes place. If the scheduled conference is rescheduled, the start date will be the rescheduled conference.

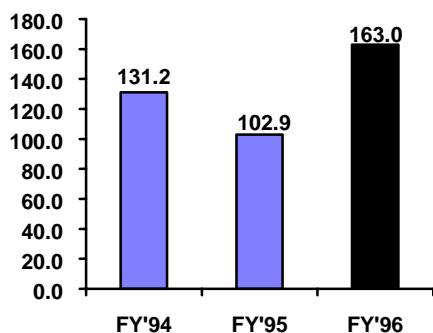
**End --** The date of the conference order.

This time frame will begin at the conference start and conclude on the date the conference order is issued. Judges may reschedule the conference to enable one or both of the parties to further develop their case by gathering additional evidence, or may issue a continuation of the conference to allow a return to work offer to be presented and verified.

**Appeal of Conference Order to Hearing** - When either party appeals a conference order by filing an *Appeal of Conference Proceeding* form (Form 121), the Division of Dispute Resolution at the DIA will schedule a hearing. Because the Workers' Compensation Act requires that the same judge who presides over the conference must also preside over the corresponding hearing, scheduling of hearings is dependent on the availability of the presiding judge. It is important to note that the rate of appeals of conference orders varies among the judges at the DIA. Since judges are available to hear only so many hearings during any particular scheduling cycle, the time frame from filing the appeal to the actual hearing will depend on the availability of the particular judge assigned to the case.

## Massachusetts Workers' Compensation Advisory Council

### Appeal of Conference Order to Hearing



**Start** -- The day the department receives an appealed conference order to a hearing (measured by time stamped correspondence).

**End** -- The day the hearing starts.

It is important to note that the shortest possible wait to hearing is not always in the best interest of either the moving or the responding party. It is often necessary that between four and six months elapse before the hearing begins to allow the medical condition of the employee to progress and stabilize so that the judge can make a determination as to the severity of injury and any earning capacity. Also, the parties need a significant period in which to prepare witnesses, testimony and evidence to present at the hearing. Finally, this period allows the employee and employers to pursue voluntary agreements.

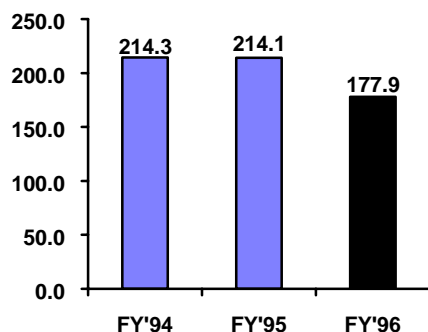
**Scheduled Hearing (Hearing start) to the Hearing Decision** - The time between the first hearing and the hearing decision marks the distinct beginning and end points of the most lengthy, complicated and formal stage of the dispute resolution process at the DIA. Within the time period of the hearing, there are various stages through which the case may have to proceed that involve not only the judges and the respective parties, but also impartial medical examiners. Often depositions and testimony of witnesses are necessary, which require time to prepare. As in the conference, many aspects of this time frame are determined by the actions of the parties.

Cases that involve medical disputes must be evaluated by an impartial medical examiner. This involves a review of the medical record and an examination of the employee. The impartial physician is then required to submit a report.

When the impartial report is submitted by the physician a hearing will be scheduled. In some cases, a party will wish to cross-examine the impartial physician at a deposition to clarify issues. The deposition would have to be scheduled at the convenience of the impartial physician. If the impartial medical report is found to be inadequate or too complex, then medical testimony from treating and examining physicians may be necessary. This would require the scheduling of further hearing dates.

## Massachusetts Workers' Compensation Advisory Council

### Hearing Scheduled (start) to Hearing Decision



**Start** -- The first hearing that actually takes place (hearing start).

**End** -- The judge's secretary enters the date of the issuance of the hearing decision into the Diameter system.

Cases vary in their complexity and individual circumstances. A case involving quasi-criminal conduct (section 28), multiple insurers, parties, witnesses or injuries, or psychological stress, chemical exposure, or AIDS may take longer, require more testimony and numerous depositions of medical testimony in comparison to other less complicated cases.

Moreover, the record is generally kept open by the judge for an agreed amount of time to allow for the submission of written briefs, memoranda, deposition transcripts, and hearing transcripts to assist the judge in preparing the decision. After the close of the record, the judge then must write a decision. Decisions are lengthy, as they must provide a factual determination, cite controlling board and court decisions, and provide a final determination of liability or compensability.

The following chart represents the average amount of time it took a case to proceed through each step of the dispute resolution process in FY'95 with respect to each district office. It is important to note that these time frames are not continuous and therefore their total should not be equal to the total average time frame of cases at the DIA.

Table 12: Regional Time Frames

<b>FY '96</b>	<b>Claim to Conciliation</b>	<b>Conciliation to Conference</b>	<b>Conference scheduled (start) to Order</b>	<b>Appeal to Hearing receipt to Hearing</b>	<b>Hearing scheduled (start) to Hearing decision</b>
<i>Boston</i>	21.2 days	73.9 days	7.0 days	169.4 days	184.3 days
<i>Fall River</i>	20.7 days	83.4 days	11.1 days	161.9 days	149.0 days
<i>Lawrence</i>	21.7 days	85.0 days	9.1 days	167.2 days	211.6 days
<i>Springfield</i>	21.9 days	75.8 days	4.5 days	151.7 days	131.5 days
<i>Worcester</i>	20.7 days	92.0 days	8.0 days	150.6 days	208.1 days
<i>Statewide</i>	<b>21.2 days</b>	<b>79.5 days</b>	<b>7.7 days</b>	<b>163.0 days</b>	<b>177.9 days</b>

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## ***REVIEWING BOARD***

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The Reviewing Board consists of six administrative law judges (ALJs) whose primary function is to review appeals of hearing decisions. While appeals are heard by a panel of three ALJs, initial pre-transcript conferences are held by individual ALJs. The administrative law judges also work independently to perform three other statutory duties—to preside at lump sum conferences, review third party settlements (§15), and discharge and modify liens against an employee's lump sum settlement (§46A).

### **Appeal of Hearing Decisions**

An appeal of a hearing decision must be filed with the Reviewing Board no later than 30 days from the date of the decision. A filing fee of 30% of the state's average weekly wage, or a request for waiver of the fee must accompany any appeal.

Pre-transcript conferences are held before a single ALJ to consider whether oral argument will be heard, to identify and narrow the issues, and to chart the course of the future proceedings. This is an important step that can clarify the issues in dispute and encourage some parties to settle or withdraw the case. Approximately 20% to 25% of the cases are withdrawn or settled after this first meeting.

After the pre-transcript conference, the parties are entitled to a verbatim transcript of the appealed hearing.

Cases that are not withdrawn or settled ultimately proceed to a panel of three ALJs. The panel reviews the evidence presented at the hearing as well as any findings of law made by the AJ. The appellant must file a brief in accordance with the board's regulations and the appellee must also file a response brief. An oral argument may be scheduled.

The panel may reverse the administrative judge's decision only when it determines that the decision was beyond the AJ's scope of authority, arbitrary or capricious, or contrary to law. The panel is not a fact finding body, although it may recommit a case to an administrative judge for further findings of fact.

*Table 13: Hearing Decisions Appealed*

<b>FY'96</b>	506 cases
<b>FY'95</b>	695 cases
<b>FY'94</b>	657 cases
<b>FY'93</b>	412 cases
<b>FY'92</b>	493 cases

The number of hearing decisions appealed to the Reviewing Board in FY'96 was 506. This is a significant decrease from last year (695). Previous totals have included: 657 (FY'94), 412 (FY'93), and 493 (FY'92).

## Massachusetts Workers' Compensation Advisory Council

The Reviewing Board resolved 772 cases in FY'96 compared to 679 in the previous fiscal year.

*Table 23: Appeals Resolved by Reviewing Board, FY'96*

<b>Disposition of Cases, FY'96</b>	<b>Number of Cases</b>
Full Panel:	473
Lump Sum Conferences:	119
Memos of Disposition:	7
Withdrawals:	131
Dismissals for Failing to File Briefs:	69
<b>Total # of Appeals Resolved:</b>	<b>772</b>

*Source: DIA Reviewing Board*

### Lump Sum Conferences

One recall AJ and one recall ALJ are individually assigned to preside at lump sum conferences. The purpose of the conference is to determine if a settlement is in the best interest of the employee.

A lump sum conference may be requested at any point during the dispute resolution process upon agreement of both the employee and insurer. Lump sum conferences are identical to the approval of settlements by administrative judges at the conference and hearing. Conciliators and AJs may refer cases to this lump sum conference at the request of the parties or the parties may request a lump sum conference directly. In FY'96, 8,560 lump sum conferences were approved.

### Third Party Subrogation (§15)

When a work related injury results in a legal liability for a party other than the employer, a claim may be brought against the third party for payment of damages. The injured employee may collect workers' compensation indemnity and health care benefits under the employer's insurance policy, and may also file suit against the third party for damages. For example, an injury sustained by an employee as the result of a motor vehicle accident in the course of a delivery would entitle the employee to workers' compensation benefits. The accident, however, may have been caused by another driver who is not associated with the employer. In this case, the employee could collect workers' compensation benefits and simultaneously bring suit against the other driver for damages.

Monies recovered by the employee in the third party action must be reimbursed to the workers' compensation insurer. However, any amounts

## **Massachusetts Workers' Compensation Advisory Council**

recovered that exceed the total amount of benefits paid by the workers' compensation insurer may be retained by the employee.

The statute provides that the Reviewing Board may approve a third party settlement. A hearing must be held to evaluate the merits of the settlement, as well as the fair allocation of amounts payable to the employee and the insurer. Guidelines were developed to ensure that due consideration is given to the multitude of issues that arise from settlements. During FY'96, administrative law judges heard 967 §15 petitions on a rotating basis, slightly higher than the number in the fiscal last year (891).

### **Compromise and Discharge of Liens (§46A)**

Administrative law judges are also responsible to determine the fair and reasonable amount to be paid out of lump sum settlements to discharge liens under G.L. ch. 152, section 46A.

A health insurer or hospital providing treatment may seek reimbursement under this section for the cost of services rendered when it is determined that the treatment provided arose from a work related injury. The Commonwealth's Department of Public Welfare can make a similar claim for reimbursement after providing assistance to an employee whose claim has subsequently been determined to be compensable under the workers' compensation laws.

In those instances, the health insurer, hospital, or Department of Public Welfare may file a lien against either the award for benefits or the lump sum settlement. When a settlement is proposed and the employee and the lienholder are unable to reach an agreement, the ALJ must determine the fair and reasonable amount to be paid out of the settlement to discharge the lien.

The number of section 46A conferences heard in 1996 was 87.

## ***LUMP SUM SETTLEMENTS***

A lump sum settlement is an agreement between the employee and the employer's workers' compensation insurer whereby the employee will receive a one time payment in place of weekly compensation benefits. In most instances, the employer must ratify the lump sum settlement before it can be implemented. While settlements close out indemnity payments for lost income, medical and vocational rehabilitation benefits must remain open and available to the employee if needed.

Lump sum settlements can occur at any point in the dispute resolution process, whether it is before the conciliation or after the hearing. Conciliators have the power to "review and approve as complete" lump sum settlements that have already been negotiated. Administrative judges may approve lump sum settlements at conference and hearings just as an ALJ does at a lump sum conference. At the request of the parties, conciliators and administrative judges may also refer the case to a separate lump sum conference where an administrative law judge (or one of the two recall AJs) will decide if it is in the best interest of the employee to settle.

*Table 14: Lump Sum Conference Statistics*

<i>Fiscal Year</i>	<i>Total lump sum conferences scheduled</i>	<i>Lump sum settlements approved</i>
<b>FY'96</b>	<b>10,047</b>	<b>9,633 (95.9%)</b>
FY'95	10,297	9,864 (95.8%)
FY'94	13,605	12,578 (92.5%)
FY'93	17,695	15,762 (89.1%)
FY'92	18,310	16,019 (87.5%)
FY'91	19,724	17,297 (87.7%)

*Source: DIA report 86A: lump sum conference statistics, for scheduled dates*

The number of lump sum conferences has declined by 49% since FY'91. Scheduled lump sum conferences are now at the lowest level since the 1991 reforms, while the percentage of lump sum settlements approved is at a high since 1991. In FY'96, only 4 lump sum settlements were disapproved. The remainder of the scheduled lump sum conferences without an "approved" disposition were either withdrawn or rescheduled.

There are four dispositions that indicate lump sum settlement for conciliations, conferences, hearings and medical hearings.

**"Lump sum reviewed - approved as complete"**- Pursuant to §48 of Chapter 152, conciliators have the power to "review and approve as complete" lump sum settlements when both parties arrive at conciliation with a settlement already negotiated.

**"Lump sum approved"**- Administrative judges at the conference and hearing may approve settlements, and just as an ALJ at a lump sum conference, they must determine if the settlement is in the best interest of the employee.



## Massachusetts Workers' Compensation Advisory Council

**“Referred to lump sum”-** Lump sums settlements may also be reviewed at a lump sum conference conducted by the recall administrative law judge or the recall administrative judge. Conciliators and administrative judges may refer cases to lump sum conferences to determine if settlement is in the best interest of the employee to settle. Many lawyers prefer to have a case referred to a lump sum conference rather than have a conciliator approve a settlement. An ALJ renders a judgment regarding the adequacy and appropriateness of the settlement amount, whereas a conciliator merely approves an amount submitted by the attorney. This would insulate the attorney from the risk of a malpractice suit.

**“Lump sum request received”-** A lump sum conference may also be requested after a case has been scheduled for a conciliation, conference, or hearing. The parties would fill out a form to request this event and the disposition would then be recorded as “lump sum request received.” Lump sum conferences may also be requested without scheduling a meeting.

Lump sum settlement dispositions become increasingly prevalent at the later stages of the dispute resolution process; as indicated in table 25.

Table 15: Lump Sum Settlements Pursued, FY'96

<b>Meeting FY'96</b>	<b>Lump Sum Pursued<sup>20</sup></b>	<b>Percentage of Total Cases Scheduled</b>
<b>Conciliation</b>	985	4.2%
<b>Conference</b>	2,106	15.6%
<b>Hearing</b>	3,407	48.3%

Source: see previous sections on conciliation, conference and hearing

<sup>20</sup> Lump sum pursued refers to four dispositions for lump sum settlements: lump sum request received; lump sum reviewed- approved as complete; lump sum approved; referred to lump sum conference

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## ***IMPARTIAL MEDICAL EXAMINATIONS***

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The impartial medical examination has become a significant component of the dispute resolution process since it was created by the 1991 reform act. During the conciliation and conference stages, a disputed case is guided by the opinions of the employee's treating physician and the independent medical report of the insurer. Once a case is brought before an administrative judge at a hearing, however, the impartial physician's report is the only medical evidence that can be presented. Any additional medical testimony is inadmissible unless the judge determines the report to be "inadequate" or that there is considerable "complexity" of the medical issues that could not be fully addressed by the report.

The 1991 reforms were designed to solve the problem of "dueling doctors," which frequently resulted in the submission of conflicting evidence by employees and insurers. Prior to 1991, judges were forced to make medical judgments by weighing the report of an examining physician retained by the insurer against the report of the employee's treating physician.

Section 11A of the workers' compensation act now requires that the senior judge periodically review and update a roster of impartial medical examiners from a variety of specialized medical fields. When a case involving disputed medical issues is appealed to hearing, the AJ must appoint an impartial physician. An insurer may also request an impartial examination if there is a delay in the conference order.<sup>21</sup> Furthermore, any party may request an impartial exam to assess the reasonableness or necessity of a particular course of medical treatment, with the impartial physician's opinion binding the parties until a subsequent proceeding. Should an employee fail to attend the impartial medical examination they risk the suspension of benefits.<sup>22</sup>

Under section 11A, the impartial medical examiner must determine whether a disability exists, whether such disability is total, partial, temporary or permanent, and whether such disability has as its "major or predominant contributing cause" a work related personal injury. The examination should be conducted within 30 to 45 calendar days from assignment. The impartial report must be received by each party at least 7 days prior to the start of a hearing.

### **Impartial Unit**

The impartial unit within the division of dispute resolution will choose a physician from the impartial physician roster when parties have not selected one or when the AJ has not appointed one. While it is rare that the impartial unit chooses the specialty, in most cases it must choose the actual physician. The unit is also required to collect filing fees, schedule examinations, and to ensure that medical reports are promptly filed and that physicians are compensated after

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<sup>21</sup> G.L. ch.152, § 8(4)

<sup>22</sup> §45 of G.L. ch.152.

## Massachusetts Workers' Compensation Advisory Council

the report is received. Filing fees for the examinations are set by regulation by the Commonwealth's Executive Office of Administration & Finance.

Below is the department's fee schedule:

Table 16: Fee Schedule

<b>\$350</b>	impartial medical examination and report
<b>\$500</b>	for deposition lasting up to 2 hours
<b>\$100</b>	additional fee when deposition exceeds 2 hours
<b>\$225</b>	review of medical records only
<b>\$90</b>	supplemental medical report
<b>\$75</b>	when worker fails to keep appointment (maximum of 2)
<b>\$75</b>	for cancellation less than 24 hours before exam

The deposing party is responsible for paying the impartial examiner for services and the report. Should the employee prevail at the hearing, the insurer must pay the employee the cost of the deposition. In FY'96, \$1,880,715.68<sup>23</sup> was collected in filing fees.

As of July 1, 1996, 531 physicians were on the roster consisting of 36 specialties. This is a slight increase from the 510 physicians as of July 1, 1995.

The impartial unit is responsible for scheduling appointments with the physicians. Scheduling depends upon the availability of physicians, which varies by geographic region and the specialty sought. A queue for scheduling may arise according to certain specialties and regions in the state.

In FY'96 the impartial unit scheduled 7,465 examinations. Of these, 5,734 exams were actually conducted in the fiscal year (the remainder of the scheduled exams were either canceled due to settlements and withdrawals or took place in the next year). Medical reports are required to be submitted to the department and to each party within 21 calendar days after completion of the examination. The number of exams scheduled in FY'95 was 7,618, and 4,787 were conducted in the year.

### **The Neff Decision**

On August 9, 1995, the Supreme Judicial Court ruled that the Department of Industrial Accidents must waive the \$350 filing fee for indigent claimants who are appealing an administrative judge's benefit-denial order. As a result of this decision the D.I.A. has implemented procedures and standards for processing waiver requests and providing financial relief for the section 11A fee used to defray the cost of the impartial medical examination. Effective January 26, 1996, the DIA issued the following emergency regulations in compliance with the court order.

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<sup>23</sup> This figure does not include "interest" or "miscellaneous" revenue (\$75,015.00)

## Massachusetts Workers' Compensation Advisory Council

**The Waiver Process** - (Added After 1.11 (1) (a)) A workers' compensation claimant who wishes to have the impartial examination fee waived must complete the form: "Affidavit of Indigence and Request for Waiver of §11A (2) Fees" (Form 136). This document must be completed before 10 calendar days following the appeal of a conference order. For those parties who have not paid the fee and currently have an appeal pending before either the Industrial Accident Board, or the Reviewing Board, or who made a written request for a waiver after August 9, 1995, must complete Form 136 before March 1, 1996.

It is within the discretion of the Commissioner to accept or deny a claimant's request for a waiver based on documentation supporting the claimant's assertion of indigency as established in 452 CMR 1.02. If the Commissioner denies a waiver request it must be supported by findings and reasons in a Notice of Denial report. Within 10 days of receipt of the Notice of Denial report a party can request a reconsideration. The Commissioner can deny this request without a hearing if past documentation does not support the definition of "indigent" set out in 452 CMR 1.02, or if the request is inconsistent or incomplete. If a claimant is granted a waiver and prevails at a hearing, the insurer must reimburse the Department for any fees waived.

**Definition of Indigency** - (Added to 452 CMR 1.02 )

*An indigent party is:*

- a) one who receives one of the following types of public assistance: Aid to Families with Dependent Children (AFDC), Emergency Aid to Elderly Disabled and Children (EAEDC), poverty related veteran benefits, food stamps, refugee resettlement benefits, Medicaid, or Supplemental Security Income (SSI) or
- b) one whose annual income after taxes is 125% of the current federal poverty threshold (established by the U.S. Department of Health and Human Services) as referred to in G.L. ch.261 §27A(b). Furthermore, a party may be determined indigent based on the consideration of available funds relative to the party's basic living costs.

Size of Family Unit	Amount
1	\$9,338
2	\$12,538
3	\$15,738
4	\$18,938
5	\$22,138
6	\$25,338
7	\$28,538
8	\$31,738

For family units with more than eight members, add \$3,200 for each additional member in the family. The poverty guidelines are updated annually by the U.S. Department of Health and Human Services.



SECTION

4

ADMINISTRATION

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*Office of Claims Administration.....57*

*Office of Education and Vocational Rehabilitation.....59*

*Office of Safety.....62*

*Office of Insurance.....63*

*Office of Investigations.....65*

*Workers' Compensation Trust Fund.....67*

*Office of Health Policy.....71*

*The Regional Offices.....74*



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## ***OFFICE OF CLAIMS ADMINISTRATION***

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The Office of Claims Administration (OCA) is responsible for reviewing, maintaining, and recording the massive number of forms the DIA receives on a daily basis, and for ensuring that claims forms are processed in a timely and accurate fashion. Quality control is a priority of the office and is essential to ensure that each case is recorded in a systematic and uniform way.

The OCA consists of the processing unit, the data entry unit, the record room, and the first report compliance office. It is the responsibility of the Deputy Director of Claims Administration to answer all subpoena requests, certified mail and file copy requests, and to act as the liaison to the State Record Center.

### **Claims Processing Unit / Data Entry Unit**

The processing unit must open, sort, and date stamp all mail that comes into OCA. It then must review each form for accuracy, and return incomplete forms to the sender. Forms are then forwarded to the data entry unit.

The data entry operators enter all forms and transactions into the DIA's Diameter database. As data entry personnel update the computerized records with new forms, they review the entire record of each claim being updated, both to ensure that duplicate forms are not contained in the database and that all necessary forms have been entered properly. While quality control measures slow down the entry of cases into the system, they are necessary for accurate and complete record keeping. Forms are entered in order of priority, with the need for scheduling at dispute resolution as the main criteria. All conciliations are scheduled upon entry of a claim through the Diameter case tracking system.

In fiscal year 1996, the Office of Claims Administration received 42,460 First Report of Injury, 28% less than FY'95 (58,940). The number of claims, discontinuances and third party claims also decreased to 30,361, 6.6% less than the previous year (28,340). The total number of referrals to conciliation for the fiscal year was 23,866, 7.5% less than FY'95 (25,815).

### **First Report Compliance Office & Fraud Data**

All employers are required to file a First Report of Injury (Form 101) within seven days of receiving notice that an employee has been disabled for at least five days. The first report compliance office issues fines to employers who do not file the First Report form in the allotted time. Fines are \$100, and are doubled if referred to a collection agency.

In fiscal year 1996, \$377,109 was collected in fines, a decrease from the \$653,308 collected in FY'95.

The office is also responsible for maintaining a data base on cases discovered by the DIA in which there is some suspicion of fraud. In fiscal year 1996, no cases were reported to the office. All referrals were made directly to



## Massachusetts Workers' Compensation Advisory Council

the Insurance Fraud Bureau or the Attorney General's office. Throughout the year the Insurance Fraud Bureau requested from the DIA copies of suspected workers' compensation files.

### **Record Room**

The record room, located in DIA's Boston office, is responsible for filing, maintaining, storing, retrieving and keeping track of all files pertaining to a case in the dispute resolution process. Included in case files are copies of all briefs, settlement offers, medical records, and supporting documents that accumulate during the dispute resolution process. Couriers transfer files between the regional offices and Boston twice a week.

Records are kept in DIA's Boston office for about five years, depending on space. After this time they are brought to the State Record Center in Dorchester where they are kept for 80 years.

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## ***OFFICE OF EDUCATION AND VOCATIONAL REHABILITATION***

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The primary purpose of the Office of Education and Vocational Rehabilitation (OEVR) is to promote return to work for disabled workers through vocational rehabilitation services.

OEVR oversees the rehabilitation of certain disabled workers receiving workers' compensation with the primary objective of return to work. While OEVR seeks to encourage the voluntary development of rehabilitation services between the disabled worker and the insurer, it has the authority to mandate services for injured workers determined to be suitable for rehabilitation.

Vocational rehabilitation is defined in G.L. ch. 152 as "non- medical services to restore the disabled worker to employment as near as possible to pre-injury wage." In order of priority, the objectives of OEVR include: return to work; return to work with modifications in either equipment, working hours, or working conditions; new work with the previous employer or with a different employer; retraining the employee for a new job.

### **Procedure for Vocational Rehabilitation**

It is the responsibility of OEVR to identify those disabled workers' who may benefit from rehabilitation services. OEVR identifies rehabilitation candidates according to injury type after liability has been established, or through referrals from sources outside of OEVR. These include internal DIA sources (including the Office of Claims Administration and the division of dispute resolution), insurers, certified providers, attorneys, hospitals, doctors, employers and injured employees themselves.<sup>24</sup>

Before requiring that an injured worker be interviewed at a mandatory meeting, a rehabilitation review officer must first consider whether the employee has functional limitations, whether medical reports indicate some work capability, and whether light duty or job modification is available at the place of employment.

**Mandatory Meeting** - At the initial interview (or mandatory meeting), the rehabilitation review officer will gather information necessary to determine whether vocational rehabilitation services are "necessary and feasible."

The information gathered includes the employee's functional limitations, employment history, education, transferable skills, work habits, vocational interests, pre-injury earnings, financial needs, and medical information. The insurer may be authorized to discontinue weekly compensation benefits if the employee fails to attend.

**Determination of Suitability** - OEVR utilizes the information gathered to determine whether a disabled employee could benefit from vocational rehabilitation. If so, a determination of suitability form is completed and sent to all parties. The insurer is notified to retain the services of a DIA certified vocational rehabilitation provider. Employees that are determined to be suitable for rehabilitation must follow and complete an individual written rehabilitation plan

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<sup>24</sup> G.L. ch. 152 secs. 30 E-H. 452 C.M.R. 4.00

## **Massachusetts Workers' Compensation Advisory Council**

(IWRP) designed exclusively for that employee. The services are paid by the insurer. If the employee fails to follow the plan without good cause, the insurer is entitled to reduce weekly compensation benefits by 15%.

If the insurer refuses to pay for services, OEVR will offer rehabilitation to the worker to be paid by the DIA's trust fund. OEVR may, however, demand reimbursement of at least two times the cost of the program provided the rehabilitation is successful and the employee returns to work.

A rehabilitation review officer monitors all cases in which suitability has been determined. The provider is required to develop an appropriate IWRP within 90 days. Sometimes the review officer assists by facilitating agreement of the plan between the employee, the insurer and the provider.

Once all parties agree to the IWRP, OEVR will monitor each case until completion of the IWRP or successful employment for 60 days. Monthly progress reports are required to be submitted regarding each case.

The employee must seek the consent of OEVR before a lump sum settlement can be approved. In the past, disabled and unemployed workers have settled for lump sum payments without receiving adequate job training or education on how to find employment. Settlement money would run out quickly and employees would be left with no means of finding suitable work. OEVR tries to have disabled employees initiate, if not complete, rehabilitation before the lump sum settlement is approved. This is difficult to accomplish in a short time. Nevertheless, OEVR will consent to a lump sum settlement if the insurer agrees to continue to provide rehabilitation benefits.

### **Use of Vocational Rehabilitation**

In FY'96 the office consisted of 8 disability analysts, 13 rehabilitation review officers, and 5 clerks.

OEVR certified 95 vocational rehabilitation providers in the last fiscal year to be available to develop and implement the individual written rehabilitation plan (IWRP). The number of approved providers may continue to decrease in the future for reasons relating to trends in claims filing.

The standards and qualifications for a certified provider are found in the regulations, 452 C.M.R. 4.03. Any state vocational rehabilitation agency, employment agency, insurer, self insurer, or private vocational rehabilitation agency may qualify to perform these services. Credentials must include at least a masters degree, rehabilitation certification, or a minimum of 10 years of experience. A list of the providers is available from the OEVR.

## Massachusetts Workers' Compensation Advisory Council

*Table 17: Utilization of Voc. Rehab. Services, FY'92 - FY'96*

<b>Fiscal Year</b>	<b>Referral to OEVR</b>	<b>Mandatory Meetings</b>	<b>Referrals to Insurer for VR</b>	<b>IWRPs approved</b>	<b>Return to work</b>	<b>% RTW after plan development</b>
FY96	3,347	2,653/119	1,185	727	364	50%
FY95	3,219	2,833	1,370	811	391	48%
FY94	3,756	3,190	1,706	948	470	50%
FY93	4,494	3,882	2,253	1,078	554	51%
FY92	6,014	3,367	2,106	1,010	583	58%

Source: DIA - OEVR

### Trust Fund Payment of Vocational Rehabilitation

When an insurer refuses to pay for vocational rehabilitation services and, after review, OEVR determines the employee suitable for services, the office may utilize moneys from the trust fund to fund the rehabilitation services.

The amount expended by the trust fund for insurer denials has decreased substantially from FY'92 levels. Insurers are increasingly providing vocational rehabilitation on a voluntary basis, without an OEVR mandate.

*Table 18: Private Trust Fund Expenditures for §30H Voc. Rehab Services*

<b>Fiscal Year</b>	<b>Expenditures</b>
FY96	8,700
FY95	8,826
FY94	10,970
FY93	37,146
FY92	68,973

OEVR is required to seek reimbursement from the insurer when the trust fund pays for the rehabilitation and the services are deemed successful (e.g., the employee returns to work). The DIA may assess the insurer a minimum of two times the cost of the services. In FY'96, 8,000 was collected from insurers for voc rehab pursuant to §30H. In FY'95, \$54,215 was collected in reimbursements.

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***OFFICE OF SAFETY***

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The function of the Office of Safety is to reduce work related injury and illnesses by “establishing and supervising programs for data collection on workplace injuries and for the education and training of employees and employers in the recognition, avoidance and prevention of unsafe or unhealthy working conditions in employment and advising employees and employers on these issues.”<sup>25</sup> In pursuit of this objective, the office administers the DIA Occupational Safety and Health Education and Training Program.

This program has a \$400,000 annual budget. The office issues a request for proposal yearly to notify the general public that these grants are available. Grants are awarded on a competitive basis based on scope and content of proposals. In FY’96, proposals could be submitted up to a maximum of \$35,000.

See appendix I for a list of proposals funded in FY’96.

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<sup>25</sup> G.L. ch. 23E, 3(6)

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## ***OFFICE OF INSURANCE***

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The Office of Insurance issues self insurance licenses, monitors all self insured employers, maintains the insurer register, and monitors insurer complaints.

### **Self Insurance**

A license to self insure is available for qualified employers with at least 300 employees and \$750,000 in annual standard premium.<sup>26</sup> To be self insured, employers must have enough capital to cover the expenses associated with self insurance. Many smaller and medium sized companies have also been approved to self insure, however. The Office of Insurance evaluates employers every year to determine their eligibility and to establish new bond amounts.

For an employer to qualify to become self insured, it must post a surety bond of at least \$100,000 to cover any losses that may occur.<sup>27</sup> The amount varies for every company depending on their previous reported losses and predicted future losses. The average bond is usually over \$1 million and depends on many factors including loss experience, the financial state of the company, the hazard of the occupation, the number of years as a self insured, and the attaching point for re-insurance.

Employers who are self insured must purchase reinsurance of at least \$500,000. The per case deductible of the re-insurance varies from the minimum \$500,000, a relatively modest amount, to much higher amounts. Smaller self insured companies may also purchase aggregate excess insurance to cover multiple claims that exceed a set amount. Many self insured employers engage the services of a law firm or a third party administrator (TPA) to handle claims administration.

In FY'96, requests for self insurance licenses decreased substantially. In the year, 5 new licenses were issued to bring the total number to 226; 5 licenses were not renewed. Each self insurance license provides approval for a parent company and its subsidiaries to self insure. From the 226 licenses, 734 companies including subsidiaries were self insured in FY'96. This amounts to approximately \$350 million in equivalent premium dollars.

Four semi- autonomous public employers are also licensed to self insure including the Massachusetts Bay Transportation Authority (MBTA), the

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<sup>26</sup> C.M.R. 5.00: Code of Massachusetts Regulations concerning insurers and self insurers. These regulations may be waived by the Commissioner of the DIA for employers that have strong safety records and can produce the necessary bond to cover for all incurred losses.

<sup>27</sup> G.L. 452 C.M.R. 5:00

## Massachusetts Workers' Compensation Advisory Council

Massachusetts Turnpike Authority, the Massachusetts Port Authority, and the Massachusetts Water Resource Authority (MWRA).<sup>28</sup>

### Insurance Unit

The Insurance Unit maintains a record of the workers' compensation insurer for every employer in the state. This record, known as the insurer register, dates back to the 1920's and facilitates the filing and investigation of claims after many years.

This record keeping system consisted of information manually recorded on 3x5 notecards, a time consuming and inefficient method for storing files and researching insurers. Every time an employer made a policy change, the insurer sent in a form and the notecard and the file was changed.

Through legislative action, the Workers' Compensation Rating and Inspection Bureau (WCRB) became the official repository of insurance policy coverage in 1991. The DIA was provided with computer access to this database which includes policy information for the eight most current years. The remainder of policy information must be researched through the files at the DIA, now stored on microfilm. In FY '96, an estimated 4,500 inquiries were made to the Insurance Register.

The Insurance Unit is also responsible for handling insurance complaints. Complaints are often registered by telephone and the unit will provide the party with the necessary information to handle the case. During the year, 540 complaints were handled by the office.

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<sup>28</sup> The Commonwealth of Massachusetts does not fall under the rubric of self insurance although its situation is analogous to self insured employers. It is not required to have a license to self insure because of its special status as a public employer and it therefore funds workers' compensation claims directly from the treasury as a budgetary expense. The agency responsible for claims management, the Public Employee Retirement Administration, has similar responsibilities to an insurer but the state does not pay insurance premiums or post a bond for its liabilities (G.L. ch.152 §25B).

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## ***OFFICE OF INVESTIGATIONS***

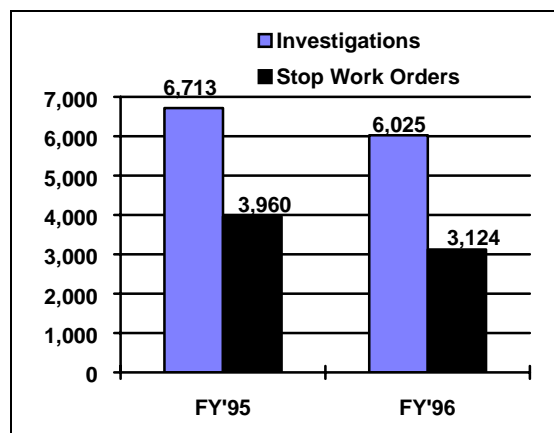
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In Massachusetts, employers are required to provide for payment of workers' compensation benefits either through the purchase of insurance, through membership in a self insurance group, or through licensing as a self insurer. (G.L. Ch. 152, §25A). The Office of Investigations of the Department of Industrial Accidents is charged with enforcing this mandate by investigating employers and imposing penalties for violations established by the legislature at G.L. Ch. 152, §25C.

The Office has access to the Workers' Compensation Rating and Inspection Bureau (WCRIB) database on all policies written by commercial carriers in the state. From this database, it can be determined which employers have canceled or not renewed their commercial insurance policies. Any employer appearing on this database is investigated for insurance coverage or alternative forms of financing (self-insurance, self-insurance group, reciprocal exchange). The WCRIB database documents only those employers that have or had a commercial insurance policy, and therefore is only one method of identifying uninsured employers in the state. Also, calls and letters are received from the general public that provide tips and suggestions of companies which may be lacking appropriate insurance. Furthermore, license and permit audits often uncover fraudulent employers who fail to provide adequate coverage.

**Stop Work Orders** - The Office of Investigations, as required by the statute, will issue a "Stop Work Order" to any business with one or more full or part time employees that fails to provide proof of workers' compensation coverage upon demand. Such an order requires that all business operations cease and becomes effective immediately upon service. An employer may appeal the order and remain open, however. In FY'96, 3,124 stop work orders were issued as a result of 6,025 investigations conducted. The number of stop work orders issued in FY'96 was 10% less than FY'95 levels.

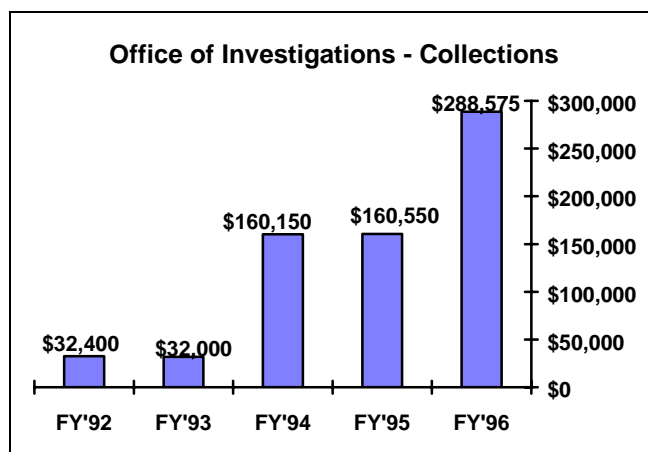




## Massachusetts Workers' Compensation Advisory Council

**Fines and Penalties** - Fines resulting from a stop work order begin at \$100.00 per day, starting the day the stop work order is issued, and continue until coverage is obtained. An employer who believes the issuance of the stop work order was unwarranted has ten days to file an appeal. A hearing must take place within 14 days, during which time the stop work order will not be in effect. The stop work order and penalty will be rescinded if the employer can prove it had workers' compensation insurance during the disputed time. If at the conclusion of the hearing, the department finds the employer had not obtained adequate insurance coverage, the employer must pay a fine of \$250.00 a day beginning from the original issuance of the stop work order, continuing until insurance is obtained (G.L. ch.152 §25C). Any employee affected by a stop work order must be paid for the first ten days lost, and that period shall be considered "time worked."

In addition to established fines, an employer lacking insurance coverage may be subject to punishment by a fine not to exceed \$1,500, or by imprisonment for up to one year, or both. If the employer continues to fail to provide insurance, additional fines and imprisonment may be imposed. The Commissioner or designee can file criminal complaints against employers (including the president and treasurer of a corporation personally) who violate any aspect of Section 25C. The amount collected in FY'96 was \$288,575.09.



**Licenses and Permits** - The statute requires that local or state licensing boards obtain proof of insurance prior to issuing or renewing a license or permit (i.e. building permits, liquor licenses).

**Public Contracts** - Section 25C states that neither the Commonwealth nor any of its political subdivisions should enter into any contract for public work if a particular business fails to comply with any of the insurance requirements of Chapter 152. Companies involved in any local, state or other public sector funded projects can be barred from all public funded projects for a three year period for failure to carry workers' compensation insurance.

**Losing a Competitive Bid** - Any business that loses a competitive bid for a contract may bring an action for damages against another business that is awarded the contract because of cost advantages achieved by not securing workers' compensation insurance or deliberate misclassification of employees. If a violation is established, the person bringing on the suit shall recover, as liquidated damages, 10% of the total amount bid of the contract, or \$15,000, whichever is less (G.L.ch.152, §25C (9)).

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## ***WORKERS' COMPENSATION TRUST FUND***

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Section 65 of the workers' compensation act establishes a trust fund in the state treasury to make payments to injured employees not covered by workers' compensation insurance and to reimburse insurers for certain payments under sections 26, 34B, 35C, 37, 37A, and 30H. The act goes on to direct the DIA to administer and represent the trust fund. The department has established procedures governing the administration and payment of trust fund claims at 452 C.M.R. 3.00. Moreover, Chapter 23E, section 10 directs the department's general counsel to be responsible for the investigation, defense, and claims handling of claims against the trust fund.

The department has established a unit within the Division of Administration known as the Trust Fund to process requests for benefits, administer claims, and respond to claims filed before the division of dispute resolution. The Commissioner has appointed a Deputy Director to manage the unit, as well as attorneys, accountants, claims adjusters, investigators, clerks, a paralegal, and a registered nurse to administer the fund. In addition, the fund has eleven consultants under contract. These employees work in conjunction with the five attorneys from the Office of Legal Counsel to administer the fund.<sup>29</sup>

### **Second Injury Claims (sections 37, 37A, and 26)**

In an effort to encourage employers to hire previously injured workers, the legislature established a Second Injury Fund early in the development of workers' compensation law. These funds pay reimbursements to insurers who pay claims for second injuries. Since return to work is critical to workers' compensation, a system was designed to offset any financial disincentives associated with the employment of injured workers.

Section 37 requires the Second Injury Fund to function as a reinsurance pool. Insurers are to pay benefits at the current rate of compensation to all claimants whether or not their injury was exacerbated by a prior injury. When the injury is determined to be a "second injury," insurers become eligible to receive reimbursement from the DIA's trust fund for a set proportion of the benefits paid. Employers are entitled to an adjustment to their experience modification factors as a result of these reimbursements.

Section 37A was enacted to encourage the employment of servicemen returning from World War II. The legislature created a fund to reimburse insurers for benefits paid for an injury aggravated or prolonged by a military injury. Insurers are entitled to reimbursement for up to fifty percent of the payments for

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<sup>29</sup> Section 65 of the act specifies that the reasonable and necessary costs of administering and representing the Workers' Compensation Trust Fund may be paid out, without appropriation, of the trust fund.

## Massachusetts Workers' Compensation Advisory Council

the first 104 weeks of compensation and up to one hundred percent for any amount thereafter.

Section 26 provides for the direct payment of benefits to workers' injured by the activities of fellow workers where those activities are traceable solely and directly to a physical or mental condition resulting from the service of that fellow employee in the armed forces. (A negligible number of these claims are actually filed.)

**Definition of Second Injury** - An employee is considered to suffer a second injury when an on the job accident or illness occurs which exacerbates a pre-existing disability. How the preexisting condition was incurred is immaterial; the impairment may derive from any previous accident, disease, or congenital condition. The disability, however, must be "substantially greater"-- because of the combined effects of the preexisting impairment and the subsequent injury-- than the disability would have been from the subsequent injury alone.<sup>30</sup>

The reimbursement rate has varied over the years, but was amended in 1991 to equal an amount up to 75% of all compensation paid. Insurers are eligible for reimbursement only for periods after the first 104 weeks of payment.

**Shelby Mutual Claims** - In May, 1995, the Massachusetts Supreme Judicial Court ordered the DIA to pay reimbursements for second injury fund claims pre-dating 1985. (*Shelby Mutual v. Commonwealth of Mass.*, 420 Mass. 251 (1995)). In the wake of this decision, the department paid over \$6.5 million to settle pre-1985 claims.

**Post-1985 Claims** - From 1986 through 1991, insurers did not file many petitions for reimbursement of section 37 and 37A claims. It is estimated that perhaps two hundred claims were filed in that period. Those that were filed were not rigorously pursued by the insurance carriers.

Beginning in 1991 and 1992, insurers more readily filed Second Injury claims. It has been a matter of concern that second injury claims have languished and been ignored. At the close of FY'96, 1,319 claims were pending under these sections. In 1994, initiatives were taken by the new Trust Fund director and Chief Legal Counsel to eliminate this backlog by vigorously pursuing settlements. A settlement mechanism was implemented allowing the department to close out cases, thereby avoiding costly future expenses.

In FY'96, the Trust Fund settled 416 section 37 and 37A cases for \$13,402,745<sup>31</sup>.

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<sup>30</sup> Mass. General Laws ch. 152, § 37 (1991).

<sup>31</sup> Private Fund §37 payments totaled \$13,260,235 (407 cases), Public Fund §37 payments totaled \$142,513 (9 cases).

## **Uninsured Employers**

Section 65 of the workers' compensation act directs the trust fund to pay benefits resulting from approved claims against Massachusetts employers who are uninsured in violation of the law. The trust fund must either accept the claim or proceed to dispute resolution over the matter. Every claim against the fund under this provision must be accompanied by a written certification from the department's Office of Insurance that the employer was not covered by a workers' compensation insurance policy on the date of the alleged injury, according to the department's records.<sup>32</sup>

In FY'96, \$7.7 million was paid to uninsured claimants, according to the General Counsel.

## **Vocational Rehabilitation (section 30H)**

Section 30 H provides that if an insurer and an employee fail to agree on a vocational rehabilitation program, then the Office of Education and Vocational Rehabilitation (OEVR) shall determine if vocational rehabilitation is necessary and feasible to return the employee to suitable employment. If OEVR determines that vocational rehabilitation is necessary and feasible, it will develop a rehabilitation program for the employee for no greater than 104 weeks' duration. If the insurer refuses to provide the program to the employee, the cost of the program will be paid out of the Section 65 trust funds. If, upon completion of the program, OEVR determines that the program was successful, it will assess the insurer no less than twice the cost incurred by the office, with that assessment paid into the trust fund.

Payments made by the trust funds decreased significantly in FY'93 and subsequent years. In FY'96, \$643 was paid for rehabilitation services (See OEVR). In FY'96, the DIA collected \$8,000 from insurers.

## **Latency Claims (Section 35C)**

Section 35C provides that benefits payable under sections 31, 34, 34A and 35 for injuries where there is at least a five year difference between the date of injury and the date of benefit eligibility will be based upon benefit levels in effect on the date of eligibility. The trust fund will reimburse the insurer or self-insurer for "adjustments to compensation" pursuant to section 35C.

While it would be expected that a number of these claims would be presented each year, through FY'92 there were no trust fund payments identified as being associated with section 35C. In FY'96, approximately \$703,500 was paid as latency claims.

## **Cost of Living Adjustments (section 34B)**

Section 34B provides supplemental benefits to any person receiving or entitled to receive benefits under section 31 and section 34A, whose date of personal injury was at least 24 months prior to the review date. The supplemental benefit is equivalent to the difference between the claimant's

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<sup>32</sup> 452 C.M.R. 3.00

## **Massachusetts Workers' Compensation Advisory Council**

current benefits and his/her benefit after an adjustment for the change in the statewide average weekly wage between the review date and the date of injury.

Insurers pay the supplemental benefit concurrently with the base benefit. They are then entitled to quarterly reimbursements for the supplemental benefits paid on all claims with dates of injury occurring prior to October 1, 1986. For injury dates subsequent to October 1, 1986, insurers will be reimbursed for any increase in supplemental benefit payments that exceed 5% annually. COLA payments for FY'96 totaled \$1,779,9011 for the public trust fund and \$11,844,247 for the private fund.

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## ***OFFICE OF HEALTH POLICY***

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The DIA is charged with ensuring that adequate and necessary health care services are provided to the state's injured workers. Specifically the statute directs the commissioner to monitor health care providers for appropriateness of care, necessary and effective treatment, the proper costs of services, and the quality of treatment. The statute directs the commissioner to appoint medical consultants to the Medical Consulting Consortium (MCC), as well as members of the Health Care Services Board (see appendix H for current members).

Commissioner Campbell created the Office of Health Policy (OHP) to address the health care related issues undertaken by the DIA, including the implementation and enforcement of the DIA's utilization review and quality assessment program. The office is also the liaison with the Health Care Services Board (HCSB) and the Medical Consultant Consortium (MCC). In fiscal year 1996, the OHP had 4 employees and 29 consultants.

### **Health Care Services Board**

The DIA's Health Care Services Board (HCSB) is an appointed voluntary committee of physicians, health care providers, and employer and employee representatives. The HCSB is charged with reviewing and investigating complaints regarding providers, developing criteria for appointment of physicians to the impartial physicians roster, and developing written treatment guidelines.

**Complaints Against Providers** - The HCSB is required to accept and investigate complaints from employees, employers and insurers regarding the provision of health care services. Such complaints include provider's discrimination against compensation claimants, over-utilization of procedures, unnecessary surgery or other procedures, and other inappropriate treatment of workers' compensation patients. Upon a finding of a pattern of abuse by a particular provider, HCSB is required to refer its findings to the appropriate board of registration.

**IME Roster Criteria** - The HCSB is also required to develop eligibility criteria to select and maintain a roster of qualified impartial physicians to conduct medical examinations pursuant to §8(4) and §11A. (*See section DIA - Impartial Unit*). The HCSB issues criteria for the selection of eligible roster participants. According to the criteria, physicians must be willing to prepare reports promptly and timely; submit reports for depositions; submit reports of new evidence; submit to the established fee schedule; and sign a conflicts of interest statement and disclosure of interest statement. The requirements of the §8(4) roster and the §11(A) roster differ pursuant to G.L. ch. 152.

**Treatment Guidelines** - Under section 13 of Chapter 152, the commissioner is required to ensure that adequate and necessary health care services are provided to injured workers by utilizing treatment guidelines developed by the HCSB, including appropriate parameters for treating injured workers. An advisory group was appointed to develop treatment guidelines.

## Massachusetts Workers' Compensation Advisory Council

The HCSB has published twenty-five treatment guidelines covering many conditions common to workers' compensation patients. HCSB examined guidelines from various groups including the American Academy of Orthopedic Surgeons (AAOS), the State of Washington Department of Labor & Insurance, and the National Institutes of Health. They adopted some of these guidelines and went on to develop several of their own.

The HCSB is required to conduct an annual review of the guidelines and update them based on the experience of the year. They continued to develop three new treatment guidelines on chronic pain, chronic injury, and asthma.

### Utilization Review

According to the department's regulations (452 C.M.R. 6.00), utilization review is a system for reviewing the "appropriate and efficient allocation of health care services" to determine whether those services should be paid or provided by an insurer. The regulations specify that all utilization review programs must be approved by the DIA. Insurers, self insurers and self insurance groups must either develop their own utilization review programs for DIA approval or contract with approved agents who can provide the required utilization review services for them.

The regulations require that utilization review be performed on all medical claims using the DIA's treatment guidelines and criteria. UR agents must review claims submitted by workers' compensation claimants for compliance with the guidelines. Review may either be prospective (examining treatment before it is provided), concurrent (review in the course of treatment), or retrospective (review after the treatment was provided).

When coverage for a treatment plan is denied by an agent, it must be communicated to the treating physician and the injured employee. Either the injured employee or the treating practitioner may appeal the denial. Appeals of prospective or concurrent treatment may be made by telephone to the UR agent with the opportunity for review by a practitioner on an expedited basis. The appeal must be resolved within two business days. Appeals for retrospective treatment must be settled within 20 business days. Review of any utilization review appeal can be made by filing a claim with the DIA division of dispute resolution.

In FY' 96, the department held hearings on revised Utilization Review and Quality Assessment Regulations (452 CMR 6.00). The new regulations would have specified the credentials necessary to be approved as a utilization review agents. Moreover, they would have required electronic submission of all claims data in a format to be prescribed by the DIA.

Two public hearings were held on these regulations on October 2, 1995 and February 12, 1996. Representatives of the insurance industry voiced opposition to many of the proposed changes, particularly where new reporting and compliance requirements were involved.

Prior to promulgation, these regulations were withdrawn upon issuance of Governor Weld's Executive Order 384. This order required each agency to review all regulations promulgated and to rescind, revise or simplify any that do

not have a defined need or that have less restrictive or intrusive alternatives. Any new regulation promulgated must also conform to these standards.

## Medical Utilization Trending and Tracking System

The commissioner is required to implement within the department a quality control system regarding delivery of health care services to injured workers. The statute states that the DIA should "monitor the medical and surgical treatment provided to injured employees and the services of other health care providers, and monitor hospital utilization as it relates to the treatment of injured employees. The monitoring shall include determinations concerning the appropriateness of the service, whether treatment is necessary and effective, the proper costs of services, and the quality of treatment."<sup>33</sup>

According to the regulations promulgated in furtherance of this directive (452 C.M.R. 6.07), the DIA intends to monitor the quality of care for injured employees using outcome measures, medical record audits, analysis of employee health status and patient satisfaction measurements. Should a provider's plan of care be found to be outside a particular treatment guideline, the provider will be informed of the aberration with instructions on the means to correct it. Should the provider remain statistically outside the guideline, the matter will be referred to the HCSB for appropriate action under the HCSB's complaint's review process.

The DIA has begun a program to gather data on compliance with treatment guidelines from insurers and utilization review agents. Specifically, the department will look to billing data to discern trends in costs as well as patterns of treatment of injured workers in Massachusetts. This data will be used to find the outliers the system and to further develop and revise treatment guidelines. The agency contends its regulatory authority extends to reporting requirements, despite rescission of its proposed regulations requiring submission of data.

Implementation of this program involves an enormous data gathering process. The department has indicated it intends to spend between \$500,000 and \$1 million per year for the next five years to contract with a firm to assemble a computer network to gather insurer, self insurer, and self insurance group data on the costs and medical practices associated with treating workers' compensation claimants. The department does not intend to buy equipment, but rather contract with a vendor to collect data.

In October, 1995, a Request for Proposals for a "Workers' Compensation Medical Utilization Trending and Tracking System" was issued. A contract was awarded to the Center for Health Economics Research, of Waltham, Massachusetts, for approximately \$500,000. The contract is effective in fiscal year 1997. The agency budgeted approximately one million dollars in fiscal year 1997 for the project.

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## ***THE REGIONAL OFFICES***

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<sup>33</sup> G.L. ch. 152, sec. 13.



## **Massachusetts Workers' Compensation Advisory Council**

The Department of Industrial Accidents has offices in Boston, Lawrence, Worcester, Fall River, and Springfield. Headquarters are located in Boston, and all DIA case records are stored in Boston.

The senior judge and the managers of the conciliation and vocational rehabilitation units are located in Boston, but each has managerial responsibility for the operations of their respective departments at the regional offices.

Each regional office has a regional manager, a staff of conciliators, stenographers, vocational rehabilitation counselors, disability managers, administrative secretaries, clerks, and data processing operators. In addition, administrative judges make a particular office the base of their operations, with an assigned administrative secretary.

### **Administration and Management of the offices**

Each regional manager is responsible for the administration of his or her regional office. Each is equipped with conference rooms and hearings rooms in which conciliations, conferences, hearings and other meetings are held. A principle clerk and a data processing operator manage the scheduling of these proceedings and the assignment of meeting rooms through the Diameter case scheduling system.

Cases are assigned to administrative judges by the Diameter system in coordination with the Senior judge. Conciliators are assigned cases according to availability on the day of the meeting, and report to the conciliation manager located at the Boston office. Likewise, stenographers are assigned when needed, but report to the stenographer manager at the Boston office. The vocational rehabilitation personnel report directly to the OEVR manager in the Boston office, and take assignments as delegated from Boston.

When an employee or insurer files a workers' compensation claim or complaint with the DIA, the case is assigned to the office geographically closest to the home of the claimant. Assignments are based on zip codes, with each regional office accounting for a fixed set of zip codes.

Each regional office occupies space rented from a private Realtor. The manager is responsible for working with building management to ensure the building is accessible and that the terms of the lease are met. Moreover, each regional manager is responsible for maintenance of utilities, including the payment of telephone, electricity, and other monthly services. The costs of operating each office is therefore managed by each regional manager.

### **Resources of the Offices**

Each of the regional offices has moved to expanded and enhanced office space within the last six years.

Court rooms have been updated and modernized according to the needs of each regional office, including handicap accessibility and security systems. Moreover, each regional office is equipped with video equipment to assist with the presentation of court room evidence.

## Massachusetts Workers' Compensation Advisory Council

Each office has been provided with personal computers networked to the Boston office, and with a CD ROM for access to software on the Mass. General Laws, Mass. court reporters, and DIA reports.

The following are the addresses of the regional offices.

### **Fall River**

30 Third Street  
Fall River, MA 02722  
508/676-3406  
**Henry Mastey, Manager**

### **Lawrence**

11 Lawrence Street  
Lawrence, MA 01840  
508/683-6420  
**Maritza Nieves, Manager**

### **Springfield**

436 Dwight Street  
Springfield, MA 01103  
413/784-1133  
**Marc Joyce, Manager**

### **Worcester**

44 Front Street  
Worcester, MA 01608  
508/753-2072  
**Leonard Gabrila, Manager**



SECTION

5

FUNDING

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<i>DIA Funding.....</i>	<i>79</i>
<i>Private Employer Assessments.....</i>	<i>81</i>
<i>Public Employer Assessments.....</i>	<i>84</i>
<i>DIA Operating Budget.....</i>	<i>86</i>



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## ***DIA FUNDING***

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To ensure that the Department of Industrial Accidents has adequate funds, the legislature required the employers of Massachusetts, both public and private, to pay assessments covering the expenses of operating the agency and for the payment of trust fund benefits. In addition to these assessments, the DIA also derives revenue from the collection of fees (for various filing costs) and fines (for violations of the act).

Each year the DIA must determine an assessment rate that will yield revenues sufficient to pay the obligations of the workers' compensation trust funds and the operating costs of the DIA. This assessment rate multiplied by the employer's standard premium is the DIA assessment, and is paid as part of an employer's insurance premium.<sup>34</sup>

The assessment rate for private sector employers in 1997 is 4.226% of standard premium. This is a 10% increase from the 1996 rate of 3.841%.

**The Trust Funds** - The DIA must make payments to uninsured injured employees and employees denied vocational rehabilitation services by their insurers. In addition, it must reimburse insurers for benefits for second and latent injuries, injuries involving veterans, and for specified cost of living adjustments.<sup>35</sup>

These obligations are paid out of the trust funds.<sup>36</sup> One account is reserved for payments to private sector employers (the private trust fund); the other is for payments to public sector employers (the public trust fund).

**The Special Fund** - The DIA's operating expenses are paid from a Special Fund, funded entirely by assessments charged to private sector employers. Operating expenses must be appropriated by the legislature each year through the General Appropriations Act.

Chapter 23E of the Massachusetts General Laws directs the Advisory Council to review the DIA's operating budget as well as the Workers' Compensation Trust Fund budgets. With the affirmative vote of seven members, the Council may submit an alternative budget to the Director of Labor and Workforce Development.

## **The Funding Process**

At the beginning of each fiscal year, the DIA estimates the amount of money needed to maintain its operations in the next fiscal year. This amount is

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<sup>34</sup> For employers that are self insured or are members of self-insured groups, an "imputed" premium is determined, whereby the WCRB will estimate what their premium would have been had they obtained insurance in the traditional indemnity market. Some employers are entitled to "opt out" from paying a full assessment. By opting out, the employer agrees that it can not seek reimbursement for benefits paid under sections 34B, 35C, 37, 30H, 26, and 37A. Separate opt out assessment rates are determined each year (See Appendix I).

<sup>35</sup> G.L. Ch. 152, § 65(2) (1996).

<sup>36</sup> Each year the DIA creates a budget for the private and public trust funds, collects assessments, and disburse funds as obligations arise-- without appropriation from the legislature.

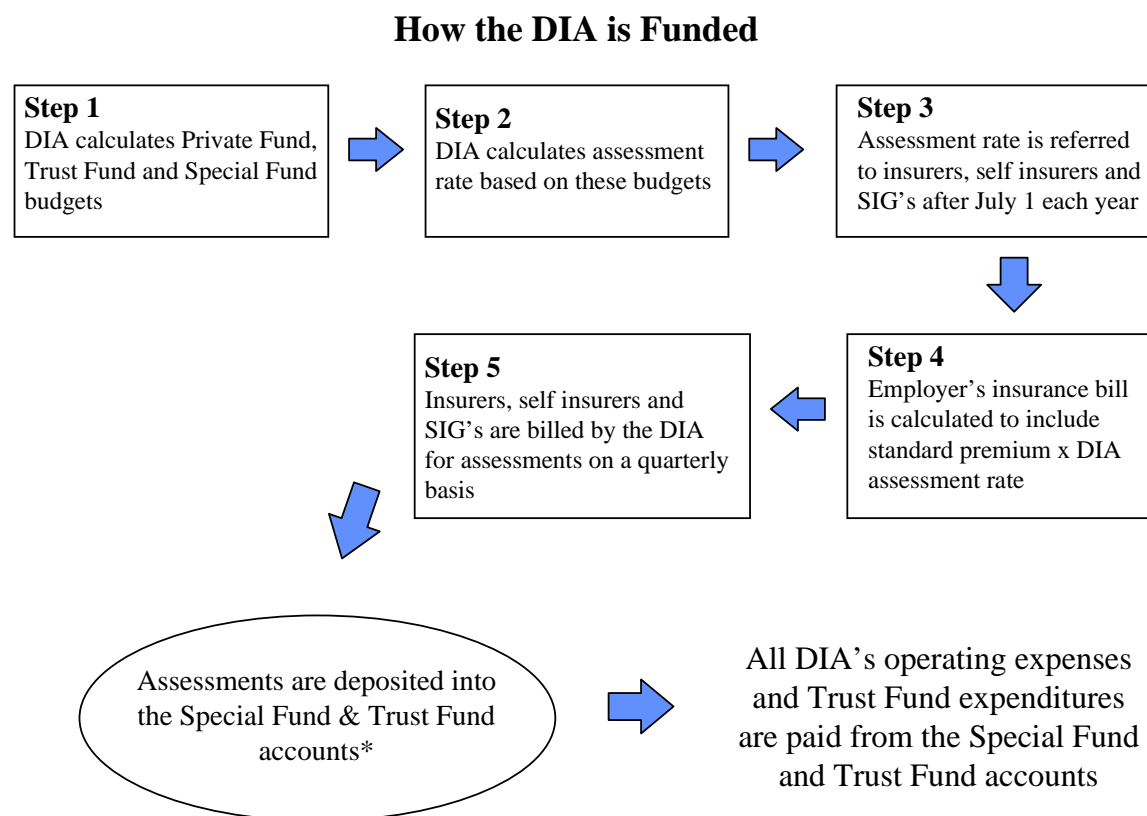
## Massachusetts Workers' Compensation Advisory Council

refined by December, when it is submitted to the governor's office for inclusion in the governor's budget, House 1, and submitted for legislative action.

In May and June, the DIA, with the assistance of consulting actuaries, estimates future expenses and determines assessments necessary to fund the special fund and the trust funds. The budgets and the corresponding assessments must be submitted to the Director of Labor and Workforce Development by July 1 of each year.

By July, the legislature appropriates the DIA's operating expenses. At that time, insurance carriers are notified of the assessment rates paid quarterly directly to the DIA. Collected assessments are deposited into the DIA's accounts which are managed by the Commonwealth's Treasurer.

Figure 17: DIA Funding Process



\*Note: Maintained by the State Treasurer.

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### ***PRIVATE EMPLOYER ASSESSMENTS***

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On June 25, 1996, Tillinghast released their analysis of the DIA FY'97 assessment rates as mandated under G.L. ch.152, section 65. Specifically, the

## Massachusetts Workers' Compensation Advisory Council

report detailed the estimated amount required by the special fund and trust funds for FY'97, beginning July 1, 1996. Included in the report are the assessment rates to be applied to public and private employer insurance premiums. The private employer assessment rate was calculated to be 4.226% of standard premium, an increase of 10%. The assessment base decreased 18%. The following is a break down of the assessment rate calculation process for private employers.

**1. FY'97 EXPENDITURES: \$57.1M** - The first step in the assessment process is the calculation of the expected FY'97 expenditures. Private employers are assessed for the sum of the Private Trust Fund budget and the Special Fund budget.

<b>PRIVATE TRUST FUND BUDGET</b>	<b>Projected FY'97 Expenditures (6/25/96)</b>	<b>FY'96 Expenditures</b>	<b>Actual FY'95 Expenditures (reported 10/95)</b>
<b>Section 37<sup>37</sup> (2nd Injuries)</b>	\$9,506,250	\$13,260,236	\$8,487,924
<b>Uninsured Employers</b>	\$7,500,000	\$7,701,011	\$7,505,834
<b>Section 30H (Rehabilitation)</b>	\$0	\$643	\$9,276
<b>Section 35C (Latency)</b>	\$960,000	\$868,214	\$862,949
<b>Section 34B (COLA's)</b>	\$13,117,072	\$11,844,287	\$12,741,936
<b>Defense of the Fund</b>	\$2,500,000	\$2,038,865	\$2,082,545
<b>TOTAL</b>	<b>\$33,583,322</b>	<b>\$42,436,743</b>	<b>\$31,690,464</b>

<b>SPECIAL PRIVATE EMPLOYER ASSESSMENTS</b>	<b>Projected FY'97 Expenditures (6/25/96)</b>	<b>FY'96 Expenditures</b>	<b>Actual FY'95 Expenditures (reported 10/95)</b>
	\$23,500,000 <sup>38</sup>		
<b>TOTAL</b>	<b>\$57,083,322</b>	<b>\$63,222,349</b>	<b>\$52,195,370</b>

**2. PROJECTED FY'97 INCOME: \$6.4M** - Any income derived by the funds is used to offset assessments. An amount is projected for the collection of fees and fines for deposit in the Special Fund, reimbursements from uninsured employers for

<sup>37</sup> The bulk of the Section 37 expenditures are directly related to the Shelby claims. The DIA has indicated that the total cost of Shelby related claims is likely to be less than half of the 20 million amount estimated last year.

<sup>38</sup> The Special Fund budget includes the amount appropriated by the legislature to operate the DIA as well as certain fringe benefits, non-personnel costs and indirect costs not appropriated.



## Massachusetts Workers' Compensation Advisory Council

deposit in the Private Trust Fund, and an amount estimated for interest earned on the Private Fund and the Special Fund balances.

***FY'97 Fines and Fees (Special Fund)*** = \$4,400,000

***FY'97 Income Due to Reimbursements*** = \$1,400,000

***Estimated Investment Income (FY'96)*** = \$608,327 (Private Fund: \$165,617/Special Fund: \$442,710)

**Total Projected FY'97 Income:** **\$6,408,327**

**3. ADJUSTMENTS TO FUND BUDGETS: \$7.6M (Private Fund)** - According to G.L. ch.152, §65(4)(c), the amount assessed employers for any fund must be reduced by a certain percentage of moneys held over from the previous year. Any amount greater than 35% of FY'95 expenditures in a particular fund must be used to reduce amounts assessed for that fund in FY'97. The balance of the Special Fund at the end of FY'96 will have a surplus which exceeds 35% of FY'95 disbursements. Therefore the assessment was calculated with a \$7.5 million reduction to the Special Fund Budget. The Private Trust Fund budget was not reduced because the year end balance was not great enough.

<b><i>SPECIAL FUND:</i></b>	<b><u>FY'96 Estimated Year End Balance</u></b>	<b><u>35% of FY'95 Expenditures</u></b>	<b><u>Amount of Reduction Required</u></b>
	\$14,757,000	\$7,176,750	\$7,580,250
<b><i>PRIVATE TRUST FUND:</i></b>	<b><u>FY'96 Estimated Year End Balance<sup>39</sup></u></b>	<b><u>35% of FY'95 Expenditures</u></b>	<b><u>Amount of Reduction Required</u></b>
	\$5,520,000	\$11,091,500	\$0

**4. CONVERSION TO RATIO** - Expenditures, income, and any balance adjustment, must be converted to a ratio. This is calculated by dividing each of the above by the assessment base which represents losses paid in FY'95. For the Private Fund, the assessment base is \$722.9M.

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<b><i>Private Expenditure Ratio:</i></b>	7.896%	(57.1 million/\$722.9 million)
<b><i>Projected Income Ratio:</i></b>	0.886%	(\$6.4 million/\$722.9 million)
<b><i>Balance Adjustment Ratio:</i></b>	1.049%	(\$7.6 million/\$722.9 million)

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**5. CALCULATION OF THE ASSESSMENT RATIO: 5.961%** - After the projected expenditures, income and balance adjustments are converted to ratios, the last two items are subtracted from the expected expenditure ratio to calculate an assessment ratio.

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<sup>39</sup> **Note:** The FY'95 year end Private Trust Fund balance was \$12,588,000. Over the course of FY'96, the Trust Fund has markedly increased second injury fund payments and settlements (including pre- 1985 claims as ordered by the SJC in Shelby Mutual) by utilizing this balance.

## Massachusetts Workers' Compensation Advisory Council

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Projected expenditures - Projected income - Balance adjustment = <b>Assessment Ratio</b>			
7.896%	0.886%	1.049%	<b>5.961%</b>

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**6. CALCULATION OF THE ASSESSMENT RATE: 4.226%** - Since the assessment ratio is relative to paid losses, the ratio must be converted into a rate that is relative to projected premiums. This is done by multiplying the assessment ratio by an assessment base factor which represents a ratio of losses to premiums (based on information provided by the WCRIBM). The 1997 assessment base factor is .709.

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Assessment Ratio x Assessment Base Factor = <b>Assessment Rate</b>		
5.961%	.709	<b>4.226%</b>

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## ***PUBLIC EMPLOYER ASSESSMENTS***

On June 25, 1996, Tillinghast released their analysis of the DIA FY'97 assessment rates as mandated under G.L. ch.152, section 65. Specifically, the report detailed the estimated amount required by the special fund and trust funds for FY'97, beginning July 1, 1996. Included in the report are the assessment rates to be applied to public and private employer insurance premiums. The public employer assessment rate has been calculated to be 7.703% of standard premium. The following is a breakdown of the assessment rate calculation process for public employers.

**1. FY'97 EXPENDITURES: \$2.7M** - The first step in the assessment process is the calculation of the expected FY'97 expenditures. Public employers are not assessed for the Special Fund budget.

<b><i>PUBLIC TRUST FUND BUDGET</i></b>	<b>Projected FY'97 Expenditures (6/25/96)</b>	<b>Actual FY'96 Expenditures</b>	<b>Actual FY'95 Expenditures (reported 10/95)</b>
<b>Section 37 (2nd Injuries)</b>	\$243,750	\$202,879	\$18,345
<b>Uninsured Employers</b>	\$0	\$0	\$0
<b>Section 30H (Rehabilitation)</b>	\$0	\$0	\$0
<b>Section 35C (Latency)</b>	\$15,000	\$0	\$0
<b>Section 34B (COLA's)</b>	\$2,459,451	\$1,779,911	\$1,514,040
<b>TOTAL</b>	<b>\$2,718,201</b>	<b>\$1,982,790</b>	<b>\$1,532,385</b>

*Note: Cost associated with defense of the Public Trust Fund are not charged to public employers.*

**2. ANTICIPATED INVESTMENT INCOME OFFSET: \$1,994** - Calculated at 3% of FY'96 year end balance of \$66,463.

**3. ADJUSTMENTS TO PUBLIC FUND BUDGET: \$0** - According to G.L. ch.152, §65(4)(c), the amount assessed employers for any fund must be reduced by a certain percentage of moneys held over from the previous year. Any amount greater than 35% of FY'95 expenditures in a particular fund must be used to reduce amounts assessed for that fund in FY'97. The FY'96 Public Fund year-end balance does not approach the amount for a reduction.

# Massachusetts Workers' Compensation Advisory Council

<i><b>PUBLIC TRUST FUND:</b></i>	<i><b>FY'96 Estimated Year End Balance</b></i>	<i><b>35% of FY'95 Expenditures</b></i>	<i><b>Amount of Reduction Required</b></i>
	\$67,000	\$536,200	\$0

**4. CONVERSION TO RATIO** - Expenditures, income, and any balance adjustment, must be converted to a ratio. This is calculated by dividing each of the above by the assessment base which represents losses paid in FY'95. For the Public Fund, the assessment base is \$25M.

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<i><b>Public Expenditure Ratio:</b></i>	10.8%	(\$2.7 million/\$25 million)
<i><b>Projected Income Ratio:</b></i>	0.008%	(\$1,994/\$25 million)
<i><b>Balance Adjustment Ratio:</b></i>	0%	(\$0/\$25 million)

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**5. CALCULATION OF THE ASSESSMENT RATIO: 10.865%** - After the projected expenditures, income and balance adjustments are converted to ratios, the last two items are subtracted from the expected expenditure ratio to calculate an assessment ratio.

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Projected expenditures -	Projected income -	Balance adjustment =	<b>Assessment Ratio</b>
10.8%	0.008%	0%	<b>10.865%</b>

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**6. CALCULATION OF THE ASSESSMENT RATE: 7.703%** - Since the assessment ratio is relative to paid losses, the ratio must be converted into a rate that is relative to projected premiums. This is done by multiplying the assessment ratio by an assessment base factor which represents a ratio of losses to premiums (based on information provided by the WCRIBM). The 1997 assessment base factor is .709.

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Assessment Ratio x	Assessment Base Factor =	<b>Assessment Rate</b>
10.865%	.709	<b>7.703%</b>

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**THE DIA OPERATING BUDGET**


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**Legislative Appropriations, FY 1997**

The Department of Industrial Accidents initially requested a budget of \$21,104,063 for fiscal year 1997. In House 1, the Governor requested a budget for the DIA totaling \$20,815,089, a reduction of \$288,974 from the Department's request. The House of Representatives approved a budget of \$19,017,209 and the Senate approved appropriations totaling \$20,790,593. The final conference resolution appropriated \$19,017,209, which was \$2,086,854 less than the DIA's initial request.

The Department of Industrial Accidents' operating budget (to be spent from the Special Fund) has been appropriated as follows (round numbers):

*Table 19: DIA Operating Budget - Appropriations*

<b>FY'92:</b>	\$14.6 million	<b>FY'95:</b>	\$17.5 million
<b>FY'93:</b>	\$15.7 million	<b>FY'96:</b>	\$17.8 million
<b>FY'94:</b>	\$17.2 million	<b>FY'97:</b>	\$19.0 million

*Table 20: Special Fund Expenditures, FY'96***Special Fund Expenditures, FY'96**

SUB	Budgeted	Expended	Balance
AA	\$12,497,002	\$11,966,330	\$530,672
BB	136,711	114,591	22,120
CC	77,475	73,255	4,220
DD	396,682	266,730	129,952
EE	750,850	670,949	79,901
GG	1,355,617	1,321,410	34,207
HH	1,214,925	1,024,222	190,703
JJ	669,765	598,375	71,390
KK	370,000	330,287	53,512
LL	270,575	213,905	56,312
<b>TOTAL</b>	<b>\$17,739,602</b>	<b>\$16,580,055*</b>	<b>\$1,172,988</b>

**\*Note:** Expended total does not include \$3,703,858 for fringe benefits, \$498,563 for indirect costs, and \$3,130 for prior year deficiency. The total including these costs is \$20,785,606.

## Budget Subsidiaries

### **Subsidiary AA: Regular Employee Compensation**

Includes regular compensation for employees in authorized positions including regular salary, overtime, and other financial benefits. All expenditures for this subsidiary must be made through the payroll system.

### **Subsidiary BB: Regular Employee Related Expenses**

This subsidiary includes reimbursements to employees and payments on behalf of employees with the exception of pension and insurance related payments. This includes out of state travel (airfare, lodging, other); in state travel; overtime meals; tuition; conference, training, and registration; membership dues, etc.

### **Subsidiary CC: Special Employees/ Contracted Services**

Payments to individuals employed on a temporary basis through contracts as opposed to authorized positions paid through subsidiary AA. (These employees are generally not eligible for benefits). Includes contracted faculty; contracted advisory board/commission members; seasonal; student interns, etc.

### **Subsidiary DD: Pension and Insurance-Related Expenditures**

Pension and insurance related expenditure for former and current employees and beneficiaries. Includes retirement, health and life insurance, workers' compensation benefits; medical expenses; universal health insurance chargeback; universal health insurance payments, etc.

### **Subsidiary EE: Administrative Expenses**

Expenses associated with departmental operations. Includes office and administrative supplies; printing expenses and supplies; micrographic supplies; central reprographic chargeback; postage, telephone, software, data processing; subscriptions and memberships; advertising; exhibits/displays; bottled water.

### **Subsidiary GG: Energy Costs and Space and Rental Expenses**

Plant operations, space rentals, utilities, and vehicle fuel. Includes fuel for buildings; heating and air conditioning; sewage and water bills, etc.

### **Subsidiary HH: Consultant Services**

Outside professional services for specific projects for defined time periods, incurred when services are not provided by, or available from state employees. Consultants advise and assist departments but do not provide direct services to clients. Includes accountants; actuaries/statisticians; information technology

## Massachusetts Workers' Compensation Advisory Council

professionals; advertising agency; arbitrators; architects; attorneys; economists; engineers; health/safety experts; honoraria for visiting speakers; researchers; labor negotiators; management consultants; medical consultants, etc.

### **Subsidiary JJ: Operational Services**

Expenditures for the routine functioning of the department. Services are provided by non employees (individuals or firms) generally by contractual arrangements, except when authorized by statute or regulation. Includes movers; snow removal services; messenger services; law enforcement (detail officer).

### **Subsidiary KK: Equipment Purchase**

Purchase and installation of equipment. (See LL for equipment lease, repair). Includes information technology equipment (computers, software); educational equipment (overhead projectors, tape recorders); photocopying equipment, office equipment, etc.

### **Subsidiary LL: Equipment Lease-Purchase, Lease and Rental, Maintenance and Repair**

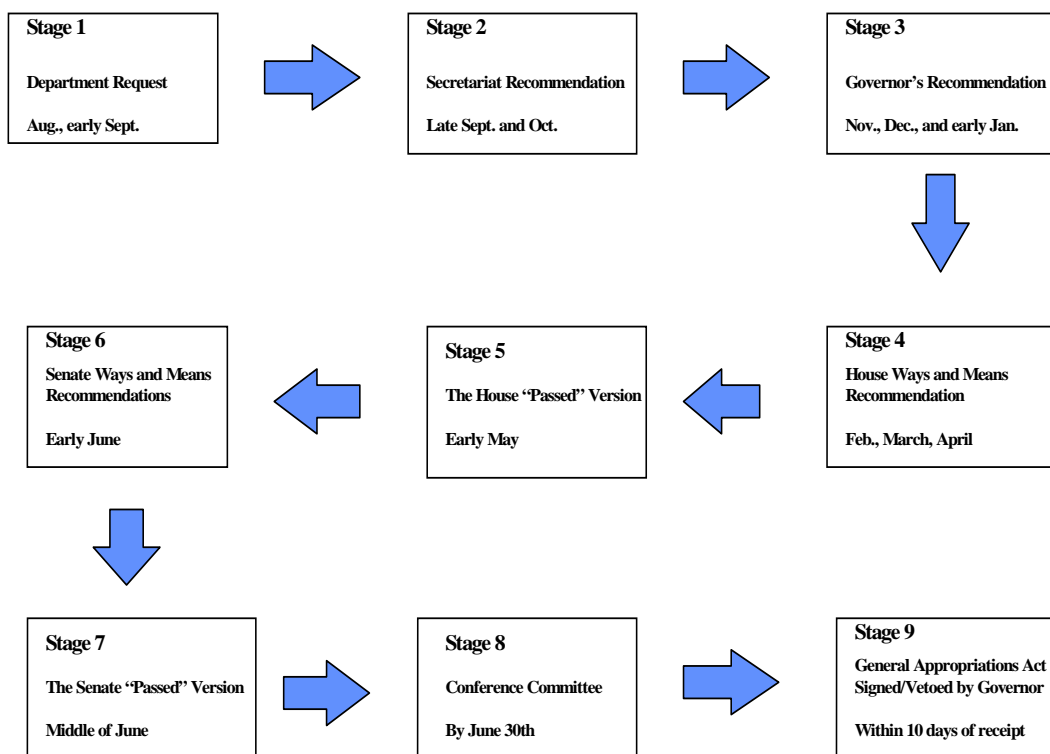
Includes expenditures for the lease-purchase, lease, rental, maintenance and repair of equipment. Includes information technology equipment (computers, software); educational equipment (overhead projectors, tape recorders); photocopying equipment, office equipment, etc.

## The Budget Process

The operating budget of the DIA must be appropriated by the legislature even though employer assessments fund the agency. The department, therefore, must submit to the budget process in the same manner as most other government agencies. It is helpful to view this process in nine distinct phases.<sup>40</sup> The following is a brief description of the process.

Figure 18: The Massachusetts' Budget Process

### The Massachusetts' Budget Process



#### **Stage 1 Department Request** *Time Frame: August and early September*

Each department submits to the Budget Bureau a budget for the next fiscal year and a spending plan for the current fiscal year.

<sup>40</sup> Making and Managing the Budget in the Commonwealth of Massachusetts, Donahue Institute for Government Services, University of Massachusetts.



## Massachusetts Workers' Compensation Advisory Council

### **Stage 2 Secretariat Recommendation** *Time Frame: late Sept. and Oct.*

The Secretariats analyze each department's requests and meet with department heads to further review respective budgets. Each Secretary will then make their recommendations for the budget.

### **Stage 3 Governor's Recommendation (House 1)** *Time Frame: Nov., Dec., and 1st weeks of Jan.*

The Governor's recommendation must be the first bill submitted to the House of Representatives each calendar year. On the fourth Wednesday in January copies of House 1 are distributed to members of the House and Senate, the Executive Secretaries and department heads, the media, and to any other interested parties. The Governor's recommended budget must be balanced and include all revenue accounts and all expenditure accounts.

### **Stage 4 House Ways and Means Committee Recommendations**

*Time Frame: Feb., March, April*

House 1 is referred to the House Ways and Means Committee where each line item is analyzed. Public hearings are held in which testimony is taken from the Governor's staff, executive secretariats, departments, and any other interested parties. In April, a new version of the budget replaces House 1 and is traditionally given the label of House 5600.

### **Stage 5 The House "Passed" Version** *Time Frame: early May*

The members of the House of Representatives take over by subjecting each line item in the budget to debate and amendments. The full House votes to pass a new version of the budget, traditionally known as House 5700.

### **Stage 6 Senate Ways and Means Committee Recommendations**

*Time Frame: early June*

House 5700 is referred to the Senate Ways and Means Committee where hearings and testimony are held. Usually by early June a recommendation will be published and given to members of the Senate and interested parties. The Chairperson and members of the Committee will hold a press conference to address concerns with this new version of the budget.

### **Stage 7 The Senate "Passed" Version** *Time Frame: middle of June*

The full Senate reviews each line item and section and subjects them to debate and amendment. Members of the Senate will then vote to pass the new updated budget.

### **Stage 8 Conference Committee** *Time Frame: by June 30th*

## Massachusetts Workers' Compensation Advisory Council

A Conference Committee is created in an effort to resolve differences between the House passed version of the budget and the Senate version. Members of this committee include the chair of both Ways and Means Committees and ranking minority party members from both committees. The only budget information the Conference Committee can analyze is what survived from the House and Senate debates. Compromises are made on each line item by selecting either the budget amount from the House version, the Senate version, or a number in between the two versions. Finally, a new draft is created which must be ratified by both the House and Senate. If one branch does not ratify the budget it is sent back to Conference Committee for more work. Once the budget is ratified it is signed by the Speaker of the House and the President of the Senate. (An interim budget can be enacted by the legislature if the budget is late to allow the government to continue spending while the appropriation act is being finished.)

### **Stage 9 General Appropriations Act** *Time Frame: within 10 days of receipt*

The Governor has 10 calendar days to decide his position on the budget. During this period the Governor may either sign the budget and approve as complete; veto selected line items (reduce to zero) but approve and sign the rest; or partially veto (reduce to a lower number) selected line items and approve and sign the rest. The legislature has the power to override a Governor's veto by a 2/3 vote in both chambers.



SECTION

6

INSURANCE

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*Insurance Coverage.....95*

*The Commercial Insurance Market.....97*

*Assigned Risk Pool.....106*

*Self Insurance and Self Insurance Groups (SIGs).....109*

*Workers' Compensation Rates.....112*

*Insurance Fraud Bureau of Massachusetts.....116*



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## ***INSURANCE COVERAGE***

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Employer mandated insurance is the backbone of the Massachusetts workers' compensation system as it is the source of funding for no fault workers' compensation coverage to employees. A healthy insurance market is therefore essential not only to the insurance industry, but to employers and employees as well. In FY'96, the insurance market improved dramatically with a third rate reduction in as many years. The residual market also improved considerably in the year.

### **Private Employers**

Every private employer in the Commonwealth of Massachusetts is required to have workers' compensation insurance. This mandate includes sole proprietors that are incorporated, domestics and seasonal workers that average over 16 hours of work a week, and family businesses employing family members. There are certain categories of workers for whom this insurance is not required. Seamen, some professional athletes, and unincorporated sole proprietors are exempt.

### **Public Employers**

Public employers fall outside the compulsory insurance mandate that requires workers' compensation insurance for all private employers.<sup>41</sup> The Workers' Compensation Act (G.L. Chapter 152) is elective for all municipalities, counties, towns, and school districts. All state employees are covered under the act, however, as well as most other public employers. Other public employee groups such as the police and fire departments, and some teacher groups have special provisions for occupational injuries that are separate from the workers' compensation act.

Public employers that elect workers' compensation coverage under Chapter 152 are not required to obtain insurance coverage in the same manner as the private sector. The Commonwealth of Massachusetts funds workers' compensation claims directly from its budget. The agency which administers claims for workers' compensation by state employees is the Public Employee Retirement Administration (PERA), which also handles the retirement system for the Commonwealth. Other public employers, especially smaller towns, do have insurance coverage that is similar to that of private employers.<sup>42</sup>

### **Enforcement**

The Office of Investigations at the Department of Industrial Accidents (DIA) monitors employers in the state to make sure they have the required insurance. The office may issue fines and close down any business that is

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<sup>41</sup> G.L. ch. 152 §25B

<sup>42</sup> For more information of the coverage of public employees see Report to the Legislature on Public Employees, Massachusetts Workers' Compensation Advisory Council, 1989

## Massachusetts Workers' Compensation Advisory Council

operating without adequate coverage for its workers. If an employee is injured while working for a company without a workers' compensation policy, the DIA's trust fund will pay for the claim. In actuality, it is every employer in the state who pays for the claim because the trust fund is maintained by assessments on all employers. In most cases, the DIA will seek repayment from the uninsured company. Reimbursement is often difficult to obtain, however, because the company may not have any assets and collection must proceed with a civil suit.

Employers in the state may obtain coverage through a commercial insurance plan, self insurance, a self insurance group (SIG), or a reciprocal exchange. Public employers may also obtain coverage through self insurance, commercial policies, and public self insurance groups.

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## ***THE COMMERCIAL INSURANCE MARKET***

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The most common method of providing workers' compensation coverage is through a traditional commercial insurance plan whereby an employer will pay an annual premium that is approved each year by the Division of Insurance. The "manual premium" of a company is based on the employer's payroll within appropriate classifications of its employees (roofing, plumbing, service, etc.). The premium is then adjusted by the "experience modification" to produce the "standard premium." The experience modification reflects the losses of a particular employer compared to the average employer in the same classification. It is computed by comparing actual losses to expected losses for a three year period.

In exchange for an annual standard premium, the insurance company will administer employee disability claims and pay for any medical, indemnity (weekly compensation), rehabilitation, or supplemental benefits due under the workers' compensation act. While the insurer may dispute claims that it and the employer deem to be noncompensable, it is the insurer's responsibility, not the employer's, to defend against the claim throughout the adjudication process.

### **The Classification System**

Workers' compensation insurance rates are calculated and charged to employers according to categories of industries called classifications. Each classification details the business functions of a particular industry. Every employer purchasing workers' compensation insurance is assigned a basic classification determined by its overall business function. Standard exception classifications may then be assigned for low risk tasks performed within most companies (i.e. clerical work).

Classifications were developed on the theory that the nature, extent and likelihood of certain injuries are common to any given industry. Each classification groups together employers that have a similar exposure to injuries so that overall costs of workers' compensation can be distributed equitably among employers. Without a classification system, employers in low risk industries would be forced to subsidize high risk employers through higher insurance costs. Classifications must also be comprised of enough employers to provide a meaningful statistical base for the development of rates.

**Regulation of Classifications** - Classifications in Massachusetts are established by the Workers' Compensation Rating & Inspection Bureau (WCRIB) and submitted to the Commissioner of Insurance as part of the rate filing. A hearing is conducted by the Commissioner to determine whether classifications and rates are not excessive, inadequate or unfairly discriminatory and that they fall within a range of reasonableness (Ch. 152, §53A). The classifications submitted by the WCRIB are based (with certain exceptions and modifications) upon the uniform



## Massachusetts Workers' Compensation Advisory Council

classifications set by the National Commission on Compensation Insurance (NCCI) used in 34 states.

**Basic Classifications** - Each business in the Commonwealth is assigned one "basic" classification that best describes the business of the employer, not the work performed by separate employees. Once a basic classification has been selected, it becomes the company's "governing" classification, the basis for determination of premium.

<b>5188</b>	<b>N/A-TX</b>
<b>PHRASEOLOGY</b> AUTOMATIC SPRINKLER INSTALLATION & DRIVERS	
<b>CROSS-REF.</b> <i>Sprinkler Installation &amp; Drivers</i> - applies to automatic sprinklers intended for fire extinguishing purposes. Lawn sprinkler installation to be separately rated as Code 5183.	
<b>SCOPE</b> This all-inclusive classification covers the shop and sprinkler systems. Code 5188 also contemplates the installation of automatic fire extinguisher systems which use dry chemicals. The shop prepares the various sizes of pipe by cutting and threading according to specifications and also gets together the fittings, such as heads, couplings, valves, hangers, regulators and alarms so that everything will fit at the job site. Incidental cutting or threading may be performed at the job site if difficulty arises in the running of sprinkler lines through walls and floors. The majority of the piping is done at ceiling level which requires extensive work on staging.	

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1996 NCCI "Scopes of Basic Manual Classifications"

Although most companies are assigned one governing classification, the following conditions require more than one basic classification to be used:

- the basic classification specifically states certain operations to be separately rated;
- the company is engaged in construction or erection operations, farm operations, repair operations, or operates a mercantile business, under which certain conditions allow for additional classifications to be assigned; or
- the company operates more than one business in a state.

**Standard Exception Classifications** - In addition to the 600 "basic" classification codes that exist in Massachusetts, there are four "standard exception classifications" for those occupations which are common to virtually every business and pose lesser risk of worker injury. Employees who fall within the definition of a standard exception classification are not generally included in the basic classification. These low cost standard exception classifications are: Clerical Office Employees (Code 8810), Drafting Employees (Code 8810), Drivers, Chauffeurs and Their Helpers (Code 7380), and Sales-persons, Collectors or Messengers-Outside (Code 8742).

**General Inclusions and Exclusions** - Sometimes certain operations within a company appear to be a separate business. Most are included, however, within the scope of the governing classification. These operations are called *general inclusions* and are:

- Employee cafeteria operations;

## Massachusetts Workers' Compensation Advisory Council

- Manufacture of packing containers;
- Hospital or medical facilities for employees;
- Printing departments; and
- Maintenance or repair work.

Some operations of a business are so unusual that they are separately classified. These operations are called *general exclusions* and are usually classified separately. General exclusions are:

- Aircraft operation - operations involved with flying and ground crews;
- New construction or alterations;
- Stevedoring, including tallying and checking incidental to stevedoring;
- Sawmill operations; and
- Employer-operated day care service.

**Manual Rate** - Every classification has a corresponding manual rate that is representative of losses sustained in the past three years. An employers' base rate is based on manual rate per \$100 of payroll, for each governing and standard exception classification.

<u>Class Code</u>	<u>Governing Classification</u>	<u>Manual Rate</u>	<u>Payroll</u>	<u>Base Rate</u>
5188	Automatic Sprinkler Installation & Drivers	\$2.50	\$200,000	\$5,000
<u>Class Code</u>	<u>Standard Exception</u>	<u>Manual Rate</u>	<u>Payroll</u>	<u>Base Rate</u>
8810	Clerical Employees	\$.25	\$50,000	\$125

**Appealing a Classification** - When a new company applies for insurance, the broker or agent chooses a classification which is audited by the insurance carrier at the end of the policy year. If the carrier determines the employer was misclassified, the employer would be charged additional premium for the correct class. The WCRIB is responsible for determining the proper classification for every employer in Massachusetts. If an employer disagrees with the classification they have been placed in or believes a separate classification should be created, there is an appeal process made available by Ch.152, §52D. The first step of the process is to file a formal appeal with the WCRIB's Governing Committee (for those insured in the Voluntary Market) or the Residual Market Committee (for those insured in the Assigned Risk Pool). The WCRIB will send an auditor to the worksite and proceed to make a ruling on the classification in question. If reclassification is denied, an appeal can be taken to the Commissioner of Insurance. A hearing officer will then be selected by the Commissioner to conduct an evidentiary hearing on the classification issue.

**Construction Industry** - In the construction industry alone, there are over 67 different classifications for each distinct kind of construction or erection operation. Often multiple classifications must be assigned to large general contractors who use different trades during the many phases of construction projects. Separate payrolls must be maintained for separate classifications or

## Massachusetts Workers' Compensation Advisory Council

else a construction company can be assigned to the highest rated classification that applies to the job or location where the operation is performed.

### All Risk Adjustment Program

In January 1990, the WCRB instituted the All Risk Adjustment Program (ARAP) calculated in addition to the experience modification for employers in and out of the pool. Its purpose is to establish adequate premiums to encourage more insurers to write voluntary business. ARAP measures actual losses against expected losses, but it differs from the experience modification in that it measures severity and not frequency of claims. ARAP can add a surcharge up to 49% of an employer's experience modified standard premium.

### Large and Small Deductibles

Available since 1991, large deductible policies can provide the advantages of a retrospective policy and self insurance. They can also save on premium payments, increasing the up front cash flow for an employer. A typical policy with a \$5,000 per claim deductible will experience a 10.6% reduction in premium. The insurer pays for all benefits under the workers' compensation act and then seeks reimbursement from the employer up to the amount of the deductible.

Large deductibles are also designed strategically to avoid some of the residual market load. Because these policies have lower premiums than full coverage policies, the assessment to pay for the pool's deficit is likewise lower. These programs are controversial as the pool's deficit is shifted onto smaller employers who cannot subscribe to large deductible policies. In FY'94, the Division of Insurance promulgated regulations that now base assessments for large deductible policies on standard premium to account for the fair distribution of the pool's deficit relative to large deductibles. This alleviates the problem of shifting residual market loads plus ARAP.

While deductible policies can reduce the amount employers pay in insurance premiums, some employers with small deductible policies are concerned with the effect deductibles can have on their experience modification. The modification is calculated using any losses that fall under the deductible amount. These employers are, in essence, paying for both the loss up to the deductible amount as well as a penalty with their experience modification. Employers with large deductibles do not have the same concerns because they are virtually self insured and are not affected in their experience modification factor.

The experience modification is intended to predict future loss experience rather than recoup past losses paid. The experience rating system reflects both frequency and severity.

According to the WCRB, if an employer has a number of small injuries that are within their deductible, it is a good indicator that at some point they will experience one or more severe occurrences. Since the premium amounts paid by the small insureds over many years frequently do not cover the cost of even one serious injury, it is only fair that the impact of a number of small accidents be

## Massachusetts Workers' Compensation Advisory Council

included in their experience modification. To do otherwise would force a tremendous surcharge whenever an insured had a serious injury.<sup>43</sup>

### Retrospective Rating Plans

Controlling the costs of workers compensation is in the interests of both employers and insurance companies. One measure of controlling costs that has become increasingly popular in Massachusetts is retrospective rating. Retrospective rating is an insurance rating system that bases premiums upon the insured's actual incurred losses after a policy period. With this type of system the insured is given direct control of insurance costs by monitoring and controlling its own loss experience. Retrospective rating is often confused with "experience rating" since both adjust the premium based on an employer's history. The main difference between the two is that experience rating adjusts premiums at the start of the policy period, whereas, retrospective rating adjusts premiums at the end of the policy period. In other words, experience rating tries to predict future costs while retrospective rating responds to the costs of past losses.

Although retrospective premiums are determined by complex formulas, they are generally based upon three factors: losses the employer incurs during a policy period, expenses that are related to the losses incurred, and a basic premium. Incurred losses have historically included both medical and indemnity losses, interest on judgments, and expenses incurred in third-party recoveries.<sup>44</sup> A basic premium is necessary to defray the expenses that do not vary with the losses incurred and to provide the insurance company with a profit. In order to control the cost of the premium in extreme cases it cannot be less than a specific minimum and cannot exceed a stated maximum. The standard formula used when deciding a premium is equal to the basic premium plus converted losses multiplied by the tax multiplier. The tax multiplier is determined by the combined charges for insurance company licenses, premium taxes, assessments, assigned risk surcharges, second injury fund assessments, and residual market loads.<sup>45</sup>

Retrospective rating plans were not designed for all businesses as eligibility is based upon a standard premium. In 1994, eligibility for a one year plan in the US was an estimated standard premium of at least \$25,000 per year. For a three year plan the estimated standard premium was at least \$75,000.<sup>46</sup> Although these eligibility standards count out many small businesses, one of the biggest misconceptions is that retrospective plans are only for large employers and high risk groups. In Massachusetts more small employers are purchasing retrospective plans in an effort to lower premiums by controlling company losses.

Under the right circumstances, retrospective rating can benefit both the insurer and buyer of insurance. Since the cost of the premium is determined by past work history, retrospective plans reward those businesses that maintain

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<sup>43</sup> Interview with Paul Meagher and Howard Mahler, The Massachusetts Workers' Compensation Rating and Inspection Bureau, February 24, 1994.

<sup>44</sup> "Retrospective Rating," Risk Financing, Supplement No. 46, May 1995: III.D.7.

<sup>45</sup> Richard Carris, "The Mathematics of Retros," CPCU Journal, Vol. 46, No. 1, March 1993: 38-39.

<sup>46</sup> "Retrospective Rating Plans," Fire Casualty & Surety Bulletins, Sept. 1994.

## Massachusetts Workers' Compensation Advisory Council

effective loss control programs. If losses are low, the insured will pay less than what other rating systems would have allowed. Furthermore, retrospective rating provides an incentive to businesses to create safety programs which could lower premium costs. Advantages can also be seen from the insurer's standpoint since a poor loss experience obligates the insured to pay a greater premium. The insurance company also benefits when premiums are low because that means a business is controlling losses.

On the other hand, retrospective rating has many disadvantages to other insurance rating plans. To begin with, there is always going to be uncertainty regarding what the final premium will amount to since companies cannot predict the volume or severity of workplace accidents. Another disadvantage is that when a company joins a three year plan and has two good years of loss experience, the premium could still be high if there is one bad year. Finally, retrospective rating plans have a lower profit margin than with other plans an insurance company could supply.<sup>47</sup>

On April 1, 1995 Massachusetts added greater flexibility to the Retrospective Rating One Year Plan and Three Year Plan. Although the reform will have no impact on premiums, it will increase the availability of coverage. Reform efforts like these will only enhance the competitive market by allowing consumers a greater choice among rating options.

### Premium Discounting

Insurance companies that provide workers' compensation insurance must factor in the various expenses of servicing policies to determine appropriate premium levels. However, a problem occurs for the insurance company when pricing premiums for large policy holders because as the premium increases, the proportion required to pay expenses decreases. In an effort to compensate for these differences, insurance companies often provide a premium discount to policy holders. The premium discount increases as the size of the policy premium increases, resulting in a premium that better reflects costs. In most states, policy holders are entitled to a premium discount if their paying over \$5,000 in premiums.<sup>48</sup>

### Dividend Plans

Insurance companies are constantly competing against one another to capture the workers' compensation market. One traditional method of competition is to offer employers dividend plans. A dividend plan can give the policy-owner a partial return on a previously paid premium. This payment from the insurer takes into account investment income, expenses, and the insured's overall loss-experience in a given year. The dividend is usually paid to the policy owner directly or by applying it to future premiums due. Regardless of how the

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<sup>47</sup> Claude C. Lilly III, "Retrospective Rating: Pitfalls for Insurers to Avoid," *CPCU Journal*, Vol. 44, No. 4, Dec. 1991: 220.

<sup>48</sup> "Workers Compensation Insurance General Rules," *International Risk Management Institute*, February 1992: I.K.1.

## Massachusetts Workers' Compensation Advisory Council

payment is issued, dividends are non-taxable since they are considered a return of premium.<sup>49</sup>

Dividend plans may seem attractive to policy holders, but sometimes promise more than can be delivered. Insurer's are not legally bound to pay what they may have estimated a policy holder's return to be. Moreover, many insurers strategically calculate a dividend only once between 18 and 24 months after a policy's inception, and not always to the advantage of the insured.<sup>50</sup>

### Captive Insurance

As insurance rates fluctuate and annual premiums become harder to predict, many companies look for alternative risk management and risk financing tools. In an effort to control one's own destiny, companies often turn to captive insurance as a cost-saving alternative to the traditional insurance markets. The general idea behind a captive is that it allows non-insurance organizations to "create" and run their own insurance company to insure the risks of their shareholders.<sup>51</sup> Although captives are arguably just another form of self insurance, they are treated by the government as an insurance business and are subject to the same regulations.

Captives have historically been attractive to large multi-national firms whose financial strength and asset base is able to offset the expensive financial requirements of running an insurance company.<sup>52</sup> In fact, a company that wants to form it's own captive must be willing to invest the standard benchmark of about a million dollars in capital. The first initial years of a captive tend to be more expensive since re-insurance must be purchased to cover the possibility of a "bad" year. However, once a captive matures, re-insurance is no longer necessary since a poor loss experiences can be covered. Since captives are not economically feasible for smaller companies, they can enjoy the same benefits by joining together to form a group captive. A group captive can avoid the expense and burdens that go along with forming a captive since the risks and costs are spread out among it's members.

There are many reasons why a company might choose captive insurance as an alternative to traditional insurance. For starters, captives can fill the gap caused from lack of coverage in the traditional market. Often, as in the case of workers compensation, insurance companies refuse to write policies to companies that are considered "high risk" and prone to heavy losses. A captive, on the other hand, allows a company to insure their own risks while providing incentives for cost control measures and safety programs. Captives can also provide a company with greater control over it's insurance program by allowing it to bypass the uncertainty of hard and soft insurance markets that can lead to unpredictable premium rates.<sup>53</sup>

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<sup>49</sup> "Risk Management-Life, Health, and Income Exposures," Life Insurance, Part 4: 406.

<sup>50</sup> "Thinking About the Work Comp Crisis," Merrit Risk Management Review, December 1991: 3.

<sup>51</sup> The Captive Insurance Manual, NILS Publishing Co., vol. 1, 1995 revision: 3.

<sup>52</sup> "Combined WC/EB Captives-Challenge With A Pay-Off," The Journal of Workers Compensation, September 26, 1994: 38.

<sup>53</sup> "When to Form a Captive," Risk Management, November 1, 1994: 73-74.

## Massachusetts Workers' Compensation Advisory Council

For many years, insurance companies have generated large underwriting profits by including investment income in their pricing of workers' compensation premiums. Furthermore, when insurance companies create a premium they are only guessing the costs of future losses which often results in overpricing during positive loss-experience years. Captives can recapture these underwriting profits that are otherwise earned by conventional insurers and produce considerable savings.<sup>54</sup>

Captive insurance is not for everyone. Often a company must invest a large portion of their assets when forming their own captive. In order to avoid the burdensome expense associated with forming a captive, many companies choose to rent a portion of another captive's holdings. This rent-a-captive system has much of the same benefits a captive is entitled to, yet costs individual companies much less. A downfall of the rent-a-captive system is that participants can become vulnerable to the losses of other members in the captive.<sup>55</sup>

The recent growth of captives in the United States has enhanced and diversified the insurance market. Captives now represent over one-third of commercial line business in the U.S. and take in over \$60 billion in premium volume annually.<sup>56</sup> In fact, captives are now considered to be the second most common choice in the alternative market next to self-insurance.<sup>57</sup> Vermont has clearly set the pace in the captive industry as a result from a flexible regulatory environment, lower premium taxes, and a quality infrastructure.<sup>58</sup> Success in other states will solely depend upon the ability of governments to provide adequate incentives for captive formation.

### Take Out Credit Program

This program is intended to provide incentives for insurers to offer voluntary coverage to employers in the pool. An insurer that removes from the pool a risk with a premium greater than \$150,000 is entitled to credits against its share of the pool deficit at the rate of 75% of the premium for the first year, 62% for the second year, and 50% for the third year. For risks with standard premium below \$5,500, the insurer would receive \$1.50 for each dollar of premium written over the next three years. For risks with standard premium between \$5,500 and \$150,000, the insurer would receive a \$1.00 credit for each dollar premium written over the next three years.

### Revised Qualified Loss Management Program (QLMP)

The purpose of the QLMP is to encourage employers to get professional assistance to lower their loss experience. Employers in the pool who contract with an approved loss control firm are eligible to receive a maximum credit of 15% (up from 10%) of their premium. Employers can reduce their premiums for

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<sup>54</sup> Ibid.

<sup>55</sup> "Captive Plan Designed To Cut Workers' Comp. Costs," National Underwriter, November 28, 1994: 12.

<sup>56</sup> "Captive Market Matures: Growth Ahead?," Risk Management, August 1, 1995: 14.

<sup>57</sup> Ibid.

<sup>58</sup> "When to Form a Captive," Risk Management, November 1, 1994: 73-74.

## **Massachusetts Workers' Compensation Advisory Council**

four years if they stay in the program. This program began in November, 1990 and it was extended to its fourth year beginning January 1, 1994. This revision provides a 25% applicable credit for a fourth year.



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## ***ASSIGNED RISK POOL***

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Any employer who seeks a commercial insurance policy and is rejected by two insurers within five days will be assigned an insurer by the Workers' Compensation Rating and Inspection Bureau (WCRB). Many companies with high risk classifications or poor experience ratings cannot obtain insurance in the "voluntary market." They will then be assigned a carrier in the "residual market," otherwise known as the "assigned risk pool." The pool is intended to be the market of last resort, but in 1995 the residual market comprised 35% of the overall market. This is still a substantial portion of the market but an improvement from previous years.

The insurance companies that administer the policies of employers in the pool are referred to as "servicing carriers." In 1995, servicing carriers were subject to "performance standards" and a "paid loss incentive program." The paid loss incentive program began in policy year 1993 and provides up to a 9% bonus or penalty. The "performance standards" effective in 1994 provide an additional swing of +2% to -14% based on four categories of on-site audit: underwriting and audit, loss control performance standards, claim performance standards, and financial reporting.

In the assigned risk pool, if the overall losses exceed the allowable premium approved each year (revenues), the policies in the assigned risk pool will have a deficit. The aggregate of these losses constitute the residual market deficit.

Every commercial insurer who writes workers' compensation insurance in the state must pay for this deficit in direct proportion to the amount of premiums they write in the voluntary market. For example, an insurer that writes 5% of all premiums in the voluntary market will have to pay for 5% of the residual market's deficit.<sup>59</sup>

The residual market load is incorporated into rates which are based on total workers' compensation experience. Theoretically, part of the voluntary market rate is to pay for the expected residual market loss.

This residual market burden (percentage of each voluntary market dollar used to pay for the assigned risk pool) has significantly decreased over the past three years. In 1994 the burden was -11.8%, meaning that the pool had a net operating gain that year.<sup>60</sup>

Loss ratios have also continued to decline. The residual market loss ratio measures the amount of losses and expenses to the premiums written (roughly money out divided by money in). A loss ratio greater than 100% indicates that

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<sup>59</sup> Theoretically, the residual market loads works in a direct proportion to the amount of premium each insurer writes in the voluntary market. However, programs such as the Take Out Credit Program affect assessable premiums and may affect the residual market load.

<sup>60</sup> WCRB Special Bulletin No. 12-96, October 4, 1996.

## Massachusetts Workers' Compensation Advisory Council

losses are greater than revenues (premiums). In 1995, the estimated loss ratio was 69%, significantly down from a high of 168% in 1987.<sup>61</sup>

In 1992, 64.7% of every premium dollar was written in the residual market. Since that time the residual market has been declining. It is estimated that for 1996, the residual market was at or below 24% of total premium, indicating a much healthier and improved insurance system.<sup>62</sup>

Any employer who seeks a commercial insurance policy and is rejected by two insurers within five days will be assigned an insurer by the Workers' Compensation Rating and Inspection Bureau (WCRB). Many companies with high risk classifications or poor experience ratings cannot obtain insurance in the "voluntary market" and must be assigned a carrier in the "residual market," otherwise known as the "assigned risk pool."

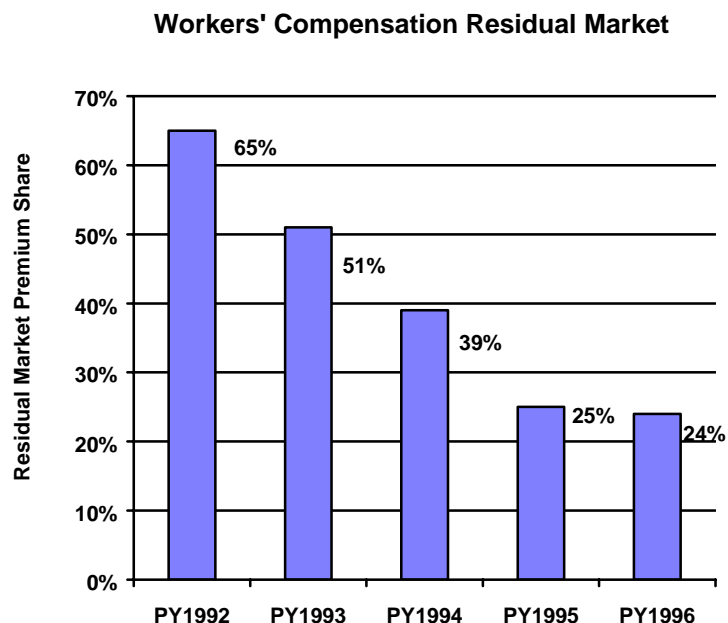


Table 21: Massachusetts  
Workers' Compensation Residual Market Information

Policy Year	Loss Ratios (@ 6/30/96)	Residual Market Burden* (@6/30/96)	Calendar Year	Market Share
'87	155.2	-38.3%	'87	25.0
'88	143.8	-37.5	'88	29.5
'89	144.0	-57.3	'89	40.1
'90	110.0	-41.6	'90	46.3
'91	71.0	-5.1	'91	50.7
'92	56.0	51.3	'92	64.7
'93	55.0	46.3	'93	61.0
'94	72.0	11.8	'94	47.0
'95	69.0	1.2	'95	27.8

Source: National Council on Compensation Insurance, 1994 Management Summary Report

\* Per dollar of voluntary assessable premium

There are many variations of commercial insurance policies that seek to equate the actual losses incurred by the employer with the amount they pay in premium. These programs make employers more accountable for their losses

<sup>61</sup> WCRB Special Bulletin No. 12-96, (Oct. 4, 1996).

<sup>62</sup> WCRB Special Bulletin No. 6-96 (April 5, 1996).

## **Massachusetts Workers' Compensation Advisory Council**

and can result in considerable savings under certain circumstances. Some of the programs are also a means for reducing the number of employers in the assigned risk pool by providing incentives for employers to seek coverage in the voluntary market and for insurers to write workers' compensation insurance in the voluntary market.

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## ***SELF INSURANCE AND SELF INSURANCE GROUPS (SIGS)***

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Self insurance and self insurance groups (SIGs) have increased in popularity in the past few years, largely due to the increase in the size of the assigned risk pool. Employers who fund their own workers' compensation claims avoid paying all of the onerous residual market loading that is incorporated into the rates for commercial insurance. Employers may also choose to self insure or join a SIG rather than obtain a policy from the pool. Self insurance and SIGs are a viable alternative to the pool, but they do pose some problems to the system and exacerbate some of the pool's problems.

### **Self Insurance**

For an employer to qualify to become self insured, it must post a surety bond of at least \$100,000 to cover for losses that may occur (G.L. 452 C.M.R. 5:00). This amount varies for every company depending on their previous reported losses and predicted future losses. The average bond, however, is usually over \$1 million. Self insurance is generally available to larger employers with at least 300 employees and \$750,000 in annual standard premium.<sup>63</sup> These regulations may be waived by the Commissioner of the DIA for employers that have strong safety records and can produce the necessary bond to cover incurred losses. In addition, employers who are self insured must purchase reinsurance of at least \$500,000. Each self-insured employer may administer their own claims or engage the services of a law firm or a third party administrator (TPA) to handle claims administration. The office of insurance evaluates employers every year to determine their continued eligibility and set a new bond amount.

See section on *DIA - Office of Insurance* for fiscal year 1995 statistics on self insurance.

### **Self Insurance Groups (SIGs)**

Companies in related industries may also join forces to form a self insurance group (SIG). The Division of Insurance regulates SIGs and furnishes the Office of Insurance at the DIA with a list of all SIGs and their member companies. SIGs may include public employers, non- profit groups, and private employers in the same industry or trade association.

According to Division of Insurance regulations, the definition of a SIG is:

*a public employers group or a not for profit unincorporated association or a corporation formed under the provisions of G.L. ch. 180, consisting of five or more employers who are engaged in the same or similar type of business, who are members of the same bona fide industry, trade or professional association which has been in existence for not less than two years, or who are parties to the same or related collective bargaining agreements, and who*

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<sup>63</sup> 452 C.M.R. 5:00: Code of Massachusetts Regulations concerning insurers and self insurers

## Massachusetts Workers' Compensation Advisory Council

*enter into agreements to pool their liabilities for workers' compensation benefits and employers' liability in the Commonwealth.*<sup>64</sup>

SIGs were permitted in 1985 to provide an alternative to the assigned risk pool and the first group was approved in 1987. After a few years of modest interest, five SIGs were formed in 1990 and 12 in 1992. As of October 1, 1996, there were 33 SIGs in the state. SIGs have very stringent reporting procedures, but it is difficult to determine how many equivalent premium dollars are accounted for by the SIGs at any given time because each SIG is assessed on a separate basis at different time intervals.

### Advantages of Self Insurance and SIGs

Employers may choose to self insure or join a SIG to avoid the current insurance market and to gain direct control over costs and administration of claims. A company that is denied insurance in the voluntary market may decide to self insure or join a SIG rather than go into the pool, since in the past there have been few incentives to control costs and servicing carriers were often cited as offering poor service to the employer. Another incentive to self insure or join a self insurance group has been to avoid the effects of residual market loading. In the past, employers turned to self insurance and SIGs since participation provided a large savings -- consider that in 1989 and 1990 over 50% of every premium dollar written in the voluntary market was used to pay for the assigned risk pool.

There are also more direct advantages that are inherent to self insurance. Employers are directly responsible for their losses because they must pay for every claim incurred. This adds greater incentives to control losses through more effective safety measures and return to work programs.

### Disadvantages of Self Insurance and SIGs

There are some problems associated with the increase in self insurance and SIGs. Administration and regulation of self insurance must keep up with the demand. The DIA has been inundated with requests to self insure, and the Division of Insurance has had many request to join or create SIGs.

In addition, self insurers and SIGs do not have guarantee funds, as in commercial policies, to pay for losses if profits turn for the worse. For self insurers, it is possible that the security they have provided may be insufficient to meet the liabilities of employee losses should they encounter economic difficulties.

SIGs have their own unique problems and risks. Companies who join these groups rely heavily on the solvency and safety records of fellow members, since the insurance risks are spread among a small group of companies in a related industry. If one of the employers in a group goes bankrupt or suffers an unusual amount of claims for benefits, the whole group must absorb the losses because there is no guarantee fund.

The increase in self insurance and SIGs also affects the distribution of the residual market assessments. As employers turn to self insurance and SIGs, the

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<sup>64</sup> Division of Insurance regulations -- 211 C.M.R. 67.02

## **Massachusetts Workers' Compensation Advisory Council**

size of the voluntary market (and hence the assessment base for the pool's deficit) becomes smaller. Commercial insurers will then have to pay a greater share of any losses that occur in the pool.

### **Reciprocal or Inter- Insurance Exchange**

A reciprocal exchange is a group of employers from diverse industries who pool their funds to insure themselves. An exchange is not self insurance or a self insurance group, but a way to provide commercial insurance to small and medium sized companies without resorting to the residual market.

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## ***WORKERS' COMPENSATION RATES***

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### **Insurance Rate Filing**

In Massachusetts, insurance rates for workers' compensation are determined by the Workers' Compensation Rating and Inspection Bureau (WCRB) and approved by the commissioner of insurance.

By agreement with the State Rating Bureau of the Division of Insurance, the WCRB submits a classification of risks and premiums, referred to as the rate filing, by the third week of November. Insurance rates become effective January 1 of the following year. According to the workers' compensation act, the commissioner of insurance must conduct a hearing within sixty days of receiving the rate filing to determine whether the classifications and rates are "not excessive, inadequate or unfairly discriminatory" and that "they fall within a range of reasonableness" (G.L. ch. 152, sec. 53A(2)).

By law, a rate filing must be submitted at least every two years, and no classifications or premiums may take effect until approved by the commissioner. If the commissioner takes no action on a rate filing within six months, then the rates are deemed to be approved. If the commissioner disapproves the rates, then a new rate filing may be submitted. Finally, the commissioner may order a specific rate reduction if after a hearing it is determined that the current rates are excessive. Determinations by the commissioner are subject to review by the Supreme Judicial Court.

### **1996 Rates**

On April 30, 1996, the commissioner of insurance approved an agreement<sup>65</sup> on workers' compensation insurance rates effective May 1, 1996, at levels on average 12.2% less than those for 1995. This marked the third rate reduction in as many years.

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<sup>65</sup> After a lengthy negotiations process following submission of the rate filing on December 6, 1993, the Workers' Compensation Rating and Inspection Bureau (WCRB) and the State Rating Bureau of the Division of Insurance agreed to rates insurance carriers could charge policy holders. This agreement obviated the need for the Commissioner to conduct hearings on the rates.

## Massachusetts Workers' Compensation Advisory Council

The following chart displays the average rate changes for general classifications effective May 1, 1996:

*Table 22: Average Rate Changes for General Classifications*

Effective: May 1, 1996	Manufacturing	Contracting	Office and Clerical	Goods and Services	Misc.
Average Rate Change	-15.7%	-10.3%	-10.7%	-12.5%	-9.0%
Maximum Rate Increase	-5.6%	-0.3%	-0.6%	-2.4%	1.1%
Max. Rate Decrease	-27.5%	-24.8%	-25.0%	-25.9%	-24.1%

### Rate Stabilization

The decrease in workers' compensation insurance rates in Massachusetts is reversing an earlier trend in rising rates which made workers' compensation insurance an economic burden for employers.

One of the foremost concerns of employers in the state was the stabilization of insurance rates. Double digit increases had placed a heavy burden on the employers, and many believed Massachusetts was at a competitive disadvantage because rates were higher than many other competing high technology and industrial states. From the insurers perspective, however, rates were inadequate and costs exceeded revenues received from workers' compensation insurance premiums. Insurers contend that the Division of Insurance had historically suppressed the rates at the cost of insurers resulting in a large residual market and insurer losses.

One way to compare the costs for insurance in Massachusetts with other states is through the average amount that employers spend on workers' compensation insurance premiums (this does not take into account costs for self insurers or SIGs). The Massachusetts Taxpayers Foundation (MTF) released a study called "An Economy in Transition: Reducing the High Cost of Doing Business in Massachusetts" in September, 1995. The report compared Massachusetts with other states on six key business costs: health care, electricity, manufacturing wages, unemployment insurance, workers' compensation and corporate income taxes.

### Workers' Compensation Costs

The MTF report compared the costs of workers' compensation by examining insurance rates on a state-by-state basis. A 1993 study revealed that premium rates in Massachusetts were 14th highest in the nation and 13 percent above the national average. However, in 1995 premium rates were only 2.8 percent above the national average and ranked 19th in the nation. As a result, Massachusetts can now be categorized as an "average cost" state.



## **Massachusetts Workers' Compensation Advisory Council**

The state with the highest net insurance costs was Maine, which was 86 percent above the national average. Both Rhode Island and New Hampshire were also above the national average by 46 and 20 percent respectively. However, Vermont and Connecticut had costs just below Massachusetts. Of the seven competing industrial states four had higher costs than Massachusetts (New York, Michigan, Pennsylvania and Florida). Costs in New Jersey and Illinois fell just below Massachusetts. Among the high technology states both Texas and California had higher costs than Massachusetts, but North Carolina and Maryland fell well below the national average.

MTF analyzed workers compensation benefits by comparing statutory benefits on a state-by-state basis. Statutory benefits can be defined as the payments required by statute for a given injury type. As of January 1995, Massachusetts ranked 6th highest for average statutory benefits. Although this figure is high, payments to disabled workers in Massachusetts has actually declined. According to the MTF report, this is a result of better administration of the statute and fewer people staying in the workers' compensation system.

The MTF report also addressed the issue of benefits paid and benefit costs to workers in Massachusetts. Benefits paid includes all payments made in a calendar year on open claims. Benefit costs are the actual premiums paid by employers. Between 1992 and 1993, benefits paid to workers in Massachusetts declined by 19 percent. This decrease was higher than 43 other states. The average benefit costs per employee also declined between 1992 and 1993 by 20 percent (from \$554 to \$442). As of 1993, Massachusetts was ranked 18th in the country according to benefit costs, which is five percent below the national average of \$466. On average, New England states spent \$522 per employee, 18 percent more than Massachusetts. According to MTF President Michael J. Widmer, workers' compensation is now at a competitive level which "clearly results from the reforms of 1991."

In 1990, insurance rates continued to increase with a 26.2% rate hike and another double digit increase in 1991 of 11.3%. There was a rate filing made by the WCRB for 1992 but rates did not change until January 1, 1993. The trend in rates began to change when, for the first time in five years, the increase slowed to a single digit increase of 6.24% for rates effective January 1, 1993.

Rates for 1994 declined by an average of 10.2%, the first rate reduction in over twenty years. In 1995 and 1996, rates again dropped. Since 1994, rates have dropped 34.16%. Rates are predicted to continue to stabilize or decline, and the position of Massachusetts relative to other states should improve as this occurs.

### **Enforcement of Mandatory Coverage**

One of the priorities for the Office of Investigation at the DIA is to make sure all employers have the necessary insurance coverage. In FY'96, the DIA's

## Massachusetts Workers' Compensation Advisory Council

private trust fund spent \$7.7 million on benefits for employees who were working for uninsured employers, down from \$8.2 million in FY'94. All employers in the state must pay for these employees as the trust fund is maintained by assessments on all employers.

The DIA is "on-line" with the database at the WCRB which enables the office of investigations to get current information on employers who cancel their insurance policies. Investigators from the office then check to see if the employer has reinstated coverage through a commercial policy, self insurance, or SIG before they issue a stop work order or impose fines.

See Section on *DIA - office of investigation* for more information on the enforcement of workers' compensation coverage.

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## ***INSURANCE FRAUD BUREAU OF MASSACHUSETTS***

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The Insurance Fraud Bureau of Massachusetts (IFB) is the primary organization in the state to combat fraud in the workers' compensation system. The IFB is an insurance industry supported agency authorized by the Commonwealth to detect, prevent and refer for criminal prosecution suspected fraudulent insurance transactions involving all lines of insurance. It was created originally on behalf of automobile insurers in 1990 (G.L. ch. 338) and further amended in 1991 to include workers' compensation.<sup>66</sup> While its mission statement is to include all lines of insurance, the focus is on automobile and workers' compensation insurance and it is funded by those two industries.

The IFB's 1995 annual report documents the progress of the Bureau since its inception.

### **The Investigative Process**

**Referrals** - Cases of suspected fraud for all types of insurance are referred to the IFB either through an insurance carrier or through a toll-free hotline (1-800-32FRAUD). For fiscal year 1995, 2,062 cases were referred to the IFB. This is an increase of 1.1% from 1994 levels. As in other years, the majority of referrals come from insurance carriers (which in FY'95 represented 1,158 referrals). This is a decline of 5.4% from 1994 in which insurance carriers referred 1,224 cases.

**Evaluation** - Once a referral is received by the IFB, an investigative staff has 20 working days to evaluate a suspected fraud case. During this time period, status letters are sent to the insurance companies indicating whether the case was referred to another agency or accepted for further investigation. A backlog had existed in investigations at this initial stage. In FY'95, however, the IFB continued to reduce the backlog of referrals pending an evaluation by 13% (pending referrals from December 31, 1995 versus 1994). From the 1,158 referrals in FY'95, 621 were accepted for further investigation.

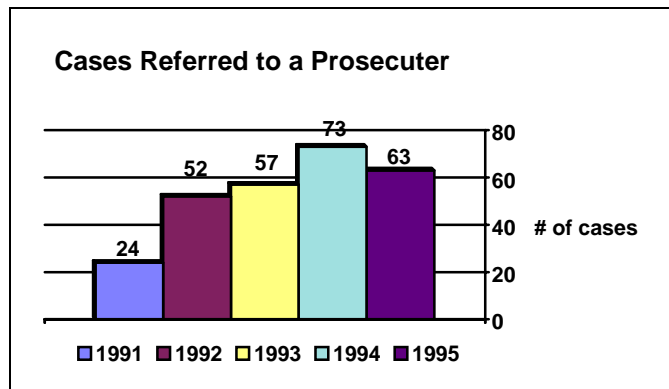
**Assigned Cases** - Once resources become available, a referral is assigned to an investigator and officially becomes a "case." In FY'95 a total of 354 new cases were assigned to investigators.

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<sup>66</sup> G.L. St. 1990, ch. 338 as amended by St. 1991, ch. 398, Section 9

## Massachusetts Workers' Compensation Advisory Council

**Prosecution** - After an investigator has completed their work on a case, it is either referred to a prosecutor (primarily the Massachusetts Attorney General's office), transferred to another agency, or closed due to lack of evidence. In FY'95, a total of 63 cases were referred to a prosecutor. This is a decrease of 14% over 1994 levels. This total includes a continued increase in the percentage of workers' compensation cases referred for prosecution.



The types of workers' compensation cases that are investigated vary greatly. Fraud can be perpetrated by the employee, employer, medical provider, attorney and in some cases the insurance agent. The majority of IFB investigations, however, involve employee misconduct. IFB personnel investigated the following types of workers' compensation fraud in 1995:

*Cases involving avoidance fraud for allegedly underestimating employee payroll; misrepresentation of job classifications; falsely reporting the number of employees on payroll; subjects who worked for other employers while collecting workers' compensation benefits; falsely reporting job-related injuries that actually occurred away from the job-site.*

While fraud continues to be a major concern for everyone involved in workers' compensation, the IFB and the Attorney General's office again made great strides in FY'95 to curtail its perpetration. It is difficult to establish criminal intent in fraud cases, but the pursuit of these cases and publicizing any convictions will establish a precedent warning those who consider defrauding the workers' compensation system that fraud will not be tolerated.



SECTION

7

Concerns & Recommendations

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*Employer Fines for Violation of Insurance Mandate..... 121*

*Year End Balances..... 122*

*Appropriate Number of Judges..... 122*

*Audit of Insurance Carrier Payments..... 123*

*Regional Offices..... 123*

*DIA Budget..... 124*



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## ***CONCERNS & RECOMMENDATIONS***

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G.L. Ch. 23 E, section 17, directs the Advisory Council to include in its annual report “an evaluation of the operations of the [DIA] along with recommendations for improving the workers’ compensation system.” The Advisory Council has concluded the following areas are in need of attention, and offers recommendations for improvements.

### **Employer Fines for Violation of Insurance Mandate**

During the fiscal year, Advisory Council members expressed concern about the adequacy of the current schedule of fines and penalties levied against employers that fail to carry adequate workers’ compensation insurance. Council members were concerned that the stop work order and fine provisions found at G.L. ch. 152, § 25C are not sufficiently punitive to deter employers from violating the mandate to obtain workers’ compensation insurance coverage.

The DIA is required to investigate employers for proof of workers’ compensation insurance. A stop work order will be issued to any employer failing to provide proof of insurance and a fine will be assessed for the period the employer lacks insurance. (See *Office of Investigations*). Fines resulting from a stop work order begin at \$100.00 per day, starting the day the stop work order is issued, and continue until coverage is obtained. An employer may appeal the stop work order (and continue to operate), but will be subject to an increased fine of \$250.00 per day if the department determines after a hearing that coverage was lacking. In addition, the DIA has the authority to prosecute a criminal complaint against an employer in continuous violation, punishment by a fine not to exceed \$1,500.00, or by imprisonment for up to one year, or both.

With the exception of a few, every state imposes fines on employers who fail to purchase workers’ compensation insurance. These fines range from severe (\$10,000 in several states) to almost negligible (10 cents per employee in South Carolina). The current flat fee schedule administered in Massachusetts may act as a deterrent to employers with relatively small insurance costs, but the same fine can be viewed as negligible to employers faced with high insurance costs.

The Advisory Council is pursuing further research on developing a penalty system for employers who violate the workers’ compensation insurance mandate. Once sufficient research has been concluded, a recommendation will be forthcoming.

It is important that a fair and effective penalty system be administered that will not damage the success of the current stop work order system. Any penalty of the same dollar amount for small risks as for large risks would not be fair and effective. In addition, the Advisory Council recommends that any new penalty system implemented should focus on informing employers of their rights and responsibilities of maintaining adequate workers’ compensation coverage to help insure a healthy relationship between the DIA and employers.



## **Year End Balances**

For the past three years, the DIA has ended the fiscal year with large balances in the Special Fund. These balances have been carried forward and have combined with existing balances to produce an expanding reserve of funds. The year end balance for fiscal year 1996 was \$13.7 million, or 66% of the \$20.7 million spent by the DIA.

Since fiscal year 1992, the balance has steadily increased from \$3 million (18% of the budget), to \$6 million (30% of the budget), to \$12 million (59% of the budget), to \$13.7 million (66% of the budget).

This trend in increasing balances is alarming since employers' assessments have increased steadily over this period. The rate in fiscal year 1992 was 3.0% of standard premium and for fiscal year 1997 was 4.226% of premium. This represents a 71 % increase. These assessments were charged to employers in an effort to collect funds which have gone unspent.

The workers' compensation statute requires the DIA to lower its assessment rates by an amount that will decrease its year end balances when they exceed a certain level. According to G.L. ch. 152, §65(4)(c), the assessment budget must be decreased by the amount of reserves that exceed 35% of the preceding year's expenditures. In reviewing the assessments charged since 1988, a reduction has only occurred twice in the Special Fund, in fiscal years 1996 and 1997. These reductions, however, have not been sufficient to lower the Special Fund balance to a reasonable level.

The formula applies equally to the private and public employer trust funds; but with different effects. Because the DIA can expend monies from the trust funds without appropriation from the legislature, reserves can be spent when needs arise. This occurred in fiscal year 1996 when the Private Trust Fund utilized more than half of its \$12.5 million reserve to pay pre-1985 second injury fund claims as ordered by the Supreme Judicial Court.

The Special Fund cannot operate in such a manner, however. With the exception of indirect and fringe benefit costs, all of the DIA's operating expenses must be appropriated by the legislature. Therefore, the operating expenses of the agency are always predetermined, and the need for a large reserve of funds unnecessary.

The requirements for determination of the Special Fund assessment contained in ch. 152, §65(4)(c) ought to be amended so that large balances can be avoided.

## **Appropriate Number of Judges**

Throughout the year the Advisory Council has reviewed the capacity of the Dispute Resolution System. As the data indicates, the time frame in which cases are adjudicated appear to have stabilized, emphasized by the Senior Judge delaying assignment of hearing cases. In addition, the number of disputed claims filed with the DIA have consistently decreased since the 1991 Reform Act.

The Advisory Council has expressed concern about the efficiency of maintaining the current staffing level of administrative judges. The Council recognizes the accomplishments achieved with the addition of six 3-year judge

## Massachusetts Workers' Compensation Advisory Council

positions<sup>67</sup> in 1991 to relieve the large backlog of cases. Since the backlog of cases has been eliminated and the caseload of the DIA has significantly declined, the department should re-evaluate the number of judges needed to operate the DIA efficiently and effectively.

The Advisory Council recommends that the Department determine the number of cases an administrative judge should be capable of handling. The capacity of the AJs should then be contrasted with the number of cases currently filed at the DIA. By comparing capacity to demand, the Department should be able to come up with an adequate number of judges which can operate the system effectively. The feasibility of filling expired 6-year judgeship positions with the current 1-year recall judges should be explored, thereby eliminating the 1-year positions.

### Audit of Insurance Carrier Payments

The DIA collects assessments from insurance carriers, self insurance groups, and self insured employers on a quarterly basis. These assessments are deposited into the accounts of the Special Fund, Private Trust Fund and the Public Trust Fund.

The Department relies on insurance carriers to accurately report and pay the amount of assessments charged and collected from employers. These payments have gone unaudited for several years. The DIA has had plans to audit assessment receipts but has delayed them for budgetary reasons. The Advisory Council urges the Department to allocate resources to conduct this audit so that payments can be justified and the Department can be assured that all out standing assessments are satisfied.

### Regional Offices

The DIA maintains four regional offices -- Lawrence, Worcester, Fall River and Springfield. These offices were created by the 1985 reform act to make adjudication of disputed claims accessible to the public. The agency staffs the regional offices with between 2 and 4 administrative judges, 3 stenographers, 2 to 3 vocational/rehab counselors, 2 to 3 conciliators and 3 to 4 administrators. These employees are all full time, and (with the exception of administrative judges who are scheduled to travel between offices) all work at these offices.

With the significant decline in cases over the past few years, the case loads handled by each office has significantly declined. The Council has discussed the necessity of maintaining the regional offices as full time offices.

The Council recommends that a study be conducted to determine the feasibility of scheduling conciliations, conferences and hearings during fewer days of the week, and assigning staff to report to other offices. Minimal staffing could be maintained at offices when conciliations, conferences and hearings are not scheduled.

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<sup>67</sup> These six 3-year positions became 1-year recall positions when their terms expired in February of 1995.

## Massachusetts Workers' Compensation Advisory Council

### DIA Budget

In Fiscal year 1996, the Advisory Council conducted an in-depth analysis of the Fiscal Year 1997 budget request. The Council convened a subcommittee which met on several occasions and issued a report to the entire Council. Based upon the report, the Advisory Council adopted the following concerns and recommendations regarding the DIA budget process.

First, the DIA budget has escalated steadily from \$13.3 million in fiscal year 1991 to \$17.8 million in fiscal year 1996. This represented a 34% increase. The fiscal year 1997 budget of \$19 million represents a 7% increase from fiscal year 1996 levels and a 43% increase since fiscal year 1991. Increases of this magnitude over the course of six years are troublesome when incoming claims have decreased markedly and the workers' compensation system is being utilized less.

Second, for the past five years the DIA Special Fund has brought forward substantial year end balances: \$13.7 million from fiscal year 1996 to 1997, over \$12 million from fiscal year 1995 into fiscal year 1996, over \$6 million from fiscal year 1994 into fiscal year 1995, and over \$3 million from fiscal year 1993 into fiscal year 1994. The latest balance represents 72% of the entire fiscal year 1997 appropriated budget. The DIA should develop an attainable budget for the Special Fund and the Private Trust Fund and work to reduce employer assessments.

Third, the budgetary planning and appropriations process is the vehicle for the agency to articulate its goals and map out specifically its planned projects for the next fiscal year. The value of this process, however, is diminished when numerous and frequent inter-subsidiary transfers occur throughout the fiscal year. This practice should be used on a limited basis. Transfers made to cover expenses that are not attributable to unforeseen, extenuating circumstances, or that have not been articulated in a prior approved spending plan should be justified by a cost-benefit analysis.

Finally, as the trending and tracking system is planned to be implemented in fiscal year 1997 and is expected to span the next several fiscal years, it seems appropriate that a budget be developed at the outset of the project and extending over the span of the project. As part of this cost analysis, justification should be made by citing specific outcomes that will benefit employees and employers in the form of improved services and/or lower costs.

Massachusetts Workers' Compensation Advisory Council

**List of Appendices**

**APPENDIX A:** ADVISORY COUNCIL MEMBERS IN FISCAL YEAR 1996

**APPENDIX B:** AGENDA OF ADVISORY COUNCIL MEETINGS, FISCAL YEAR 1996

**APPENDIX C:** DIA ORGANIZATIONAL CHART, FISCAL YEAR 1996

**APPENDIX D:** COLLECTIONS AND EXPENDITURE REPORT

**APPENDIX E:** ROSTER OF JUDGES AND APPOINTMENT DATES

**APPENDIX F:** INDUSTRIAL ACCIDENT NOMINATING PANEL

**APPENDIX G:** HEALTH CARE SERVICE BOARD

**APPENDIX H:** MEDICAL CONSULTANT CONSORTIUM

**APPENDIX I:** OFFICE OF SAFETY PROPOSALS RECOMMENDED FOR FUNDING

**APPENDIX J:** JOINT COMMITTEE ON COMMERCE AND LABOR

**APPENDIX K:** GOVERNOR'S EXECUTIVE COUNCIL

**APPENDIX L:** WORKERS' COMPENSATION ORGANIZATIONS



## APPENDIX A

### Advisory Council Members Fiscal Year 1996

#### Voting Members:

**Edward Sullivan, Jr. (Chair)**, SEIU-Local 254, 11 Beacon Street, Boston,  
MA 02108  
**Jeanne-Marie Boylan (Vice Chair)**, Boston Sand and Gravel Company 169 Portland  
Street, Boston, MA 02114  
**Robert Banks**, J.A.C. Iron Workers - Local 7, 35 Travis Street, Alston, MA 02108  
**William H. Carnes**, Teamsters Union, Local 25, 544 Main Street, Boston,  
MA 02129-1113  
**Edmund Corcoran**, Manager, Disability Program/WC, Raytheon, 141 Spring Street,  
Lexington, MA 02173  
**Antonio Frias**, S & F Concrete Company, 1266 Central Street, P.O. Box 427,  
Hudson, MA 01749  
**John Gould**, President, AIM (Donald Baldini), 222 Berkeley Street, P.O. Box 763,  
Boston, MA 02117-0763  
**Robert Jones**, Surety Insurance, Inc. 609 State Street, Springfield, MA 01109  
**Lawrence Morrisroe**, Carpenters' Union, 10 Dry Dock Avenue, Boston, MA 02210  
**John J. Perry**, Teamsters, Local 82, 3330 Dorchester Street, South Boston, MA 02127

#### Non-Voting Members:

**J. Bruce Cochrane**, Cochrane and Porter, 70 Hastings Street, Wellesley, MA 02181  
**Christine Morris**, Secretary of Labor, Room 2112, One Ashburton Place, Boston,  
MA 02108  
**Alan S. Pierce**, Alan S. Pierce & Associates, 27 Congress Street, Salem, MA 01970  
**David A. Tibbetts**, Secretary of Economic Affairs, Room 2101, One Ashburton Place,  
Boston, MA 02108  
**Amy Vercillo**, Rehab Re-employment, 28 Bradfield Avenue, Roslindale,  
MA 02131-1902

#### *Staff:*

*Matthew A. Chafe*  
*Andrew Burton*  
*Ann Helgran*

## Terms of Advisory Council Members

### Voting Members

### Term Exp. Date

Edward Sullivan, Jr.	(labor)	6/25/01
Antonio Frias, Sr.	(business)	6/25/01
Robert Banks	(labor)	6/25/00
Edmund Corcoran	(self insurer)(chair-expires '98)	6/25/99
Lawrence Morrisroe	(labor)	6/25/99
Robert Lee Jones	(small business)	6/25/98
John J. Perry	(labor)	6/25/98
Jeanne-Marie Boylan	(business)	6/25/97
William Carnes	(labor)	6/25/97
John Gould	(business)	6/25/95

### Non-Voting Members

Amy Vercillo	(rehab)	6/25/95
J. Bruce Cochrane	(insurance)	6/25/97
Alan S. Pierce	(bar)	6/25/98
Christine Morris		
Executive Office of Labor		Ex-Officio
Gloria C. Larson		
Executive Office of Economic Affairs		Ex-Officio

## APPENDIX B

### AGENDA

Fiscal Year 1996

#### **July 19, 1995**

DIA Update - Senior Judge Jennings - David Smith

DIA Assessments

DIA Budget

Stop Work Order Procedures

Action Items

Competitive Rating Vendor Selection

J. H. Albert International Insurance Advisors, Inc.

Francis J. Licata, CPCU

Minutes May 31, 1995

Executive Director Update

#### **August 23, 1995**

DIA Update - Senior Judge Jennings - David Smith

State Audit of DIA

Judge's Decisions Outstanding for Six Months

Neff v. Commissioner of the Department of Industrial Accidents

Impartial Medical Exam Fees

Executive Director Update

Legislation

Competitive Rating Study

#### **September 13, 1995**

DIA Update - David Smith - Senior Judge Jennings

Neff v. Commissioner of the Department of Industrial

Accidents--Impartial Medical Exam Fees

Utilization Review RFP

Proposed Utilization Review Regulations

Trending & Tracking RFP

Subcommittee for DIA Budget

Action Items

Minutes July 19, 1995

Minutes August 23, 1995

Executive Director Update

DRAFT Competitive Rating Study



**October 11, 1995**

DIA Update - Senior Judge Jennings - David Smith  
J. H. Albert - Frank Licata  
DIA Budget Subcommittee  
Annual Report - Dispute Resolution  
Action Items  
Competitive Rating Report  
Minutes - September 13, 1995  
Executive Director Update  
Commerce & Labor Hearing

**November 8, 1995**

DIA Update - Senior Judge Jennings - David Smith  
Conciliation Unit - Geoffrey May  
Commissioner Campbell - Donna Ward - Rena Hannaford  
Action Items  
Minutes - October 11, 1995  
Executive Director Update

**December 13, 1995**

DIA Update - Senior Judge Jennings - David Smith  
Executive Director Update  
Annual Report  
Action Items  
Judges Nominations  
Annual Report  
Minutes - November 9, 1995

**January 10, 1996**

DIA Update - Senior Judge Jennings - David Smith  
Administrative Law Judge William McCarthy  
Action Items  
Minutes - December 13, 1995  
DIA Budget Subcommittee Update  
Executive Director Update

**February 14, 1996**

DIA Update - Senior Judge Jennings - David Smith  
Health Care Services Board - Henry DiCarlo B. - Jonathan Schaffer M.D.  
DIA Budget/Reorganization Plan  
Action Items  
Minutes - January 10, 1996  
Executive Director Update

**March 13, 1996**

DIA Update - Senior Judge Jennings  
DIA Fiscal Year 1997 Budget  
Competitive Rating Legislation  
DIA Impartial Exam Program for Ingents  
Action Items  
Minutes - February 14, 1996  
Executive Director Update

**April 10, 1996**

DIA Update - Senior Judge Jennings - Tom Griffin - Stephen Linsky  
Rate Filing  
J. H. Albert Report on DIA Assessments  
Action Items  
Minutes - March 13, 1996  
Executive Director Update

**May 8, 1996**

Commissioner of Insurance Linda Ruthardt  
DIA Update - Senior Judge Jennings - Tom Griffin  
Action Items  
Minutes - April 10, 1996  
Judicial Appointments  
Executive Director Update

**June 12, 1996**

DIA Update  
Advisory Council Funding  
Workers' Compensation Legislation  
Commissioner Campbell  
Action Items  
Minutes - May 8, 1996

## **APPENDIX C**

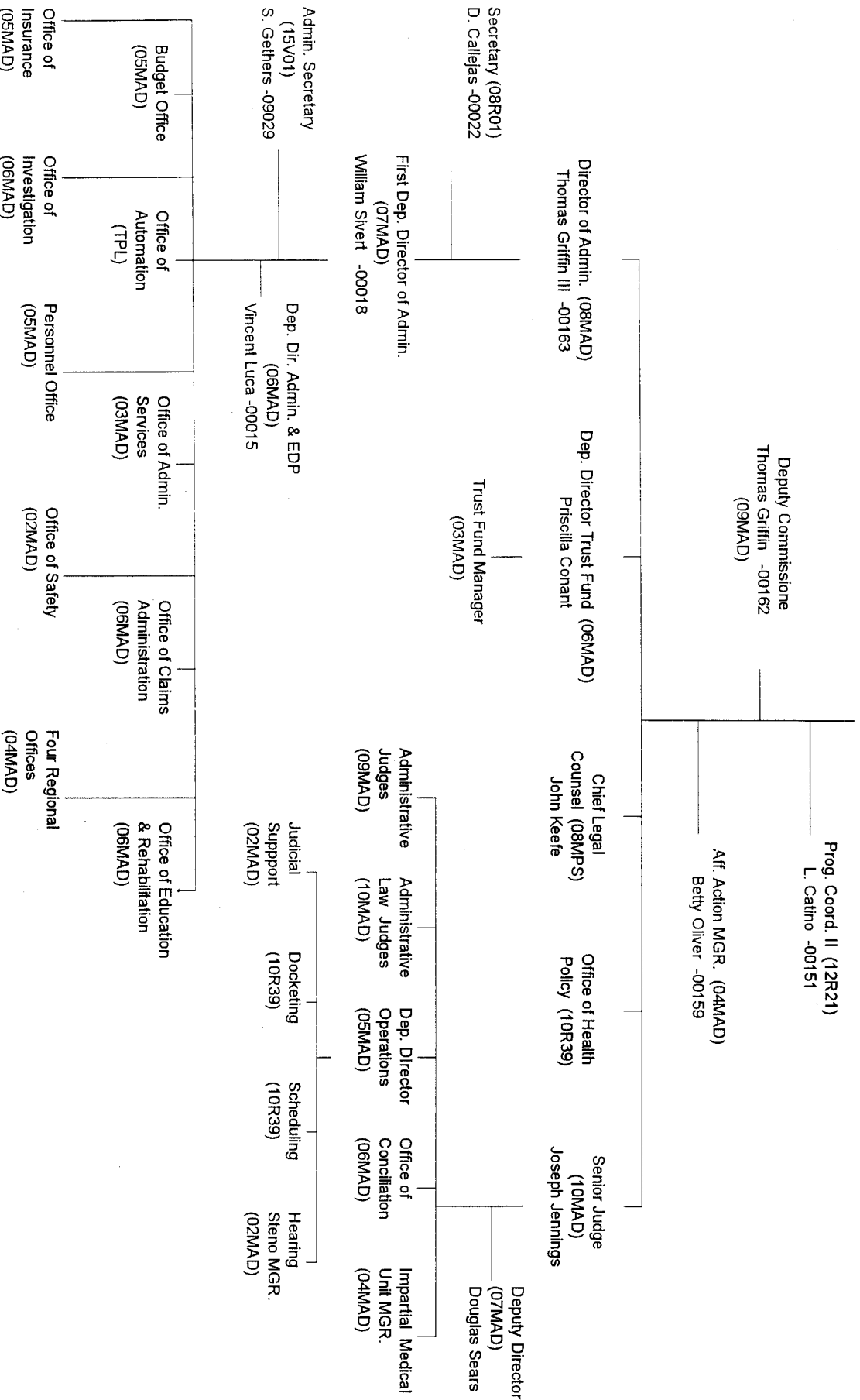
**FISCAL YEAR 1996**

### **DEPARTMENT OF INDUSTRIAL ACCIDENTS ORGANIZATIONAL CHART**

Monday, May 13, 1996

COMMISSIONER

James J. Campbell -00003  
(10MAD)



Positions Filled 8

Vacancies 1

Total 9

# OFFICE OF ADMINISTRATION AND EDP

1st Dep. Director of  
Admin. (07MAD)  
William Sivert -00018

Dep. Director Admin.  
& EDP (06MAD)  
Vincent Luca -00015

Budget Director  
(05MAD)  
Ed Cure -X0021

1. Accountant V  
(14R01)  
J. Endres -00149

1. Accountant IV  
(12R01)  
D. Arnold -09063

1. Business MGT.  
Specialist (12R01)  
D. Lentini -00142

2. Accountant III's  
(10R01)  
B. Kelly -00148  
D. Cavanaugh -00130

5. Accountant II's  
(08R01)  
C. Marcial -00108  
J. Poteau -00146  
R. Ponnudurai -00147  
C. Emertho -00002  
S. Whittle -09055

1. Admin. Asst. I  
(07R02)  
J. Casal -00188

1. Admin. Secretary I  
(15V01)  
A. Campbell -00157

Contract Specialist  
(06R02)  
E. Granberry 00183  
J. Haynes -00131

Automation Manager  
(16R01) TPL  
Joseph Constantine -00207

## APPLICATIONS/OPERATIONS      PROGRAMMING/NETWORKING

3. EDP Analyst III's  
(TPL)  
C. Collins -00206

EDP Systems Supervisor  
(17V06)  
C. Ryan -09007

Asst MGR Computer  
Operations (11R22)  
D. Moran -00173

Electronic Computer  
Operator (17V06)  
F. Nazaire -00174

EDP Programmer V  
(TPL)  
B. Leary -00125

EDP Programmer IV  
(TPL)  
\* -00204

2. EDP Analyst III  
(TPL)  
H. Kupets I -00197  
K. Healy -00126

EDP Programmer IV  
(TPL)  
T. Barrett -00205

Administrative  
Services Manager  
(03MAD)  
Jean Phalan -09013

3. Clerk V's  
(15V05)  
H. Lilley -00290  
S. Mohan -00114  
R. Fuytes -00064

2. Clerk III's/Principal  
Clerk (11V01)  
J. Cashman -00111  
J. McCormack 00123

## PUBLIC INFORMATION

1. Info. Officer III  
(11R01)  
E. Butts -00001

3 Info. Officer I's  
L. Gilgan -00115  
T. Rashid -00117  
J. Downey -00118

1. Steno II/Senior Clerk  
(10V12)  
K. McNeil -00285

Positions Filled	Vacancies	Total
35	1	36

# OFFICE OF CLAIMS ADMINISTRATION

Director (06MAD)  
James Hayes -00017  
(Acting)

Admin. Assistant II (09R01)  
P. Donoghue - 00153

Paralegal (10R39)  
P. Downey -00124

## PROCESSING UNIT

Processing Manager  
(03MAD)  
Janine Senatore -09018

1. Admin. Assistant I (07R02)  
- 00132

1. Head Clerk/Clerk IV (13V02)  
V. Doctor -00191

## RECORD ROOM

1. Admin. Asst. II  
(09R01)  
A. Arroyo -00027

2 EDP III's (12V04)  
C. Lugo -00113  
D. Pesantes -00236

8 Clerk III's/Principal Clerk  
(11V01)

A. Ivers -00180  
L. Payton -00182  
F. Wallace -00269  
J. Carota -00181  
M. Ivey -00178  
H. McGlothlin -00143  
M. Albert -00138  
R. Chen -09040

1 Typist II/Clerk II (09V07)  
G. Webb -00141

## PROCESSING UNIT

1. Admin. Assistant II  
(09R01)  
E. Lydston -00154

1. EDP III (12V04)  
E. Salomone -00110

4 Clerk III's/Principal Clerk  
(11V01)

K. Kilburn -00179  
I. Fuentes -00195  
J. Durette -00116  
S. Dillon -00267

## DATA ENTRY

1. Admin. Asst. II  
(09R01)  
B. Peake -00150

9 EDP III's (12V04)  
D. Drinkwater -00120  
I. McGuire -00079  
H. Reddick -00198  
D. Keefe -09048  
E. Campbell -00135  
R. Cookson -09052  
M. Catalano -00074  
S. Steed -00199  
I. Rivera -00192

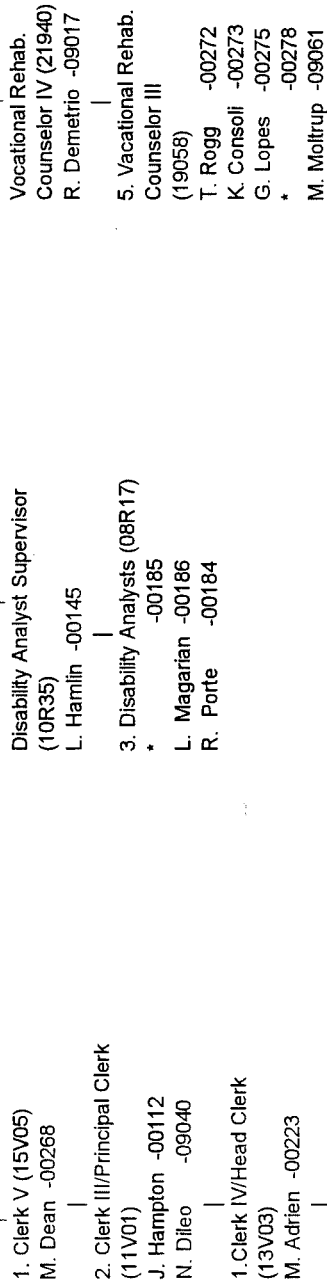
4. EDP II's (10V04)  
D. Waldman -09050  
D. O'Leary -00196  
A. Luo -09053  
J. McLellan -00193

Positions Filled	Vacancies	Total
37	1	38

OFFICE OF EDUCATION AND REHABILITATION

Director (06MAD)  
Stephen Linsky -00161

Administrative Assistant II  
(09R01)  
B. Mann -00152



Positions Filled 15      Vacancies 2      Total 17

OFFICE OF INSURANCE

Director (05MAD)  
Richard Lundregan -00281

Administrative Assistant I  
(07R02)  
N. Fisher -00280

Self Insurance Administrator  
(03MAD)  
Frank Janas -00327

1. Research Analyst II  
(10R20)  
M. Owen -00245

1. Clerk V (15V05)  
T. Finneran -00194

1. Clerk III/Principal Clerk  
(11V01)  
A. Powers -09044

1. Steno II/St. Clerk  
(10V12)  
S. Fisher -00133

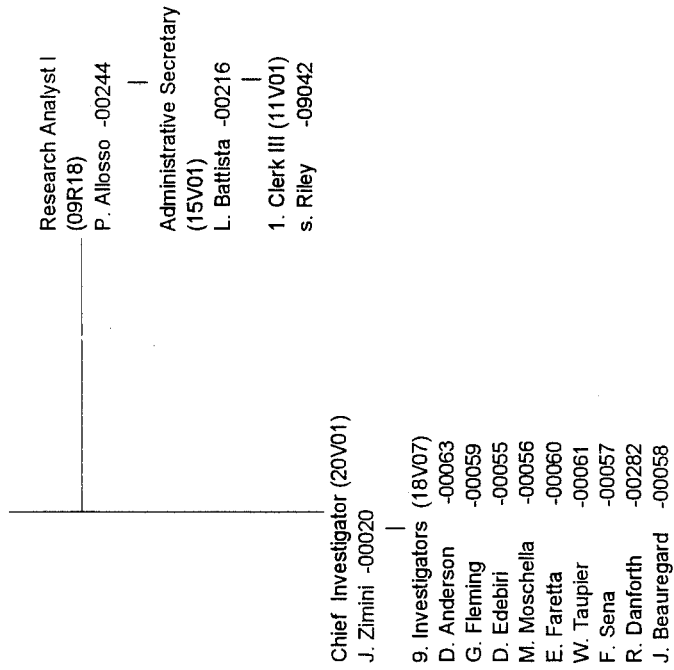
1. EDP II (10V04)  
B. Cheatum -09062

Positions Filled 8      Vacancies 0      Total 8



OFFICE OF INVESTIGATIONS

Investigation Manager (06MAD)  
James O'Dea -09016



Positions Filled 14      Vacancies 0      Total 14

OFFICE OF PERSONNEL

Director (05MAD)  
Alice Crotty -00016

1. Personnel Officer I  
(11R31))  
M. Pesantes -00155

1. Program Coordinator I  
(10R38)  
M. Guerlin -09037

1. Clerk IV/Head Clerk  
(13V02)  
P. Beard -09038

Positions Filled	4	Vacancies	0	Total	4
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OFFICE OF SAFETY

Director (02MPM)  
James Hayes -00237



1. Industrial Safety &  
Health Inspector III  
(23Y10)

T. Carroll -00235



1. Clerk III/Principal Clerk  
(11V01)  
N. Reyes -X0016

Positions Filled 3      Vacancies 0      Total 3

# DIA REGIONAL

## FALL RIVER OFFICE

Manager (04MPM)  
Henry Masley -00240

1. Administrative Assistant I (07R02)  
M. Quintal -00226

4. Administrative Judges (09MAD)  
J. McLaughlin -00166  
J. Cox -00164  
W. Long -09025  
J. Bradford -00262

1. Review Examiner II (14R10)  
S. Sharek -00202

2. Review Examiner I (12R14)  
Y. Viera-Cardoza -00250  
J. Felz -00252

2. Voc. Rehab. Counselor III (19058)  
A. Gonsales -00276  
U. Maranhas -00279

1. Disability Analyst (08R17)  
P. Dowd -09057

4. Administrative Sec. (15V01)  
L. Baptiste -00025  
F. Moniz -00232  
D. Tripp -00218  
D. Briggs -00221

3. Hearing Stenographers (17V09)  
B. Gomes -00046

J. Doherty -09002  
T. Parker -00040

1. Clerk III/Principal Clerk (11V01)  
M. Pacheco -09041

1. EDP II (10V04)  
J. Jones -00202

## LAWRENCE OFFICE

Manager (04MPM)  
Maritza Nieves -00238

1. Administrative Assistant I (07R02)  
I. Gonzalez -00228

2. Administrative Judges (09MAD)  
R. Heffernan -X0004  
J. LaMothe -X0001

1. Review Examiner II (14R10)  
P. Whelton -00254

1. Review Examiner I (12R14)  
G. Ramirez -00246

1. Voc. Rehab. Counselor III (19058)  
I. Gerrish -00271

1. Disability Analyst (08R17)  
L. Connolly -00187

2. Administrative Sec. (15V01)  
M. Leard -00311  
B. Ciancetta -00308

2. Hearing Stenographers (17V09)  
G. Signorelli -00031  
T. O'Keefe -00315

1. EDP II (10V04)  
J. Chapman -00200

## SPRINGFIELD OFFICE

Manager (04MPM)  
Marc Joyce -00239

1. Administrative Assistant I (07R02)  
M. Sullivan -00029

3. Administrative Judges (09MAD)  
J. St. Amant -00007  
B. Murphy -09024  
D. Chivers -00168

2. Review Examiner II's (14R10)  
N. Hicks -00257

T. Sullivan -00261

1. Voc. Rehab. Counselor IV(21940)  
E. Bajger -09060

1. Voc. Rehab. Counselor III (19058)  
R. Fitzgerald -00274

1. Disability Analyst (08R17)  
G. Urbina -09059

3. Administrative Sec. (15V01)  
G. Gosselin -00028  
M. Woodfine -00224  
J. Holve -09028

3. Hearing Stenographers (17V05)  
N. Whitley -00047  
M. Allen -00050  
L. King -00037 (part-time)

1. Clerk III/Principal Clerk (11V01)  
C. Callahan -X0015

1. EDP II (10V04)  
L. Beaudry -00080

## WORCESTER OFFICE

Manager (04MPM)  
Leonard Gabrilla -00241

1. Administrative Assistant I (07R02)  
C. Rafferty -00225

4. Administrative Judges (09MAD)  
T. Merlo -00012  
F. Gromelski -00014  
J. Constantino -00006  
S. Sumner -00298

3. Review Examiner I (12R14)  
D. Candia -00249  
J. Brunelle -00251

W. Trybulski -00248

2. Voc. Rehab. Counselor III (19058)  
K. Fleming -00270

D. Thibault -00277

1. Disability Analyst (08R17)  
L. Chenevert -09058

4. Administrative Sec. (15V01)  
P. O'Mella -X0009  
D. Miller -X0013  
D. Layton -09031  
P. Vincequere -09035

3. Hearing Stenographers (17V09)  
B. Pike -00043  
T. Valls -00034  
C. Nalesnik -00035

1. Clerk III/Principal Clerk (11V01)  
J. Powers -09043

1. EDP II (10V04)  
T. Sweeney -00201

Positions Filled 72

Vacancies 0

Total 72

TRUST FUND

Deputy Director (06MAD)  
Priscilla Conant -09017  
(Acting)  
|  
Manager (03MAD)  
M. Gagliardi -09000

Administrative Assistant II  
(09R01)  
M. J. Henderson -09005

SUPPORT STAFF

1. Clerk V (15V05)  
K. Cunningham -09012  
|  
2. Clerk IV/Head Clerk  
(13V02)  
B. Tisel -09009  
J. Lentini -09001

2. Accountant II's  
(08R01)  
W. Burns -09006  
N. Tsapatsaris -09007

5. Counsel II's (17R01)  
P. Benitez-Perales -09010  
P. Ingrahm -09011  
D. Andronico -09020  
T. Finn -00022  
M. Kelly -00023  
|  
1. Paralegal (10R39)  
A. Fortes -09021

4. Investigators  
(18V07)  
T. Vincequere -09015  
\* -09013  
J. Primeau -09014  
M. Comerford -09016

2. Registered Nurse III  
(03A16)  
D. DiBella -09003  
\* -09004  
|  
3. Claims Adjusters  
(08R03)  
K. Magnotta -09002  
T. Allison -09018  
R. Andronico -09019

Positions Filled 20      Vacancies 3      Total 23

**LEGAL COUNSEL**

Chief Legal Counsel  
(08MPS)  
John Keefe -00021

4. Counsel III (17R01)  
J. Labadini -00328  
C. Callotte -09019  
D. Theodore -00087  
T. Sternberg -09015

1. Paralegal (10R39)  
E Kelly -00086

1. Adm. Secretary (15V01)  
A. Frederick -09051

Positions Filled 7      Vacancies 0      Total 7

OFFICE OF HEALTH POLICY

Commissioner  
(10R39)  
James J. Campbell -00003

|

|

1. Paralegal (10R39)  
D. Ward 09045

|

1. Research Analyst II  
(10R20)  
H. Kevorkian 00189

|

1. Program Coordinator I  
(10R38)  
\*

|

1. Admin. Secretary I  
(15V01)  
S. Shea 00212

# DIVISION OF DISPUTE RESOLUTION

Senior Judge  
(10MAD)  
Joseph Jennings III -00295

Deputy Director  
(07MPS)  
Douglas Sears -00122

1. Administrative Secretary II  
J. Ferrante -00316  
1. Administrative Secretary I  
V. Okwuosa -00158

## INDUSTRIAL ACCIDENT BOARD

19 Administrative Judges  
(09MAD)

1. E. Johnson -00008
2. J. Thompson -00013
3. M. Carroll -00005
4. J. McKinnon -00004
5. J. McGuinness -00011
6. J. McKenna -00010
7. J. Harris -00167
8. F. Taub -X0006
9. D. Solomon -09026
10. F. Levine -00299
11. \* -00302
12. \* -00301
13. K. Capeless -09022
14. D. O'Shea -00009
15. D. McDonald -09023
16. D. Bean -00165
17. \* -X0002
18. R. Tirrell -X0003
19. J. D'Esti -X0005

## REVIEWING BOARD

6 Administrative Law  
Judges (10MAD)

1. W. McCarthy -00169
2. C. Fischel -00171
3. S. Wilson -00172
4. E. Kirby -00170
5. S. Smith -00296
6. S. Maze-Rothstein -00297
- 
2. Counsel II's (17R01)  
J. Biederman -09014  
C. MacLachlan -00283

Deputy Director for  
Operations (05MAD)  
Noreen Day

Conciliation Manager  
(04MPM)  
Geoffrey May

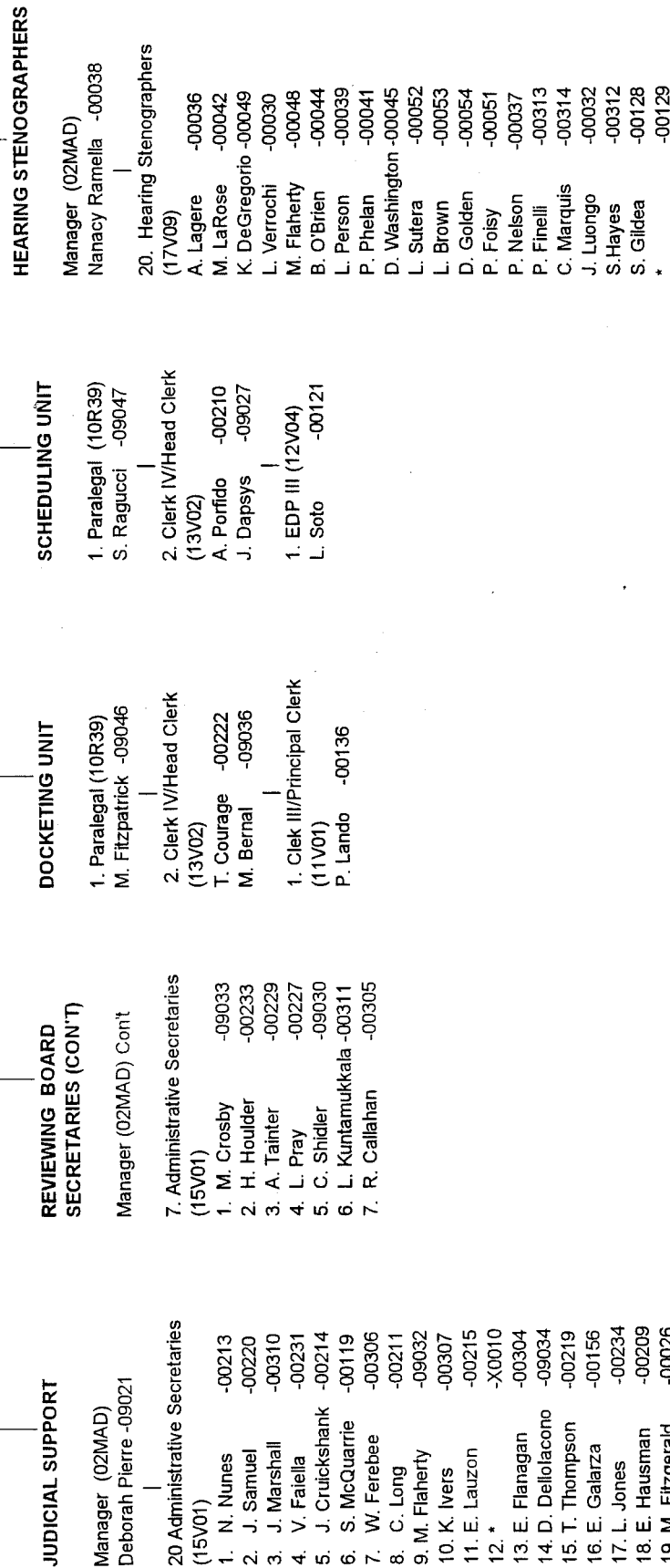
Impartial Medical Unit  
Manager (04MAD)

Positions Filled 28      Vacancies 3      Total 31



# DIVISION OF DISPUTE RESOLUTION CONT

Deputy Director for  
Operations (05MAD)  
Noreen Day -09020



Positions Filled 57 Vacancies 3 Total 60

# DIVISION OF DISPUTE RESOLUTION CONT

## SENIOR JUDGE

### CONCILIATION UNIT

Conciliation Manager (06MPM)  
Geoffrey May -00242

### IMPARTIAL MEDICAL UNIT

Impartial Unit Manager (04MAD)  
Kathleen White -00326

### SUPPORT STAFF

1. Administrative Assistant I  
(07R02)  
S. Perez -00203  
1. Clerk IV/Head Clerk (13V02)  
M. Bell -09039  
1. Steno II/Senior Clerk (10V12)  
K. Wallace -00134

### CONCILIATORS

8. Review Examiner II  
(14R10)  
S. Conte -00256  
K. Walsh -00258  
N. Mann -00259  
J. Runkal -00260  
C. Rubbico -00255  
L. Delaney -00263  
C. Casella -00265  
J. Phleps -00264  
2. Review Examiner I  
(12R14)  
S. DeMarco -00253  
C. Burns -00247

### 1. Accountant II (08R01)

E. Ruiz -00317

### 1. Accountant I (07R02)

C. Byrnoe -00330

### 1. Administrative Assistant I (07R02)

P. DeBonis -00321

8. Clerk V's (15V05)  
D. French -00318  
E. Smith -00319  
D. Weaver -00320  
V. Coleman -00322  
M. Sheppard -00323  
L. Fitzpatrick -00324  
V. Blanchard -00325  
J. Keogh -00190

Positions Filled 26

Vacancies 0

Total 26

ADVISORY COUNSEL

Executive Director (04MAD)  
Matthew Chafe -00160  
|  
|  
1. Research Analyst II (10R20)  
A. Burton -09064  
|  
1. Paralegal (10R39)  
A. Helgran -00243

Positions Filled 3      Vacancies 0      Total 3

(DIA) POSITIONS FILLED 319      VACANCIES 13      TOTAL 332

(T F) POSITIONS FILLED 20      VACANCIES 03      TOTAL 23

## APPENDIX D

### COLLECTIONS AND EXPENDITURES REPORT

<b><i>SPECIAL FUND</i></b>	<b><i>FY'96</i></b>	<b><i>FY'95</i></b>	<b><i>FY'94</i></b>	<b><i>FY'93</i></b>	<b><i>FY'92</i></b>
<b><u>COLLECTIONS</u></b>					
INTEREST	998,971	585,191	365,817	217,797	323,960
ASSESSMENT	16,915,362	21,084,055	17,537,534	13,743,804	11,023,312
LESS RET. CHECKS	26,640	44	0	88,274	0
ADJUSTMENTS	0	3,241			
LESS REFUNDS	67,265	10,354	98,514	9,022	0
<b>SUB-TOTAL</b>	<b>16,821,457</b>	<b>21,070,416</b>	<b>17,439,020</b>	<b>13,646,508</b>	<b>11,023,312</b>
FILING FEES	3,970,484	3,281,447	4,744,199	3,483,110	2,511,501
COLLECTION FEE	16,205	10,354			
LESS RET. CHECKS	80,608	2,566	4,447	4,743	0
LESS REFUNDS	4,579	3,014	5,192	2,131	0
<b>SUB-TOTAL</b>	<b>3,869,092</b>	<b>3,805,513</b>	<b>4,734,560</b>	<b>3,476,236</b>	<b>2,511,501</b>
1ST REPORT FINES	377,109	665,226	402,442	85,707	144,200
LESS COLLECTION FEE	12,072	9,218			
LESS RET. CHECKS	700	1,200	300	0	0
LESS REFUNDS	500	1,500	2,200	0	0
<b>SUB-TOTAL</b>	<b>363,837</b>	<b>653,308</b>	<b>399,942</b>	<b>85,707</b>	<b>144,200</b>
STOP WORK ORDERS	292,175				
LESS BAD CHECKS	3,600				
COLLECTION FEE	2,460				
<b>SUB-TOTAL</b>	<b>286,115</b>				
LATE ASSESS. FINES	97,865	25,701	33,822	21,970	0
STOP WORK ORDERS	see above	370,271	166,600	see Private Fund	see Private Fund
SEC. 7 & 14 FINES	5,118	10,400	0	6,000	4,000
MISCELLANEOUS	22,899	12,876	7,867	880	350
<b>SUB-TOTAL</b>	<b>125,882</b>	<b>419,248</b>	<b>208,289</b>	<b>28,850</b>	<b>4,350</b>
<b>TOTAL COLLECTIONS</b>	<b>22,465,354</b>	<b>26,533,676</b>	<b>23,147,628</b>	<b>17,455,098</b>	<b>14,007,323</b>
BALANCE BRGT FWD	12,044,652	6,015,882	3,035,890	2,621,052	3,279,692
<b>TOTAL</b>	<b>34,510,006</b>	<b>32,549,558</b>	<b>26,183,518</b>	<b>20,076,150</b>	<b>17,287,015</b>
LESS EXPENDITURES	20,785,606	20,504,906	20,167,636	17,040,260	14,665,963
<b>BALANCE</b>	<b>13,724,400</b>	<b>12,044,652</b>	<b>6,015,882</b>	<b>3,035,890</b>	<b>2,621,052</b>
<b><u>EXPENDITURES</u></b>					
SALARIES	11,966,331	11,432,627	10,984,604	9,797,077	8,616,722
FRINGE BENEFITS	3,703,858	3,613,307	3,513,989	2,666,838	2,331,860
INDIRECT COSTS	498,563	501,847	578,985	613,250	613,250
NON-PERSONNEL COSTS	4,613,724	4,954,835	5,093,478	3,957,815	3,104,131
PRIOR YEAR DEFICIENCY	3,130				
<b>SUB-TOTAL</b>	<b>20,785,606</b>	<b>20,502,616</b>	<b>20,171,056</b>	<b>17,034,980</b>	<b>14,665,963</b>
misc.		2,290	-3,420	5,280	
<b>TOTAL EXPENDITURES</b>	<b>20,785,606</b>	<b>20,504,906</b>	<b>20,167,636</b>	<b>17,040,260</b>	<b>14,665,963</b>

### COLLECTIONS AND EXPENDITURES REPORT

<b><i>PUBLIC TRUST</i></b>	<b><i>FY'96</i></b>	<b><i>FY'95</i></b>	<b><i>FY'94</i></b>	<b><i>FY'93</i></b>	<b><i>FY'92</i></b>
<b><u>COLLECTIONS</u></b>					
INTEREST	0	0	53,222	98,627	93,549
SECTION 30H	0	4,192	0	0	1,875
ASSESSMENTS	2,064,334	1,419,799	819,613	1,632,650	4,896,637
REFUNDS	46,712	9,024	93	205	0
<b>TOTAL ASSESSMENTS</b>	<b>2,017,622</b>	<b>1,410,775</b>	<b>819,520</b>	<b>1,632,445</b>	<b>4,896,637</b>
TOTAL COLLECTIONS	2,017,622	1,414,967	872,742	1,731,072	4,992,061
BALANCE BRGT FWD	167,910	285,328	2,291,964	3,056,655	1,495,574
<b>TOTAL</b>	<b>2,185,532</b>	<b>1,700,295</b>	<b>3,164,706</b>	<b>4,787,727</b>	<b>6,487,635</b>
LESS EXPENDITURES	1,982,790	1,532,385	2,879,379	2,495,761	3,430,980
<b>BALANCE</b>	<b>202,742</b>	<b>167,910</b>	<b>285,327</b>	<b>2,291,966</b>	<b>3,056,655</b>
<b><u>EXPENDITURES</u></b>					
RR COLAS	1,779,911	1,514,040	2,621,503	2,464,967	3,413,611
OEVR sec 30H	0	0	0	0	741
RR SEC. 37	142,513	18,345	254,676	30,794	16,628
RR LATENCY CLAIMS	0	0	3,200	0	0
RR REHAB	366				
SHELBY CLAIMS	60,000				
MM IME SEC 37	0				
<b>TOTAL EXPENDITURES</b>	<b>1,982,790</b>	<b>1,532,385</b>	<b>2,879,379</b>	<b>2,495,761</b>	<b>3,430,980</b>

<b><i>PRIVATE TRUST</i></b>	<b><i>FY'96</i></b>	<b><i>FY'95</i></b>	<b><i>FY'94</i></b>	<b><i>FY'93</i></b>	<b><i>FY'92</i></b>
<b><u>COLLECTIONS</u></b>					
INTEREST	1,390,938	620,028	354,842	187,259	658,729
ASSESSMENTS	33,891,287	30,147,213	28,974,039	25,187,627	26,012,517
LESS RET. CHECKS	6,956	2,129	0	143,490	0
ADJUSTMENTS	0	92,088			
LESS REFUNDS	151,983	5,285	160,718	23,843	0
<b>SUB-TOTAL</b>	<b>33,732,348</b>	<b>30,047,711</b>	<b>28,813,321</b>	<b>25,020,294</b>	<b>26,012,517</b>
REIMBURSEMENTS	1,346,814	1,129,709	1,029,263	572,170	452,905
PLUS ADJUSTMENTS	0	95,899			
LESS COLLECTION FEE	74,462	23,739			
LESS ADJUST. COLL. FEE		3,810			
RET. CHECK	5,588	4,772	200	1,818	0
REFUNDS	1,548				
<b>SUB-TOTAL</b>	<b>1,265,216</b>	<b>1,193,287</b>	<b>1,029,063</b>	<b>570,352</b>	<b>452,905</b>
STOP WORK ORDER *		0	0	31,150	28,600
LESS RET. CHECKS		0	0	0	0
<b>SUB-TOTAL</b>		<b>Special Fund*</b>	<b>Special Fund*</b>	<b>*31,150</b>	<b>*28,600</b>
MISC.	18,989				
SEC. 30 H	8,000	54,215	41,842	16,833	9,702
<b>TOTAL COLLECTIONS</b>	<b>36,415,491</b>	<b>31,915,241</b>	<b>30,239,068</b>	<b>25,825,888</b>	<b>27,162,453</b>
BALANCE BRGT FWD	12,588,262	12,363,485	7,588,112	3,652,610	4,333,975
<b>TOTAL</b>	<b>49,003,753</b>	<b>44,278,726</b>	<b>37,827,180</b>	<b>29,478,498</b>	<b>31,496,428</b>
LESS EXPENDITURES	42,436,743	31,690,464	25,463,695	21,890,386	27,843,817
<b>BALANCE</b>	<b>6,567,010</b>	<b>12,588,262</b>	<b>12,363,485</b>	<b>7,588,112</b>	<b>3,652,611</b>

### COLLECTIONS AND EXPENDITURES REPORT

<b>EXPENDITURES</b>	<b>FY'96</b>	<b>FY'95</b>	<b>FY'94</b>	<b>FY'93</b>	<b>FY'92</b>
RR SEC. 34	1,445,378	2,646,319	2,591,989	2,783,111	2,959,303
RR SEC. 35	828,384	750,064	795,556	714,888	527,439
RR LUMP SUM	2,112,194	1,575,454	1,373,464	1,146,409	1,255,442
RR SEC. 36 *	342,590	182,747	484,297	490,492	253,110
RR SEC. 31	93,383	69,115	109,928	106,862	113,973
RR SEC. 34, PERM. TOTAL	32,234				
RR COLA ADJ	100,838	123,267	12,459	11,160	3,758
RR EE MEDICAL REIMB.	49,961	64,091	29,158	18,832	14,513
RR EE TRAVEL	980	2,682	5,627	8,618	15,296
RR EE MISC. EXPENSE	669	32,638			
RR EE BOOKS & SUPPLIES	210	176	0	122	915
RR FUNERAL EXPENSES	4,000	480	8,000	4,000	4,000
RR VETERANS SERVICES	0	1,522	4,690	1,711	0
RR LEGAL FEES	725,505	499,328	716,184	599,323	546,142
RR LEGAL EXPENSES	66,294	44,002	72,862	35,292	-----
RR MEDICAL EXPENSES	4,899	1,463,797	1,797,948	1,854,762	1,497,815
RR REHAB SERVICES	16,031	47,893	5,172	6,954	17,253
RR REHAB. SERV. TRAVEL	613	1,319	323	-----	-----
RR LABOR MARKET STUDY	26,142				
RR MEDICAL	1,479,997				
RR MEDICAL RECORDS	315				
RR WELFARE LIENS	342,996	0	209,069	61,741	64,370
<b>SUB-TOTAL RR (benefits for uninsured claimants)</b>	<b>7,673,613</b>	<b>7,504,894</b>	<b>8,216,726</b>	<b>7,844,277</b>	<b>7,273,329</b>
<b>KK VAN</b>	<b>20,995</b>				
<b>MM TUITION</b>	<b>6,403</b>	<b>940</b>	<b>2,828</b>	<b>22,490</b>	<b>18,368</b>
<b>TOTAL BENEFITS</b>	<b>7,701,011</b>	<b>7,505,834</b>	<b>8,219,554</b>	<b>7,866,767</b>	<b>7,291,697</b>
<b><u>INSURERS</u></b>					
RR COLAS	11,844,247	12,741,936	10,924,588	11,325,195	19,627,352
RR SHELBY CLAIMS	6,723,487				
RR LATENCY CLAIMS	702,996	749,166	4,768,138	246,407	0
RR LEGAL FEE SEC. 35	163,488	113,783			
RR LEGAL EXP. SEC. 35	1,770				
RR SEC. 37	13,260,236	8,487,924	699,185	1,896,753	575,652
<b>SUB-TOTAL INSURERS</b>	<b>32,696,224</b>	<b>22,092,809</b>	<b>16,391,911</b>	<b>13,468,355</b>	<b>20,203,004</b>
<b>TOTAL RR-LEGAL</b>	<b>40,397,235</b>	<b>29,598,643</b>	<b>24,611,465</b>	<b>21,335,122</b>	<b>27,494,701</b>
<b><u>OEVR</u></b>					
MM IME CORP.	280	450			
MM TUITION	0	2,500	9,440	20,596	44,023
RR SEC. 30H	363	6,018	1,530	13,795	18,700
RR TRAVEL - 30H	0	114			
RR EE TRAVEL	0	0	0	2,458	5,903
RR EE BOOKS & SUPPLIES	0	194	0	297	347
<b>SUB-TOTAL OEVR</b>	<b>643</b>	<b>9,276</b>	<b>10,970</b>	<b>37,146</b>	<b>68,973</b>
<b>TOTAL BENEFITS</b>	<b>40,397,878</b>	<b>29,607,919</b>	<b>24,622,435</b>	<b>21,372,268</b>	<b>27,563,674</b>

# COLLECTION AND EXPENDITURE REPORT

<b>EXP.-DEFENSE OF THE FUND</b>	<b>FY'96</b>	<b>FY'95</b>	<b>FY'94</b>	<b>FY'93</b>	<b>FY'92</b>
AA SALARIES	579,854	495,141	306,588	196,223	54,577
AA OVERTIME	15,598				
<b>SUB-TOTAL</b>	<b>595,452</b>				
DD FRINGE	180,849	151,436	100,412	61,810	15,968
DD UNIVERSAL HEALTH	650	624	155	112	0
DD MEDICARE	8,006	5,984	4,197	2,728	860
DD UNEMPLOYMENT	2,354				
<b>SUB-TOTAL</b>	<b>191,859</b>	<b>653,185</b>	<b>411,352</b>	<b>260,873</b>	<b>71,405</b>
BB TRAVEL	7,013	7,926	834		
BB TRAINING/TUITION	4,690	1,035	110		
<b>SUB-TOTAL</b>	<b>11,703</b>				
CC CONSULTANT	7,290				
EE MV RENTALS	800	69	542		
EE ADVERTISING	482	0	355		
EE SUPPLIES/BOOKS/BUS.CARDS	59,868	364,826	2,914		
EE PETTY CASH REIMB.	59	25			
EE IMPARTIAL APPEALS	19,580	19,125	10,575		
EE CENTRAL REPRO.	500	1,240			
EE OMIS CHARGEBACK	9,713	3,999			
EE CONF. INCIDENTALS	54				
EE CELLULAR PHONES	1,083	2,454			
<b>SUB-TOTAL</b>	<b>92,139</b>				
HH WILSON ASSOC.	0		5,000		
HH ACCUMED	0	1,416	28,977		
HH MELCHIN & CO.	9,049	16,235			
HH STENO IND.	0		0		
HH STENO CORP.	0	499	127		
HH CONSULTANT	957	3,329	18,444		
HH CONSULTANT	0	32,960	30,996		
HH CONSULTANT	0	54,375	46,875		
HH CONSULTANT	0	24,125	23,900		
HH CONSULTANT	0	49,500	37,175		
HH CONSULTANT	0	36,013			
HH CONSULTANT	0	98,799			
HH CONSULTANT	0	22,500			
HH CONSULTANT	0	15,000			
HH CONSULTANT	0	3,550			
HH CONSULTANT	53,168				
HH CONSULTANT	179,609				
HH CONSULTANT	51,885				
HH CONSULTANT	78,690				
HH CONSULTANT	46,010				
HH CONSULTANT	29,156				
HH CONSULTANT	49,588				

(CONTINUED...)

### COLLECTION AND EXPENDITURE REPORT

<b>EXP.-DEFENSE OF THE FUND (CONT.)</b>	<b>FY'96</b>	<b>FY'95</b>	<b>FY'94</b>	<b>FY'93</b>	<b>FY'92</b>
HH CONSULTANT	21,270				
HH CONSULTANT	30,400				
HH CONSULTANT	48,750				
<b>SUB-TOTAL</b>	<b>598,532</b>				
JJ ACE TEMP.	91,032	92,153	45,997		
JJ TEMP. EXPRESS	0		0		
JJ KIRK/MAYER	0	0	0		
JJ PROJECT TRIANGLE	0	7,728			
JJ INVESTIGATORS	235,219	140,475	710		
JJ SHERIFFS	22,177	1,307	1,602		
JJ SCHOOL ST. CAMERA	51	54			
JJ CATAPULT, INC.	0	2,640			
JJ IME'S CORP.	93,308				
JJ IME'S IND.	0				
JJ IME'S CORP. INT.	520				
JJ IME'S CORP. SEC. 37	13,250				
JJ AMERICAN MULTILINE	0				
JJ JEAN E. HOLLANT	400				
JJ KAREN O'NEIL, CT. RPTR	1,896				
<b>SUB-TOTAL</b>	<b>457,853</b>				
KK EQUIPMENT	16,060	221,438	19,270		
LL ACTION TRANS., INC	620				
LL MOBIL MEDIA	24				
<b>SUB-TOTAL</b>	<b>16,704</b>				
MM IME'S IND.		0	0		
IME'S CORP.		142,461	144,505		
IME'S CORP. INT.		1,208			
IME'S CORP. SEC. 37		42,748			
RR PENALTIES	10,600	2,800	1,000		
RR BEARAK REPORTS	54,809	15,348			
RR SECTION 50 INTEREST	1,924				
<b>SUB-TOTAL</b>	<b>67,333</b>	<b>1,429,360</b>	<b>429,908</b>	<b>257,244</b>	<b>208,738</b>
<b>TOTAL DEFENSE OF FUND</b>	<b>2,038,865</b>	<b>2,082,545</b>	<b>841,260</b>	<b>518,117</b>	<b>280,143</b>
<b>TOTAL EXPENDITURES</b>	<b>42,436,743</b>	<b>31,690,464</b>	<b>25,463,695</b>	<b>21,890,385</b>	<b>27,843,817</b>

\* Stop work order fines transferred to Special Fund from Private Trust Fund in FY'94.



## APPENDIX E

NAME	AFFILIATION	EXPIRATION DATE
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### INDUSTRIAL ACCIDENT REVIEWING BOARD SIX YEAR TERMS

1.	Carolynn Fischel	Unenrolled	5/28/98
2.	Edward Kirby	Republican	5/28/98
3.	Susan Maze-Rothstein	Democrat	6/10/98
4.	William McCarthy	Democrat	5/21/98
5.	Suzanne Smith	Republican	6/03/98
6.	Sara Holmes Wilson	Republican	5/28/98

### INDUSTRIAL ACCIDENT BOARD SIX YEAR TERMS

1.	Douglas Bean	Republican	6/26/99
2.	Karen Capeless	Democrat	7/06/00
3.	Martine Carroll	Unenrolled	1/31/00
4.	David Chivers	Republican	5/28/98
5.	William Constantino	Republican	5/26/01
6.	Janet Cox	Unenrolled	5/21/98
7.	Fran Gromelski	Democrat	9/04/97
8.	John Harris	Republican	5/28/98
9.	Emogene Johnson	Unenrolled	7/29/00
10.	William Long	Democrat	8/03/00
11.	Douglas McDonald	Democrat	7/06/00
12.	James McGuinness	Democrat	7/05/96
13.	John McLaughlin	Republican	5/28/98
14.	John McKenna	Republican	1/31/97
15.	John McKinnon	Democrat	6/26/98
16.	Theodore Merlo	Republican	5/28/98
17.	Bridget Murphy	Republican	7/27/00
18.	Daniel O'Shea	Republican	5/21/98
19.	James St. Amand	Democrat	5/14/98
20.	Dianne Solomon	Unenrolled	8/10/00
21.	Jo'Anne Thompson	Republican	9/18/98

### INDUSTRIAL ACCIDENT BOARD ONE YEAR TERMS

1.	John Bradford	Republican	2/01/97
2.	Joellen D'Esti	Unenrolled	7/17/97
3.	Richard Heffernan	Democrat	7/15/97
4.	James Lamothe	Republican	8/03/97
5.	Frederick Levine	Unenrolled	2/01/97
6.	Stephen Sumner	Unenrolled	2/01/97
7.	Fred Taub	Democrat	7/01/97
8.	Richard Tirrell	Democrat	7/01/97

## **APPENDIX F**

### **INDUSTRIAL ACCIDENT NOMINATING PANEL**

**Mr. Joseph C. Faherty**  
President  
Massachusetts AFL-CIO  
8 Beacon Street  
Boston, MA 02108

**Mr. Paul W. Johnson**  
Chief Legal Counsel  
Room 271  
State House  
Boston, MA 02133

**Mr. Angelo Buonopane**  
Director of  
Labor & Workforce  
Development  
Commonwealth of Massachusetts.  
One Ashburton Place - 14th Floor  
Boston, MA 02133

**Mr. David Tibbetts**  
Director of Department of  
Economic Development  
One Ashburton Place - Room 1201  
Boston, MA 02133

**Mr. Louis A. Mandarinini**  
Business Manager  
Local 22  
280 Medford Street  
Malden, MA 02148

**Mr. Gino Maggi**  
President  
Inter-all Corp.  
P.O.Box 586  
Holyoke, MA 01041

**Mr. James C. Cronin, Esquire**  
Raytheon  
100 Hayden Avenue  
Lexington, MA 02173

**Mr. James J. Campbell**  
Commissioner  
Dept. of Industrial Accidents  
600 Washington Street  
Boston, MA 02111

**Dr. Grant Rodkey**  
11 Beatrice Circle  
Belmont, MA 02178-02657

**Joseph W. Jennings, III**  
Senior Judge  
Dept. of Industrial Accidents  
600 Washington Street  
Boston, MA 02111

\* These people usually appear for the person listed above their name.

## APPENDIX G

### HEALTH CARE SERVICE BOARD

**Patricia Crane**

Vice-President Development and Public Affairs  
Lowell General Hospital 295 Barnam Street  
Lowell, MA 01854

Hospital Administrative Representative

**Henry W. DiCarlo**

Director, Loss Prevention  
Stride Rite Corporation  
5 Cambridge Street  
Cambridge, MA 02142

Employers Representative

**Jefferson H. Dickey, M.D.**

25 Maple Street  
Florence, MA 01060

Physician Representative

**William F. Fishbaugh Jr., MD**

Director, Sports Medicine, Occup. Health  
Braintree Hospital Rehabilitation Network  
250 Pond St., P.O.Box 9020  
Braintree, MA 02184

Physician Representative

**Dean Hashimoto, MD, JD**

Boston College School of Law  
885 Center Street  
Newton, MA 02159

Physician Representative

**Peter A. Hyatt, DC**

227 East Street  
Methuen, MA 01844

Chiropractic Representative

**Catherine Lane, RPT**

Boston Center for Physical & Sports Medicine  
653 Summer Street  
Boston, MA 02210

Physical Therapy Representative

**Charles E. Lutton, MD, PhD**

P.O.Box 428  
Ashland, MA 01721

Physician Representative

**L. Christine Oliver, MD**  
Pulmonary/Critical Care Unit/Bulfinch #1  
Mass General Hospital  
55 Fruit Street  
Boston, MA 02114

Chair/Ex-Officio Member

**William P. Ryan**  
International Union of Operating Engineers, Local 4  
120 Mt. Hope Street  
Roslindale, MA 02131

Employee Representative

**Jonathan Schaffer, MD**  
Department of Orthopedic Surgery  
Brigham & Women's Hospital  
75 Francis Street  
Boston, MA 02115

Physician Representative

**Willie Stephens, DDS**  
Brigham & Women's Hospital  
75 Francis Street  
Boston, MA 02115

Dentist Representative

**Harriet G. Tolpin, Ph.D.**  
Simmons College  
300 The Fenway  
Boston, MA 02115

Public Representative

**Bernard S. Yudowitz, M.D., J.D.**  
Director of Psychiatry  
c/o Wild Acre Inns  
108 Pleasant Street  
Arlington, MA 02174

Physician Representative

## APPENDIX H

### MEDICAL CONSULTANT CONSORTIUM

**Troyen A. Brennan, MD, JD**

The Harvard School of Public Health  
Department of Health Policy & Mgmt.  
Room 401, 677 Huntington Ave.  
Boston, MA 02115

**Murray M. Freed, MD**

5550 Piping Rock Drive  
Boyton Beach, Florida 33437

**Dean Hashimoto, MD, JD**

Boston College Law School  
885 Center Street  
Newton, MA 02159

**Manuel Lipson, MD**

Director, Spaulding Rehabilitation Hospital  
125 Nashua St., 1st Floor  
Boston, MA 02114

**L. Christine Oliver, MD**

Pulmonary/Critical Care Unit  
Bullfinch #1/Mass General Hospital  
55 Fruit Street  
Boston, MA 02114

**Barry Simmons, MD**

Brigham Orthopedic Assoc.  
Brigham & Women's Hospital  
75 Francis Street  
Boston, MA 02115

### DIA:

**James J. Campbell**

Commissioner, DIA  
600 Washington St.  
Boston, MA 02111

**Donna M. Ward**

Director, Office of Health Policy  
600 Washington St.  
Boston, MA 02111

## APPENDIX I

### Office of Safety Proposals Recommended for Funding

1. Advanced Therapeutic Resources  
157 Elm Street  
Amesbury, MA 01913  
(508) 388-6775  
**Title:** Ergonomic and Safety for the prevention of upper CTD's and Back injuries  
**Category of Applicant:** Private Employer  
**Target Population:** Employers/Supervisors  
**Geographic Target:** Lawrence/North Shore  
**Program Administrator:** Julie Cicalis  
**Total Funds Requested:** \$29,707.10      **Approved:** \$29,647.10
2. City of Worcester  
City Hall  
455 Main Street  
Worcester, MA 01608  
(508) 799-1400  
**Title:** "Comprehensive Non-Violent Crisis Intervention Training Program"  
**Category of Applicant:** Public Employer  
**Target Population:** Employees  
**Geographic Target:** Worcester  
**Program Administrator:** Lori Favata  
**Total Funds Requested:** \$29,590.00      **Approved:** \$29,406.08
3. Braintree Hospital  
100 Baystate Drive  
Braintree, MA 02184  
(617) 356-0520  
**Title:** Work Injury Prevention Programs for Musculoskeletal & Repetitive Motion Disorders  
**Category of Applicant:** For-profit Corporation  
**Target Population:** Employees/Employers/Supervisors  
**Geographic Target:** Boston  
**Program Administrator:** Mary Riley  
**Total Funds Requested:** \$15,562.00      **Approved:** \$15,562.00
4. Electrical Contracting Industry of Greater Boston  
Joint Apprentice and Training Committee  
194 Freeport Street  
Dorchester, MA 02122

**Title:** Local 103, IBEW Health & Safety Steward Training Program

**Category of Applicant:** Joint Labor/Management Committee

**Target Population:** Employees

**Geographic Target:** Boston/Lawrence

**Program Administrator:** Philip Mason

**Total Funds Requested:** \$29,540.00      **Approved:** \$29,540.00

5. Mass. Construction Safety Congress

256 Freeport Street

Dorchester, MA 02122

(617) 436-3551

**Title:** Certified Safety Training for Construction Apprentices

**Category of Applicant:** Joint Labor/Management/Non-profit Organization

**Target Population:** Employees/Employers/Supervisors

**Geographic Target:** Statewide

**Program Administrator:** Joseph Dart

**Total Funds Requested:** \$27,460.00      **Approved:** \$27,460.00

6. Morton Hospital

88 Washington Street

Taunton, MA 02780

(508) 824-0243

**Title:** "FY 97 RFP" Injury Prevention Program

**Category of Applicant:** Non-profit Organization

**Target Population:** Employees/Employers/Supervisors

**Geographic Target:** Fall River

**Program Administrator:** Kathleen Hickey

**Total Funds Requested:** \$5,646.87      **Approved:** \$5,646.87

7. Operating Engineers

One Engineers Way

Canton, MA 02021

(617) 321-0306

**Title:** Crane Safety

**Category of Applicant:** Joint Labor/Management Committee

**Target Population:** Employees

**Geographic Target:** Statewide

**Program Administrator:** William Mooney

**Total Funds Requested:** \$29,960.58      **Approved:** \$28,503.88

8. Ergonomic Engineering, Inc.

20 Gulf Road

Pelham, MA 01002

(413) 253-4286

**Title:** Customized training for ergonomic program implementation  
**Category of Applicant:** Private Employer  
**Target Population:** Employees/Employers/Supervisors  
**Geographic Target:** Boston  
**Program Administrator:** Robert O. Andres  
**Total Funds Requested:** \$26,144.00      **Approved:** \$18,524.00

9. Pioneer Valley Central Labor Council

458 Bridge Street  
Springfield, MA 01103  
(413) 732-7970

**Title:** Improving Health and Safety On-the-Job  
**Category of Applicant:** Labor Organization/Federation  
**Target Population:** Employees  
**Geographic Target:** Springfield  
**Program Administrator:** Irene Kimball  
**Total Funds Requested:** \$7,893.20 **Approved:** \$7,893.20

10. WorkRight, Inc.

386 Washington Street  
Wellesley Hills, MA 02181  
(617) 237-1732

**Title:** Back Injury Prevention & Ergonomics for Long Term Care & Ambulance Workers  
**Category of Applicant:** Private Employer  
**Target Population:** Employees/Employers/Supervisors  
**Geographic Target:** Boston/Wakefield/Newton/Needham  
**Program Administrator:** Bette Hoffman  
**Total Funds Requested:** \$30,000.00      **Approved:** \$25,434.25

11. Boston Area Painter Training Program Trust

25 Colgate Road, Suite 221  
Roslindale, MA 02131  
(617) 524-0248

**Title:** Occupational Health & Safety: Prevention & Protection  
**Category of Applicant:** Joint Labor/Management Committee  
**Target Population:** Employees  
**Geographic Target:** Boston/Eastern Mass  
**Program Administrator:** Joseph Calci  
**Total Funds Requested:** \$14,822.73      **Approved:** \$14,822.73

12. COM/Electric

2421 Cranberry Highway  
Wareham, MA 02571  
(508) 291-0950



**Title:** Prevention of acute and cumulative Musculoskeletal injuries in electrical workers  
**Category of Applicant:** Private Employer/Labor/Management  
**Target Population:** Employers  
**Geographic Target:** S.E. Mass/Cape  
**Program Administrator:** Stephen K. Knowles  
**Total Funds Requested:** \$21,515.50      **Approved:** \$15,994.42

13. Lawrence General Hospital

One General Street  
Lawrence, MA 01842  
(508) 683-4000

**Title:** Office Ergonomics Education and Training Program for Lawrence General Hospital  
**Category of Applicant:** Non-profit Organization  
**Target Population:** Employees/Employers/Supervisors  
**Geographic Target:** Lawrence  
**Program Administrator:** Janet Sheehan  
**Total Funds Requested:** \$17,038.80      **Approved:** \$14,038.80

14. Outer Cape Health Services

P.O. Box 1128  
Truro, MA 02666  
(508) 487-6301

**Title:** Occupational Safety and Health Education and Training Program  
**Category of Applicant:** Non-profit Organization  
**Target Population:** Employees/Employers/Supervisors  
**Geographic Target:** Cape Cod  
**Program Administrator:** Cheryl A. Gayle  
**Total Funds Requested:** \$29,621.00      **Approved:** \$28,631.00

15. Motorola I.S.G.

20 Cabot Boulevard  
Mansfield, MA 02048

**Title:** Prevention of Musculoskeletal Disorder in Manufacturing Workers  
**Category of Applicant:** Private Employer  
**Target Population:** Employees/Employers/Supervisors  
**Geographic Target:** Mansfield  
**Program Administrator:** Barbara Mundy  
**Total Funds Requested:** \$15,090.00      **Approved:** \$15,090.00

16. Asbestos Workers Local #43

1053 Burts Pit Road  
Northampton, MA 01060  
(413) 584-0028

**Title:** Preventing Asbestos and Fiberglass-Related disease for building Trades Workers in Westerns Massachusetts

**Category of Applicant:** Labor Organization/Federation

**Target Population:** Employees

**Geographic Target:** Worcester/Lawrence/Springfield

**Program Administrator:** Robert E. Starr

**Total Funds Requested:** \$21,288.82      **Approved:** \$18,096.22

17. ARC

Pioneer Valley Chapter

235 Chestnut Street

Springfield, MA 01103

(413) 737-4306

**Title:** American Red Cross Protect your Back

**Category of Applicant:** Non-profit Organization

**Target Population:** Employees/Supervisors

**Geographic Target:** Springfield

**Program Administrator:** Jean Hobbie

**Total Funds Requested:** \$6,249.35      **Approved:** \$6,249.35

18. Department of Public Health

Occupational Health Surveillance Program

250 Washington Street 6th floor

Boston, MA 02108

(617) 624-5625

**Title:** Occupational Health and Safety Training for Summer Jobs Program

**Category of Applicant:** Public Employer

**Target Population:** Employees/Employers/Supervisors

**Geographic Target:** Boston

**Program Administrator:** Robin Dewey

**Total Funds Requested:** \$29,990.94      **Approved:** \$29,990.94

19. Western MassCOSH

458 Bridge Street

Springfield, MA 01103

(413) 731-0760

**Title:** Western Massachusetts Coalition for Occupational Safety and Health

**Category of Applicant:** Non-profit Organization

**Target Population:** Employees/Supervisors

**Geographic Target:** Springfield

**Program Administrator:** Susan DeMaria

**Total Funds Requested:** \$28,087.50      **Approved:** \$28,087.50

20. Republic Management Corporation

211 Middlesex Turnpike

Burlington, MA 01803

(671) 270-6434

**Title:** Occupational Safety & Health Training for Food Service Management Employees

**Category of Applicant:** Private Employer

**Target Population:** Employees/Employers/Supervisors

**Geographic Target:** Statewide

**Program Administrator:** Laurie Knoff

**Total Funds Requested:** \$15,751.00 **Approved:** \$11,100.00

## **APPENDIX J**

### **Commerce & Labor Committee**

**Senator Robert Travaglini (Chair)**

State House - Room 511B  
Boston, MA 02133-1053

**Senator Robert Antonioni**

State House - Room 134  
Boston, MA 02133-1053

**Senator Stephen F. Lynch**

State House - Room 520  
Boston, MA 02133-1053

**Representative Robert Koczera (Chair)**

State House - Room 43  
Boston, MA 02133-1053

**Representative Patricia A. Walrath**

State House - Room 275  
Boston, MA 02133-1053

**Representative Daniel J. Valianti**

State House - Room 540  
Boston, MA 02133-1053

**Representative Jay R. Kaufman**

State House - Room 43  
Boston, MA 02133-1053

**Representative Bradley H. Jones, Jr.**

State House - Room 443  
Boston, MA 02133-1053

**Representative Janet O'Brien**

State House - Room 109E  
Boston, MA 02133-1053

**Senator Dianne Wilkerson**

State House - Room 312H  
Boston, MA 02133-1053

**Senator Jane Swift**

State House - Room 323  
Boston, MA 02133-1053

**Rep. William G. Green, Jr.**

State House - Room 167  
Boston, MA 02133-1053

**Representative Pamela Resor**

State House - Room 33  
Boston, MA 02133-1053

**Rep. William J. McManus, II**

State House - Room 448  
Boston, MA 02133-1053

**Representative Michael Rodrigues**

State House - Room 146  
Boston, MA 02133-1053

**Representative Cele Hahan**

State House - Room 43  
Boston, MA 02133-1053

## **APPENDIX K**

### **The Governor's Executive Council**

**Honorable David F. Constantine**  
State House Room 184  
Boston, MA 02133

**Honorable Dorothy A. Kelly Gay**  
State House Room 184  
Boston, MA 02133

**Honorable Kelly A. Timilty**  
State House Room 184  
Boston, MA. 02133

**Honorable Jordan Levy**  
State House Room 184  
Boston, MA. 02133

**Honorable Christopher A. Iannella, J**  
State House Room 184  
Boston, MA 02133

**Honorable Edward O'Brien**  
State House Room 184  
Boston, MA 02133

**Honorable Cynthia S. Creem**  
State House Room 184  
Boston, MA 02133

**Honorable Patricia A. Dowling**  
State House Room 184  
Boston, MA 02133

## APPENDIX L

### **Workers' Compensation Organizations**

The following are government, private, and non-profit organizations that have a role in the Massachusetts workers' compensation system. Many of the organizations below are advocacy groups funded by a specific group to represent and promote their particular view.

This is meant to be informative only, and is by no means an exhaustive list of all groups involved with workers' compensation. Inclusion of an organization's name does not indicate an endorsement of any particular viewpoint or organization nor does it relate to their effectiveness or reliability in advocating a particular view.

The categories are Massachusetts State Government, Insurance, Medical, Public Policy/Research, Fraud, Safety, Legal, and Federal Government/National Organizations.

### **Massachusetts State Government**

#### **Department of Industrial Accidents (DIA)**

600 Washington Street  
Boston, MA 02111 (Boston Office)  
617-727-4900 Information office - 800-323-3249 x470

The DIA is a state agency funded by employer assessments to operate and administer the state's workers' compensation system. The duties of the DIA are described throughout part one of the report.

#### **Massachusetts Workers' Compensation Advisory Council**

600 Washington Street  
Boston, MA 02111  
617-727-4900 x378

The Advisory Council is a labor/management committee appointed by the Governor to oversee the workers' compensation system. Its membership and mandate is described on pages one through three of the report.

**Joint Committee on Commerce and Labor**

State House Room 43  
Boston, MA 02133  
617-722-2030

The Commerce and Labor Committee consists of elected state representatives and senators. One of their duties is to review all legislation relating to workers' compensation. They issue recommendations to the full legislature on whether the legislation should pass or not. The committee often refers the proposals before them to conference for further study and analysis.

**Office of the Governor**

State House Room 360  
Boston, MA 02133  
617-727-7238

The Governor appoints the Secretary of Labor, the Secretary of Economic Affairs, the Commissioner of the DIA, the judges at the DIA, and the members of the Workers' Compensation Advisory Council.

**Governor's Council**

State House Room 184  
Boston, MA 02133  
617-727-2795

All DIA judges are appointed by the Governor subject to the consent and approval of the Governor's Council, an elected body of 8 members that meets once a week in the Governor's office.

**Executive Office of Labor**

One Ashburton Place  
Boston, MA 02108  
617-727-6573

The Secretary of Labor's office is charged with promoting and protecting the legal, safety, health and economic interests of the Commonwealth's workers and preserving productive and fair paying jobs. The Department of Industrial Accidents is one of five departments that fall under the Executive Office of Labor. The Secretary of Labor is an ex officio member of the Workers' Compensation Advisory Council.

**Executive Office of Economic Affairs**

One Ashburton Place  
Boston, MA 02108  
617-727-8380

The Secretary of Economic Affairs is charged with promoting the economy of the Commonwealth by fostering economic and employment opportunities. The Secretary of Economic Affairs is an ex officio member of the Workers' Compensation Advisory Council.

**Office of the Attorney General**

One Ashburton Place  
Boston, MA 02108  
617-727-2200

The Attorney General's office prosecutes workers' compensation fraud and enforces state labor laws. It also held a series of meetings for its task force on waste, fraud, and abuse in the workers' compensation system. A series of "White Papers" are available from the office on issues brought up at those meetings.

**Massachusetts Rehabilitation Commission**

59 Temple Place  
Boston, MA 02108 (Boston District)  
617-482-1780

There are also district offices throughout the state

The purpose of this commission is "to provide comprehensive services which maximize quality of life and economic self-sufficiency for people with disabilities. This is accomplished through multiple programs including vocational rehabilitation, independent living rehabilitation, and the Massachusetts disability determination for social security benefits." (Massachusetts Rehabilitation Commission Annual Report 1992)

*The Rate Setting Commission and the Division of Insurance are also State Agencies (described in following sections).*



## **Insurance**

### **Commonwealth of Massachusetts Division of Insurance (DOI)**

470 Atlantic Avenue  
Boston, MA 02110  
617-521-7794

The DOI regulates all insurance programs and monitors and licenses self insurance groups. The **State Rating Bureau** is an office within the DOI that testifies at rate hearings with respect to insurance rates. The Commissioner of DOI holds hearings on rate filings and issues a decision.

#### **DIA- Office of Insurance**

600 Washington Street  
Boston, MA 02111  
617-727-4900 x371

Issues annual licenses for self insurance; monitors insurance complaints; maintains the insurer register.

#### **DIA- Office of Investigations**

617-727-4900 x409

Issues stop work orders and fines employers without workers' compensation insurance.

### **The Workers' Compensation Rating and Inspection Bureau of Massachusetts (WCRB)**

101 Arch Street, 5<sup>th</sup> floor  
Boston, MA 02110  
617-439-9030

Private non profit body funded by insurers;

- Licensed rating organization for workers' compensation; WCRB submits workers' compensation insurance rates, rating plans, and forms for approval (rates are subject to approval by the Commissioner of Insurance);
- WCRB is the statistical agent for workers' compensation for the Commissioner of Insurance;
- administers assigned risk pool; designates insurance carriers for employers who cannot obtain policy in voluntary market;
- collects statistical data from insurers;
- NCCI handles some of the accounting procedures for the pool.

**National Council on Compensation Insurance (NCCI)**

750 Park of Commerce Drive  
Boca Raton, FL 33487  
407-997-1000

NCCI is a national organization devoted to workers' compensation insurance. It has a somewhat limited role in Massachusetts.

In Massachusetts:

- Does some of the accounting for the assigned risk pool under contract with the WCRB;
- Determines residual market loss reserves.  
Other states;
- In 34 other states, NCCI is the organization that files for insurance rates or loss costs (in Massachusetts, it is the WCRB that files for rate changes);
- NCCI also administers various state funds where the state acts as an insurance carrier for workers' compensation.

**Medical**

**Commonwealth of Massachusetts Rate Setting Commission**

2 Boylston Street  
Boston, MA 02116  
617-451-5340

The Rate Setting Commission sets reimbursement rates for medical services in workers' compensation.

**DIA- Office of Health Policy**

617-727-4900 x578

This office coordinates the utilization review program, the Medical Consultant Consortium, and the Health Care Services Board at the DIA.

**Massachusetts Medical Society**

1440 Main Street  
Waltham, MA 02154-1649  
617-893-4610 / 800-322-2303

Private, non-profit professional association representing the Massachusetts physician community.

**Massachusetts Hospital Association**

5 Executive Park  
Burlington, MA 01803  
617-272-8000

Private, non-profit association representing its membership of Massachusetts hospitals.

**Massachusetts Orthopedic Association**

45 Broad Street  
Boston, MA 02109  
617-451-9663

Private, non-profit professional association representing physicians practicing in the specialty area of orthopedic surgery.

**Massachusetts Chiropractic Society**

7 Woodland Street  
Methuen, MA  
800-442-6155

**Massachusetts Chapter of American Physical Therapy Association**

18 Tremont Street  
Boston, MA 02108  
617-523-4285  
National Chapter: 800-999-2782

**American Occupational Therapy Association**

1383 Piccard Drive  
P.O. Box 1725  
Rockville, MD 20849-1725

**Public Policy/ Research**

**Workers' Compensation Research Institute (WCRI)**

101 Main Street  
Cambridge, MA 02142  
617-494-1240

WCRI is a nonpartisan, not-for-profit public policy research organization funded primarily by employers and insurers. The WCRI research takes several forms, according to their statement of purpose: "original research studies of major issues confronting workers' compensation systems; original studies of individual state systems where policy makers have shown an interest in reform and where there is an unmet need for that objective information; source book that brings together information from a variety of sources to provide unique, convenient reference works on specific issues; periodic research briefs on significant new research, data, and issues in the field." (WCRI Annual Report/Research Review, 1992).

**Associated Industries of Massachusetts (AIM)  
Workers' Compensation Oversight Committee**

222 Berkeley Street, P.O. Box 763  
Boston, MA 02117  
617-262-1180

Private, non-profit association of employers from various industrial sectors in Massachusetts.

**Massachusetts AFL-CIO**

8 Beacon Street  
Boston, MA 02117  
617-227-8260

Umbrella organization representing its member local offices of unions in Massachusetts.  
**International Association of Industrial Accident Boards and Commissions (IAIBC) 1575**

Aviation Center Parkway, Suite 512  
Daytona Beach, FL 32114  
904-252-2915

**Fraud**

**Insurance Fraud Bureau of Massachusetts (IFB)**

101 Arch Street  
Boston, MA 02110  
617-439-0439 Toll free hotline (1-800-32FRAUD).

The IFB is a non profit association created and empowered to "detect, investigate, and prevent fraudulent insurance transactions, for all lines of insurance." (IFB annual report 1993). Its funding is split equally between automobile and workers' compensation insurers.

*The DIA - Office of Investigations (see above "insurance") and the Attorney General's Office, Insurance Fraud Unit (see above "state government") also fall under the fraud category.*

**Safety**

**Office of the Attorney General  
Fair Labor and Business Practices Division**

617-727-3477

This division is responsible for the enforcement of the state labor laws, including workplace safety (formerly the responsibility of the Department of Labor and Industries).

**DIA- Office of Safety**

617-727-4900 x377

The function of the office of safety is to reduce work related injury and illnesses by “establishing and supervising programs for data collection on workplace injuries and for the education and training of employees and employers in the recognition, avoidance and prevention of unsafe or unhealthy working conditions in employment and advising employees and employers on these issues.” ( M.G.L. c. 23E, 3(6)). The office issues approximately \$400,000 in safety grants each fiscal year (17 grants were funded last year).

**Massachusetts Coalition of Occupational Safety and Health (MassCOSH)**

555 Armory Street  
Jamaica Plain, MA 02130  
617-524-6686

The following safety councils provide publications, videos, training programs, speakers and other information for a fee.

- **Safety Council of Western Massachusetts** (Springfield) 413-737-7908
- **National Safety Council** , Central Massachusetts Chapter (West Boylston) 508-835-2333
- **Massachusetts Safety Council** (Braintree) (Serves Eastern Massachusetts) 617-356-1633

**American Society of Safety Engineers (ASSE)** is a non profit association that provides monthly educational seminars and training. It can be reached through the local safety councils.

*See also OSHA and NIOSH under federal government*

**Legal**

**Massachusetts Bar Association  
Workers' Compensation Committee**

20 West Street  
Boston, MA  
617-542-3602

Private, non-profit professional association representing the Massachusetts legal community.

**Massachusetts Academy of Trial Attorneys**

15 Broad Street  
Boston, MA  
617-248-5858

Private, non-profit professional association representing the plaintiff's attorneys in Massachusetts.

*DIA Reviewing Board decisions, Chapter 152 (workers' compensation statute) and Code of Massachusetts Regulations are available in the State House Library.*

**Federal Government / National Organizations**

While most programs for workers' compensation are administered at the state level, there are various safety, labor, and workers' compensation programs administered by the federal government.

**U.S. Department of Labor**  
**Employment Standards Administration**  
**Office of Workers' Compensation Programs**  
Division of Planning, Policy and Standards  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210  
202-219-7491

The Division of Planning, Policy and Standards at the Office of Workers' Compensation Programs serves as a liaison to the states regarding state workers' compensation matters. They produce two major publications: State Workers' Compensation Administration Profiles and State Workers' Compensation Laws.

The Office of Workers' Compensation Programs also administers three other divisions: Division of Longshore and Harbor Workers' Compensation (202-219-8721); Division of Federal Employee's Compensation (202-219-7552); and the Division of Coal Mine Workers' Compensation (202-219-6692).

**Department of Labor**  
**Occupational Safety and Health Administration (OSHA)**  
200 Constitution Avenue, NW  
Washington, D.C. 20210

Regional Office: 133 Portland Street  
Boston, MA 02114  
617-565-7164

**National Institute for Occupational Safety and Health (NIOSH)**  
944 Chestnut Ridge Road  
Morgantown, WV 26505-2888  
800-356-4674

Federal agency under the Department of Health and Human Service. Clearinghouse information on workplace safety, health, and illness.

**Occupational Health Foundation**

815 16th Street, N.W. Suite 312

Washington, D.C. 20006

202-842-7840

The OHF is a labor- sponsored, non profit organization delivering service to the American labor movement and individual members of the workforce. OHF's mission is to improve occupational safety and health conditions for workers. (OHF 1993 Annual Program Report)

**United States Chamber of Commerce**

1615 H Street, NW

Washington, D.C. 20062-2000

202-659-6000

Publishes an analysis of state workers' compensation statutes.