

**THE STATE OF THE MASSACHUSETTS WORKERS'  
COMPENSATION SYSTEM**

**FISCAL YEAR 1998 ANNUAL REPORT**

**MASSACHUSETTS WORKERS' COMPENSATION  
ADVISORY COUNCIL**

---

**ADVISORY COUNCIL MEMBERS:**

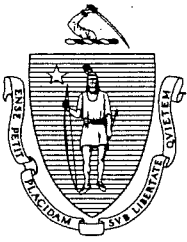
**Edmund C. Corcoran**, *Chair (Raytheon)*; **William H. Carnes**, *Vice-Chair (International Brotherhood of Teamsters, Local 25)*; **Robert Banks** (*J.A.C. Iron Workers, Local 7*); **Jeanne-Marie Boylan** (*Boston Sand & Gravel Company*); **J. Bruce Cochrane** (*Cochrane and Porter Insurance Agency*); **Antonio Frias** (*S & F Concrete Company*); **John Gould** (*Associated Industries of Massachusetts*); **Lawrence Morrisroe** (*Carpenters' Union, Local 33*); **John J. Perry** (*International Brotherhood of Teamsters, Local 82*); **Alan S. Pierce** (*Alan S. Pierce & Assoc.*); **Frank Fanning** (*Service Employees International Union, Local 254*); **Carol Falcone** (*Falcone Associates*); **Joseph Tamulis** (*T Equipment Corp.*)

**EX OFFICIO:**

**Angelo Buonopane** (*Director of Labor & Workforce Development*)  
**David Tibbetts** (*Director of Economic Development*)

**STAFF:**

**Matthew A. Chafe** (*Executive Director*); **Andrew S. Burton**; **Ann M. Helgran**



MASSACHUSETTS WORKERS' COMPENSATION  
ADVISORY COUNCIL  
600 WASHINGTON STREET  
BOSTON, MASSACHUSETTS 02111  
(617) 727-4900 EXT. 378

EDMUND C. CORCORAN, JR.  
CHAIR

MATTHEW A. CHAFFE  
EXECUTIVE DIRECTOR

WILLIAM H. CARNES  
VICE-CHAIR

February 3, 1999

His Excellency Argeo Paul Cellucci  
Governor of Massachusetts

The Honorable Stephen F. Lynch  
Senate Chair, Joint Committee on Commerce and Labor

The Honorable Peter J. Larkin  
House Chair, Joint Committee on Commerce and Labor

Dear Governor Cellucci, Senator Lynch, Representative Larkin:

On behalf of the Massachusetts Workers' Compensation Advisory Council, I am pleased to submit to you our annual report on the State of the Massachusetts Workers' Compensation System for Fiscal Year 1998.

This report provides an overall picture of the workers' compensation system in Massachusetts, including legislative initiatives, the activity of the Division of Industrial Accidents, and an analysis of the workers' compensation insurance market. The Council has also identified areas of concern and provides recommendations to improve the workers' compensation system. Finally, the report recognizes areas of accomplishment where the Division of Industrial Accidents, the Division of Insurance, and other organizations have implemented promising programs to improve the workers' compensation system for all participants.

Thank you for your consideration of the Advisory Council's positions and recommendations. The Advisory Council looks forward to working with you in the future to ensure the workers' compensation system in Massachusetts continues to operate efficiently and effectively.

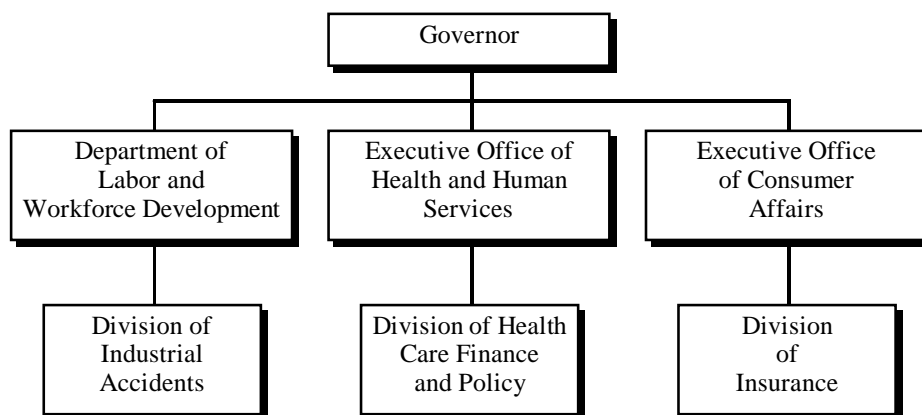
Sincerely,

A handwritten signature in dark ink, appearing to read "Andrew S. Burton".

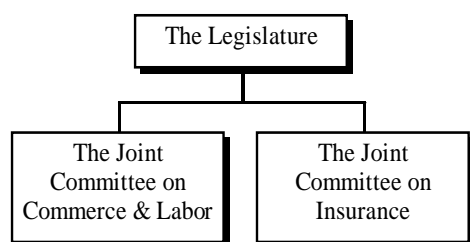
Andrew S. Burton  
Acting Executive Director

# Government Regulation of Workers' Compensation

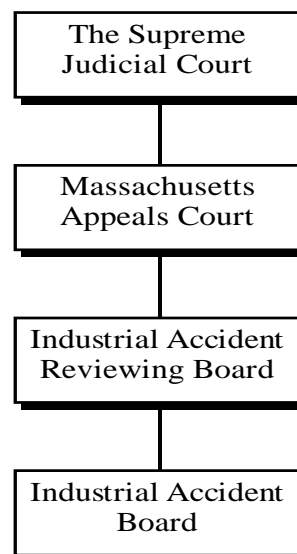
## Administrative



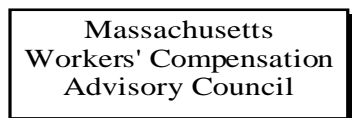
## Legislative



## Judicial



## Oversight



**Note:** The Advisory Council monitors and reports on all aspects of the workers' compensation system.

# TABLE OF CONTENTS

---

## INTRODUCTION

<b>ADVISORY COUNCIL .....</b>	<b>3</b>
ADVISORY COUNCIL STUDIES .....	3
<b>FISCAL YEAR 1998 IN REVIEW .....</b>	<b>5</b>
<b>CONCERNS &amp; RECOMMENDATIONS.....</b>	<b>8</b>
DECISIONS OUTSTANDING/TIME FRAMES .....	8
ADEQUATE BENEFIT LEVELS .....	9
EMPLOYER FINES LEGISLATION .....	9
YEAR END BALANCES.....	10
MEDICAL UTILIZATION TRENDING AND TRACKING SYSTEM (MUTTS).....	12
JUDICIAL TERMS .....	13
<b>LEGISLATION.....</b>	<b>14</b>
BILLS WITH A "FAVORABLE RATING" .....	14
BILLS WITH AN "EXTENSION ORDER" FOR FURTHER CONSIDERATION .....	17

## SECTION 1: OVERVIEW

<b>PROVISIONS TO RESOLVE DISPUTES .....</b>	<b>21</b>
WORKERS' COMPENSATION CLAIMS.....	21
DISPUTE RESOLUTION PROCESS.....	22
LUMP SUM SETTLEMENTS .....	23
ALTERNATIVE DISPUTE RESOLUTION MEASURES .....	23
<b>SUMMARY OF BENEFITS.....</b>	<b>24</b>
INDEMNITY AND SUPPLEMENTAL BENEFITS .....	24
ATTORNEY'S FEES .....	25

## SECTION 2: WORKPLACE INJURY & CLAIMS STATISTICS

<b>OCCUPATIONAL INJURIES AND ILLNESSES .....</b>	<b>29</b>
FATAL WORK INJURIES .....	30
<b>CASE CHARACTERISTICS.....</b>	<b>31</b>

## SECTION 3: DISPUTE RESOLUTION

<b>DIA CASELOAD .....</b>	<b>37</b>
<b>ADMINISTRATIVE JUDGES .....</b>	<b>38</b>
APPOINTMENT PROCESS.....	38
<b>CONCILIATION .....</b>	<b>39</b>
THE CONCILIATION PROCESS .....	39
VOLUME AT CONCILIATION.....	39
CONCILIATION OUTCOMES.....	40
RESOLVED CASES - CONCILIATED.....	41
CASES RESCHEDULED .....	42
<b>CONFERENCE .....</b>	<b>43</b>
VOLUME OF CONFERENCES .....	43
CONFERENCE OUTCOMES.....	43
CONFERENCE QUEUE .....	45
<b>HEARINGS.....</b>	<b>46</b>
SCHEDULING .....	46
HEARING QUEUE.....	46
VOLUME OF HEARINGS .....	46
HEARING OUTCOMES .....	47
<b>CASE TIME FRAMES.....</b>	<b>49</b>
CASE TIME FRAMES GUIDE .....	49
<b>REVIEWING BOARD .....</b>	<b>54</b>
APPEAL OF HEARING DECISIONS .....	54
LUMP SUM CONFERENCES.....	55
THIRD PARTY SUBROGATION (§15).....	55
COMPROMISE AND DISCHARGE OF LIENS (§46A).....	56
<b>LUMP SUM SETTLEMENTS.....</b>	<b>57</b>
<b>IMPARTIAL MEDICAL EXAMINATIONS.....</b>	<b>59</b>
IMPARTIAL UNIT .....	59
WAIVERS OF IMPARTIAL EXAM FEES .....	60

## SECTION 4: DIA ADMINISTRATION

<b>OFFICE OF CLAIMS ADMINISTRATION .....</b>	<b>65</b>
CLAIMS PROCESSING UNIT / DATA ENTRY UNIT.....	65
FIRST REPORT COMPLIANCE OFFICE & FRAUD DATA .....	65
RECORD ROOM.....	66
<b>OFFICE OF EDUCATION AND VOC. REHAB.....</b>	<b>67</b>
UTILIZATION OF VOCATIONAL REHABILITATION .....	70
TRUST FUND PAYMENT OF VOCATIONAL REHABILITATION .....	70
<b>OFFICE OF SAFETY.....</b>	<b>71</b>

<b>OFFICE OF INSURANCE.....</b>	<b>72</b>
SELF INSURANCE.....	72
INSURANCE UNIT .....	73
<b>OFFICE OF INVESTIGATIONS.....</b>	<b>74</b>
<b>WORKERS' COMPENSATION TRUST FUND.....</b>	<b>76</b>
UNINSURED EMPLOYERS .....	76
SECOND INJURY CLAIMS (SECTIONS 37, 37A, AND 26).....	76
VOCATIONAL REHABILITATION (SECTION 30H) .....	77
LATENCY CLAIMS (SECTION 35C).....	77
COST OF LIVING ADJUSTMENTS (SECTION 34B).....	77
<b>OFFICE OF HEALTH CARE SERVICES BOARD .....</b>	<b>78</b>
HEALTH CARE SERVICES BOARD .....	78
UTILIZATION REVIEW .....	79
MEDICAL UTILIZATION TRENDING AND TRACKING SYSTEM.....	79
<b>THE REGIONAL OFFICES.....</b>	<b>81</b>
ADMINISTRATION AND MANAGEMENT OF THE OFFICES .....	81
RESOURCES OF THE OFFICES .....	81

## SECTION 5: DIA FUNDING

<b>DIA FUNDING .....</b>	<b>85</b>
THE FUNDING PROCESS.....	86
<b>PRIVATE EMPLOYER ASSESSMENTS.....</b>	<b>87</b>
<b>PUBLIC EMPLOYER ASSESSMENTS .....</b>	<b>90</b>
<b>THE DIA OPERATING BUDGET .....</b>	<b>92</b>
LEGISLATIVE APPROPRIATIONS, FISCAL YEAR 1999.....	92
GENERAL APPROPRIATIONS ACT.....	92
THE BUDGET PROCESS .....	93

## SECTION 6: INSURANCE COVERAGE

<b>MANDATORY INSURANCE COVERAGE.....</b>	<b>99</b>
<b>COMMERCIAL INSURANCE .....</b>	<b>100</b>
THE INSURANCE MARKET .....	100
THE CLASSIFICATION SYSTEM .....	102
PREMIUM CALCULATION.....	105
PREMIUM DISCOUNTING.....	106
DEDUCTIBLE POLICIES .....	107
RETROSPECTIVE RATING PLANS .....	107
DIVIDEND PLANS .....	108
<b>ASSIGNED RISK POOL.....</b>	<b>109</b>

<b>ALTERNATIVE RISK FINANCING METHODS.....</b>	<b>111</b>
SELF INSURANCE.....	111
SELF INSURANCE GROUPS.....	112
<b>INSURANCE FRAUD BUREAU.....</b>	<b>113</b>
THE INVESTIGATIVE PROCESS.....	113

# TABLES AND FIGURES

---

Table 1: Indemnity Benefits.....	24
Table 2: Injury Incidence Rates by Industry .....	30
Table 3: Developed Claim Counts .....	31
Table 4: Average Claim Costs - "Indemnity + Medical" .....	31
Table 5: Average Claim Costs - Indemnity .....	32
Table 6: Average Claim Costs - Medical.....	32
Table 7: Developed Losses Distribution.....	32
Table 8: Developed Losses Distribution - "Medical" .....	33
Table 9: Developed Losses Distribution - "Indemnity" .....	33
Table 10: Claim Frequency (Number of Claims per Million of Man- Weeks) .....	33
Table 11: Regional Time Frames.....	53
Table 12: Utilization of Voc. Rehab. Services, FY'92 - FY'98 .....	70

---

Figure 1: Schedule of Events .....	21
Figure 2: Dispute Resolution Process .....	22
Figure 3: Injury and Illness Incidence Rates.....	29
Figure 4: Distribution of Fatal Occupational Injuries by Event in Massachusetts .....	30
Figure 5: Total Cases at the DIA .....	37
Figure 6: Volume of Cases Scheduled for Conciliation .....	40
Figure 7: Fiscal Year 1998, Conciliation Statistics .....	41
Figure 8: Fiscal Years 1993-1998, Conferences Held .....	43
Figure 9: Fiscal Year 1998, Conference Outcomes .....	44
Figure 10: Fiscal Years 1998 and 1997, Conference Outcomes.....	44
Figure 11: Conference and Hearing Queues; Fiscal Years 1991 -1998.....	45
Figure 12: Conference and Hearing Queue; Fiscal Year 1998.....	45
Figure 13: Fiscal Years 1993-1998, Volume of Hearings .....	47
Figure 14: Fiscal Year 1998, Hearing Outcomes.....	47
Figure 15: Fiscal Years 1998 and 1997, Hearing Outcomes .....	48



# **LIST OF APPENDICES**

---

**APPENDIX A:** ADVISORY COUNCIL MEMBERS IN FISCAL YEAR 1998

**APPENDIX B:** TERMS OF ADVISORY COUNCIL MEMBERS

**APPENDIX C:** AGENDA OF ADVISORY COUNCIL MEETINGS, FISCAL YEAR 1998

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

**APPENDIX E:** INDUSTRIAL ACCIDENT NOMINATING PANEL

**APPENDIX F:** ROSTER OF JUDICIAL EXPIRATION DATES

**APPENDIX G:** MEDICAL CONSULTANT CONSORTIUM

**APPENDIX H:** BUDGET SUBSIDIARIES

**APPENDIX I:** WORKERS' COMPENSATION ORGANIZATIONS

**APPENDIX J:** WORKERS' COMPENSATION LEGISLATION, 1997-1998 SESSION

**APPENDIX K:** JOINT COMMITTEE ON COMMERCE & LABOR - FY'98

**APPENDIX L:** THE GOVERNOR'S COUNCIL

**APPENDIX M:** HEALTH CARE SERVICES BOARD

**APPENDIX N:** DIA ORGANIZATIONAL CHART, FISCAL YEAR 1998

**APPENDIX O:** COLLECTIONS AND EXPENDITURES REPORT

# INTRODUCTION

---

---

Advisory Council.....	3
Fiscal Year 1998 in Review.....	5
Concerns & Recommendations.....	8
Legislation.....	14



## ADVISORY COUNCIL

---

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 conducts studies on various aspects of the workers' compensation system and reports its findings to key legislative and administrative officials.

The Advisory Council is mandated to issue an annual report evaluating the operations of the Division of Industrial Accidents and the state of the Massachusetts workers' compensation system. In addition, members are required to review the annual operating budget of the Division of Industrial Accidents, and, when necessary, submit an independent recommendation. The Council is also charged with reviewing the insurance rate filing and participating in insurance rate hearings.

The Advisory Council is comprised of sixteen members, appointed by the governor for five year terms including: 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 customarily meets on the second Wednesday of each month at 9:00 a.m. at the Division of Industrial Accidents, 600 Washington Street, 7th Floor Conference Room, Boston, Massachusetts.

Meetings are open to the general public pursuant to the Commonwealth's open meeting laws (G.L., ch. 30A, sec. 11A ).

### Advisory Council Studies

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

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

Report on Competitive Rating, Tillinghast, (1989).

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

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

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

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).

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

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

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

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

Review of WC Ratemaking Concepts and WCRIB 8/14/97 Filing, Ernst & Young LLP, (1997).

Analysis of Proposed Changes to Section 34 and 35 of Chapter 152 of the Massachusetts General Laws, Tillinghast, (1997).

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, 6<sup>th</sup> Floor, Boston, Massachusetts (617) 727-4900 ext. 378.

For further information about the Massachusetts Workers' Compensation Advisory Council, visit our web page at: <http://www.state.ma.us/wcac/>.

## **FISCAL YEAR 1998 IN REVIEW**

---

For the Massachusetts Workers' Compensation System, fiscal year 1998 can be described as the year of stability and improvement. Claims were down, claims costs were down, as were insurance rates and premiums. Fewer employees and insurers contested claims, and the DIA's caseload once again diminished. Few regulatory changes occurred, and the legislature took no interest in enacting changes to the act. Insurance carriers from across the country became licensed in the state, so they too could compete in our vibrant insurance market. The Advisory Council continued to carefully monitor the insurance market and the operations of the DIA seeking to recommend ways to make the system more effective and efficient.

The DIA passed through a transition as a tremendous number of judicial terms ended during the year. Eleven of twenty-four administrative judge positions expired by the end of the fiscal year, as did all six administrative law judge positions. The Advisory Council became proactive in ensuring that the appointment process occur speedily and smoothly. The DIA experienced delays in conferences and hearings, as those judges with expiring terms were taken off-line. This became a matter of concern for the WCRB in its rate filing as it evaluates DIA timeframes in its assessment of future claims costs. In addition, Commerce & Labor Committee Chairman Koczera filed legislation to stagger the terms of these appointments to relieve the impact of such a large number of expiring terms six years down the road. By the end of the summer, several new judges were appointed, with a majority of reappointments, and the process proved to work smoothly and efficiently.

In fiscal year 1998, the Division of Industrial Accidents continued to experience decreases in its workload. Cases filed at the DIA declined 10.4% from fiscal year 1997 levels, and are down 55% since fiscal year 1991. Employee claims decreased 10.8% (down 33% since fiscal year 1991), and insurer requests for discontinuances decreased 13% (marking a 68% decrease since fiscal year 1998).

Recognizing this decrease in workload, the DIA's fiscal year operating budget was appropriated with level-funding. As endorsed by the Advisory Council, the Governor reduced the DIA account by \$341,500 from the legislature's final budget.

The Advisory Council made numerous inquiries to the DIA about its ability to verify payment of assessments collected by insurance carriers from the employers of the Commonwealth. In our Fiscal Year 1997 Annual Report, the Council voiced concern about the inadequacy of information pertaining to remittance of DIA assessments. During the year the agency informed Council Members of its intentions to conduct an audit of insurance carrier calculation, collection and payment of employer assessments, as well as DIA Trust Fund reimbursement of COLA benefits. The agency worked on the specifications for bids and intends to issue a Request For Responses (RFR) in Fiscal Year 1999.

On August 14, 1997, the Workers' Compensation Rating & Inspection Bureau of Massachusetts (WCRB) submitted to Insurance Commissioner Linda Ruthardt a proposal

to reduce average workers' compensation insurance rates 11.1%. This proposal was greeted with great enthusiasm, as it marked the fourth consecutive decrease in rates. The enthusiasm, however, proved to be short-lived. In fact, the entire rate approval process was the most contentious and protracted in recent memory. The State Rating Bureau (SRB) charged that the WCRB's reductions were "illusory," and that the state's smallest employers were being deprived of the benefits of the current market. The SRB and the WCRB clashed over numerous issues, including ARAP, and the assigned risk pool. Even the effective date of the rates became an issue for litigation. Negotiations between the two groups ended at an impasse, and there was to be no stipulation as there had been for the past several rate decisions. A lengthy hearing ensued.

On February 13, 1998, Insurance Commissioner Linda Ruthardt issued a rate decision, which reduced average workers' compensation rates 21.1%. This rate decrease was the first since the 12.2% rate reduction in 1996 and ranks among the largest rate decrease ever issued in the Commonwealth. The reduction became effective for policies renewed or written on and after February 14, 1998.

The insurance market continued to be extremely competitive in fiscal year 1998. A total of 28 new carriers were licensed by the Division of Insurance to write workers' compensation insurance in Massachusetts. Moreover, since the implementation of new rates in February, 71 separate deviations and scheduled credits have been approved by the Insurance Commissioner. These discounts range from 7.5% to 35% off manual rates, depending on the carrier and the classification. Drawn by favorable market conditions marked by decreased loss costs, carriers from around the nation have entered the state in search of profitable underwriting opportunities.

At the request of the legislature, the Council conducted a study to estimate the impact on workers' compensation costs of increasing the wage replacement benefits paid to injured employees under a variety of scenarios. In December, Tillinghast issued a report to the Council with their findings. It was concluded that the most significant impact on costs came from the scenario modeled on House Bill 1441 (pre c.398 benefits) which was estimated to increase costs by 14%, assuming no increase in utilization. The report also noted that extending durations had a more significant impact on costs than changing the compensation rate. Removing the Section 35 cap has a relatively minimal impact on overall costs.

During the fiscal year, The National Academy of Social Insurance conducted a survey on the utilization of workers' compensation insurance. It was reported that the national trend indicates both benefit payments under workers' compensation programs and corresponding costs to employers declined significantly between 1993 and 1995 reversing the period of rising costs experienced in the 1980's.

Another study of note was written by the Workers' Compensation Research Institute (WCRI) which examined similarities and differences between workers' compensation advisory councils across the United States. The report details how each council is structured, where authority is derived, the scope of responsibilities and activities, who the members represent, how decisions are made, and the extent of their resources.

The Internet has proven to be an effective and useful tool for the public to gain access to state government information. The DIA experienced tremendous usage of its web page and e-mail inquiries. In February, the Advisory Council built a webpage for the Internet ([www.state.ma.us/wcac/](http://www.state.ma.us/wcac/)). The Council's web page provides the public with an overview of the Council's functions, minutes from our meetings, agenda for meetings, meeting notices, and studies we have conducted. The site also serves to educate those who are unfamiliar with the Advisory Council's activities and provides easy access to useful workers' compensation resources.



## CONCERNS & RECOMMENDATIONS

---

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.” Overall, the Advisory Council is pleased with the workers’ compensation system in Massachusetts as reflected by reduced caseloads at the DIA, premium reductions to employers, and a competitive insurance marketplace. In an effort to both continue and build upon the success of the 1991 reforms, the Advisory Council has concluded the following areas are in need of attention, and offers recommendations for improvements.

### Decisions Outstanding/Time Frames

Periodically, the Advisory Council is provided with information on administrative judges with hearing decisions outstanding for more than six months. According to the report from Senior Judge Jennings, “decisions outstanding over six months” is reported as cases open over 300 days from the initial hearing schedule date. This reporting tracks the time frames required by statute and regulations plus six months.

According to 452 CMR 1.12, depositions of impartial medical examiners must take place after the first scheduled hearing. Deposition transcripts must be submitted no more than 60 calendar days from the close of lay testimony, but a party can request an additional 30 days. Therefore, 90 days is tracked as the deposition filing period. An additional 30 days is allotted for writing decisions (the statute actually allows 28 days). After this initial 120 day period, the six month period begins.

The Advisory Council is concerned with recent increases in decisions outstanding over 300 days as reported by the Senior Judge. During the time period from 3/5/98 to 10/21/98, the total number of decisions outstanding for all judges increased by 130%, from 105 cases to 241 cases respectively. Furthermore, as of October 21, 1998, four administrative judges had over 25 decisions outstanding.

At a time when cases entering the dispute resolution system are at an eight-year low, increases in the number of decisions outstanding is troublesome to Council members. Delays in decision writing are equally burdensome to injured workers as well as insurers. Although part of the problem stems from the fact that eleven of twenty-four administrative judge terms expired in the year, it is evident that several judges are not performing to the level of their peers as demonstrated by their significant delays in issuing decisions.

Adding to this delay in the dispute resolution system is the recent increase experienced in the average time frame for a case to go from conciliation to conference. In FY’98, the average case time frame for this phase of dispute resolution was 100.2 days. In FY’96, this time frame was 79.5 days.

The Advisory Council proposes to establish a subcommittee to work with the Senior Judge to further examine and define appropriate time frames in which to evaluate

judicial performance levels. It is the Council's recommendation that those judges who fail to meet the performance levels of their peers be issued appropriate discipline measures, including the process of statutory removal as delineated by G.L., ch. 23E, sec. 8, when necessary.

## **Adequate Benefit Levels**

During the 1997-98 legislative session, a number of bills were filed that proposed to increase the wage benefit levels for injured workers under Section 34 (temporary total) and Section 35 (permanent partial). For both sections, the current 60% compensation rate was implemented as part of the c.398 revisions in 1991 (previously the rate was 66 2/3%). As a result from this increased interest on modifying wage levels, the Commerce & Labor Committee asked the Advisory Council to conduct a study that would address the cost impact an increase on benefits and durations would have on system-wide costs.

In response to the Commerce & Labor's request, the Advisory Council contracted with the actuarial firm Tillinghast to estimate the cost impact under twelve alternative scenarios with respect to benefits under Section 34 and Section 35. Furthermore, the Council requested Tillinghast to project the impact of these changes on costs to carriers, employers, self-insured employers, members of self insurance groups, and the impact on the Assigned Risk Pool.

The report made a number of findings including but not limited to:

- The most significant impact on costs (14%) resulted from a change to pre c.398 benefits (House Bill 1441).
- Extending durations has a more significant impact on costs than changing then compensation rate.
- Removal of the Section 35 cap has a relatively minimal impact on overall costs.

Shortly after the Tillinghast report was released, Council members met with both chairs and staff of the Commerce & Labor Committee to discuss the report in detail. Both Chairman Koczera and Chairman Lynch thanked Council members for preparing a report under such limited time constraints.

In the 1997-98 legislative session, three bills<sup>1</sup> regarding wage-level were issued an "Extension Order" by the Commerce & Labor Committee for further consideration. The Advisory Council recommends that any future legislative activity regarding changes to wage benefit levels or durations, be conducted with guidance from our Tillinghast report - "Analysis of Proposed Changes in Sections 34 and 35 of Chapter 152 of the Massachusetts General Laws."

## **Employer Fines Legislation**

During fiscal year 1998, the Advisory Council continued to express concern over the current flat fine of \$100 per day assessed against any employer that is found to be lacking workers' compensation insurance. This fine was established in 1987 and has not

---

<sup>1</sup> House Bill 1441 - Rep. Cabral, House Bill 3006 - Rep. Kennedy, House Bill 3008 - Rep. Kennedy.

been adjusted since. Council members have agreed that 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.

For the past three years, this issue has been foremost of Advisory Council Concerns. In FY'97, the Advisory Council worked to develop a bill to address the inadequacy of the current fines. Council members consulted with officials from the insurance industry, the Insurance Fraud Bureau, and the Department of Industrial Accidents. As a result of these meetings, the Council believed it was important that a fine be based on a "sliding scale" so employers that have avoided greater amounts of premium would be subject to a larger fine than employers that have avoided smaller premium. For this reason, the Council agreed to adopt the approach of several states which imposed fines at the rate of three times premium avoided. The Advisory Council drafted legislation to address these concerns and Senate Bill 1840 was filed by Senator Stephen Lynch, Chairman of the Commerce & Labor Committee.

Also troubling to Advisory Council members is the magnitude of Trust Fund Claims. When an employee is injured at work, and it is discovered that the employer failed to provide coverage, the employee may obtain benefits through the DIA's Trust Fund. The Trust Fund was built into the statute as a protective measure to pay for the benefits of injured employees of uninsured employers. The Trust Fund is financed through assessments paid by the vast majority of employers who purchase insurance.

At our March Advisory Council meeting, members were informed that since January 1, 1996, the Trust Fund has handled 1,187 claims, expending \$35.9 million. Even more alarming, 30 employers had two or more claims submitted to the Trust Fund in that period. It was explained to the Council that many of these employers either refuse to submit to the law, or will obtain a policy for a brief period, only to let the policy lapse. Council members are frustrated that such a large number of uninsured employers take advantage of the system, leaving employers who faithfully purchase workers' compensation insurance to pay for Trust Fund claims.

Throughout fiscal year 1998, the Advisory Council has voiced support for Senate Bill 1840. Although this legislation was reported favorably by the Commerce & Labor Committee, no action was taken by the Senate Ways & Means Committee. As the 1999-2000 Legislative session begins, Council members are optimistic that the legislature will pay close attention to the employer fines bill which has been re-filed by Senator Lynch. Council members strongly believe that passage of this bill will force fraudulent employers to purchase workers' compensation insurance and will help alleviate multiple claims against the Trust Fund. The Advisory Council strongly urges that this bill be passed this legislative session.

## **Year End Balances**

An ongoing issue with Advisory Council members is the fact that the Division of Industrial Accidents has historically carried forward substantial funds from one year's budget to the next. These balances, as reflected in the Collections and Expenditures Report (see Appendix O), indicate that more than 50% of the DIA's annual operating

expenses have been held over at the end of the last three years. In FY'98 alone, the DIA spent \$20,546,414 in operating costs, but carried forward a balance of \$10,915,460.

The workers' compensation act is specific about limiting the amount of funds the agency can maintain, in a clear effort to prohibit "stockpiling" of funds. It specifically states that only 35% of a prior years expenditures can be brought forward in a new fiscal year. Any balance exceeding 35% of the prior year's expenditures must be used to reduce the employers assessment.

The DIA experienced dramatic increases in assessment collections between fiscal year 1993 and fiscal year 1995, with collections increasing 54%. In fiscal year 1994, assessments increased from \$13.7 million to \$17.5 million, and in fiscal year 1995, to \$21 million. Since that time, assessments have receded to \$14.1 million in FY'98. These large, assessment collections in 1994 and 1995 appear to have caused the large year end balances. While the DIA has adjusted its assessment rate to reduce year end balances as required by Section 65 of the act, they remain especially high.

During the 1997-1998 legislative session, Commerce and Labor Committee Chairman Robert Koczera introduced legislation that would amend chapter 152 so that the DIA could not continue to hold over such large balances. House 3588, An Act Relative to the Department of Industrial Accidents, would require that any year end balance be completely expended in the next fiscal year by lowering employer's assessments. Although the bill was rated favorably by the Commerce & Labor Committee, no further legislative activity occurred.

The Advisory Council feels strongly that the DIA's year end balances have been excessive. Carrying over 50% of expenditures is unreasonable, and employers should not be required to pay large assessments when balances remain so high. The Council has also discussed many of the potential values these funds may hold for the DIA to accomplish some costly yet important initiatives that will keep the agency working efficiently in the future. Such projects include but are not limited to: significant computer upgrades to allow electronic transfer of first report of injury and other claims forms data to be sent directly to the agency; purchase of computer imaging equipment that would enable data entry to become fully automated; and overhauling the Diameter computer system so that the agency may better track and evaluate data that is contained on these forms.

It is the Council's recommendation that the DIA work with the Commerce & Labor Committee in developing legislation that addresses the appropriate percentage of expenditures that should be carried over from one fiscal year to the next. The Advisory Council recognizes that the agency must have funds to continue operations into a new fiscal year and therefore is reluctant to amend the act to eliminate all carryover of funds. Any legislation should also have a provision that would allow access to these excessive balances for the purposes of either further reducing the assessments to employers or for needed department projects.

## Medical Utilization Trending and Tracking System (MUTTS)

The Advisory Council continued to monitor the progress of the Medical Utilization Trending and Tracking System (MUTTS) in FY'98. For the past six years, the DIA has been developong a program to gather billing data from insurers and utilization review agents to monitor trends in costs as well as patterns of treatment of injured workers in Massachusetts. The data will be used to help identify providers who over or under-utilize medical procedures, create and revise treatment guidelines, and create profiles of providers insurers, and possibly employers as well.

In May, the Advisory Council assembled a subcommittee to further study the MUTTS project. Subcommittee members met with Robert Davis, Executive Director of the Health Care Services Board (HCSB) and Thomas Grannemann from the Center of Health and Economics Research (CHER) to discuss the progress of MUTTS. The DIA is currently in the third year (as of 7/1/98) of a five year contract with CHER.

In the first year of the contract with CHER, emphasis was placed on project design. A survey was developed for insurance companies to respond to in an effort to determine participation and feasibility of the project. In the second year of the project, CHER began the process of "coding" the system so that data gathered from insurance companies can be processed in a uniform manner. This year of the contract the system will be pilot tested. Years four and five of the project will both be "operational" years for MUTTS in which data will be gathered and used by the DIA. Mr. Grannemann explained that at the end of the fifth year, CHER will turn the MUTTS system over to the DIA, unless contract extension is decided.

Advisory Council members of have expressed frustrations with the numerous delays the project has already experienced. It was explained to the subcommittee that delays occurred when the contract was modified to use Massachusetts-specific data rather than the West Virginia data as originally proposed for the pilot project.

Also troubling to Council members is the lack of participation seen in the MUTTS Pilot Program by the larger insurer community. At the November Advisory Council meeting, members learned that only three TPA's are participating in the Pilot Program.

Although MUTTS potentially may have some very promising benefits once completely developed, the Advisory Council remains concerned with the projects history of delays. Furthermore, agency funds have been spent on MUTTS over several years and yet there is very little tangible to show for it. Council members are also concerned of the possibility of future legal challenges to MUTTS regarding compulsory submission of detailed claims data. The Advisory Council will continue to closely monitor progress made in the pilot and future budgeting for the project.<sup>2</sup>

---

<sup>2</sup> Robert Davis reports that contracted amounts for Year 3 (current fiscal year) are not to exceed \$273,323.28; Year 4 not to exceed \$269,289.72; Year 5 not to exceed \$277,090.40.

## Judicial Terms

In fiscal year 1998, eleven of twenty-four administrative judge terms expired, as did all six administrative law judge terms. As a result, the workers' compensation system has experienced delays in conferences and hearings as judges are taken "off-line" (cases will not be scheduled) as the term expiration date approaches. This is done to ensure that cases brought to hearing and awaiting a decision will not need reassignment to a different judge. Moreover, a large number of candidates must be evaluated and reviewed.

During the Fiscal Year 1997-98 legislative session, Representative Robert Koczera, House Chair of the Commerce and Labor Committee, and Senator Mark Montigny filed House Bill 5042 which proposed to stagger the terms of the judges and increase the number of administrative judges to 25.

Section 1 of this bill would require the staggering of administrative judge appointments beginning in 1998, to avoid future problems of multiple terms expiring in one year. In 1998, *five* administrative judges would be appointed to *six-year* terms; *three* to *four-year* terms; *three* to *three-year* terms; and *two* administrative judges would be appointed to a *one-year* term. In 1999, *three* would be appointed to *six-year* terms. In 2000, *four* administrative judges would be appointed to *six-year* terms; *one* would be appointed to a *five-year* term, and *two* would be appointed to *three-year* terms. After these appointments have expired, appointments would be made for a term of six years.

Section 2 of this bill amends G.L. ch. 23E, §4 by increasing the number of permanent administrative judges positions at the DIA from 21 to 25. Currently the DIA has 24 administrative judges (21 permanent and 3 recall judges). Under the bill, the number of administrative judges from any one political party could not exceed 13, up from the current 11.

Section 3 of this bill would amend Chapter 23E, §5 by staggering administrative law judge appointments. Beginning in 1998, *one* would be appointed to a *one-year* term; another would be appointed to a *two-year* term; another to a *three-year* term; another to a *four-year* term; another to a *five-year* term; and another to a *six-year* term. After these terms have expired, new appointments would be made for six year terms.

Although the Advisory Council supported this bill and recommended its enactment, the proposed legislation was never passed by the legislature. While the bill could not have done anything to alleviate the problem facing the system in 1998, it nevertheless would have prevented similar stresses to the system in the future. The Advisory Council strongly urges the legislature to revisit this issue of staggering judicial terms at the DIA so that future appointments are spread out allowing the workers' compensation system to function without delays to both injured workers as well as insurers. Furthermore, the Advisory Council recommends that the length of the initial term for new administrative judges at the DIA be either a two or three year period. This would allow the Senior Judge adequate time to evaluate judicial performance prior to the appointment of a full six year term.

## LEGISLATION

---

During 1997-1998 legislative session, sixty-two bills were filed by legislators seeking to amend the workers' compensation system (see Appendix J). 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 bills. A hearing covering most of these bills was held on April 30, 1997. On June 24<sup>th</sup> and July 2<sup>nd</sup>, 1997, the committee met in executive session where the members voted to recommend that each bill either receive a favorable rating of "ought to pass," an unfavorable rating of "ought not to pass," to order further study, or to extend it for further examination until a particular date.

During the session, proposals ranged in scope from increasing the benefits to providing discounts for employers with drug testing programs.

The Advisory Council was asked to conduct a study on the cost impacts of increasing benefits, as contained in H. 1441, as well as other proposals. A study was contracted with the firm Tillinghast - Towers Perrin, and a report was released on December 1, 1997.

For a list of members of the Joint Committee on Commerce and Labor, see Appendix K.

### **Bills with a "Favorable Rating"**

#### **Lump Sum Settlements** - (H.653, Rep. Koczera, attached to S.71, Sen. Morrissey)

This bill seeks to amend §48 of the act which pertains to lump sum settlements. This bill would elevate the role of the conciliator to approve lump sum settlements "as being in the claimant's best interest." Currently, the statute provides that conciliators may "approve as complete" lump sum settlements, a much lower standard.

#### **Voluntary Payment of Benefits** - (H.654, Rep. Koczera, attached to S.70 Sen. Morrissey)

This bill would amend section 19 of the act which addresses agreements between an insurer and a claimant to voluntarily pay benefits. It seeks to allow insurers who do not make prompt payment within 14 days to have the benefit of the pay without prejudice period should the insurer agree to make future payments. This bill would broaden the circumstances under which disputes can be resolved amicably without a full evidentiary hearing.

#### **Employee Leasing Companies - Exclusive Remedy** - (H.881, filed by Rep. Kaufman)

This bill would amend §14A which allows the Commissioner of Insurance to regulate the terms of workers' compensation policies for employee leasing companies. The bill would extend the exclusive remedy doctrine to both the leasing company and the client company, as well as the provisions of the employer's liability provisions of a workers' compensation policy, in any given controversy.

**Lump Sum Settlements** - (H.2051, filed by Rep. Donovan)

This bill would amend §48 by requiring that a carrier's waiver of reimbursement under §15 could not be considered future weekly benefits. It would also remove the requirement that employers approve lump sum settlements.

**Competitive Rating** - (H.2238, Rep. Bosley, attached to H.3773, Rep. Koczera)

This bill would require a system of competitive rating of workers' compensation insurance rates. Insurance carriers would competitively price insurance coverage, rather than have the Commissioner of Insurance approve a uniform set of rates required for all carriers. This bill was extensively studied by the Council in the Fall of 1996, when a lengthy report was prepared by J.H. Albert and submitted to the Legislature. The Council endorsed the proposal, with some suggestions and cautionary remarks. The bill incorporates the concerns of the Advisory Council.

**Special Fund & Trust Fund Budgets - Year End Balances** - (H.3588, Rep. Koczera)

This bill was reported favorably with a Committee redraft. Section 1 of this bill would amend §65(4) to require that the Advisory Council vote and record its support or opposition to any proposed trust fund budget. Section 2 would amend how much money the DIA can carry forward each year from year-end balances. Currently, only 35% of a prior year's expenditures can be brought forward in a new fiscal year. Any balance exceeding 35% of the prior year's expenditures must be used to reduce the employers' special fund assessment. This bill, as it is written, would make it nearly impossible to reduce year-end balances because it would require reductions only when the balance exceeds a prior year's expenditures. To ensure that balances are reduced to a greater extent than current practice, a lower amount than 35% of expenditures ought to be the threshold. The bill should be amended to read some percent less than 35%.

**Workplace Safety Programs** - (H.3589, Rep. Koczera)

This bill would create within the DIA an Office of Safety, Training and Injury prevention, responsible for the implementation and enforcement of safety programs for employers of the Commonwealth. Employers with ten or more employees would be required to prepare a written safety program and establish a management loss control committee to carry out workplace safety programs that encourage injured employees to return to work and educate employees on workplace safety. This bill would require the Commissioner of the Division of Industrial Accidents to develop a list of the ten lowest experience modification employers for each policy year in an effort to recognize employers for their safety efforts. Employers who fail to establish a management loss control committee as required, can be subject to a stop work order, requiring the cessation of all business operations.



**Purchase of Insurance Requirement** - (H.3591, Rep. Koczera)

This bill would require the DIA to file with the House and Senate Committees on Ways & Means, and the Committee on Commerce and Labor a review of all transfers between budget subsidiary accounts in the prior fiscal year. This bill would also require the DIA Commissioner to provide the Secretary of the Commonwealth with a notice explaining the duties, responsibilities, and liabilities of each corporation to purchase and provide workers' compensation insurance coverage.

**Average Weekly Wage - Attorney's Fees** - (S.53, Sen. Lynch, Connolly, and Shannon)

Section 1 of this bill addresses injured employees who return to work (without a lump sum settlement) and receive wages which are less than the pre-injury wages. This bill would apply the prior average weekly wage to any subsequent period of incapacity, whether or not such incapacity was the result of a new injury or subsequent injury as set forth in §35B. Section 2 of this bill would eliminate consideration of the last best offer in awarding attorney's fees when the insurer files for discontinuance of benefits or refuses initial payment. Currently, the claimants attorney is only entitled to payment if the administrative judge accepts the offer of the claimant or the amount submitted by the conciliator.

**Scar Based Disfigurement** - (S.71, Sen. Lynch)

This bill would eliminate the requirement that scar based disfigurement appear on the face, neck or hands to be compensable. This would require compensation for all disfigurement, whether or not scar based, regardless of its location on the body. Section 36(k) was amended by chapter 398 to limit payments for purely scar based disfigurement by requiring benefits only when the disfigurement is on the face, neck, or hands.

**Employer Fines - Increase** - (S.1840, Sen. Lynch)

This bill was written by the Advisory Council with the assistance of a panel of insurance experts. The bill seeks to curtail abuses of employers who fail to carry workers' compensation insurance by increasing the fines and penalties imposed on violating employers. Senate 1840 would require that violators pay a fine equal to three times the amount of premium which was avoided. In addition, the bill would require employers to pay a \$5,000 criminal penalty in severe cases and reimburse the DIA Trust Fund when an employee is injured and requires trust fund benefits. The bill would also allow companies to sue violators under the Unfair and Deceptive Business Practices Act (ch. 93A) when losing a competitive bid as a result of premium avoidance. Finally, it would require the Division of Industrial Accidents to conduct an education campaign to inform the entire employer community of the insurance requirement and the new fines.

## **Bills with an “Extension Order” For Further Consideration**

### **Increase Benefits** - (H.1441, Rep. Cabral)

This bill would increase wage benefits for injured workers under sections 34 and 35 by restoring the amount to 2/3 of average weekly wage and the duration to 260 weeks for §34 (currently 156) and 600 weeks for §35 (currently 260 or 520 for serious injuries).

### **Total Incapacity (§34) - Increase Benefits** - (H.3006, Rep. Kennedy)

This bill would increase the weekly compensation for total incapacity (§34) benefits. Compensation would increase from the current 60% to 2/3 of average weekly wage.

### **Partial Incapacity (§35) Increase Benefits, Limit Durations** - (H.3008, Rep. Kennedy)

This bill would increase temporary total benefits to 2/3 of average weekly wage. It would eliminate the requirement that benefits not exceed 75% of §34 benefits and combined earnings and benefits not to exceed two times the state average weekly wage. It also amends the maximum duration from 260 weeks to 520 weeks.

### **Attorney's Fees - Agreements to Pay Benefits** - (S.56, Sen. Lynch)

Section 1 of this bill would allow attorneys to collect fees for advancing an employee's rights under section 75A (preferential hiring of injured workers) and 75B (protections against handicap discrimination), in addition to any attorney's fees owed under section 13A. Section 2 of this bill adds two new subsections to section 19. It would allow any administrative judge, administrative law judge or conciliator to approve any agreement to pay benefits authorized by §19. In addition, it would allow an agreement to include a pay without prejudice clause.



**SECTION**  
**- 6 -**

**OVERVIEW**

---

**Provisions to Resolve Disputes.....21**

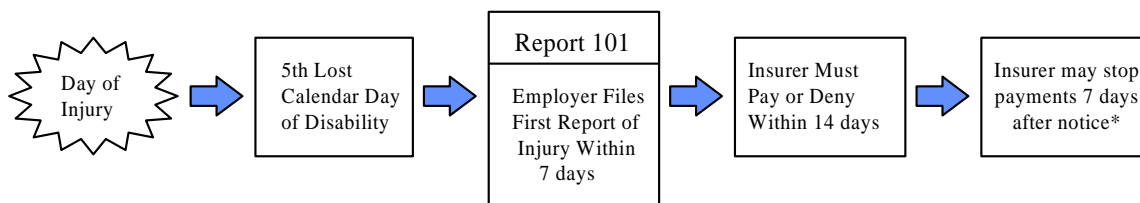
**Summary of Benefits.....24**



## PROVISIONS TO RESOLVE DISPUTES

*Figure 1: 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>3</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>4</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.

<sup>3</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>4</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.

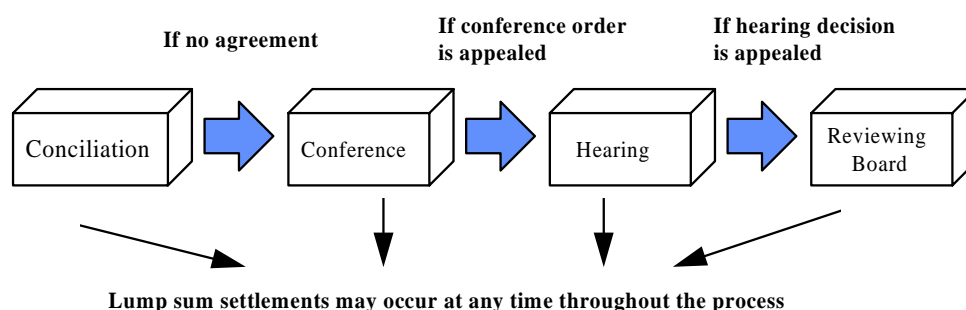
## Dispute Resolution Process

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 2: 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.



Dispute resolution begins at conciliation, where a conciliator will attempt to resolve a dispute by informal means. Disputes should go to conciliation within 15 days of receipt of the case from the division of administration.

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 ALJ's will hear the case.

At the reviewing board, a panel of three ALJ's will review the evidence presented at the hearing and may ask for oral arguments from both sides. They can reverse the AJ's 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.

AJ's 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. AJ's and ALJ's 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.



## SUMMARY OF BENEFITS

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>5</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 1992 and the maximum (SAWW) and minimum benefit levels for §34 and §34A claims:

*Table 1: Indemnity Benefits*

<u>Effective Date</u>	<u>Maximum Benefit</u>	<u>Minimum Benefit</u>
10/1/92	\$543.30	\$108.66
10/1/93	\$565.94	\$113.19
10/1/94	\$585.95	\$117.19
10/1/95	\$604.03	\$120.81
10/1/96	\$631.03	\$126.21
10/1/97	\$665.55	\$131.11
<b>10/1/98</b>	<b>\$699.91</b>	<b>\$139.98</b>

Source: DIA Circular Letter No. 296 (October 1, 1998)

## 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

<sup>5</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, 1998, the SAWW is \$699.91.

(\$699.91), while the minimum is 20% of the SAWW (\$139.98) if claims involve injuries occurring on or after October 1, 1998. 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 (\$699.91), while the minimum is 20% of the SAWW (\$139.98) if claims involve injuries that occurred on or after October 1, 1998. 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.ch.152 §13A(10). As of October 1, 1998 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 **\$835.24** plus necessary expenses. If the employee's attorney fails to appear at a scheduled conciliation, the amount paid is **\$417.62**.

(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 **\$1,193.20**. 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 **\$ 596.60**.

(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 **\$596.60** plus necessary expenses. This fee can be reduced to **\$298.30** 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 **\$835.24** 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 **\$417.62** 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 **\$4,176.20** 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 **\$1,193.20**. 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.

# **SECTION**

# **- 6 -**

## **WORKPLACE INJURY & CLAIMS STATISTICS**

---

<b>Occupational Injuries and Illnesses.....</b>	<b>29</b>
<b>Case Characteristics.....</b>	<b>31</b>



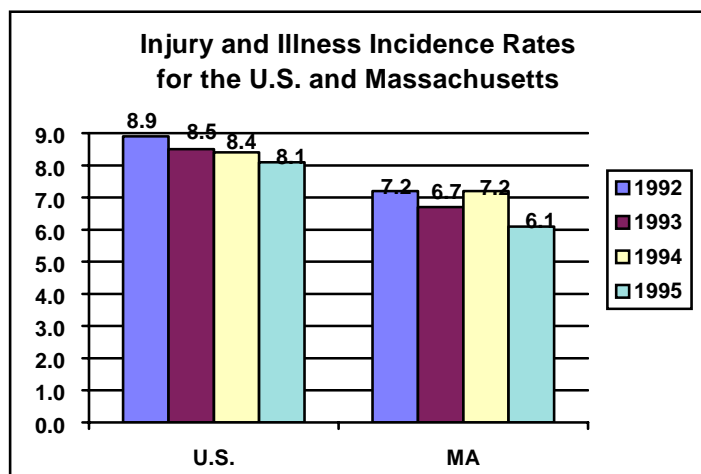
## OCCUPATIONAL INJURIES AND ILLNESSES

Every year the Massachusetts Department of Labor & Workforce Development 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 1995.

The initial results of the 1995 annual survey were released in March of 1997. In 1995 the Commonwealth averaged 2,537,800 workers in the private sector workforce. Of these workers, 127,100 experienced some sort of job-related injury or illness. This means that for every 100 full-time workers, 6.1 were injured in 1995 (incidence rate). For the fourth year in a row, Massachusetts ranks the lowest incident rate among all New England states and well below the national average of 8.1. Out of the 127,100 cases, 64,200 were serious enough to keep workers from their jobs for at least a day (or required restricted work activity). 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 four consecutive years.

	1995	1994	1993	1992
U.S.	8.1	8.4	8.5	8.9
MA	6.1	7.2	6.7	7.2
CT	8.0	8.5	9.0	9.0
ME	9.7	10.5	10.7	10.8
RI	8.5	8.5	7.9	8.5
VT	no data	9.3	9.3	9.1
NH	no data	no data	no data	no data

Figure 3: Injury and Illness Incidence Rates



Source: Labor & Industry News - March '97

**Table 2: Injury Incidence Rates by Industry**

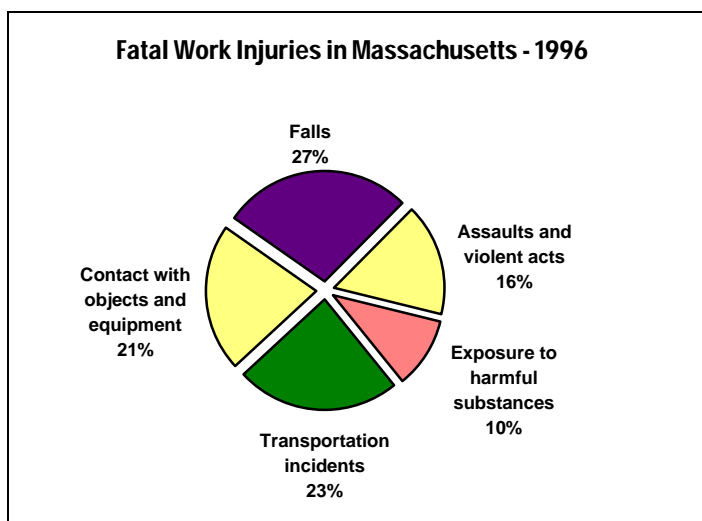
Industry Division (Massachusetts)	1992	1993	1994
<b>Private Industry</b>	<b>7.2</b>	<b>6.7</b>	<b>7.2</b>
Agriculture, forestry, and fishing	10.1	9.2	10.9
Construction	11.9	10.5	11.2
Manufacturing	7.3	7.3	8.1
• Durable goods	6.6	6.8	7.3
• Nondurable goods	8.6	8.4	9.4
Transportation and public utilities	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 Massachusetts 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 1996 a total of 62 fatal work injuries occurred in Massachusetts. This calculates to be only 1% of the 6,112 fatal work injuries nationally.

**Figure 4: Distribution of Fatal Occupational Injuries by Event in Massachusetts**

Falls were the leading cause of workplace deaths in Massachusetts at 27% of the total cases in 1996. Nationally, the leading cause of workplace death results from transportation incidents (42%). Massachusetts' deviation from the national average is most likely reflective of the heavy presence of the construction industry in the economy.

Source: Bureau of Labor Statistics, *News* 8/7/97

## CASE CHARACTERISTICS

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 1994/1995 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 1990/91 policy year, 76% of the losses were paid in indemnity (wage replacement) benefits, while 24% paid for medical benefits. A shift can be seen in the 1994/95 policy year to 69% for indemnity benefits and 32% medical.

### Case Data By Injury Type

*Table 3: Developed Claim Counts*

<i>Composite Policy Year</i>	<i>Fatal</i>	<i>Permanent Total</i>	<i>Permanent Partial</i>	<i>Temporary Total</i>	<i>Medical Only</i>
<b>1990/91</b>	66	19	10,613	38,529	87,555
<b>1991/92</b>	55	16	6,812	30,844	81,038
<b>1992/93</b>	57	26	6,229	26,175	74,235
<b>1993/94</b>	44	18	6,140	24,115	70,099
<b>1994/95</b>	61	16	5,777	23,736	69,636

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

<i>Composite Policy Year</i>	<i>Fatal</i>	<i>Permanent Total</i>	<i>Permanent Partial</i>	<i>Temporary Total</i>	<i>Medical Only</i>
<b>1990/91</b>	266,730	684,248	57,147	7,796	289
<b>1991/92</b>	189,753	708,117	52,175	7,791	327
<b>1992/93</b>	201,864	590,686	48,408	7,859	336
<b>1993/94</b>	157,049	397,422	46,236	7,398	336
<b>1994/95</b>	284,487	903,350	44,605	7,339	351

<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.



**Table 5: Average Claim Costs - Indemnity**

<i>Composite Policy Year</i>	<i>Fatal</i>	<i>Permanent Total</i>	<i>Permanent Partial</i>	<i>Temporary Total</i>
<b>1990/91</b>	259,438	461,388	46,012	5,627
<b>1991/92</b>	175,434	411,284	39,444	5,230
<b>1992/93</b>	189,022	360,618	36,816	5,210
<b>1993/94</b>	142,542	280,942	35,482	5,031
<b>1994/95</b>	248,190	364,496	33,743	4,928

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

**Table 6: Average Claim Costs - Medical**

<i>Composite Policy Year</i>	<i>Fatal</i>	<i>Permanent Total</i>	<i>Permanent Partial</i>	<i>Temporary Total</i>	<i>Medical Only</i>
<b>1990/91</b>	7,292	222,860	11,135	2,169	288.77
<b>1991/92</b>	14,319	296,833	12,731	2,561	327.22
<b>1992/93</b>	12,842	230,068	11,592	2,649	336.27
<b>1993/94</b>	14,507	116,480	10,754	2,367	336.32
<b>1994/95</b>	36,297	538,854	10,862	2,411	350.86

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

### **Distribution of Paid Claims** (Incurred losses)

**Table 7: Developed Losses Distribution**

<i>Composite Policy Year</i>	<i>Total Indemnity</i>	<i>Total Medical</i>
<b>1990/91</b>	75.93	24.08
<b>1991/92</b>	69.29	30.72
<b>1992/93</b>	69.02	30.98
<b>1993/94</b>	70.11	29.90
<b>1994/95</b>	69.19	31.81

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

**Table 8: Developed 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>1990/91</b>	0.05	0.44	12.28	8.68	2.63	24.08
<b>1991/92</b>	0.12	0.74	13.47	12.27	4.12	30.72
<b>1992/93</b>	0.13	1.07	12.92	12.40	4.46	30.98
<b>1993/94</b>	0.13	0.42	13.21	11.42	4.72	29.90
<b>1994/95</b>	0.45	1.77	12.86	11.72	5.01	31.81

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

**Table 9: Developed 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>1990/91</b>	1.78	0.91	50.72	22.52	75.93
<b>1991/92</b>	1.50	1.02	41.72	25.05	69.29
<b>1992/93</b>	1.93	1.68	41.02	24.39	69.02
<b>1993/94</b>	1.25	1.01	43.58	24.27	70.11
<b>1994/95</b>	3.10	1.19	39.94	23.96	68.19

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>1990/91</b>	0.704	0.203	113.21	411.01	933.99
<b>1991/92</b>	0.653	0.190	80.86	366.13	961.94
<b>1992/93</b>	0.704	0.321	76.97	323.42	917.26
<b>1993/94</b>	0.555	0.227	77.45	304.18	884.20
<b>1994/95</b>	0.759	0.199	71.84	295.17	865.95

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



# **SECTION**

# **- 6 -**

## **DISPUTE RESOLUTION**

---

---

<b>DIA Caseload.....</b>	<b>37</b>
<b>Administrative Judges.....</b>	<b>38</b>
<b>Conciliation.....</b>	<b>39</b>
<b>Conference.....</b>	<b>43</b>
<b>Hearings.....</b>	<b>46</b>
<b>Case Time Frames.....</b>	<b>49</b>
<b>Reviewing Board.....</b>	<b>54</b>
<b>Lump Sum Settlements.....</b>	<b>57</b>
<b>Impartial Medical Examinations.....</b>	<b>59</b>

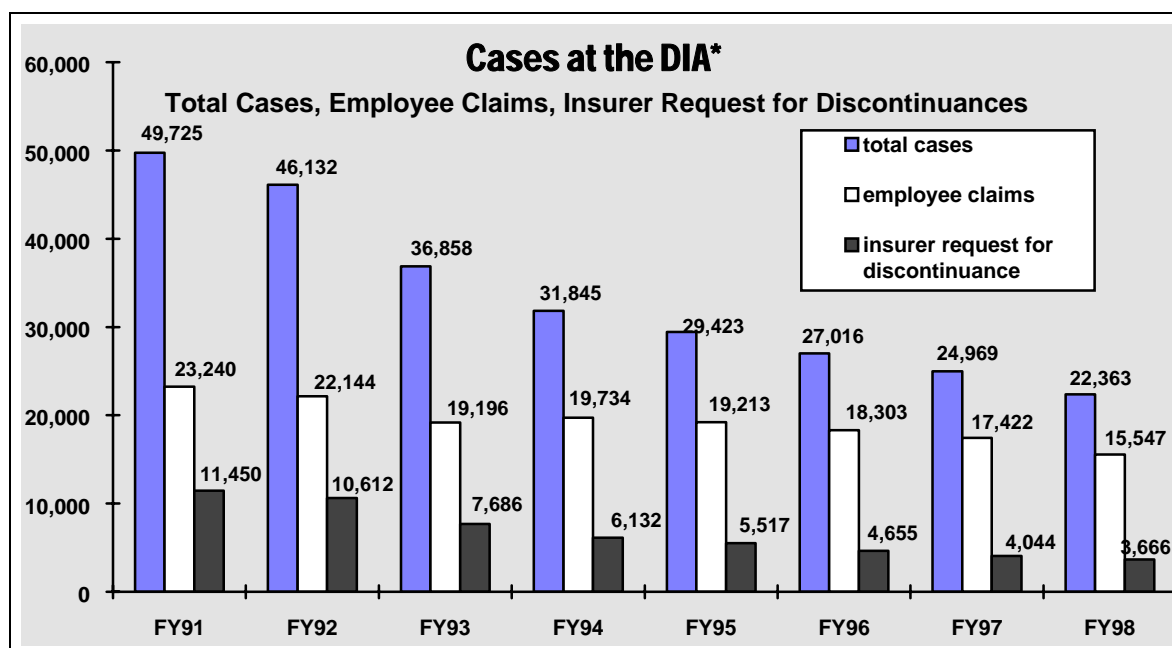


## DIA CASELOAD

Cases originate at the DIA when any of the following are filed: an employee's claim for benefits<sup>7</sup>, an insurer's complaint for termination or modification of benefits<sup>8</sup>, a third party claim<sup>9</sup>, or request for approval of a lump sum settlement.<sup>10</sup>

As demonstrated in Figure 5, there has been a significant decline (55%) in the DIA caseload since implementation of the 1991 reform act. Continuing a trend for the seventh straight year, "total cases" have continued to decline, decreasing by 10.4% in FY'98. Employee's claims, which account for almost 70% of the total cases, declined 10.8% in FY'98. This has been a decrease of 33% since 1991. Most noticeably, insurers' requests for discontinuance declined 9.3% in FY'98, a reduction of 68% since 1991.<sup>11</sup>

Figure 5: Total Cases at the DIA



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 form 110

<sup>8</sup> DIA forms 106, 107 or 108

<sup>9</sup> DIA form 115

<sup>10</sup> DIA form 116

<sup>11</sup> DIA report 28: Statistics for sections of the law being claimed (indicates cases that are received at the DIA for litigation).

## ADMINISTRATIVE JUDGES

---

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 by the Industrial Accidents Nominating Panel and then rated by the Advisory Council. G.L. ch. 23E allows for the appointment of 21 administrative judges and as many former judges to be recalled as the Governor deems necessary.

As one management tool to maintain a productive staff, the Senior Judge may stop assigning new cases to any judge with an inordinate number of hearing decisions unwritten. Intended as a sanction, it provides a judge who has fallen behind with the opportunity to catch up. This could become problematic if a large queue of new cases were to develop. 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.

### Appointment Process

**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). [see Appendix E for members]

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. Consideration for reappointment includes review of a judge's written decisions, as well as the senior judge's evaluation of the applicant'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. Candidates are asked to come before Council for an interview. 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.

## CONCILIATION

---

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.

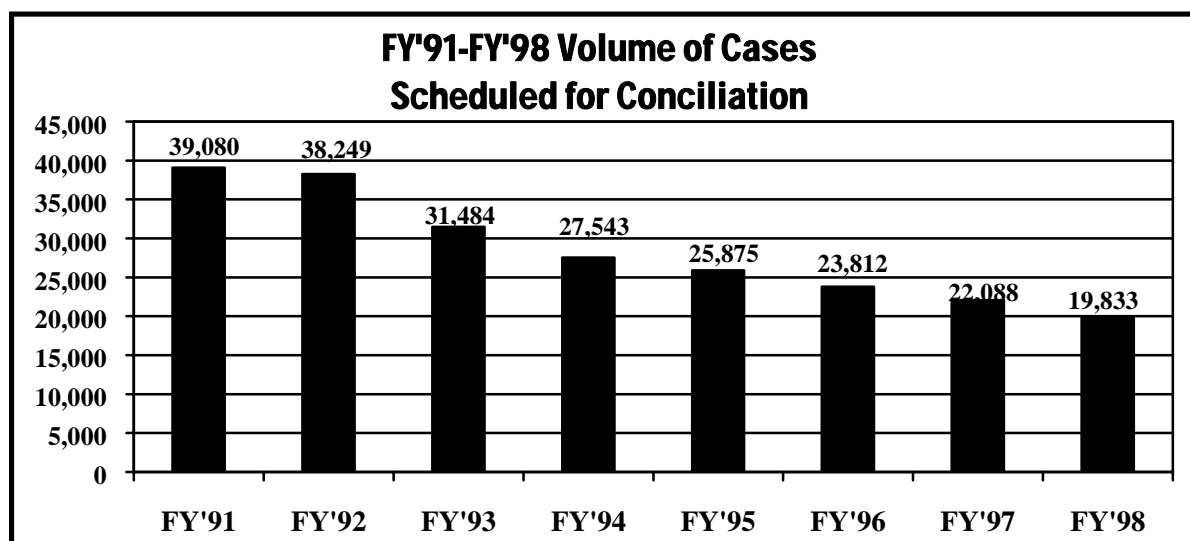
When liability is not an issue but modification or discontinuance of benefits is sought, both parties are required to submit written settlement offers. If the employee fails to file, the conciliator must record either the last offer made by the employee or the maximum compensation rate. If the insurer 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 has decreased every year to the current low of 19,833 cases in fiscal year 1998 (49% less than 1991 levels).



*Figure 6: Volume of Cases Scheduled for Conciliation*

Source: DIA report 17

Figure 6 indicates the number of conciliations scheduled in FY'98. The volume of cases scheduled for conciliation decreased by 10.2% in FY'98. Out of the 19,833 conciliations scheduled in FY'98, 16,740 conciliations actually occurred.<sup>12</sup>

## Conciliation Outcomes

**Cases Referred to Conference** - Conciliation outcomes may be divided into two major categories: "referred to conference," or "resolved." In FY'98, 56% of the 19,833 cases scheduled for conciliation were referred to conference, the next stage of dispute resolution. This is the exact percentage of cases referred to conference as last fiscal year.<sup>13</sup>

As in previous years, a small percentage (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.

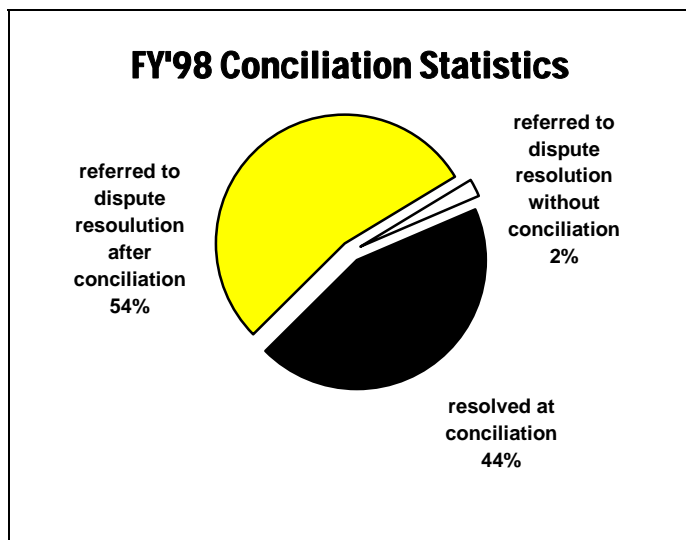
**Resolved Cases** - The remaining 44% of conciliation cases in FY'98 are considered to be resolved (that is they were not referred on to conference). Numbers for FY'98 are similar to previous years, although appear to be trending downward (FY'97 - 44%, FY'96 - 45%, FY'95 - 47%, FY'94 - 45%, FY'93 - 46%, FY'92 - 49%, FY'91 - 48%). While the case load has decreased since the 1991 reforms, the percentage of cases resolved at

<sup>12</sup> This figure accounts for those cases withdrawn or adjusted prior to the actual conciliation. "Referred to conference" (10,612), "conciliated - adjusted" (3,357), "conciliated- pay without prejudice" (123), "withdrawn at conciliation" (1,914), "lump sum approved as complete" (230), "referred to lump sum" (504) = 16,740

<sup>13</sup> DIA report 17 (Finished cases, not including reschedules).

conciliation has remained just below 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 7: Fiscal Year 1998, Conciliation Statistics*



Source: DIA report 17

Conciliation Outcomes FY'98 and FY'97	Number of Cases		Percentage	
	FY'98	FY'97	FY'98	FY'97
Referred to Dispute Resolution	11,014	12,420	55.5%	56.2%
Withdrawn	3,807	4,058	19.2%	18.3%
Adjusted Prior to Conciliation	656	792	3.3%	3.5%
Lump Sum	876	1,062	4.4%	4.8%
Conciliated-Adjusted	3,357	3,670	16.9%	16.6%
Conciliated-Pay Without Prejudice	123	86	0.6%	0.3%
<b>Totals</b>	<b>19,833</b>	<b>22,088</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 exactly the same as last year’s percentage of “conciliated-adjusted” cases.

Cases may also be “conciliated - pay without prejudice” (1% of resolved cases in both FY'98 and FY'97) meaning the pay without prejudice period has 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'98. This is a slight decrease from the 38% in FY'97, 37% in FY'96, 35% rescheduled in FY'95, 31% rescheduled in FY'94, 28% in FY'93, and 22% in FY'92.<sup>14</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.

---

<sup>14</sup> DIA report 16

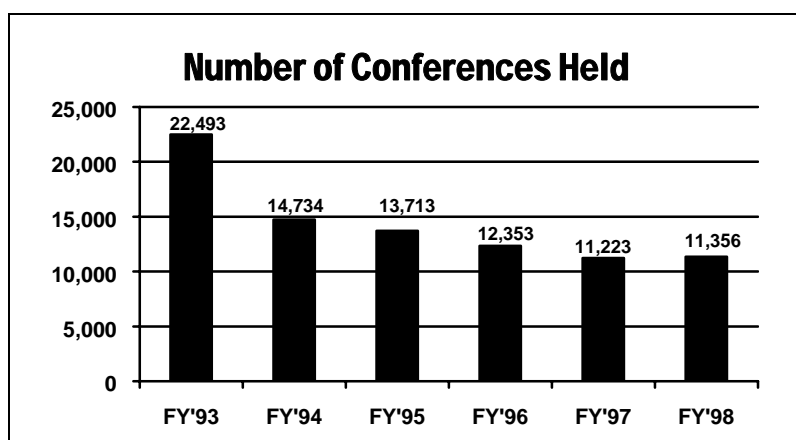
## CONFERENCE

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'98, conference orders were issued on average within 7 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'98, slightly increased by 1.2% (11,223 in FY'97 to 11,356 in FY'98<sup>15</sup>). Historically, the number of conferences held has represented approximately half of the cases scheduled for conciliation. FY'98 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 8: Fiscal Years 1993-1998, Conferences Held*



Source: DIA Report 45B

### Conference Outcomes

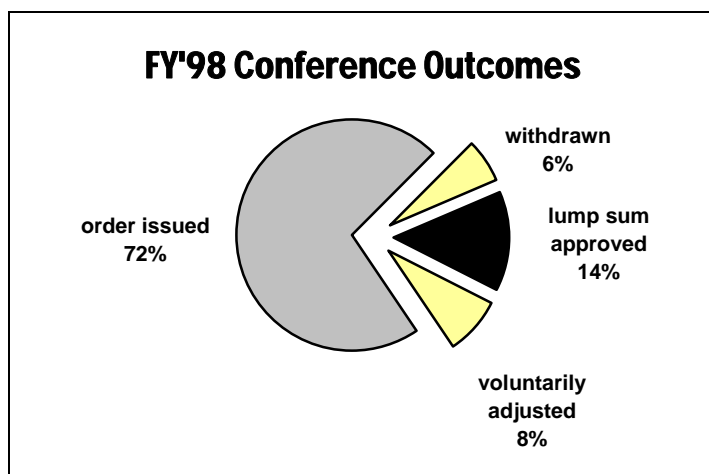
When a case is withdrawn, directed to lump sum conference, or voluntarily adjusted, it may never actually reach the conference as it could be settled before review by the administrative judge. A case may be withdrawn at or before the conference either by the moving party or by the administrative judge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

<sup>15</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 11,356 conferences which took place and were completed in the year.

In a majority of conferences (72% in FY'98) the administrative judge will issue an order to modify, terminate or begin indemnity medical benefits. In fiscal year 1998, 84% of conference orders were appealed, the same percentage as in FY'97<sup>16</sup>.

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 a retired 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 by the presiding AJ rather than scheduling a separate meeting. Lump sum settlements approved comprised a slightly higher percentage of the dispositions in FY'98 (13.8%) than in FY'96 (13.3%).

*Figure 9: Fiscal Year 1998, Conference Outcomes*



Source: DIA report 45B

*Figure 10: Fiscal Years 1998 and 1997, Conference Outcomes*

Conference Outcomes FY'98 and FY'97	Number of Cases		Percentage	
	FY'98	FY'97	FY'98	FY'97
Withdrawn	773	794	6.4%	6.6%
Lump Sum Settlement Approved	1,665	1,600	13.8%	13.3%
Voluntarily Adjusted	951	994	7.9%	8.3%
Order Issued	8,680	8,597	71.7%	71.6%
Other	34	30	0.3%	0.2%
<b>Total</b>	<b>12,103</b>	<b>12,015</b>	<b>100%</b>	<b>100%</b>

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

<sup>16</sup> DIA Report 319, "Appealed Conference Order Statistics."

## Conference Queue

The Senior judge has explained that a conference queue of between 1,500 and 2,000 cases can be scheduled within the 12 week scheduling cycle. A queue much lower than 1,500 will not provide enough cases for the judges to hear and a queue higher than 2,000 will require changes in scheduling and assignment of cases

The conference queue remained relatively stable throughout FY'98, ending 393 cases below the start of the year (2,105 on 7/1/97 and 1,712 on 6/24/98). The queue fluctuated throughout the year, responding to the scheduling cycle of the judges. The queue reached a high of 2,105 on 7/1/97 and a low of 873 on 10/1/97.

Figure 11: Conference and Hearing Queues; Fiscal Years 1991 -1998

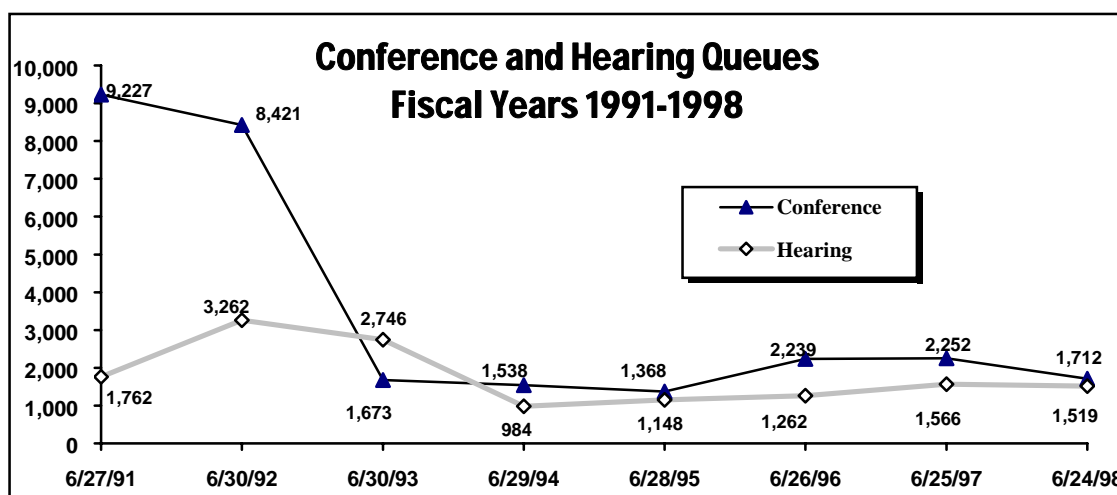
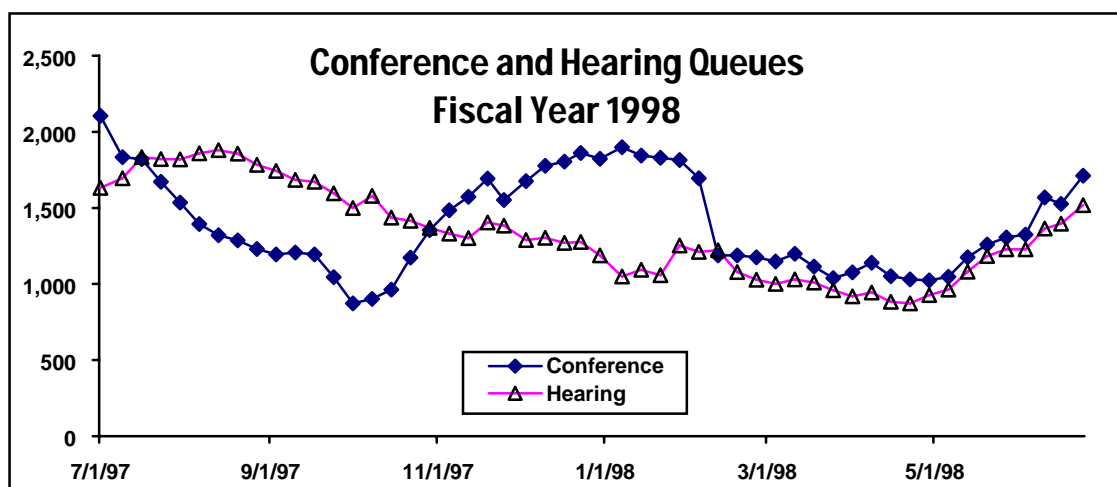


Figure 12: Conference and Hearing Queue; Fiscal Year 1998



Source: DIA report 404

## HEARINGS

---

According to the workers' compensation act, the administrative judge that presided over the conference must 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'98, the average time from the beginning of a hearing to the issuance of the decision was 198 days. This is 5 days longer than the average of 193 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.

### Scheduling

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

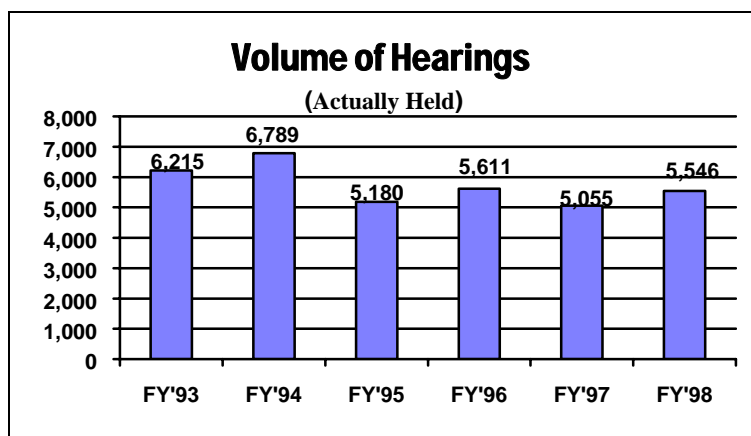
It is difficult to compare the hearing queue with the conference queue because of differences in the two proceedings. Hearings must be scheduled with the same judge who presided over the conference, whereas conferences are scheduled according to availability (when "judge ownership" is not yet a factor). Since hearings are also more time consuming than conferences it takes more time to handle a hearing queue than a conference queue. Fiscal year 1998 began with a hearing queue of 2,105 and ended at 1,542. In the last eight 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'98, there were 5,199 cases appealed to the hearing stage of dispute resolution (60% of the 8,680 conference orders) but approximately 5,546 hearings were held.<sup>17</sup>

---

<sup>17</sup> Dispositions included: "Voluntarily Adjusted," "Referred to Lump Sum," "Decision Filed," "Lump sum Approved/Recommended," and "Administrative Withdrawal."

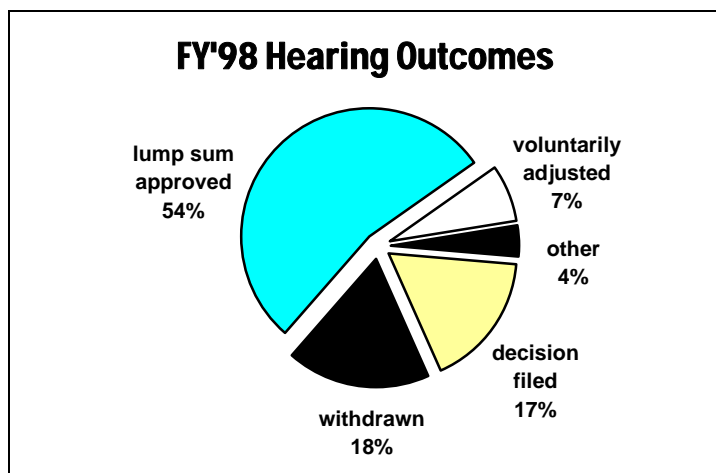
*Figure 13: Fiscal Years 1993-1998, Volume of Hearings*

Source: DIA Report 346

The number of hearings “actually held” increased by 9.7% in FY’98 to its current level of 5,546 cases. Last year this number decreased by 10% to 5,055 cases.

## Hearing Outcomes

The number of hearing dispositions entered in FY’98 totaled 6,915, increasing slightly from last fiscal year’s total of 6,210 dispositions.<sup>18</sup> “Lump sums” consists of half of all the cases while “decision filed” accounts for only 17%, virtually the opposite of the situation at conference.

*Figure 14: Fiscal Year 1998, Hearing Outcomes*

Source: DIA Report 346

<sup>18</sup> There is usually a greater number of dispositions than the actual number of hearings because some cases have more than one disposition, others are withdrawn before the hearing, and others are from prior years.



*Figure 15: Fiscal Years 1998 and 1997, Hearing Outcomes*

<b>Hearing Outcomes FY'98 and FY'97</b>	<b>Number of Cases</b>		<b>Percentage</b>	
	<b>FY'98</b>	<b>FY'97</b>	<b>FY'98</b>	<b>FY'97</b>
Withdrawn	1,244	1,030	18%	17.0%
Lump Sum Settlement Approved	3,759	3,060	54.4%	50.6%
Voluntarily Adjusted	513	545	7.4%	9.0%
Decision Filed	1,139	1,343	16.5%	22.2%
Other	260	74	3.8%	1.2%
<b>Total</b>	<b>6,915</b>	<b>6,052</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'98, 3,759 lump sum settlements were approved by the judge at hearing. 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.

## CASE TIME FRAMES

For many years, the Advisory Council has been concerned about the length of time it takes disputed workers' compensation claims to proceed through the Division of Industrial Accidents' dispute resolution process. In 1991 when the Division 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.

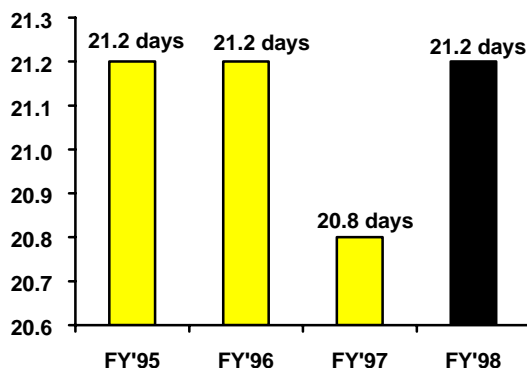
Since 1993 the DIA has been able to eliminate its backlog of cases. This was achieved by adding more judges to the DIA's division of dispute resolution, appointing a Senior Judge to manage the caseloads and assignments of the judges, utilizing management techniques to improve the functioning of the division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

The following case time frame statistics are taken from Diameter Report #591.

### 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), with the Division of Industrial Accidents, a conciliation is automatically scheduled.

#### Claim to Conciliation



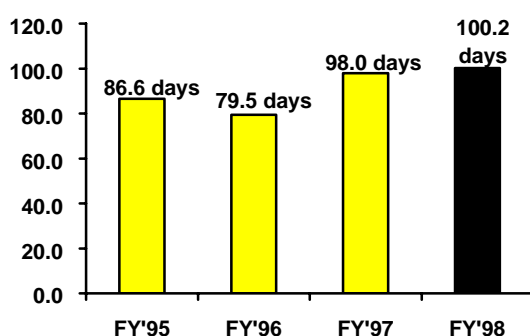
**Start** -- The day the Division receives the employee's claim for benefits, measured by the time stamp on the correspondence when the Division receives it (if there is no time stamp, the date that it is entered is used, however most claims have the date stamped).

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

**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.

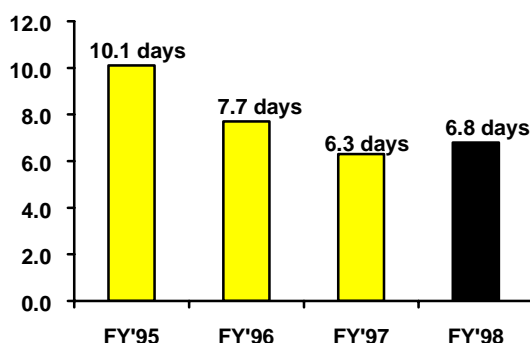
**Scheduled Conference (Conference Start) to Conference Order** - At the conclusion of the conference, the administrative judge must issue a determination in the form of a conference order. The conference order is a short written document requiring an administrative judge's initial impression of compensability 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 arrangements. An administrative judge may also require that the parties define the legal and evidentiary

<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".

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

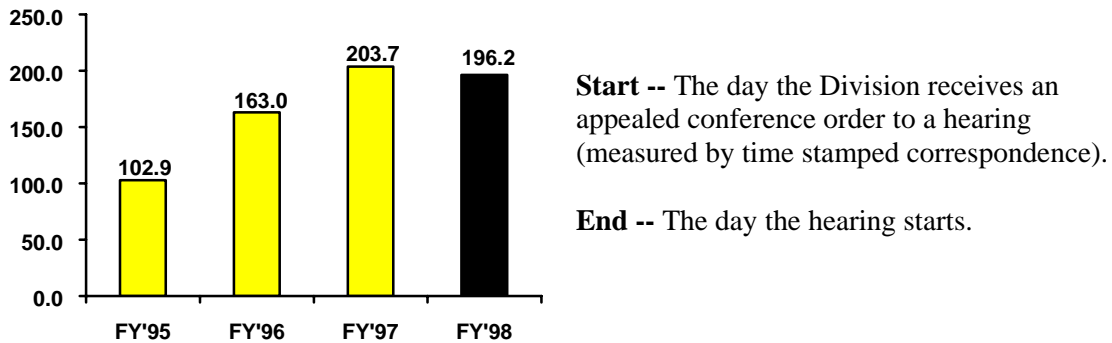


**Start** -- The first actual conference that takes place. If the scheduled conference is rescheduled, the start date will be the rescheduled conference.

**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.

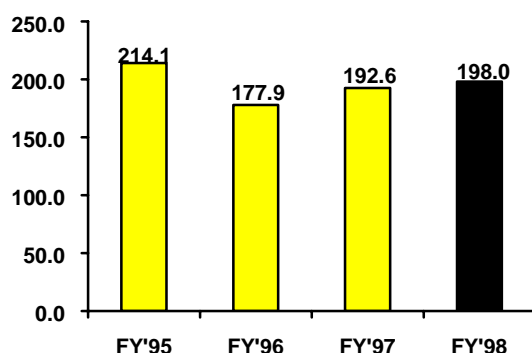
**Appeal of Conference Order to Hearing**

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.

**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 and/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'98 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 11: Regional Time Frames*

<b>FY'98</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><b>Boston</b></i>	21.0 days	116.4 days	6.6 days	204.9 days	204.5 days
<i><b>Fall River</b></i>	21.2 days	76.8 days	11.6 days	193.8 days	228.5 days
<i><b>Lawrence</b></i>	23.1 days	99.4 days	6.9 days	191.7 days	222.3 days
<i><b>Springfield</b></i>	20.7 days	86.8 days	2.6 days	170.9 days	128.5 days
<i><b>Worcester</b></i>	20.6 days	90.7 days	5.4 days	198.6 days	180.5 days
<i><b>Statewide</b></i>	<b>21.2 days</b>	<b>100.2 days</b>	<b>6.8 days</b>	<b>196.2 days</b>	<b>198.0 days</b>

## REVIEWING BOARD

The Reviewing Board consists of six administrative law judges (ALJ's) whose primary function is to review appeals of hearing decisions. While appeals are heard by a panel of three ALJ's, initial pre-transcript conferences are held by individual ALJ's. The administrative law judges also work independently to perform three other statutory duties: 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 identify and narrow the issues, to determine if oral argument is necessary and to decide if producing a transcript is necessary. 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 if needed.

Cases that are not withdrawn or settled ultimately proceed to a panel of three ALJ's. 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 vast majority of cases are remanded for further findings of fact and/or review of conclusions of law. The panel may, however, 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 21: Hearing Decisions Appealed**

<b>FY'98</b>	488 cases
<b>FY'97</b>	529 cases
<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'98 was 488. This is a slight decrease from last fiscal year (529). Previous totals have included: 506 (FY'96), 695 (FY'95), 657 (FY'94), 412 (FY'93), and 493 (FY'92).

The Reviewing Board resolved 574 cases in FY'98 (some from the prior year) compared to 565 in the previous fiscal year.

*Table 23: Appeals Resolved by Reviewing Board, FY'98*

<b>Disposition of Cases, FY'98</b>	<b>Number of Cases</b>
Full Panel:	418
Lump Sum Conferences:	95
Withdrawals/Dismissals for Failing to File Briefs:	61
<b>Total # of Appeals Resolved:</b>	<b>574</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 may refer cases to this lump sum conference at the request of the parties or the parties may request a lump sum conference directly.

## **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 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'98, administrative law judges approved 95 §15 petitions on a rotating basis.

## **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 M.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 lien-holder 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 fiscal year 1998 was 86.

## 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 AJ's) will decide if it is in the best interest of the employee to settle.

*Table 24: Lump Sum Conference Statistics*

<i>Fiscal Year</i>	<i>Total lump sum conferences scheduled</i>	<i>Lump sum settlements approved</i>
<b>FY'98</b>	<b>9,579</b>	<b>9,158 (95.6%)</b>
FY'97	9,293	8,770 (94.4%)
FY'96	10,047	9,633 (95.9%)
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 51% since FY'91. In FY'98, only 4 lump sum settlements were disapproved in the whole fiscal year. The remainder of the scheduled lump sum conferences without an "approved" disposition were either withdrawn or rescheduled.

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

**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 protect 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 the table below.

*Table 25: Lump Sum Settlements Pursued, FY'98*

<i>Meeting FY'98</i>	<i>Lump Sum Pursued<sup>20</sup></i>	<i>Percentage of Total Cases Scheduled</i>
<b>Conciliation</b>	876	4.4%
<b>Conference</b>	1,868	15.1%
<b>Hearing</b>	3,953	57.2%

*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

## IMPARTIAL MEDICAL EXAMINATIONS

---

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 parties must agree on the selection of an impartial physician. If the parties cannot agree, the AJ must appoint one. 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 the report is received. Filing fees for the

---

<sup>21</sup> M.G.L. c.152, § 8(4)

<sup>22</sup> §45 of M.G.L. c.152.

examinations are determined by the Commissioner and set by regulation by the Commonwealth's Executive Office of Administration & Finance.

Below is the department's fee schedule:

*Table 26: 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'98, \$5,038 was collected in filing fees.

As of 7/1/98, there were 355 physicians<sup>23</sup> on the roster consisting of 29 specialties. This is a significant decrease from the 510 physicians as of 7/1/97.

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'98 the impartial unit scheduled 7,005 examinations. Of these, 4,535 exams<sup>24</sup> 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 Division and to each party within 21 calendar days after completion of the examination. The number of exams scheduled in FY'97 was 6,784, and 4,605 were conducted in the year.

## Waivers of Impartial Exam Fees

In 1995, the Supreme Judicial Court ruled that the Division of Industrial Accidents must waive the filing fee for indigent claimants 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.

<sup>23</sup> Including contracts pending renewal.

<sup>24</sup> Additional reports may be entered upon FY'98 closure.

**The Waiver Process** - 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.

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 Division for any fees waived.

**Definition of Indigency** -

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 M.G.L. c.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	\$10,063
2	\$13,563
3	\$17,063
4	\$20,563
5	\$24,063
6	\$27,563
7	\$31,063
8	\$34,563

Guidelines as of 2/24/98.

For family units with more than eight members, add \$3,500 for each additional member in the family. The poverty guidelines are updated annually by the U.S. Department of Health and Human Services.



# **SECTION**

# **- 6 -**

## **ADMINISTRATION**

---

Office of Claims Administration.....	65
Office of Education and Voc. Rehabilitation.....	67
Office of Safety.....	71
Office of Insurance.....	72
Office of Investigations.....	74
Workers' Compensation Trust Fund.....	76
Office of Health Care Services Board.....	78
The Regional Offices.....	81





## **OFFICE OF CLAIMS ADMINISTRATION**

---

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 1998, the Office of Claims Administration received 40,711 First Report of Injury Forms, 1,799 less than FY'97 (42,510). The number of claims, discontinuances and third party claims decreased to 22,861, 7.7% less than the previous year (24,757). The total number of referrals to conciliation for the fiscal year was 19,822, 10.1% less than FY'97 (22,056).

### **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 1998, \$279,136 was collected in fines, a decrease from the \$363,968 collected in FY'97.

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 1998, Claims

Administration received eight in house referrals. Outside referrals are directly reported to the Insurance Fraud Bureau or the Attorney General's Office. Claim Administration assists the Insurance Fraud Bureau investigators on copies of suspected workers' compensation files and receives status update letters.

## **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.

## **OFFICE OF EDUCATION AND VOC. REHAB**

---

The Office of Education and Vocational Rehabilitation (OEVR) oversees the rehabilitation of disabled workers' compensation recipients for successful return to work. While OEVR seeks to encourage the voluntary development of rehabilitation services, it has the authority to mandate services for injured workers determined to be suitable for rehabilitation. Vocational rehabilitation is defined by the act as "non-medical services reasonably necessary at a reasonable cost to restore a disabled employee to suitable employment as near as possible to pre-injury earnings. Such services may include vocational evaluation, counseling, education, workplace modification, and retraining, including on-the-job training for alternative employment with the same employer, and job placement assistance."<sup>25</sup>

A claimant is eligible for vocational rehabilitation services when injury results in a functional limitation prohibiting a return to previous employment, or when the limitation is permanent or will last an indefinite period of time. Liability must be established in every case, and the claimant must be receiving benefits.

### **The Vocational Rehabilitation System**

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, and through referrals from 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>26</sup>

Rehabilitation review officers (RRO's) interview prospective candidates during a "mandatory meeting," for the purpose of determining whether or not an injured worker is suitable for VR services. If suitability is determined, RRO's will request that the insurer assign a provider (approved by OEVR) to the injured worker so that an Individual Written Rehabilitation Program (IWRP) can be developed. RRO's then monitor all IWRP's to ensure the quality and cost-effectiveness of the provider's services. Occasionally the RRO will conduct a "team" meeting with all parties to identify problems and redirect the process towards a successful conclusion.

Each year OEVR approves VR specialist to develop and implement the individual written rehabilitation plans (IWRP). 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

---

<sup>25</sup> G.L. ch.152, sec. 1(12).

<sup>26</sup> G.L. ch. 152, secs. 30 E-H. 452 C.M.R. 4.00

least a master's degree, rehabilitation certification, or a minimum of 10 years of experience. A list of the providers is available from the OEVR. In FY'98, OEVR approved 79 VR providers. It is the responsibility of the provider to submit progress reports on a regular basis so that the RRO can have a clear understanding of the progress a case has made. Progress reports must include the following:

1. Status of vocational activity;
2. Status of IWRP development (including explanation if IWRP has not been completed within 90 days);
3. If client is retraining, copy of grades received from each marking period and other supportive data (such as attendance);
4. Summary of all vocational testing used to help develop an employment goal and a vocational goal;
5. The name of the OEVR review officer.

**Determination of Suitability** - Once an injured worker has been referred to OEVR, an initial mandatory interview between the injured worker and the rehabilitation review officer is scheduled. During this meeting, the RRO obtains basic case information from the client, explains the VR process (including suitability, employment objectives in order of priority, client rights, and OEVR's role in the process) and answers any questions the client may have. The failure of an employee to attend the mandatory meeting can result in the discontinuance of benefits until the employee complies.

Once a "mandatory meeting" has concluded, it is the duty of the RRO to issue a decision on the appropriateness of the client for vocational rehabilitation services. This is done through a Determination of Suitability (DOS) Form. Suitability is determined by a number of factors including: medical stability, substantial functional limitations, feasibility and cost-effectiveness of services, and liability must be established. If a client is deemed "suitable," the RRO will write to the insurer and request VR services for the injured worker. The insurer must then choose any OEVR-approved provider and must submit to OEVR any pertinent medical records within 10 days. If a client is deemed "unsuitable," the insurer can refer the client again after six months has elapsed.

At any point during the OEVR process after an injured worker has been found suitable for VR services, a RRO can schedule a "team meeting" to resolve issues of disagreement among any of the represented parties. All parties are invited and encouraged to attend team meetings. At the conclusion of the meeting, if parties are still in disagreement, the RRO can refer the matter back to the parties with recommendations and an action plan. All team meetings are summarized in writing.

**Individual Written Rehabilitation Program (IWRP)** - After an employment goal and vocational goal has been established for the injured worker, an Individual Written Rehabilitation Program (IWRP) can be written. The IWRP is written by the vocational provider and includes the client's vocational goal, the services the client will receive to

obtain that goal, and explanation why the specific goal and services were selected, and the signatures necessary to implement it. A vocational rehabilitation program funded voluntarily by the insurer has no limit of length, however OEVR-funded programs are limited to 52 calendar weeks for pre-12/23/91 injuries and 104 calendar weeks for post-12/23/91 injuries. The IWRP should follow OEVR's priority of employment goals:

1. Return to work with same employer, same job modified;
2. Return to work with same employer, different job;
3. Return to work with different employer, similar job;
4. Return to work with different employer, different job;
5. Retraining.

In order for an IWRP to be successful, it needs to be developed jointly with the client and the employer. An IWRP with the specific employment goal of permanent, modified work must include:

- a) a complete job description of the modified position (including the physical requirements of the position);
- b) a letter from the employer that the job is being offered on a permanently modified basis;
- c) a statement that the client's treating physician has had the opportunity to review and comment on the job description for the proposed modified job.

Before any vocational rehabilitation activity begins, the IWRP must be approved by OEVR. Vocational Rehabilitation is successful when the injured worker completes a VR program and is employed for 60 days. A "Closure Form" must then be signed by the provider and sent to the appropriate RRO. Closures should meet the following criteria:

- 1) all parties should understand the reasons for case closure;
- 2) the client is told of the possible impact on future VR rights;
- 3) the case is discussed with the RRO;
- 4) a complete closure form is submitted by the provider to OEVR.
- 5) form should contain new job title, DOT code, employer name and address, client wage, and the other required information.

**Lump Sum Settlements** - An employee obtaining vocational rehabilitation services 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. Nevertheless, OEVR will consent to a lump sum settlement if the insurer agrees to continue to provide rehabilitation benefits.

## Utilization of Vocational Rehabilitation

In FY'98 OEVR was headed by an acting director and staffed by 12 Rehabilitation Review Officers, 7 Disability Analysts, and 5 Clerks.

Out of the 3,011 cases referred too OEVR in FY'98, 80% proceeded to a "mandatory meeting" for a determination of suitability for vocational rehabilitation services. The remaining 20% exited the system for reasons that include the non-establishment of liability or that the employee was not on compensation. Of those cases, which received a "mandatory meeting," 45% were referred to the insurer/self-insurer with a request to initiate vocational rehabilitation services by and OEVR certified provider. In FY'98, the 61.5% success ratio of those injured workers who completed plans and returned to work was an all time high.

*Table 12: Utilization of Voc. Rehab. Services, FY'92 - FY'98*

<i>Fiscal Year</i>	<i>Referrals to OEVR</i>	<i>Mandatory/In form. Meetings</i>	<i>Referrals to Insurer for VR</i>	<i>IWRPs approved</i>	<i>Return to work</i>	<i>% RTW after plan development</i>
FY'98	3,011	2,422/236	1,040	603	371	61.5%
FY'97	3,266	2,455/292	1,094	690	320	46%
FY'96	3,347	2,653/119	1,185	727	364	50%
FY'95	3,219	2,833	1,370	811	391	48%
FY'94	3,756	3,190	1,706	948	470	50%
FY'93	4,494	3,882	2,253	1,078	554	51%
FY'92	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 finance the rehabilitation services.

Fiscal Year 1998 encumbrances of the Trust Fund totaled \$63,838.35 for vocational rehabilitation services.<sup>27</sup> 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. The Trust Fund made one collection in the fiscal year from an insurer for \$5,556.10. The insurer paid no penalty fee.

<sup>27</sup> \$17,860.60 of the encumbrances was canceled after the insurer agreed to take over the vocational rehabilitation plan on two cases. Another \$600.00 of the encumbrances were canceled due to the failure of an employee to keep the initial evaluation appointment. This results in a total of \$45,397.75 encumbered in FY'98.

## OFFICE OF SAFETY

---

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>28</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 proposals yearly to notify the general public that these grants are available. Grants are awarded on a competitive basis according to scope and content of proposals.

See Appendix D for a list of proposals recommended for funding in FY’99.

---

<sup>28</sup> G.L. ch. 23E, 3(6)



## OFFICE OF INSURANCE

---

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>29</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>30</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 \$100,000, 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'98, five new licenses were issued to bring the total number of "parent-licensed" companies to 186, covering a total of 503 Subsidiaries. Each self insurance license provides approval for a parent company and its subsidiaries to self insure. This amounts to approximately \$295 million in equivalent premium dollars.

Four semi- autonomous public employers are also licensed to self insure including the Massachusetts Bay Transportation Authority (MBTA), the Massachusetts Turnpike Authority, the Massachusetts Port Authority, and the Massachusetts Water Resource Authority (MWRA).<sup>31</sup>

---

<sup>29</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>30</sup> G.L. 452 C.M.R. 5:00

<sup>31</sup> The Commonwealth of Massachusetts does not fall under the category 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).

## **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'98, 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.

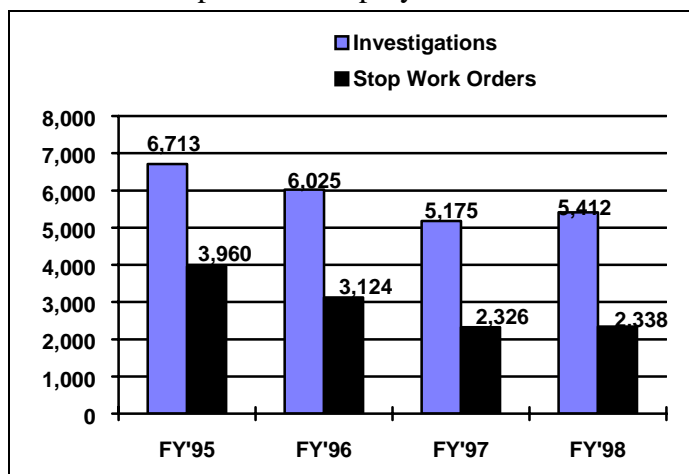
## OFFICE OF INVESTIGATIONS

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 Division 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

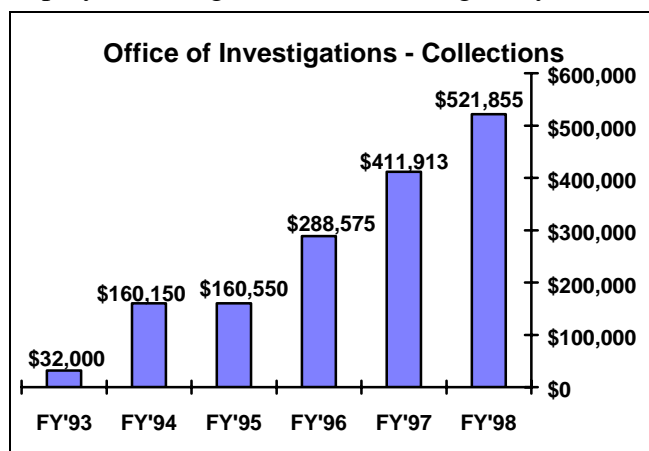
fails to provide proof of workers' compensation coverage upon demand. Such an order requires that all business operations cease and becomes effective immediately upon service. An employer may appeal the stop work order and remain open, however. In FY'98, 2,338 stop work orders were issued as a result of 5,412 investigations conducted<sup>32</sup>. The number of stop work orders issued in FY'98 was 41% less than FY'95 levels. Of the 2,338 stop work orders issued, 2,318 (99%) were issued to "small" companies (1-10 employees), 18 were issued to "medium" companies (11-75 employees) and 2 were issued to "large" companies (76+ employees).



<sup>32</sup> "Office of Investigations - Monthly Report - June, 1998," (July 7, 1998).

**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 proof of coverage to the DIA 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 Division 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'98 was \$521,855.



**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)).

## **WORKERS' COMPENSATION TRUST FUND**

---

Section 65 of the workers' compensation act establishes a trust fund in the state treasury to make payments to injured employees whose employers did not obtain insurance, and to reimburse insurers for certain payments under sections 26, 34B, 35C, 37, 37A, and 30H. The DIA has established a department known as the Trust Fund to process requests for benefits, administer claims, and respond to claims filed before the division of dispute resolution. In FY'98, the Trust Fund staff worked in conjunction with the General Counsel's Office to administer the fund.<sup>33</sup>

### **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 DIA'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 Division's records.<sup>34</sup> In FY'98, \$4,831,025.79 was paid to uninsured claimants. 218 claims were filed, and 89 claims were accepted.

### **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 to offset any financial disincentives associated with the employment of injured workers.

Section 37 requires insurers 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"<sup>35</sup>, insurers become eligible to receive reimbursement from the DIA's trust fund for 75% of compensation paid after the first 104 weeks of payment. 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 the first 104 weeks of compensation and up to one hundred percent for any amount thereafter.

---

<sup>33</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.

<sup>34</sup> 452 C.M.R. 3.00

<sup>35</sup> 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.

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 have ever been filed.)

At the close of fiscal year 1998, 961 claims for benefits under these sections were pending all of which pertain to §37. The Trust Fund paid \$1,693,493.94 in quarterly payments on 72 claims and settled 314 cases for \$15,251,955.

### **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) must 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 a maximum of 104 weeks. 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. In FY'98, \$14,270.01 was paid for rehabilitation services on 9 cases (See OEVR).

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

Section 35C states that when there is at least a five year difference between the date of injury and the date of benefit eligibility, benefits' paid will be based upon levels in effect on the date of eligibility. The trust fund will reimburse the insurer or self-insurer for supplemental benefits due to cost of living adjustments. In FY'98, \$835,173.47 was paid as latency claims and 90 claims were filed.

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

Section 34B provides supplemental benefits for persons receiving death benefits under section 31 and permanent and total incapacity benefits under section 34A, whose date of personal injury was at least 24 months prior to the review date. The supplemental benefit is the difference between the claimant's 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 after October 1, 1986, insurers will be reimbursed for any increase that exceeds 5%.

COLA payments for FY'98 totaled \$2,764,902 for the Public Trust Fund and \$18,008,554 for the Private Fund.

## OFFICE OF HEALTH CARE SERVICES BOARD

---

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 M for current members).

### Health Care Services Board

The DIA's Health Care Services Board (HCSB) is a voluntary committee of health care providers, as well as employer and employee representatives. The HCSB is charged with reviewing and investigating complaints against providers, developing appointment criteria for the impartial physicians roster, and developing written treatment guidelines used for utilization review.

**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 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.

The HCSB has published twenty-five treatment guidelines covering many conditions common to workers' compensation patients. 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 Division'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.

## Medical Utilization Trending and Tracking System

The commissioner is required to implement within the Division 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>36</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.

For the past few years, the DIA has been implementing a program to gather billing data from insurers and utilization review agents to monitor trends in costs as well as patterns of treatment of injured workers in Massachusetts. This data will be used to

---

<sup>36</sup> G.L. ch. 152, sec. 13.



identify providers who over or under-utilize medical procedures, and to 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 Division has contracted 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 Division does not intend to buy equipment, but rather contract with a vendor to collect data. The Center for Health Economics Research (CHER), of Waltham, Massachusetts, has been hired to conduct the project.

In the first year of the contract with CHER, emphasis was placed on project design. A survey was developed for insurance companies to respond to in an effort to determine participation and feasibility of the project. In the second year of the project, CHER began the process of "coding" the system so that data gathered from insurance companies can be processed in a uniform manner. This year of the contract the system will be pilot tested. Years four and five of the project will be "operational" years for MUTTS in which data will be gathered and used by the DIA.

## **THE REGIONAL OFFICES**

---

The Division 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 Divisions 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.

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

**Louis Connolly, Manager**

**Springfield**

436 Dwight Street, Room 105  
Springfield, MA 01103  
413/784-1133

**Marc Joyce, Manager**

**Worcester**

8 Austin Street  
Worcester, MA 01608  
508/753-2072

**Bill Taupier, Manager**

# **SECTION**

# **- 6 -**

## **DIA FUNDING**

---

---

<b>DIA Funding.....</b>	<b>85</b>
<b>Private Employer Assessments.....</b>	<b>87</b>
<b>Public Employer Assessments.....</b>	<b>90</b>
<b>The DIA Operating Budget.....</b>	<b>92</b>



## DIA FUNDING

---

To ensure that the Division 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>37</sup>

The assessment rate for private sector employers in FY'99 is 5.383% of standard premium. This is a 34% increase from the FY'98 rate of 4.021%.

**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>38</sup>

These obligations are paid out of the trust funds.<sup>39</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.

---

<sup>37</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>38</sup> G.L. Ch. 152, § 65(2) (1996).

<sup>39</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.

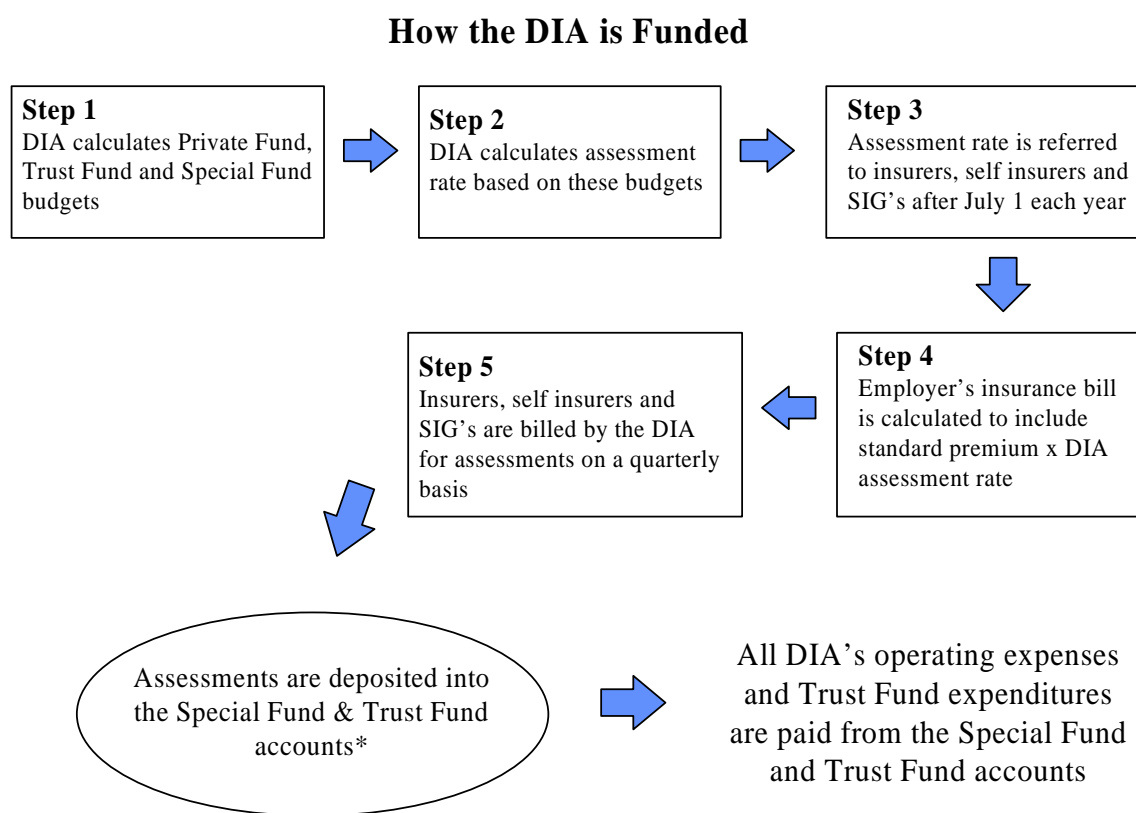
## The Funding Process

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 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<sup>st</sup> 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.

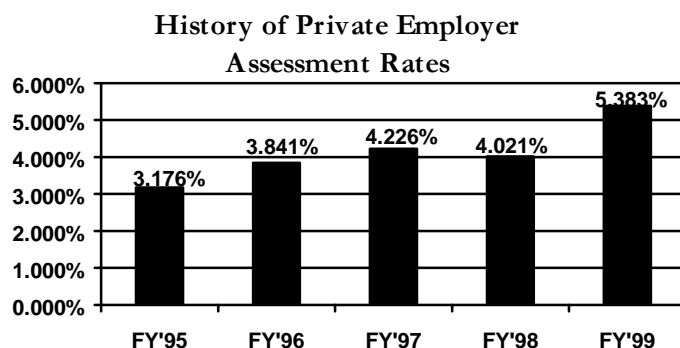
*Figure 14: DIA Funding Process*



\*Note: Maintained by the State Treasurer.

## PRIVATE EMPLOYER ASSESSMENTS

On June 23, 1998, Tillinghast released its analysis of the DIA FY'99 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'99, beginning July 1, 1998. Included in the report are the assessment rates to be applied to public and private employer insurance premiums. The private employer assessment rate has been calculated to be **5.383%** of standard premium, an increase of 34% from last year (4.021%). The following breaks down the process of the assessment rate calculation for private employers.



### 1. FY'99 EXPENDITURES: \$58.2M

The first step in the assessment process is the calculation of the expected FY'99 expenditures. Private employers are assessed for the sum of the Private Trust Fund budget and the Special Fund budgets.

<b>PRIVATE TRUST FUND BUDGET</b>	<b>Projected FY'99 Expenditures (6/23/98)</b>	<b>FY'98 Expenditures (estimated on 3/31/98)</b>
<b>Section 37 (2nd Injuries)</b>	\$14,338,125	\$18,004,000
<b>Uninsured Employers</b>	\$4,800,000	\$5,044,000
<b>Section 30H (Rehabilitation)</b>	\$0	\$20,000
<b>Section 35C (Latency)</b>	\$1,188,000	\$1,113,000
<b>Section 34B (COLA's)</b>	\$14,542,386	\$17,495,000
<b>Defense of the Fund</b>	\$1,800,000	\$1,682,000
<b>TOTAL</b>	<b>\$36,668,511</b>	<b>\$43,358,000</b>



<b>SPECIAL FUND BUDGET</b>	<b>Projected FY'99 Expenditures (6/23/98)</b>	<b>FY'98 Expenditures (estimated on 3/31/98)</b>
<b>TOTAL</b>	<b>\$21,500,000</b>	<b>\$19,700,000</b>

<b>PRIVATE EMPLOYER EXPENDITURES</b>	<b>Projected FY'99 Expenditures (6/23/98)</b>	<b>FY'98 Expenditures (estimated on 3/31/98)</b>
<b>TOTAL</b>	<b>\$58,168,511</b>	<b>\$63,058,000</b>

## 2. PROJECTED FY'99 INCOME: \$6.8M

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

*FY'99 Fines and Fees (Special Fund)* = \$4,700,000

*FY'99 Income Due to Reimbursements* = \$1,400,000

*Estimated Investment Income (FY'98)* = \$687,695 (Private Fund: \$324,434/Special Fund: \$363,261)

**Total Projected FY'99 Income:** **\$6,787,695**

## 3. ADJUSTMENTS TO FUND BUDGETS: \$4.4M (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'97 expenditures in a particular fund must be used to reduce amounts assessed for that fund in FY'99. The balance of the Special Fund at the end of FY'98 will have a surplus which exceeds 35% of FY'97 disbursements. Therefore the assessment was calculated with a \$4.4 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'98 Estimated Year End Balance</u></b> \$12,108,703	<b><u>35% of FY'97 Expenditures</u></b> \$7,743,747	<b><u>Amount of Reduction Required</u></b> \$4,364,956
<b><i>PRIVATE TRUST FUND:</i></b>	<b><u>FY'98 Estimated Year End Balance</u></b> \$10,814,465	<b><u>35% of FY'97 Expenditures</u></b> \$13,852,671	<b><u>Amount of Reduction Required</u></b> \$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'97. For the Private Fund, the assessment base is \$680.4M.

---

**Private Expenditure Ratio:** 8.549% (\$58.2 million/\$680.4 million)

**Projected Income Ratio:** 0.998% (\$6.8 million/\$680.4 million)

**Balance Adjustment Ratio:** 0.6415% (\$4.4 million/\$680.4 million)

---

**5. CALCULATION OF THE ASSESSMENT RATIO: 6.910%**

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.

---

Projected expenditures -	Projected income -	Balance adjustment =	<b>Assessment Ratio</b>
8.549%	0.998%	0.641%	<b>6.910%</b>

---

**6. CALCULATION OF THE ASSESSMENT RATE: 5.383%**

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 1999 assessment base factor is .779.

---

Assessment Ratio x	Assessment Base Factor =	<b>Assessment Rate</b>
6.910%	.779	<b>5.383%</b>

---

## PUBLIC EMPLOYER ASSESSMENTS

On June 23, 1998, Tillinghast released its analysis of the DIA FY'99 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'99, beginning July 1, 1998. 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 **12.797%** of standard premium.

The following breaks down the process of the assessment rate calculation for public employers.

### 1. **FY'99 EXPENDITURES: \$2.9M**

The first step in the assessment process is the calculation of the expected FY'99 expenditures. Public employers are not assessed for the Special Fund budget.

<b>PUBLIC TRUST FUND BUDGET</b>	<b>Projected FY'99 Expenditures (6/23/98)</b>	<b>Actual FY'98 Expenditures (estimated on 6/30/98)</b>
<b>Section 37 (2nd Injuries)</b>	\$286,875	\$433,181
<b>Uninsured Employers</b>	\$0	\$0
<b>Section 30H (Rehabilitation)</b>	\$0	\$0
<b>Section 35C (Latency)</b>	\$16,500	\$0
<b>Section 34B (COLA's)</b>	\$4,276,286	\$2,736,302
<b>TOTAL</b>	<b>\$4,600,286</b>	<b>\$3,169,483</b>

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

### 2. **ANTICIPATED INVESTMENT INCOME OFFSET: \$1,706**

Calculated at 3% of FY'98 year end balance of \$56,873.

### 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'97 expenditures in a particular fund must be used to reduce amounts assessed for that fund in FY'99. The FY'98 Public Fund year-end balance does not approach the amount for a reduction.

<b><i>PUBLIC TRUST FUND:</i></b>	<b><u>FY'98 Estimated Year End Balance</u></b>	<b><u>35% of FY'97 Expenditures</u></b>	<b><u>Amount of Reduction Required</u></b>
	\$56,873	\$795,576	\$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'97. For the Public Fund, the assessment base is \$17.5M.

---

<b><i>Public Expenditure Ratio:</i></b>	16.436%	(\$2.9 million/\$17.5 million)
<b><i>Projected Income Ratio:</i></b>	0.009%	(\$1,706/\$17.5 million)
<b><i>Balance Adjustment Ratio:</i></b>	0%	(\$0/\$17.5 million)

---

**5. CALCULATION OF THE ASSESSMENT RATIO: 16.427%**

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.

---

Projected expenditures -	Projected income -	Balance adjustment =	<b>Assessment Ratio</b>
16.436%	0.009%	0%	<b>16.427%</b>

---

**6. CALCULATION OF THE ASSESSMENT RATE: 12.797%**

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 1999 assessment base factor is .779.

---

Assessment Ratio x	Assessment Base Factor =	<b>Assessment Rate</b>
16.427%	.779	<b>12.797%</b>

---

## THE DIA OPERATING BUDGET

### Legislative Appropriations, Fiscal Year 1999

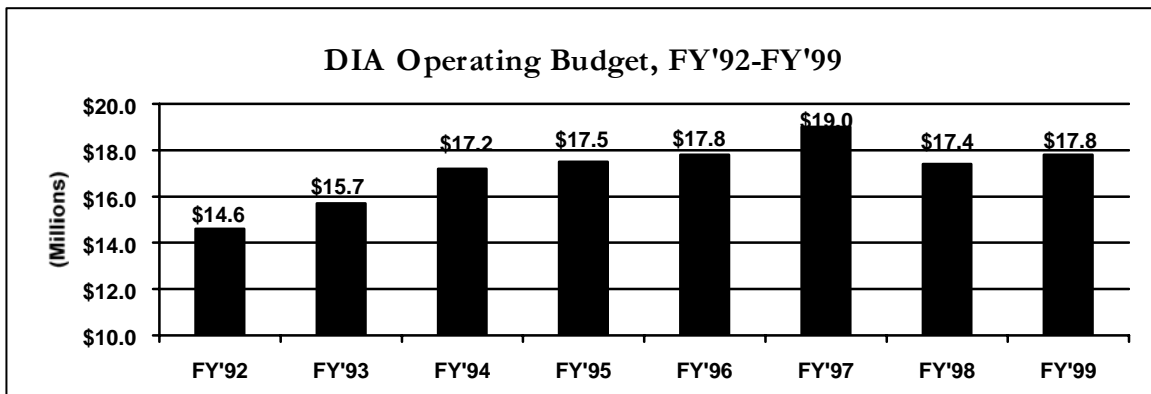
The Division of Industrial Accidents initially requested a budget of \$18,628,828 for fiscal year 1999. In House 1, the Governor's recommendation for the DIA's budget was \$17,768,412, a reduction of \$860,416 from the Division's request. The House of Representatives approved a budget of \$16,871,828 and the Senate approved appropriations totaling \$18,109,912. The final conference committee resolution appropriated \$18,109,912.

<b>DIA Request</b> .....	\$18,628,828
<b>Governor's Recommendation</b> .....	\$17,768,412
<b>Full House</b> .....	\$16,871,828
<b>Full Senate</b> .....	\$18,109,912
<b>Conference Committee</b> .....	\$18,109,912

### General Appropriations Act

On July 30, 1998, Governor Cellucci signed the General Appropriations Act giving the DIA a **\$17,768,412** operating budget for fiscal year 1999. This year's appropriation is 2% greater than last year's appropriation amount of \$17,426,687. The appropriation was made to a single account.

The Governor reduced the DIA account by \$341,500 as allocated in the Conference Committee budget. The \$17,768,412 appropriation is the amount endorsed by the Advisory Council. The following chart shows the appropriations of the Division of Industrial Accidents operating budget (to be spent from the Special Fund) over the past eight years.

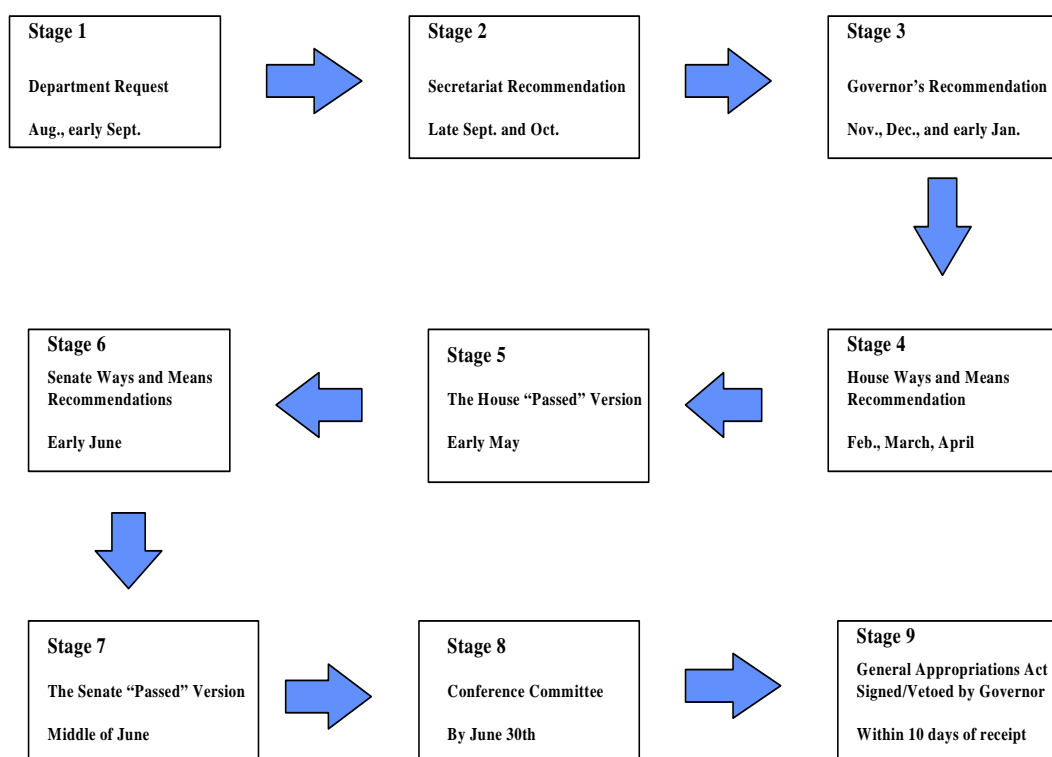


## The Budget Process

The operating budget of the DIA must be appropriated by the legislature even though employer assessments fund the agency. The Division, 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 15: 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.

**Stage 2: Secretariat Recommendation**

**Time Frame:** Late September and October

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:** November, December, and 1st weeks of January

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:** February, 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

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 COVERAGE**

---

---

<b>Mandatory Insurance Coverage.....</b>	<b>99</b>
<b>Commercial Insurance.....</b>	<b>100</b>
<b>Assigned Risk Pool.....</b>	<b>109</b>
<b>Alternative Risk Financing Methods.....</b>	<b>111</b>
<b>Insurance Fraud Bureau.....</b>	<b>113</b>



## MANDATORY INSURANCE COVERAGE

---

Every private sector employer in the Commonwealth is required to maintain workers' compensation insurance.<sup>41</sup> Coverage may consist of purchasing a commercial insurance policy, membership in a self-insurance group, participation in a reciprocal insurance exchange,<sup>42</sup> or maintaining a license as a self-insured employer.

All Commonwealth of Massachusetts employees are covered under the act, with claims paid directly from the General Fund. The Executive Office of Administration & Finance, Human Resources Division administers workers' compensation claims, with individual agencies paying a yearly "charge back" based on losses paid in the prior year. This charge back comes directly from each agency's operating budget.

When enacted in 1911, the workers' compensation act was elective for counties, cities, towns, and school districts. The vast majority of municipal employees, however, are covered, with only a few communities having never adopted coverage for certain employee groups. Municipalities attain insurance coverage in a manner identical to private employers that is through commercial insurance, self-insurance, or membership in a self-insurance group.<sup>43</sup>

The Office of Investigations at the Division of Industrial Accidents (DIA) monitors employers in the state to ensure no employer operates without insurance. The office may issue fines and close any business operating without coverage.<sup>44</sup> If an employee is injured while working for a company without coverage, a claim may be filed with the DIA's trust fund.<sup>45</sup>

---

<sup>41</sup> 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 insurance is not required. Seamen, some professional athletes, and unincorporated sole proprietors are exempt.

<sup>42</sup> 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.

<sup>43</sup> For more information of the coverage of public employees see Report to the Legislature on Public Employees, Massachusetts Workers' Compensation Advisory Council, 1989.

<sup>44</sup> See section covering Office of Investigations.

<sup>45</sup> See section covering Trust Fund.

## COMMERCIAL INSURANCE

---

Purchasing a commercial insurance policy is the most common method of complying with the workers' compensation mandate. These policies are governed by the provisions of chapter 152 and are regulated by the Division of Insurance. The Workers' Compensation Rating & Inspection Bureau of Massachusetts (WCRB) has delegated authority to determine standard policy terms, classifications, and manual rates, in addition to maintaining statistics on behalf of the Commissioner of Insurance.

While commercial insurance policies are available that provide for varying degrees of risk retention (such as small and large deductibles), the most common type is first dollar coverage whereby all losses are paid from the first dollar incurred for medical care and indemnity payments. A variety of pricing mechanisms are also available (including retrospective rating and dividend plans), with the most common being guaranteed cost. In exchange for payment of an annual premium based on rates approved each year by the Commissioner of Insurance, an employer is guaranteed that work related injuries and illnesses will be paid in full by the insurer.

The WCRB's Massachusetts Workers' Compensation and Employers Liability Insurance Manual sets forth the methods to determine the classification of insureds as well as terms of policies, premium calculation, credits and deductibles.

### The Insurance Market

The commercial insurance market is the primary source of funding for workers' compensation benefits in Massachusetts. A healthy insurance market, therefore, is essential to the welfare of both employees and employers.

Commercial insurance carriers are regulated by the Division of Insurance, which provides licensing, monitors solvency, determines rates, approves the terms of policies, and adjudicates unfair claims handling practices.

In FY'98, the Division licensed 28 new carriers to write workers' compensation insurance in Massachusetts. Drawn by favorable market conditions marked by decreased loss costs, carriers from around the nation have entered the state in search of profitable underwriting opportunities. This has intensified competition amongst carriers for market share, fueling a record number of downward deviations. Employers have been the beneficiaries of competition, experiencing dramatic reductions to their insurance costs as the result of a large decrease in manual rates compounded with double digit reductions provided by individual carriers.

**Insurance Rates** - In Massachusetts, workers' compensation insurance rates are determined through an administered pricing system.<sup>46</sup> Insurance rates are proposed by the Workers' Compensation Rating and Inspection Bureau (WCRB) on behalf of the insurance industry, and set by the Commissioner of Insurance. The WCRB submits to the commissioner a classification of risks and premiums, referred to as the rate filing, which is reviewed by the State Rating Bureau. 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.<sup>47</sup>

According to the workers' compensation act, the commissioner of insurance must conduct a hearing within 60 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."<sup>48</sup>

On February 13, 1998, Insurance Commissioner Linda Ruthardt ordered a 21.1% reduction in average workers' compensation rates.<sup>49</sup> This marks a continuing trend of fluctuating rates over the past decade. While average rates in 1998 are 6.15% higher than 1987, rates increased 104.34% from 1987 through 1993, and then decreased 48% since 1993.

*Impact of Rate Changes since 1987*

YEAR	Percent Change from Previous Year's Rate	Assuming a Manual Rate of \$100 in 1987
1987	No Change	\$100
1988	+ 19.9%	\$119.90
1989	+ 14.2%	\$136.93
1990	+ 26.2%	\$172.81
1991	+ 11.3%	\$192.34
1992	No Change	\$192.34
1993	+ 6.24%	\$204.34
1994	- 10.2%	\$183.50
1995	- 16.5%	\$153.22
1996	-12.2%	\$134.53
1997	No Change	\$134.53
<b>1998</b>	<b>- 21.1%</b>	<b>\$106.15</b>

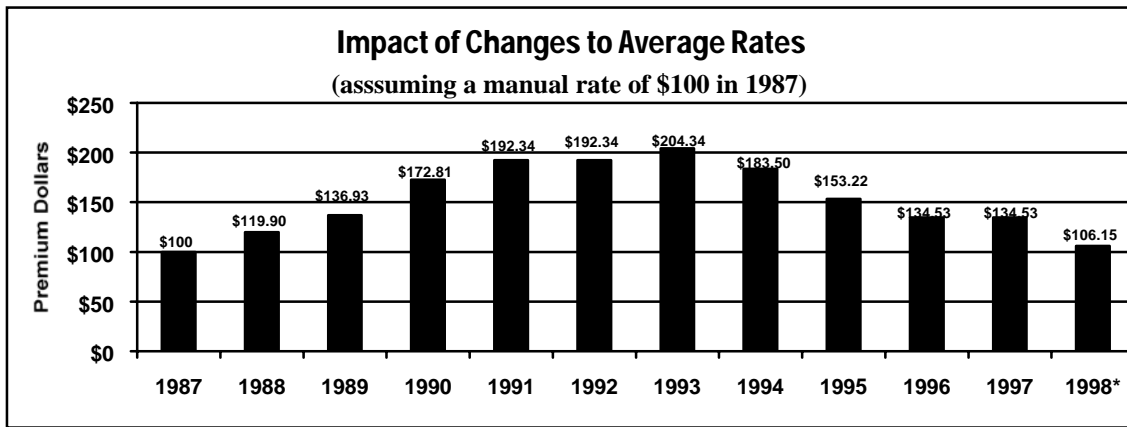
<sup>46</sup> In the United States, workers' compensation insurance rates are regulated one of three ways: through administered pricing, competitive rating, or a monopolistic state fund. Administered pricing involves strict regulation of rates by the state. Competitive rating allows carriers to set rates individually, usually based on market-wide losses developed by a rating organization and approved by the state. Monopolistic state funds require that workers' compensation insurance be purchased exclusively through a state run program. Some states have competitive state funds that allow employers to purchase insurance from either a private carrier or the state.

<sup>47</sup> 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.

<sup>48</sup> G.L. ch.152, sec. 53A (2).

<sup>49</sup> Rates were not retroactive to January 1 as they had been in other years, but took effect for those policies renewed or written on and after February 14, 1998.

The following chart illustrates the fluctuations in workers' compensation insurance rates since 1987. The chart displays how a company's premium would be affected by the average rate increases and decreases, assuming a company's premium was \$100.00 in 1987 (with all other factors remaining the same - experience rating, discounts, etc.). The recent decision to decrease rates by 21.1% coupled with previous decreases in Massachusetts, has brought workers' compensation rates close to 1987 levels.



\*NOTE: 1998 Rate is for policies renewed or written on or after February 14, 1998.

**Deviations & Schedule Credits** - The act allows individual carriers to seek permission from the commissioner to use a percentage decrease from approved rates within certain classifications.<sup>50</sup> These percentage decreases are called “downward deviations.” Schedule credits are \_\_\_\_\_. These discounting techniques have become an important part of the Massachusetts insurance market. While open competition is not permitted, the use of deviations (and other alternatively priced policies) has encouraged carriers to compete for business on the basis of pricing.

Since the implementation of new rates on February 14, 1998, 71 separate deviations and schedule credits have been approved by the Insurance Commissioner. These discounts range from 7.5% to 35% off manual rates, depending upon the carrier and the classification.

## The Classification System

Workers' compensation insurance rates are calculated and charged to employers according to categories of industries called classifications. Every employer purchasing workers' compensation insurance is assigned a basic classification determined by the nature of its operations. 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'

<sup>50</sup> G.L. ch.152, sec. 53A (9).

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.

**Regulation of Classifications** - Classifications in Massachusetts are established by the Workers' Compensation Rating & Inspection Bureau (WCRB) subject to approval by the Commissioner of Insurance. Hearings are conducted at the Division of Insurance to determine whether classifications and rates are not excessive, inadequate or unfairly discriminatory and that they fall within a range of reasonableness.”<sup>51</sup>

**Basic Classifications** - Each business in the Commonwealth is assigned one “basic” classification that best describes the business of the employer. Once a basic classification has been selected, it becomes the company’s “governing” classification, the basis for determination of premium.

Although most companies are assigned one governing classification, the following conditions determine when more than one basic classification should 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;
- Manufacture of packing containers;
- Hospital or medical facilities for employees;
- Printing departments; and
- Maintenance or repair work.

---

<sup>51</sup> Ch. 152, §53A.



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 by the industry. An employers' base rate is based on manual rate per \$100 of payroll, for each governing and standard exception classification.

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

**Appealing a Classification** - When a new company applies for insurance, the broker or agent assigns 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 is charged additional premium or receives a credit for the correct class. The WCRB is responsible for determining the proper classification for all insureds in Massachusetts. If an employer disagrees with its assigned classification, or believes a separate classification should be created, there is an appeal process made available by Ch.152, §52D. A formal appeal must be held with the WCRB's Governing Committee (for those insured in the Voluntary Market) or the Residual Market Committee (for those insured in the Assigned Risk Pool). The WCRB 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 made to the Commissioner of Insurance. A hearings 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 the various types 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 else a construction company can be assigned to the highest rated classification that applies to the job or location where the operation is performed. The Massachusetts Construction Classification Premium Adjustment Program is a program that provides for a manual premium credit ranging from 5% to 25% depending on average hourly wages paid to employees. Because a disparity exists between high and low wage construction employers (largely determined by the existence of a collective bargaining agreement), this program is designed to offset the higher premiums associated with larger payrolls and equalize workers' compensation costs.

## Premium Calculation

Premiums charged to employers in Massachusetts are dependent on several factors that are designed to measure each company's exposure to loss. Premium is based on uniform rates that are developed for each classification and modified according to the attributes of each employer. In return for payment of premiums, the insurance company will administer all workers' compensation claims and pay all medical, indemnity (weekly compensation), rehabilitation, and supplemental benefits due under the workers' compensation act. The following is an overview of the premium calculation process.

**Manual Premium** - The first step in the premium calculation process is determination of manual premium. The manual premium is reflective of both the industry (manual rate) and size (payroll) of a company. The manual premium is calculated by multiplying the employer's manual rate by its annual payroll per \$100.

$$\text{Manual Premium} = (\text{Manual Rate} \times \text{Payroll})/100$$

An employer's manual rate is assigned according to its classification. As explained in the prior section, every classification has a corresponding manual rate that reflects the industry's exposure to loss.

Once a corresponding manual rate has been established, exposure to loss for the particular employer must then be considered. In Massachusetts, this is determined by payroll. Payroll is a factor of an employers wage rate, the number of employees employed, and the number of hours worked. All other factors being equal, a firm with a large payroll has a greater exposure to loss than a firm with a smaller payroll. Furthermore, since indemnity benefits are calculated as a percentage of wages earned, payroll also reflects severity of potential loss.

**Standard Premium** - Once a manual premium has been determined, it is then multiplied by an experience modification factor to determine the standard premium.

$$\text{Standard Premium} = \text{Manual Premium} \times \text{Experience Modification Factor}$$

Experience rating is a system of comparing the claims history of each employer against the average claims experience of all employers within the same classification. An experience modification factor is calculated which provides either a premium reduction (credit) or a premium increase (debit) to an insured's premium. For example, a modification of .75 results in a 25% credit or savings to the premium, while a modification of 1.10 produces a 10% debit or additional charge to the premium. When a modification of 1.00 (unity) is applied, no change to premium results.

The experience modification factor is determined on an annual basis based on an insured's losses for the last three completed years.

For instance, two similar employers may have a manual rate of \$25 per \$100 of payroll, but the safety conscious employer (with fewer past claims) may have an experience modification factor of .80, thus adjusting his rate to \$20 per \$100 of payroll. The less-safety conscious employer may have an experience modification factor of 1.20, which adjusts the company's rate to \$30 per \$100 of payroll.

**All Risk Adjustment Program** - In January 1990, the WCRB instituted the All Risk Adjustment Program (ARAP) calculated in addition to the experience modification factor. Its original purpose was 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.

## Premium Discounting

Insurance companies that provide workers' compensation coverage must factor in the various expenses involved with servicing insureds to determine appropriate premium levels. However, a problem occurs when pricing premiums for large policies; as the premium increases, the proportion required to pay expenses decreases. In an effort to compensate for these differences, insurance companies must provide a premium discount to large 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 they are paying over \$10,000 in premiums.

TYPE "A" COMPANIES			TYPE "B" COMPANIES		
Layer of Standard Premium		Percent of Premium Discount	Layer of Standard Premium		Percent of Premium Discount
First	10,000	0.0%	First	10,000	0.0%
Next	190,000	9.1%	Next	190,000	5.1%
Next	1,550,000	11.3%	Next	1,550,000	6.5%
Over	1,750,000	12.3%	Over	1,750,000	7.5%

WCRIBM, A General Revision of Workers' Comp. Insurance Rates and Rating Values, pg. 590 (Aug. 14, 1995).

## Deductible Policies

Available since 1991, deductible policies can provide the advantages of a retrospective policy and self-insurance. Employers are responsible for paying from the first dollar incurred up to the deductible limit either on a per claim basis or on an aggregate basis for claims in the policy year. The insurer pays all benefits and then seeks reimbursement from the employer up to the amount of the deductible.

<b>PER CLAIM DEDUCTIBLE<sup>52</sup></b> <i>Effective May 1, 1996</i>	
<b>Medical and Indemnity Deductible Amount</b>	<b>Premium Reduction Percentage</b>
\$500	3.0%
\$1,000	4.2%
\$2,000	6.2%
\$2,500	7.1%
\$5,000	10.6%

<b>MASSACHUSETTS BENEFITS CLAIM AND AGGREGATE DEDUCTIBLE PROGRAM<sup>53</sup></b>			
<b>Estimated Annual Standard Premium</b>	<b>Claim Deductible Amount</b>	<b>Aggregate Deductible Amount</b>	<b>Premium Reduction Percentage</b>
0 to \$75,000	\$2,500	\$10,000	7.0%
\$75,001 to \$100,000	\$2,500	\$10,000	6.5%
\$100,001 to \$125,000	\$2,500	\$10,000	5.9%
\$125,001 to \$150,000	\$2,500	\$10,000	5.4%
\$150,001 to \$200,000	\$2,500	\$10,000	4.5%
over \$200,000	\$2,500	5% of Estimated Annual Standard Premium	4.3%

## Retrospective Rating Plans

Retrospective rating bases premium on an insured's actual losses calculated at the conclusion of the policy period. The insured therefore has greater control over its insurance costs by monitoring and controlling its own losses. Retrospective rating should not be confused with "experience rating." Both adjust premium based on an employer's loss history. Experience rating, however, adjusts premiums at the start of the policy period (to predict future losses), whereas retrospective rating adjusts premiums at the end of the policy period to reflect losses that actually occurred.

**The Formula** - Although retrospective premiums are determined by a complex formula, they are generally based on three factors: losses the employer incurs during a policy period; expenses that are related to the losses incurred; and basic premium. Incurred losses have historically included medical and indemnity losses, interest on judgments, and expenses incurred in third-party recoveries.<sup>54</sup> A basic premium is necessary to defray the expenses that do not vary with losses and to provide the insurance company with a

<sup>52</sup> Massachusetts Workers' Compensation and Employer's Liability Insurance.

<sup>53</sup> Massachusetts Workers' Compensation and Employer's Liability Insurance.

<sup>54</sup> "Retrospective Rating," Risk Financing, Supplement No. 46, May 1995: III.D.7.

profit. In order to control the cost of the premium in extreme cases, the policies, state that the premium cannot be less than a specific minimum and cannot exceed a stated maximum.

**Eligibility Requirements** - Eligibility for a retrospective rating plan is based upon a minimum standard premium. Eligibility for a one-year plan is estimated standard premium of at least \$25,000 per year, and for a three-year plan the estimated standard premium must be at least \$75,000.<sup>55</sup> Although these eligibility standards exclude 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.

**Benefits and Disadvantages** - Under the right circumstances, retrospective rating can benefit both the insurer and the policyholder. The policyholder benefits by paying a smaller premium at the beginning of the policy year. Because premium is determined by losses, retrospective plans reward those businesses that maintain effective loss control programs. If losses are low, the insured will pay less than standard premium.

There is however, significant uncertainty regarding the final premium amount since it is impossible to be precise in predicting the volume or severity of workplace accidents. An unexpected claim towards the end of a policy period can be detrimental to a company if funds have not been set aside for the retro premium. Furthermore, there is little incentive for the insurance company to limit settlement costs when they are able to recover payments made on claims brought against the policyholder.

## Dividend Plans

Offered as another means of reducing an employers insurance costs, dividend plans can provide the policy-owner with 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 insured directly or by applying it to future premiums due. Regardless of how the payment is issued, dividends are non-taxable since they are considered a return of premium.<sup>56</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>57</sup>

<sup>55</sup> Workers' Compensation: Exposures, Coverage, Claims, Levick, Dwight E. Standard Publishing Corp., page 11-4.

<sup>56</sup> "Risk Management-Life, Health, and Income Exposures," Life Insurance, Part 4: 406.

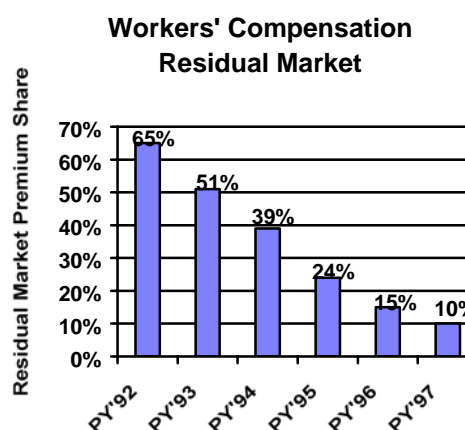
<sup>57</sup> "Thinking About the Work Comp Crisis," Merrit Risk Management Review, December 1991: 3.

## ASSIGNED RISK POOL

Any employer rejected for workers' compensation insurance can obtain coverage through the residual market, or Assigned Risk Pool. Administered by the Workers' Compensation Rating and Inspection Bureau (WCRB), the Assigned Risk Pool is the "insurer of last resort" and is required by law to provide coverage when an employer is rejected by at least two carriers within five business days. Very small employers and companies in high-risk classifications or having poor experience ratings often cannot obtain insurance in the voluntary market. This occurs when a carrier determines that the cost of providing insurance to a particular company is greater than the premium it can collect.

Preliminary figures for Policy Year 1997 indicate that 10% of every premium dollar is written in the residual market.<sup>58</sup> This is an astounding statistic given that 64.7% of workers' compensation premium share is in the residual market during the 1992 policy year.

Employers insured through the pool pay standard premium, and are not offered premium discounts, dividend plans, etc. The Commissioner of Insurance chooses the carriers that will administer the policies, called "servicing carriers." These carriers are paid a commission for servicing the policies, and are subject to performance standards and a paid loss incentive program.<sup>59</sup> These programs are designed to provide servicing carriers with incentives to provide loss control services to insureds.



**Residual Market Loads** - Every insurance carrier licensed to write workers' compensation policies is required to be a member of the Assigned Risk Pool. Members are collectively responsible for underwriting pool policies, for bearing the risk of all losses, and are entitled to any profits generated. When the pool operates at a deficit, the members are subject to an assessment. Assessments are calculated in direct proportion to

<sup>58</sup> WCRB Special Bulletin No. 10-98 (August 21, 1998).

<sup>59</sup> The paid loss ratio incentive program provides up to a 9% bonus or penalty to the servicing carriers depending upon the performance of losses. The performance standards program provides an additional bonus or penalty (between +2% to - 14% of the fee) based on four categories of on-site audit: (1) underwriting and audit, (2) loss control performance standards, (3) claim performance standards, and (4) financial reporting. However, because the percentage of premium in the residual market is so low, the Commissioner has determined that it is no longer feasible to conduct onsite performance standards audits. For this reason, the Commissioner suspended the program for 1997 and under new rules will make a yearly determination. (WCRB, Assigned Risk Pool Plan of Operation as amended by Decision and Order, Division of Insurance, Docket No. W97-19 (December 31, 1997)).

the amount of premium written in the voluntary market. This is called the Residual Market Load.

The Residual Market Load is incorporated into rates, and was a significant factor for employers to search out alternative risk financing options. Self insurance and self-insurance groups are not subject to residual market assessments.

The residual market load is incorporated into manual rates. 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 policy year 1995 the burden was -3.0%, 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 losses are greater than revenues (premiums). In policy year 1996, the estimated loss ratio was 70%, significantly down from a high of 168% in 1987.<sup>61</sup>

---

<sup>60</sup> WCRB Special Bulletin No. 13-97, (Nov. 7, 1997).

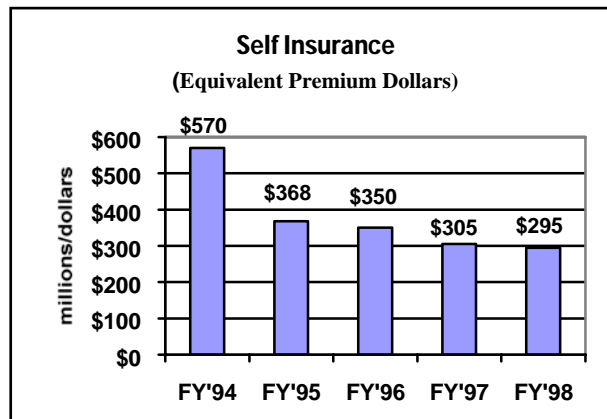
<sup>61</sup> WCRB Special Bulletin No. 13-97, (Nov. 7, 1997).

## ALTERNATIVE RISK FINANCING METHODS

Self insurance and self insurance groups (SIGs) became an extremely popular device to control rising workers' compensation costs when insurance rates rose so dramatically in the late 1980's and early 1990's. Much of the cost savings derived from avoidance of residual market loads incorporated in commercial insurance premiums to pay for the large assigned risk pool. Since 1993, insurance rates have decreased dramatically making alternative risk financing measures less attractive. In recent years employers have reassessed cost savings associated with these programs and many have turned to commercial insurance plans, most noticeably large deductible policies and retrospective rating plans.

### Self Insurance

The Division of Industrial Accidents strictly regulates self insured employers through its annual licensing procedures. 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 (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>62</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 its own claims or engage the services of a law firm or a third party administrator (TPA) to handle claims administration. The office of insurance<sup>63</sup> evaluates employers every year to determine their continued eligibility and set a new bond amount.



	<u>New Licenses</u>	<u>Total Licenses</u>	<u>Companies Covered</u>
<b>FY'94</b>	23	224	688
<b>FY'95</b>	11	227	734
<b>FY'96</b>	5	226	734
<b>FY'97</b>	5	206	417
<b>FY'98</b>	5	186	503

<sup>62</sup> 452 C.M.R. 5:00: Code of Massachusetts Regulations concerning insurers and self insurers

<sup>63</sup> See section on *DIA - Office of Insurance* for fiscal year 1997 statistics on self insurance.



## Self Insurance Groups

Companies in related industries may join forces to form a self insurance group (SIG). Regulated by the Division of Insurance, SIGs may include public employers, non-profit groups, and private employers in the same industry or trade association.<sup>64</sup>

As part of the workers' compensation reform package of 1985, SIGs were permitted in Massachusetts to provide an alternative to coverage in the assigned risk pool. Since that time, membership has been a popular alternative to commercial insurance because of the ability of members to manage their own claims. In addition, SIGs are generally able to reduce administrative costs from a fully insured plan. These savings result from reduced or eliminated commissions, premium taxes, etc.

Members of a self insurance group are assigned a classification and are charged manual rates approved by the Commissioner of Insurance for commercial insurance policies. Premium is calculated in the same manner, with manual rates adjusted by an experience modification factor and the All Risk Adjustment Program (ARAP).<sup>65</sup> Cost savings arise through dividends returned to members and deviated rates.

Companies who join self insurance groups rely heavily on the solvency and safety records of fellow members, since the insurance risks are spread amongst the group. If one of the employers in a group declares bankruptcy or suffers a catastrophic accident, the whole group must absorb the losses. In addition, all members share joint and several liability for losses incurred.

The first group was approved in 1987. After a few years of modest interest, five SIGs were formed in 1990 and 21 in 1992. As of January 1, 1998, there were 26 SIGs in the state comprised of 2,880 employer-members.

**Membership in Workers' Compensation Self-Insurance Groups as of Jan 1<sup>st</sup>**

<u>Year</u>	<u>Number of Groups</u>	<u>Number of Members</u>
1991	8	N/A
1992	21	N/A
1993	28	N/A
1994	27	2,300
1995	31	2,550
1996	32	2,700
1997	30	2,830
1998	26	2,880

<sup>64</sup> According to Division of Insurance regulations, a SIG must have "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. (Division of Insurance Regulations, 211 CMR 67.02).

<sup>65</sup> 211 CMR 67.09.

## INSURANCE FRAUD BUREAU

---

The Insurance Fraud Bureau<sup>66</sup> 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 in 1990 to investigate auto insurance fraud and expanded in 1991 to include workers' compensation fraud.<sup>67</sup> While its mission statement is to include all lines of insurance, the focus is on automobile and workers' compensation insurance.

### The Investigative Process

**Referrals** - Cases of suspected fraud for all types of insurance are generally referred to the IFB either through an insurance carrier or through a toll-free hotline (1-800-32FRAUD). In 1997 the IFB received 1,983 referrals from all sources.<sup>68</sup> Of these referrals, 989 were submitted by insurance companies. This is a decline of 3.5% from 1996 in which insurance carriers referred 1,025 cases.

**Evaluation** - Once a referral is received by the IFB, an investigative staff must evaluate each case within 20 working days. During this time, status letters are sent to the insurance companies indicating whether the case was referred to another agency or accepted for further investigation. A backlog has historically existed in investigations at this initial stage. In 1997, however, the IFB's backlog of referrals pending an evaluation was reduced by 30%.

**Assigned Cases** - Once resources become available, a referral is assigned to an investigator and officially becomes a "case." In 1997 a total of 448 new cases were assigned to investigators (154 of these cases were assigned at the close of 1996 and carried into the new year).

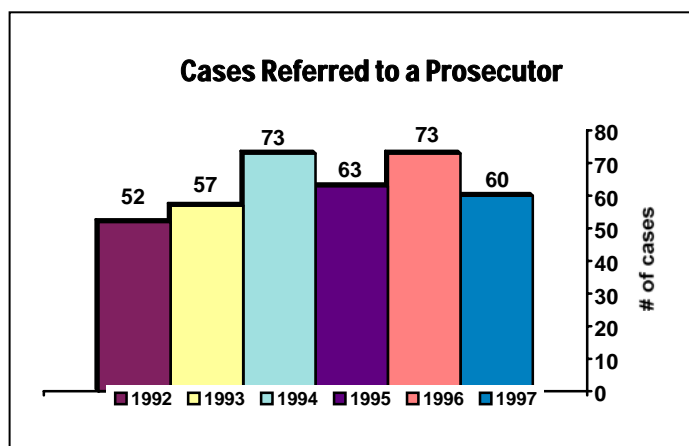
---

<sup>66</sup> The Insurance Fraud Bureau has its own Internet web site which can be found at <http://www.ifb.org>. The site is designed to inform the public on the activities and accomplishments of the IFB. The site also allows the general public to submit anonymous tips on suspected insurance fraud.

<sup>67</sup> G.L. St. 1990, ch. 338 as amended by St. 1991, ch. 398, Section 9

<sup>68</sup> Solicited referrals are included in this number.

**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 1997, a total of 60 cases were referred to a prosecutor. This is an decrease of 18% over 1996 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 investigate the following types of workers' compensation fraud:

*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 continue to make great strides 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.

**MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL**

## **LIST OF APPENDICES**

---

**APPENDIX A:** ADVISORY COUNCIL MEMBERS IN FISCAL YEAR 1998

**APPENDIX B:** TERMS OF ADVISORY COUNCIL MEMBERS

**APPENDIX C:** AGENDA OF ADVISORY COUNCIL MEETINGS, FISCAL YEAR 1998

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

**APPENDIX E:** INDUSTRIAL ACCIDENT NOMINATING PANEL

**APPENDIX F:** ROSTER OF JUDICIAL EXPIRATION DATES

**APPENDIX G:** MEDICAL CONSULTANT CONSORTIUM

**APPENDIX H:** BUDGET SUBSIDIARIES

**APPENDIX I:** WORKERS' COMPENSATION ORGANIZATIONS

**APPENDIX J:** WORKERS' COMPENSATION LEGISLATION, 1997-1998 SESSION

**APPENDIX K:** JOINT COMMITTEE ON COMMERCE & LABOR - FY'98

**APPENDIX L:** THE GOVERNOR'S COUNCIL

**APPENDIX M:** HEALTH CARE SERVICES BOARD

**APPENDIX N:** DIA ORGANIZATIONAL CHART, FISCAL YEAR 1998

**APPENDIX O:** COLLECTIONS AND EXPENDITURES REPORT

## APPENDIX A

### Advisory Council Members

#### Voting Members:

Edmund C. Corcoran, Jr., (Chair), Manager, Disability Program/WC, Raytheon,  
125 Spring Street, Lexington, MA 02173 Tel: 860-3811 FAX: 860-2408  
William H. Carnes, (Vice Chair), Teamsters Union, Local 25, 544 Main Street,  
Boston, MA 02129-1113 Tel: 241-8831 FAX: 242-4284  
Edward Sullivan, Jr., SEIU-Local 254, 11 Beacon Street, Boston, MA 02108  
Tel: 367-7360 FAX 367-7372  
Jeanne-Marie Boylan, Boston Sand and Gravel Company, 169 Portland Street,  
Boston, MA 02114 Tel: 227-9000 FAX 523-7947  
Robert Banks, J.A.C. Ironworkers - Local 7, 195 Old Colony Avenue, South  
Boston, MA 02127 Tel: 268-0707 FAX: 268-7878  
John Gould, President, AIM, 222 Berkeley Street, P.O. Box 763, Boston,  
MA. 02117-0763 Tel: 262-1180 FAX 536-6785 (Donald F. Baldini)  
Antonio Frias, S & F Concrete Company, 1266 Central Street, P.O. Box 427,  
Hudson, MA 01749 Tel: (508) 562-3495 FAX: (508) 562-9461  
John J. Perry, Teamsters, Local 82, 3330 Dorchester Street, South Boston, MA 02127  
Tel: 269-6868 FAX: 269-6914  
Lawrence Morrisroe, Carpenters' Union, 10 Dry Dock Avenue, Boston, MA 02210,  
Tel: 350-0017 FAX: 330-1684  
Joseph Tamulis, T Equipment Corp., 170 Granite Avenue, Dorchester, MA 02124-5431  
Tel: (617) 282-7610 FAX: 265-5568

#### Non-Voting Members:

Carol Falcone, Falcone Associates, 15 Cliff Road/Brier Neck, Gloucester, MA 01930  
Tel: 978-281-4275  
J. Bruce Cochrane, Cochrane and Porter, 70 Hastings Street, Wellesley, MA 02181  
Tel: 239-1162 FAX: 239-0737  
Alan S. Pierce, Alan S. Pierce & Associates, 27 Congress Street, Salem, MA 01970  
Tel: 508-745-0914 FAX: (508) 745-1046  
Angelo Buonopane, Director, Department of Labor & Workforce Development,  
Suite 1402-14th Floor, McCormack Building, One Ashburton Place, Boston,  
MA 02108 Tel: 727-6573 FAX: 727-1090  
David A. Tibbetts, Director, Department of Economic Affairs, One Ashburton Place,  
Boston, MA 02108 Tel: 727-3206

#### *Staff:*

Matthew A. Chafe, *Executive Director*  
Andrew Burton, *Research Analyst*  
Ann Helgran, *Paralegal*

## APPENDIX B

### 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
Joseph Tamulis	(small business)	6/25/98
John J. Perry	(labor)	6/25/98
Jeanne-Marie Boylan	(business)	7/01/99
William Carnes	(labor)	6/25/97
John Gould	(business)	6/25/95

#### **Non-Voting Members**

Carol Falcone	(rehab)	6/25/00
J. Bruce Cochrane	(insurance)	6/25/97
Alan S. Pierce	(bar)	6/25/98
Angelo Buonopane Director, Department of Labor & Workforce Development One Ashburton Place Boston, MA 02108		Ex-Officio
David A. Tibbertts Director, Economic Affairs One Ashburton Place Boston, MA 02108		Ex-Officio

## APPENDIX C

### Agenda - Fiscal Year 1998

#### **July 9, 1997**

DIA Update

Action Items

Minutes - June 11, 1997

Rate Filing - Ruy Cardoso of Ernst & Young

Employer Assessments

Executive Director Update

#### **August 13, 1997**

DIA Update

Vendor Presentations (Cost of Benefit Increases)

A. Tillinghast

B. Watson Wyatt

C. Ernst & Young

Action Items

Minutes - July 9, 1997

Executive Director Update

#### **September 10, 1997**

WCRIB - Roy Stewart, President

Rate Filing - Ruy Cardoso of Ernst & Young

Action Items - Minutes - August 13, 1997

Wage Benefit Study

DIA Update

Executive Director Update

#### **October 8, 1997**

DIA Update

Action Items - Minutes - September 10, 1997

Wage Benefit Study Update

Insurance Rate Filing Hearing

Executive Director Update - Employer Fines

Miscellaneous

#### **November 5, 1998**

DIA Update

Wage Benefit Study Presentation - Ann Conway, Tillinghast

Legislation - Terms of Judges (H.5042)

Action Items

Minutes - October 8, 1997

Executive Director Update

i. insurance manual

ii. rate filing hearing

### **December 10, 1997**

DIA Update

- A. Judge Jennings
  - i. hearing queue
  - ii. conference queue
  - iii. reviewing board queue
  - iv. impartial exams
- B. Stop Work Orders
- C. Budgetary Matters
  - i. personnel issues

Trust Fund-- Dino Theodore & Priscilla Conant

Fiscal Year 1997 Annual Report

- A. Concerns & Recommendations

Criteria for Rating AJ & ALJ Candidates

Action Items

Minutes - November 5, 1997

### **January 14, 1998**

DIA Update

Injured Worker

Fiscal Year 1997 Annual Report

Criteria for Rating AJ & ALJ Candidates

Action Items

Minutes - December 10, 1997

Insurance Rate Hearing

Executive Director Update

### **February 11, 1998**

DIA Update

Audit of Insurance Carrier Assessment Payments

Criteria for Rating AJ & ALJ Candidates

Fiscal Year 1999 Budget

W/C Insurance Discounts for Drug Free Workplace Programs

Action Items

Minutes - January 14, 1997

Executive Director Update

Miscellaneous



**March 11, 1998**

Trust Fund

DIA Update Subcommittee Report

A. MUTTS

B. Budget Fiscal Year 1999

Action Items

Minutes - February 11, 1998

Executive Director Update

**April 8, 1998**

DIA Update

Senior Judge Jennings

Stop Work Orders

Personnel Issues

Assessment Audit

MUTTS

Action Items

Minutes - February 11, 1998 & March 11, 1998

DIA Fiscal Year 1999 Budget

Judges' Appointments

Meeting on Trust Fund Personnel

Miscellaneous

**May 7, 13, 19, 1998**

Judicial Appointments

## APPENDIX D

### FY'99 Office of Safety Proposals Recommended for Funding

1. Morton Hospital & Medical Center  
88 Washington Street  
Taunton, MA 02780  
(508) 824-0243  
**Title:** FY98 RFR Injury Prevention Program  
**Category of Applicant:** Non-profit Organization  
**Target Population:** Employees/Employer/Supervisors  
**Geographic Target:** Fall River  
**Program Administrator:** Kathleen Hickey  
**Total Funds Requested:** \$9,304.50      **Approved:** \$ 9,304.50
  
2. Advanced Therapeutic Resources  
157 Elm Street  
Amesbury, MA 01913  
(508) 388-6775  
**Title:** Ergonomics & Safety Training for the Prevention of Musculoskeletal Injuries  
**Category of Applicant:** Private Employer  
**Target Population:** Employees/Supervisors  
**Geographic Target:** Lawrence/North Shore  
**Program Administrator:** Julie Cicalis  
**Total Funds Requested:** \$24,855.00      **Approved:** \$24,855.00
  
3. Braintree Hospital Rehabilitation Network  
100 Baystate Drive  
Braintree, MA 02118  
(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/Worcester  
**Program Administrator:** Mary Riley  
**Total Funds Requested:** \$8,619.00      **Approved:** \$8,619.00
  
4. Chadwick's of Boston  
35 United Drive  
West Bridgewater, MA 02379-1021  
(508) 583-8110  
**Title:** Coordinating Our Safety Efforts to Ensure Success  
**Category of Applicant:** Private Employer  
**Target Population:** Employees/Supervisors  
**Geographic Target:** Fall River  
**Program Administrator:** Thomas Minichiello  
**Total Funds Requested:** \$24,400.00      **Approved:** \$ 24,400.00

5. Spectrum Health Systems  
154 Oak Street  
Westboro, MA 01581  
(508) 898-1570  
**Title:** Injury Prevention & OSHA Compliance: Blood Borne Pathogens, TB, & Emergency Action Plan Program  
**Category of Applicant:** Private Employer  
**Target Population:** Employees/Employer/Supervisors  
**Geographic Target:** Central Massachusetts  
**Program Administrator:** Dianne Williams  
**Total Funds Requested:** \$7,929.00      **Approved:** \$7,929.00
6. Harvard University  
46 Oxford Street  
Cambridge, MA 02138 - 1995  
(617) 496-3437  
**Title:** Back Injury Reduction: Training for Materials Handling  
**Category of Applicant:** Private Employer  
**Target Population:** Employees/Supervisors  
**Geographic Target:** Statewide  
**Program Administrator:** Nancy Curtin  
**Total Funds Requested:** \$16,390.00      **Approved:** \$16,390.00
7. City of Worcester  
City Hall, Room #109  
455 Main Street  
Worcester, MA 01608  
(508) 799-1031  
**Title:** "Right to Know" Occupational Safety and Health Education and Training Program  
**Category of Applicant:** Public Employer/Non-profit Organization  
**Target Population:** Employees/Employers/Supervisors  
**Geographic Target:** Worcester  
**Program Administrator:** Lori Favata  
**Total Funds Requested:** \$13,686.20      **Approved:** \$13,686.20
8. University of Massachusetts Medical Center  
35 Lake Avenue North  
Worcester, MA 01655  
(508) 856-0011  
**Title:** Program to Prevent Unprotected Exposures to Bloodborne and Airborne Pathogens in Emergency Medical Service Providers  
**Category of Applicant:** Public Employer  
**Target Population:** EMT's  
**Geographic Target:** Worcester  
**Program Administrator:** Cathy Lioselle  
**Total Funds Requested:** \$5,316.00      **Approved:** \$5,316.00

9. George Gould Construction Institute  
One Wall Street  
Burlington, MA 01803  
(781) 270-9990  
**Title:** OSHA 10-Hour Training for Construction Apprentices  
**Category of Applicant:** Non-Profit  
**Target Population:** Employees/Employers/Supervisors  
**Geographic Target:** Statewide  
**Program Administrator:** Jean Connaughton  
**Total Funds Requested:** \$22,040.00      **Approved:** \$22,040.00
10. Acushnet Rubber Co., Inc.  
744 Belleville Avenue  
New Bedford, MA 02742-6916  
(508) 998-4060  
**Title:** Ergonomics and Safety Training for the Prevention of Musculo-skeletal Injuries  
**Category of Applicant:** Private Employer  
**Target Population:** Employees/Employers/Supervisors  
**Geographic Target:** Fall River  
**Program Administrator:** Theresa Camire  
**Total Funds Requested:** \$20,151.60      **Approved:** \$20,151.60
11. Reebok International  
1 Reebok Drive  
Stoughton, MA 02072  
(781) 401-4209  
**Title:** Ergonomic & Safety Training Program for the Prevention of Musculoskeletal Injuries  
**Category of Applicant:** Private Employer  
**Target Population:** Employees/Employers/Supervisors  
**Geographic Target:** Stoughton/Avon  
**Program Administrator:** Mark Collins  
**Total Funds Requested:** \$10,432.74      **Approved:** \$10,432.75
12. Operating Engineers Local 98  
2 Center Square  
East Longmeadow, MA 01028-0217  
(413) 525-4291  
**Title:** Hazwoper Training Program  
**Category of Applicant:** Joint Labor/Management Committee  
**Target Population:** Employees  
**Geographic Target:** Springfield  
**Program Administrator:** Michael Florio  
**Total Funds Requested:** \$24,871.24      **Approved:** \$24,871.24
13. Chelsea Jewish Nursing Home  
17 Lafayette Avenue  
Chelsea, MA 02150  
(617) 884-6766  
**Title:** Aggression & Assault Prevention & Reduction for Nursing Home Caregivers & Support Personnel  
**Category of Applicant:** Private Employer/Non-profit Organization  
**Target Population:** Employees/Supervisors  
**Geographic Target:** Boston  
**Program Administrator:** Elizabeth Mullen  
**Total Funds Requested:** \$24,140.00      **Approved:** \$17,835.00

14. Duro Industries, Inc.  
110 Chace Street  
Fall River, MA 02724  
(508) 675-0101  
**Title:** Ergonomic Training and Injury Prevention  
**Category of Applicant:** Private Employer  
**Target Population:** Employees/Employers/Supervisors  
**Geographic Target:** Fall River  
**Program Administrator:** Frank Nenca  
**Total Funds Requested:** \$23,465.70      **Approved:** \$23,465.70
15. Franklin Regional Council of Governments  
425 Main Street  
Greenfield, MA 01301  
(413) 774-3167  
**Title:** Preventing Occupational Injuries and Illnesses in Franklin County  
     Towns and Schools  
**Category of Applicant:** Public Employer  
**Target Population:** Employees/Supervisors  
**Geographic Target:** Springfield  
**Program Administrator:** Phoebe Walker  
**Total Funds Requested:** \$13,973.48      **Approved:** \$13,973.48
16. Avalon Health Assoc.  
185 Ayer Road  
Harvard, MA 01451  
(978) 456-6868  
**Title:** Voc-Ed POWER-Promoting Occupational Wellness thru Excellence and Responsibility  
**Category of Applicant:** Private Employer  
**Target Population:** Students/Faculty/Administration  
**Geographic Target:** Worcester  
**Program Administrator:** Susan Frey  
**Total Funds Requested:** \$24,310.00      **Approved:** \$24,310.00
17. OSRAM SYLVANIA  
100 Endicott Street  
Danvers, MA 01923  
(978) 750-1990  
**Title:** Office Ergonomic Intervention at Osram Sylvania  
**Category of Applicant:** Private Employer  
**Target Population:** Employees/Employers/Supervisors..  
**Geographic Target:** Danvers  
**Program Administrator:** Anne Viehl  
**Total Funds Requested:** \$10,739.00      **Approved:** \$10,739.00
18. City of Peabody  
24 Lowell Street  
Peabody, MA 01960  
(978) 532-3000  
**Title:** Funding for Safety Program  
**Category of Applicant:** Public Employer  
**Target Population:** Employees/Employers/Supervisors  
**Geographic Target:** Lawrence/Peabody  
**Program Administrator:** Cynthia King  
**Total Funds Requested:** \$16,108.14      **Approved:** \$16,108.14

19. Husky Injection Molding Systems, Inc.  
One Plastics Avenue  
Pittsfield, MA 02101  
(413) 445-6200  
**Title:** Occupational Safety & Health Education and Training Program  
**Category of Applicant:** Private Employer  
**Target Population:** Employees/Supervisors  
**Geographic Target:** Pittsfield  
**Program Administrator:** Stephanie McGarry  
**Total Funds Requested:** \$14,250.00      **Approved:** \$14,250.00
20. City of Somerville  
93 Highland Avenue  
Somerville, MA 02143  
(617) 625-6600, ext. 3307  
**Title:** City of Somerville's Occupational Safety and Training Program  
**Category of Applicant:** Public Employer  
**Target Population:** Employees/Supervisors  
**Geographic Target:** Boston  
**Program Administrator:** Renee Mello  
**Total Funds Requested:** \$19,975.00      **Approved:** \$17,697.60
21. Standard Tube Sales Corporation  
90 Bartlett Street  
Marlborough, MA 01751  
(508) 481-7100  
**Title:** Multi-Level Safety Training Program  
**Category of Applicant:** Private Employer  
**Target Population:** Employees/Employers/Supervisors  
**Geographic Target:** Middlesex  
**Program Administrator:** Loretta Williams  
**Total Funds Requested:** \$3,177.50      **Approved:** \$3,177.50
22. Robert D. Marshall Carpenters Training Center  
13 Holman Road  
Millbury, MA  
(508) 792-5443  
**Title:** Scaffold Education Program  
**Category of Applicant:** Labor Organization/Non-Profit  
**Target Population:** Employees  
**Geographic Target:** Statewide  
**Program Administrator:** James O'Leary  
**Total Funds Requested:** \$24,298.44      **Approved:** \$24,298.44
23. The Dunlap Corporation  
175 Canal Street  
Manchester, N.H. 03104  
(800) 627-9583  
**Title:** Supervisor Safety Leadership Training for Supervisors  
**Category of Applicant:** Private Employer  
**Target Population:** Employees/Employers/Supervisors  
**Geographic Target:** Statewide  
**Program Administrator:** Cindy Gerlach  
**Total Funds Requested:** \$12,372.40      **Approved:** \$12,372.40

24. Dept. Of Public Health  
250 Washington Street  
Boston, MA 02108  
(617) 624-5626  
**Title:** Occupational Health & Safety Training for Nursing Home Employees  
**Category of Applicant:** Public Employer  
**Target Population:** Employees/Supervisors  
**Geographic Target:** Statewide  
**Program Administrator:** Elise Morse  
**Total Funds Requested:** \$24,992.92      **Approved:** \$24,992.92
25. SEIU 509  
150 Fearing Street  
Amherst, MA 01002  
(413) 549-8255  
**Title:** A Safer University: Health and Safety Training for Three Campus Unions  
**Category of Applicant:** Labor Organization  
**Target Population:** Employees/Supervisors  
**Geographic Target:** Springfield  
**Program Administrator:** Maura Sweeney  
**Total Funds Requested:** \$6,018.98      **Approved:** \$6,018.98
26. Western MassCOSH  
458 Bridge Street  
Springfield, MA 01103  
(413) 731-0760  
**Title:** Protecting School Bus Personnel from Violence  
**Category of Applicant:** Non-profit Organization  
**Target Population:** Employees/Supervisors  
**Geographic Target:** Springfield  
**Program Administrator:** Susan DeMaria  
**Total Funds Requested:** \$15,354.75      **Approved:** \$15,354.75
27. Presmet Corporation  
112 Harding Street  
Worcester, MA 01604  
(508) 792-6400  
**Title:** Occupational Safety and Health Training and Education Program  
**Category of Applicant:** Private Employer  
**Target Population:** Employees/Employers/Supervisors  
**Geographic Target:** Worcester  
**Program Administrator:** Paul Browning  
**Total Funds Requested:** \$24,300.00      **Approved:** \$20,925.00
28. South Central Rehabilitative Resources, Inc.  
171 Charlton Road  
Sturbridge, MA 01566  
(508) 347-8181  
**Title:** Occupational Health & Safety Training for Restaurant Workers  
**Category of Applicant:** Private Employer  
**Target Population:** Employees/Employers/Supervisors  
**Geographic Target:** Statewide  
**Program Administrator:** Bonita Keefe-Layden  
**Total Funds Requested:** \$25,000.00      **Approved:** \$25,000.00

29. Quadrant Health Strategies, Inc.  
P.O.Box 99  
Newton Centre, MA 02159-9998  
(800) 766-2519  
**Title:** Ergonomic and Safety Training Program for the Prevention of Musculo-Skeletal Injuries for the Employees of the Town of Watertown  
**Category of Applicant:** Public Employer  
**Target Population:** Employees/Employer  
**Geographic Target:** Boston  
**Program Administrator:** Rena Hannaford  
**Total Funds Requested:** \$25,000.00      **Approved:** \$23,922.49
30. Laidlaw Transit Services dba National School Bus Services, Inc.  
115 Freeport Street  
Dorchester, MA 02122  
(617) 825-3830  
**Title:** Preventing Musculoskeletal Injury to Boston School Bus Drivers  
**Category of Applicant:** Private Employer  
**Target Population:** Employees/Supervisors  
**Geographic Target:** Boston  
**Program Administrator:** Sandra Baldwin-Goncalves  
**Total Funds Requested:** \$25,000.00      **Approved:** \$24,723.00
31. Belcastro Brothers, Inc.  
80R Gibson Street  
Medford, MA 02155  
(781) 395-1270  
**Title:** Personnel Protection Program  
**Category of Applicant:** Private Employer  
**Target Population:** Employees/Employers/Supervisors  
**Geographic Target:** Boston  
**Program Administrator:** Bernard Belcastro  
**Total Funds Requested:** \$5,139.10      **Approved:** \$5,115.10
32. Asbestos Workers Local #43  
1053 Burts Pit Road  
Northampton, MA 01060-3630  
(413) 584-0028  
**Title:** Preventing Asbestos and Fiberglass-Related Disease & Scaffolding Injuries for Building Trades Workers in Western Mass  
**Category of Applicant:** Labor Organization/Federation  
**Target Population:** Employees  
**Geographic Target:** Worcester/Lawrence/Springfield  
**Program Administrator:** Robert Starr  
**Total Funds Requested:** \$19,955.20      **Approved:** \$19,958.62
33. UAW Local 2322  
56 Main Street  
Northampton, MA 01060-3129  
(413) 584-4905  
**Title:** Improving Health and Safety on Our Job  
**Category of Applicant:** Labor Organization/Federation  
**Target Population:** Employees  
**Geographic Target:** Springfield  
**Program Administrator:** Jenny Miriam  
**Total Funds Requested:** \$9,390.00      **Approved:** \$9,390.000



34. Iron Workers Local 7  
Joint Apprenticeship Committee  
195 Old Colony Avenue  
South Boston, MA 02127  
(617) 268-0707  
**Title:** A Model Study to Increase Iron Workers Voluntary Compliance with a Hearing Conservation Program Through Education and Training  
**Category of Applicant:** Joint Labor/Management Committee  
**Target Population:** Employees/Employers/Supervisors..  
**Geographic Target:** Boston  
**Program Administrator:** Robert Banks  
**Total Funds Requested:** \$30,458.16      **Approved:** \$24,537.36
35. Chamber of Commerce of the Berkshires  
66 West Street  
Pittsfield, MA 01201  
(413) 499-4000  
**Title:** Occupational Safety & Health and Training Program  
**Category of Applicant:** Not for Profit  
**Target Population:** Employees/Employers/Supervisors  
**Geographic Target:** Berkshire County/Western/Pittsfield  
**Program Administrator:** Claudine Chavanne  
**Total Funds Requested:** \$13,125.00      **Approved:** \$13,125.00
36. Mount Wachusett Community College  
444 Green Street  
Gardner, MA 01440-1000  
(978) 632-6600  
**Title:** Health Integration Program (HIP) at the Mount  
**Category of Applicant:** Public Employer  
**Target Population:** Employees/Employers/Supervisors  
**Geographic Target:** Worcester  
**Program Administrator:** Sheila Sykes  
**Total Funds Requested:** \$24,991.00      **Approved:** \$17,191.00
37. Summup  
c/o Chrys Zarazinsky  
P.O. Box 1194  
Webster, MA 01570-4194  
(508) 366-4401 ext. 2500  
**Title:** Preventing Injury from Violence to Commonwealth of Massachusetts  
Human Services Workers  
**Category of Applicant:** Public Employer  
**Target Population:** Employees  
**Geographic Target:** Statewide  
**Program Administrator:** Rosalind Horner  
**Total Funds Requested:** \$25,000.00      **Approved:** \$23,168.00

38. Sisters of Providence Health Systems  
1223 Main Street  
Holyoke, MA 01040  
(413) 539-2635  
**Title:** Occupational Safety and Health Education and Training Program  
**Category of Applicant:** Non-profit Organization  
**Target Population:** Employees/Employers/Supervisors  
**Geographic Target:** Springfield/Holyoke  
**Program Administrator:** Deborah LaVoie  
**Total Funds Requested:** \$24,900.00      **Approved:** \$21,975.00
39. Minuteman Tech High School  
758 Marrett Road  
Lexington, MA 02173  
(781) 861-6500, ext. 349  
**Title:** Occupational Safety and Health Education and Training  
**Category of Applicant:** Public Employer  
**Target Population:** Employees/Supervisors  
**Geographic Target:** Boston  
**Program Administrator:** Carol Zanin  
**Total Funds Requested:** \$21,810.00      **Approved:** \$21,810.00
40. 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  
**Target Population:** Employees  
**Geographic Target:** Springfield  
**Program Administrator:** Irene Kimball  
**Total Funds Requested:** \$12,847.50      **Approved:** \$12,847.50
41. FLEXcon Company, Inc.  
FLEXcon Industrial Park  
Spencer, MA 01562-2642  
(508) 885-8200  
**Title:** Occupational Safety & Health Education and Training Program  
**Category of Applicant:** Public Employer  
**Target Population:** Employees/Employers/Supervisors  
**Geographic Target:** Worcester  
**Program Administrator:** Darwin Irish  
**Total Funds Requested:** \$22,350.00      **Approved:** \$20,100.00
42. Benn Safety Management and Training  
45 Pullen Avenue  
Pawtucket, RI 02861  
(401) 724-4007  
**Title:** Lockout/Tagout and Bloodborne Pathogens for the City of Northampton  
**Category of Applicant:** Self Employed Consultant  
**Target Population:** Employees/Employers/Supervisors  
**Geographic Target:** Springfield  
**Program Administrator:** William Gordon Benn  
**Total Funds Requested:** \$17,340.00      **Approved:** \$17,170.00

43. Cape Cod Regional Tech High School  
351 Pleasant Lake Avenue  
Harwich, MA 02645  
(508) 432-4500  
**Title:** Cape Cod Tech Occupational Health-Safety Training Program  
**Category of Applicant:** Non-profit Organization/Public Employer  
**Target Population:** Employees/Students  
**Geographic Target:** Statewide  
**Program Administrator:** William Fisher  
**Total Funds Requested:** \$24,870.00      **Approved:** \$24,930.00

44. Kennedy Die Castings, Inc.  
15 Coppage Drive  
Worcester, MA 01603  
(508) 791- 5594  
**Title:** Occupational Safety & Health Training and Education Program  
**Category of Applicant:** Private Employer  
**Target Population:** Employees/Employers/Supervisor  
**Geographic Target:** Worcester  
**Program Administrator:** Jay Scully  
**Total Funds Requested:** \$24,600.00      **Approved:** \$19,500.00

45. Brunetta Associates  
P.O. Box 1525  
Lawrence, MA 01842  
**Title:** Occupational Safety and Health Education and Training Program  
**Category of Applicant:** Private Employer  
**Target Population:** Employees/Employers/Supervisors  
**Geographic Target:** Boston  
**Program Administrator:** Anthony Brunetta  
**Total Funds Requested:** \$24,978.75      **Approved:** \$24,978.75

46. Associated Builders and Contractors  
One Wall Street  
Burlington, MA 01803  
(781) 273-0123  
**Title:** Certified Site Safety Technician (100hrs)  
**Category of Applicant:** Trade Association  
**Target Population:** Employees/Employers/Supervisors  
**Geographic Target:** Statewide  
**Program Administrator:** Julia DeCola  
**Total Funds Requested:** \$19,748.00      **Approved:** \$17,087.00

## APPENDIX E

### Industrial Accident Nominating Panel

**JAMES J. CAMPBELL, COMMISSIONER - DIA - CHAIR**

**Joseph Bonfiglio**

Business Manager/Secretary Treasurer  
Laborer's International Union  
Local 151  
238 Main Street  
Cambridge, MA 02142  
Tel. (617) 876-8081  
Fax:(617) 492-0490

**Mr. Gino Maggi**

President, Inter-all Corp.  
P. O. Box 586  
Holyoke, MA 01041  
Tel. (413) 467-7181  
Fax:(413) 467-7186

**Angelo Buonopane**

Dir. of Labor & Workforce Development  
One Ashburton Place, 14<sup>th</sup> Floor  
Boston, MA 02108  
Tel.(617) 727-6573 x 100  
Fax: (617)727-1090

**Terence McCourt, Esq.**

Menard, Murphy & Walsh  
One Financial Center  
Boston, MA 02111  
Tel.(617) 832-2500  
Fax:(617) 832-2550

**James C. Cronin, Esq.**

Raytheon  
20 Seyon Street  
Waltham, MA 02254  
Tel. (781) 642-4008  
Fax:(781) 642-4123, 4124

**Dr. Grant Rodkey**

11 Beatrice Circle  
Belmont, MA 02178-02657  
Office: 724-0110  
Fax: 724-0113

**Mr. Robert J. Haynes**

President, Mass. AFL-CIO  
8 Beacon Street  
Boston, MA 02108  
Tel. (617) 227-8260  
Fax:(617) 227-2010

**David Tibbetts**

Dir. of Dept. of Economic Development  
One Ashburton Pl., Room 1201  
Boston, MA 02108  
Tel. (617) 727-8380 x 309  
Fax:(617) 727-727-4426  
Brenda Miller, Assistant

**Joseph W. Jennings, III**

Sr. Judge, DIA - 600 Washington Street  
Boston, MA 02111  
Tel. (617) 727-4900 x 354  
Fax:(617) 727-7122

**Michael A. Torrisi, Esq.**

Berger & Hyde  
90 Main Street  
Andover, MA 01810  
Tel. (508) 475-0756  
Fax: (508) 475-8959

**Paul Johnson**

Chief Legal Counsel \*(Laurie Wallach)  
Room 271 - State House  
Boston, MA 02133  
Tel. (617) 727-2065  
Fax:(617) 727-8290

\*These people usually appear for the person listed above their name.

## APPENDIX F

### Summary of Judicial Expiration Dates (8/31/98)

#### *INDUSTRIAL ACCIDENT REVIEWING BOARD SIX YEAR TERMS*

1.	Martine Carroll	Unenrolled	5/28/04
2.	Frederick Levine	Unenrolled	5/28/04
3.	Susan Maze-Rothstein	Democrat	6/10/04
4.	William McCarthy	Democrat	5/21/04
5.	Suzanne Smith	Republican	6/03/04
6.	Sara Holmes Wilson	Republican	5/28/04

#### *INDUSTRIAL ACCIDENT BOARD SIX YEAR TERMS*

1.	Douglas Bean	Republican	6/26/99
2.	Michael Chadinha	Republican	5/28/04
3.	David Chivers	Republican	5/21/04
4.	William Constantino	Democrat	6/13/01
5.	Karen Corcoran	Democrat	7/06/00
6.	Joellen D'Esti	Unenrolled	5/21/04
7.	John Harris	Republican	5/28/04
8.	Richard Heffernan	Democrat	9/04/03
9.	Emogene Johnson	Unenrolled	7/29/00
10.	James LaMothe	Republican	1/31/03
11.	Roger Lewenberg	Republican	6/26/04
12.	William Long	Democrat	8/03/00
13.	Douglas McDonald	Democrat	7/06/00
14.	John McLaughlin	Republican	5/28/98
15.	Bridget Murphy	Republican	7/27/00
16.	Daniel O'Shea	Republican	5/28/04
17.	Leo Purcell	Democrat	12/29/99
18.	Diane Solomon	Unenrolled	8/10/00
19.	Stephen Sumner	Unenrolled	7/05/02
20.	Richard Tirrell	Democrat	5/14/04
21.	Jo'Anne Thompson	Republican	9/18/98

#### *INDUSTRIAL ACCIDENT BOARD ONE YEAR TERMS*

1.	Carolynn Fischel	Unenrolled	6/18/99
2.	James St. Amand	Democrat	5/13/99
3.	Fred Taub	Democrat	7/01/99

#### *RETIRED/PART-TIME ONE YEAR TERMS*

1.	William Pickett	Democrat	1/14/99
----	-----------------	----------	---------

## APPENDIX G

### Medical Consultant Consortium

**L. Christine Oliver, MD**

Pulmonary / Critical Care Unit  
Bullfinch #1 / Mass General Hospital  
55 Fruit Street  
Boston, MA 02114  
(617) 227-8163  
Fax: 726-2932

**Dean Hashimoto, MD, JD**

Boston College Law School  
885 Center Street  
Newton, MA 02159  
(617) 522-4617  
Fax: 552-2615

**Manuel Lipson, MD**

Director, Spaulding Rehabilitation  
Hospital  
125 Nashua Street – 1st Floor  
Boston, MA 02114  
(617) 720-6648

**Barry Simmons, MD**

Brigham Orthopedic Association  
Brigham and Women's Hospital  
75 Francis Street  
Boston, MA 02115  
(617) 732-5378  
Fax: 732-6937

## **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 charge-back; 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 charge-back; 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 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 Division. 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.



## APPENDIX I

### 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**

##### **Division of Industrial Accidents (DIA)**

600 Washington Street, Boston, MA 02111 (Boston Office)

Phone: 617-727-4900 Info: 800-323-3249 x470 Web Page: <http://www.state.ma.us/dia/>

The Division of Industrial Accidents administers the Commonwealth's Workers' Compensation system. The Division provides prompt and rational compensation to victims of occupational injuries and illness, and oversees that medical treatment to injured workers is provided in a timely manner while balancing the needs of employers to contain workers' compensation insurance costs.

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

600 Washington Street, Boston, MA 02111

Phone: 617-727-4900 x378 Web Page: <http://www.state.ma.us/wcac/>

The Advisory Council is a labor-management committee appointed by the Governor to monitor, oversee, and make recommendations to improve the workers' compensation system in the Commonwealth.

##### **Joint Committee on Commerce and Labor**

State House Room 43, Boston, MA 02133

Phone: 617-722-2030 Web Page: <http://www.state.ma.us/legis/comm/j12.htm>

The Commerce and Labor Committee consists of elected state representatives and senators. It is their duty to consider all matters concerning commercial, industrial and mercantile establishments, industrial development, consumer protection, discrimination with respect to employment, labor laws and such other matters.

**Office of the Governor**

State House Room 360, Boston, MA 02133

Phone: 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

Phone: 617-727-2795 Web Page: <http://www.state.ma.us/gov/govco.htm>

The Massachusetts Governor's Council, also known as the Executive Council, is composed of eight individuals elected from districts, and the Lt. Governor who serves ex officio. The eight councilors are elected from their respective districts every two years. The Council generally meets at noon on Wednesdays in its State House Chamber, next to the Governor's Office, to act on such issues as payments from the state treasury, criminal pardons and commutations, and approval of gubernatorial appointments; such as judges, notaries, and justices of the peace. All DIA judges are appointed by the Governor subject to the consent & approval of the Governor's Council.

**Department of Labor and Workforce Development**

One Ashburton Place, Boston, MA 02108

Phone: 617-727-6573

The Department of Labor and Workforce Development 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 Division of Industrial Accidents in one of five departments that fall under the Department of Labor and Workforce Development. The Director of Labor is an ex-officio member of the Workers' Compensation Advisory Council.

**Massachusetts Rehabilitation Commission**

Fort Point Place, 27-43 Wormwood Street, Boston, MA 02110-1616

Phone: 617-482-1780 Web Page: <http://www.state.ma.us/mrc/>

The mission of the MRC is to provide comprehensive services with and for persons with disabilities toward the goal of employment and independence. In cooperation with other public and private human service organizations, the MRC promotes its ultimate vision of equality, empowerment and productive independence of individuals with disabilities.

**Department of Economic Development**

One Ashburton Place, Boston, MA 02108

Phone: 617-727-8380 Web Page: <http://www.magnet.state.ma.us/econ/>

The Department of Economic Development and its offices and divisions seek to promote job creation and long-term economic growth in Massachusetts. It seeks to attract new businesses to the state, help existing businesses expand, assist emerging firms in obtaining the human, financial, and technological resources necessary to prosper and grow, and provide assistance and training to the unemployed and underemployed. The Director of Economic Development is an ex-officio member of the Workers' Compensation Advisory Council.

**Office of the Attorney General**

One Ashburton Place, Boston, MA 02108

Phone: 617-727-2200 Web Page: <http://www.state.ma.us/ag/ago.htm>

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.

*The Rate Setting Commission and the Division of Insurance are also State Agencies.*

**Insurance****Commonwealth of Massachusetts Division of Insurance (DOI)**

470 Atlantic Avenue, Boston, MA 02110-2223

Phone: 617-521-7794 Web Page: <http://www.state.ma.us/doi/>

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

Phone: 617-727-4900 x371

Issues annual licenses for self insurance; monitors insurance complaints; maintains the insurer register.

**DIA- Office of Investigations**

600 Washington Street, Boston, MA 02111

Phone: 617-727-4900 x409

Issues stop work orders and fines employers without workers' compensation insurance.

**The Workers' Compensation Rating and Inspection Bureau of Massachusetts (WCRIB)**

101 Arch Street, 5<sup>th</sup> floor, Boston, MA 02110

Phone: 617-439-9030

Private non profit body funded by insurers;

- Licensed rating organization for workers' compensation; WCRIB submits workers' compensation insurance rates, rating plans, and forms for approval (rates are subject to approval by the Commissioner of Insurance);
- WCRIB 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

Phone: 407-997-1000 Web Page: <http://www.ncci.com/index.html>

NCCI is a national organization devoted to workers' compensation insurance. It has a somewhat limited role in Massachusetts:

- Does some of the accounting for the assigned risk pool under contract with the WCRIB;
- 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 WCRIB that files for rate changes);
- NCCI also administers various state funds where the state acts as an insurance carrier for workers' compensation.

**Medical**

**Division of Health Care Finance and Policy**

2 Boylston Street, Boston, MA 02116

Phone: 617-451-5340 Web Page: <http://www.state.ma.us/dhcfp/>

The Division of Health Care Finance and Policy (formerly the Rate Setting Commission) sets reimbursement rates for medical services in workers' compensation.

**DIA- The Health Care Services Board**

Phone: 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

Phone: 781-893-4610 / 800-322-2303 Web Page: <http://www.massmed.org/>

Private, non-profit professional association representing the Massachusetts physician community.

**Massachusetts Hospital Association**

5 New England Executive Park, Burlington, MA 01803

Phone: 781-272-8000 Web Page: <http://www.mhalink.org>

The Massachusetts Hospital Association (MHA) is a voluntary, not-for-profit organization comprised of hospitals and health systems, related organizations, and other members with a common interest in promoting the health of the people of the Commonwealth.

**Massachusetts Orthopedic Association**

45 Broad Street, Boston, MA 02109

Phone: 617-451-9663

Private, non-profit professional association representing physicians practicing in the specialty area of orthopedic surgery.

### **Massachusetts Chiropractic Society**

76 Woodland Street, Methuen, MA 01844-4295

Phone: 978-682-8242 / 800-442-6155 Web Page: <http://www.masschiro.org>

The Massachusetts Chiropractic Society a non-profit membership service organization representing the chiropractic profession in Massachusetts. The Society's principle function is to maintain the standards in education, ethics, and professional competency necessary to meet the requirements of the profession and the expectations of the general public.

### **American Physical Therapy Association of Massachusetts**

14 Beacon Street, Suite 719, Boston, MA 02108

Phone: 617-523-4285 National Chapter: 800-999-2782 Web Page: <http://aptaofmass.org>

The American Physical Therapy Association of Massachusetts Inc., with more than 2200 members, is a component of the American Physical Therapy Association. APTA's goal is to foster advancement in physical therapy practice, education, and research.

### **American Occupational Therapy Association**

4270 Montgomery Lane, P.O. Box 31220, Bethesda, MD 20824-1220

Phone: 301-652-2682 Web Page: <http://www.nih.gov/nia/related/aoaresrc/dir/45.htm>

The American Occupational Therapy Association (AOTA) supports the professional community for occupational therapists and develops and preserves the viability and relevance of the profession. The organization serves the interests of its members, represents the profession to the public, and promotes access to occupational therapy services.

## **Public Policy/ Research**

### **Workers' Compensation Research Institute (WCRI)**

101 Main Street, Cambridge, MA 02142

Phone: 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

Phone: 617-262-1180 Web Page: <http://www.aimnet.org>

The Associated Industries of Massachusetts is a dues-supported, non-profit, nonpartisan employers' association dedicated to improving the Commonwealth's economic climate.

### **Massachusetts AFL-CIO**

8 Beacon Street, Boston, MA 02108

Phone: 617-227-8260 Web Page: <http://www.massaficio.org>

Umbrella organization representing its member local offices of unions in Massachusetts.

**International Association of Industrial Accident Boards and Commissions** (IAIABC)

1201 Wakarusa, C-3, Lawrence, KA 66049

Phone: 904-252-2915 Web Page: <http://www.iaiaabc.org>

The International Association of Industrial Accident Boards and Commissions serves the needs of the workers compensation system through promoting efficient and far sighted regulation and administration of the law.

**Fraud**

**Insurance Fraud Bureau of Massachusetts** (IFB)

101 Arch Street, Boston, MA 02110

Phone: 617-439-0439 (1-800-32FRAUD) Web Page: <http://www.ifb.org>

The Insurance Fraud Bureau of Massachusetts is a multifaceted investigative agency dedicated to the systematic elimination of fraudulent insurance transactions. Authorized by an Act of the Massachusetts Legislature and signed into law in 1990, the Insurance Fraud Bureau undertakes cases for investigation and preparation for criminal prosecution. The Bureau is wholly funded by the insurance industry in Massachusetts.

*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 - Business and Labor Protection Bureau**

Fair Labor and Business Practices Division, 200 Portland Street, Boston, MA 02114

Phone: 617-727-3477 Web Page: <http://www.state.ma.us/ag/ago5.htm>

The Business and Labor Protection Bureau investigates and prosecutes violations of child labor laws and work-related injuries to minors, grants workplace procedure waivers, inspects workplace safety on construction sites, industrial sites and in the manufacturing industry. They also prosecute egregious cases of violations of industrial workplace safety and may shut down a job site in cases of imminent danger to the safety of employees or the public.

**DIA- Office of Safety**

Phone: 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)).

**Massachusetts Coalition of Occupational Safety and Health** (MassCOSH)

555 Armory Street

Boston, 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

Phone: 617-542-3602 Web Site: <http://www.massbar.org>

The Massachusetts Bar Association is the statewide voluntary professional association for all lawyers, in all types of practice, in all areas of law.

### **Massachusetts Academy of Trial Attorneys**

15 Broad Street, Suite 415, Boston, MA 02109

Phone: 617-248-5858

Private, non-profit professional association representing the plaintiff's attorneys in Massachusetts.

## **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

Phone: 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.



## **Workers' Compensation Legislation**

### **Before the Joint Committee on Commerce & Labor**

*1997-1998 Legislative Session*

---

#### **Employer Fines** - (H.5039 - *Lees*)

This bill would amend § 25C (2) regarding fines for failing to secure workers' compensation insurance. It would add provisions allowing the DIA Commissioner to reduce employer fines to an amount no lower than \$250 following a hearing in which there is a finding that:

- (a) the fine would have a severe negative impact on the cash flow or financial stability of the business;
- (b) weekends and holidays interrupted the employer's ability to secure coverage in a more timely fashion;
- (c) the business was unable to secure voluntary coverage thus delaying their application to the Massachusetts Workers' Compensation Assigned Risk Pool for coverage; or
- (d) the amount of annual premium for worker's compensation coverage is less than the amount of fines imposed by the DIA under the stop work order.

Section 2 of the bill, would amend § 75A, which requires employers to give preference in hiring to injured employees applying for re-employment. This bill would relieve the rehiring requirement if the injured employee has been employed by another employer for more than six months since the date of injury. Section 3 of the bill would amend § 1 (4). It would make the coverage of corporate officers elective.

#### **Employer Fines** S.52 - (*Lynch*)

This bill would increase the fines for employers who fail to obtain workers' compensation insurance. The bill would:

- increase the fines from the current \$100.00 per day to \$200.00 per day, per employee;
  - create a civil penalty for employers in the construction industry who lack insurance, charging \$500.00 per day, per employee, for each day the employer was without insurance (counting the date of service of the stop work order as the first day and date of payment of the penalty with the proof of insurance or self-insurance as the final day);
  - increase the fine from \$250.00 per day to \$500.00 per day, per employee, when an employer appeals a stop work order and is found, after a hearing, that coverage was lacking;
  - create a civil penalty of \$1,000 per day, per employee, for employers doing business in the construction industry who appeal a stop work order and are found that coverage was lacking. This penalty would account for each day that the employer was without insurance (counting the date of service of the stop work order as the first day and date of payment of the penalty with the proof of insurance or self-insurance as the final day);
- cap the maximum punishment by fine from the current \$1,500.00 to \$10,000.00.

**Stop Work Orders - New Corporations** (H. 1872 - *Kulik*)

This bill would amend §25C to require the DIA to give a three day notice to any business it intends to investigate. This bill would create a new section, §25V, which would require the DIA to notify all persons filing articles of incorporation with the Secretary of State's Office of their responsibilities to obtain workers' compensation.

**Tax Information for Fraud Investigation** (H.3585 - *Honan*)

This bill would amend Ch. 62C of the General Laws, which provides administrative procedures relative to state taxation. Section 21(a) prohibits the Department of Revenue from disclosing taxpayer information contained on any person's tax return or tax document to anyone but the taxpayer, except for criminal prosecution in certain enumerated instances. Section 21(b) provides the exceptions to this prohibition. This bill would require the DOR to disclose tax information to the Commissioner of the DIA or any state, county or municipal official, for the purpose of ascertaining or confirming the existence of fraud, abuse or improper payment of benefits.

**Fraudulent Activities - Modification of Benefits** (H.3965 - *Dempsey*)

This bill would add a new subsection 8B, which would give the Division of Industrial Accidents the authority to initiate investigations and proceedings to alter the payments of benefits received by employees suspected of engaging in fraudulent activities.

**Def. of Employee - Exemption of Sole Proprietors & Partnerships** (S.22 - *Amorello*, H.445 *Miceli*, H.3594 - *Koczera*, H.3010 - *Resor*) These bills would amend the definition of employee, giving a sole proprietor or a partnership the option of being considered an employee, thereby making workers' compensation coverage elective.

**Def. of Employee - Exemption of Sole Shareholders** (S.74 - *Murray*)

This bill would amend the definition of employee by exempting the sole shareholder of a corporation or an officer who is a sole shareholder from the requirements of obtaining workers' compensation insurance.

**Def. of Employee - Exemption of Corporate Officers** (H.1079 - *Stanley*, H.1645 - *Lepper*)

These bills are similar to S. 41 and S. 72 filed last legislative session. These bills would amend the definition of employee by making workers' compensation coverage elective for corporate officers regardless of their duties. This proposal would especially effect small, family run businesses where the owners typically are the only workers.

**Definition of Employer - Exemption of Volunteers** (H.883 - *Walrath*)

This bill would exempt from the act any director, officer or trustee of a nonprofit entity (as defined by the IRS code), provided they receive no compensation except reimbursement for out of pocket expenses.

**Def. of Employer - Exemption of Employee Owned Companies** (H.3003 - *Casey*)

This bill would amend the definition of an "employer" by excluding businesses which are fifty percent or more employee owned, and with less than four employees.

**Definitions - Contractors & Sub-Contractors** (H.644 - *Hynes*) [Refile]

This bill (filed last legislative session as H. 1793 and H. 1794) would exempt residential contractors from the requirement of providing workers' compensation insurance for certain subcontractors. H. 644 would exclude from the definition of employee any subcontractor who enters into a contract with a residential contractor provided that the general informs the sub in writing that he does not provide workers' compensation insurance, and that the subcontractor

signs a notarized statement that he enters into the subcontract freely accepting the condition of no workers' compensation insurance and waives any right to legal action pursuant to ch. 152.

**Employee Leasing Companies - Exclusive Remedy** (H.881 - *Kaufman*)

This bill would amend §14A which allows the Commissioner of Insurance to regulate the terms of workers' compensation policies for employee leasing companies. The bill would extend the exclusive remedy doctrine to both the leasing company and the client company, as well as the provisions of the employer's liability provisions of a workers' compensation policy, in any given controversy.

**Creation of a Residential Home Contractor Classification** (H.645 - *Hynes*) [Refile]

H. 645 would establish a new classification of risks and premiums for residential home contractors whose premium rate would be capped at 40% of the 1995 classification rate.

**Exemption of Out of State Employers** (S.20 - *Amorello*)

This bill would create a new section (25V) and that would exempt an out of state employer from the Massachusetts workers' compensation laws when its employees work in Massachusetts temporarily. The exemption would only apply if: the employer is not a resident of Mass. and was not contracted here; the employer does not have a permanent place of business in-state; or the employee has not worked in-state for more than 5 consecutive days, 10 days in a 30-day period or 30 days in a 360-day period. The workers' compensation laws of the resident state would govern any work related injuries in Massachusetts.

**Insurance Requirement - Exemption of Agricultural Employers** (S.29 - *Brewer*)

This bill would amend §25B by exempting from the insurance requirement agricultural or horticultural employers with a gross annual payroll below \$100,000.

**Study of Occupational Safety & Health of Public Employees** (H.640 - *Businger*)

This bill would authorize the Joint Committee on Commerce & Labor to conduct a study on the occupational safety and health of public employees. Such a study would include an examination of safety standards, health hazards, the prevention of industrial accidents, enforcement mechanisms, etc.

**Insurance Discounts for Drug Free Workplace Programs** (S.59 - *Magnani, Stasik, Murray, Thompson, Stefanini, and Tarr*) This bill would require that employers who implement a drug-free workplace program receive a 5% discount on workers' compensation premium. Employers would have to comply with the standards and procedures set forth in the legislation and all applicable rules adopted by the DIA.

**Medical Insurance for Injured Workers** (S.30 - *Brewer on behalf of MA AFL-CIO*) [Refile]

This bill would require any employer that provides accident, health and life insurance coverage or makes contributions to an employee welfare fund, to continue to provide such benefits while the employee is eligible to receive workers' compensation or is on sick leave for a work related injury. This legislation conflicts with a U.S. Supreme Court case, District of Columbia v. Greater Washington Board of Trade, 113 S.Ct.580 (1992). The Supreme Court declared that an identical piece of legislation enacted in Washington, D.C. was unconstitutional. According to the Supreme Court the legislation in question impermissibly sought to regulate health benefits that "relate to" ERISA covered benefits, and therefore were preempted by federal law.

**Benefits for Specific Injuries - Scar Based Disfigurement** (S.51 - *Lynch*, H.3765 - *Cabral*) [Refile]

These bills would eliminate the requirement that scar based disfigurement appear on the face, neck or hands to be compensable. This would require compensation for all disfigurement, whether or not scar based, regardless of its location on the body. Section 36(k) was amended by chapter 398 to limit payments for purely scar based disfigurement by requiring benefits only when the disfigurement is on the face, neck, or hands.

**Durable Medical Equipment** (S.97 - Travaglini, S.98 - Travaglini)

Senator Robert Travaglini filed these bills in the last legislative session as an outside section to the 1997 budget. They apply to providers of durable medical equipment. These bills would accomplish the following:

- Providers of durable medical equipment would be considered a “provider” for all purposes of ch. 152.
- If a treating physician of an injured employee prescribes and determines a treatment to be medically necessary, no insurer, self insurer, third party claims administrator or utilization review agent could deny or refuse reimbursement for their costs, unless:
  - 1) the provider is given the same rights of appeal as any physician provider or injured employee with respect to claims denial or refusal of any adverse utilization review determination; and

- 2) the utilization review agent, insurer, self-insurer or third party administrator discloses to the physician, injured employee or provider of medical equipment the standards used for the denial.

- A durable medical equipment provider would have a private right of action to enforce this provision and other applicable sections under chapter 152. Any violation of this provision would be deemed an unfair method of competition as defined by chapter 176D and an unfair practice as defined in ch. 93A.

**Voluntary Payment of Benefits - Pay Without Prejudice** (H654 - Koczera, S.70 - Morrissey)

H. 654 and S.70 are identical. These bills would amend section 19 of the act. This section addresses agreements between an insurer and a claimant to voluntarily pay benefits. Unless payment begins within 14 days of receipt of the first report of injury or an employee's complaint, all agreements to make payments must be in writing and approved by the DIA. This applies to voluntary payment of weekly indemnity benefits as well as lump sum agreements which are further regulated by §48. Section 7 of the statute explicitly states that the decision to pay or deny a claim for benefits must be made by the insurer within fourteen days, under penalty of law. Section 8 of the act states that if an insurer begins payment within this time frame, it has 180 days to unilaterally cease making payments. The pay without prejudice period does not apply when an insurer denies a claim and later voluntarily agrees to pay, or where an insurer makes a late decision to pay benefits. This "pay without prejudice" period is one feature of the 1991 reforms credited with encouraging prompt payment of claims and reducing disputed claims at the agency. Currently, the DIA will not approve a §19 agreement that contains a pay without prejudice clause on the basis that such an agreement violates the prompt payment mandates of sections 7 and 8. These bills seek to allow insurers who do not make prompt payment within 14 days to have the benefit of the pay without prejudice period should the insurer agree to make future payments.

**New Section - Insurance Coverage of Domestic Employees** (S.19 - Amorello)

This bill would add a new section (25V) to Ch.152. It would require all insurance companies that provide comprehensive personal liability, tenant's or homeowner's insurance to also provide “workers’ compensation insurance” covering domestic employees.

**Impartial Examinations** (S.54 - *Lynch*)

This bill is substantively identical to H. 1072 filed last year. It would create a new section 9C to allow an AJ or ALJ to appoint an impartial physician to examine and report on a claimant's condition prior to a conference or hearing. [Currently, under section 8(4), an impartial physician can be requested at the conference stage only at the request of the insurer after the 180 day pay without prejudice period has expired.] This bill also replaces language for section 11A impartial exams. It would remove the Ch. 398 requirement that an impartial exam be conducted whenever "a dispute over medical issues is the subject of a conference order." Under this bill, appointment of an impartial physician would be at the discretion of the AJ or ALJ. It also requires that the report indicate whether employment is the predominant contributing cause for mental or emotional disability. This bill would expand the role of the impartial physician by requiring that the physician make a determination about causation, whether or not the determination can be made with a reasonable degree of medical certainty. Moreover, the causation standard would change from whether the work-related injury was the "major or predominant contributing cause" of the disability to whether the work-related injury was "probably caused or was contributing cause" of the disability. The standard would therefore be eased. The report from section 9C must be entered into evidence at the hearing, and the current requirement that it be treated as prima facie evidence is eliminated. This means that the impartial report must not be the only medical evidence presented to the AJ, but that medical evidence from the employee's treating physician and insurer reports may be entered as well. The fee for any deposition would be paid by the deposing party, however, if the decision of the AJ is in favor of the employee, the cost of the deposition would be added to the amount awarded to the employee.

**Impartial Medical Examinations** (H.3009 - *Kennedy*)

This bill would amend section 11A, dealing with the impartial medical examination process. Additional medical evidence could be presented along with the impartial report at hearing. This bill would also create a new section 8B governing the content of the report and the conditions of the exam. It would require that the report state whether the workplace injury was a "contributing cause" of the disabling condition, whether the injury claimed is "mental or emotional in nature," and whether "any disabling mental or emotional condition has as its significant or predominant contributing cause, an event or series of events within the employment."

**Comprehensive** (S.53 - *Lynch, Connolly*)

Section 1 of this bill addresses injured employees who return to work Shannon (without a lump sum settlement) and receive wages which are less than the pre-injury wages. This bill would apply the prior average weekly wage to any subsequent period of incapacity, whether or not such incapacity was the result of a new injury or subsequent injury as set forth in §35B. Section 2 of this bill would eliminate consideration of the last best offer in awarding attorney's fees when the insurer files for discontinuance of benefits or refuses initial payment. Currently, the claimants attorney is only entitled to payment if the administrative judge accepts the offer of the claimant or the amount submitted by the conciliator.

**Pilot Program on Limited Provider Networks** (S.91 - *Tarr*)

This bill would authorize the Commissioner of the Department of Labor and Industries to develop a pilot program designed to evaluate the potential of limited provider networks to control costs and maintain quality care. Participation would include no more than 20 small employers and should be representative of small employers across the Commonwealth. An open and competitive process must be used in selecting an insurance carrier to run the program.

**Creating a Workers' Compensation Insurance Fund** (H.1449 - *Tolman, MA AFL-CIO*)

This bill would create a non-profit independent public corporation to provide workers' compensation insurance as an alternative to insurance secured through the private market, and also to serve as the carrier of last resort.

**Insurance Rates - Competitive Rating** (H.2238 - *Bosley*)

This bill would require a system of competitive rating of workers' compensation insurance rates. Insurance carriers would competitively price insurance coverage, rather than have the Commissioner of Insurance approve a uniform set of rates required for all carriers. This bill was extensively studied by the Council in the Fall of 1996, when a lengthy report was prepared by J.H. Albert and submitted to the Legislature. The Council endorsed the proposal, with some suggestions and cautionary remarks. This bill is identical to the original bill filed by Rep. Bosley. The original, however, was replaced with a version which incorporated concerns of the Council and the State Rating Bureau.

**Total Incapacity, Partial Incapacity - Increase Benefits** (H.1441 - *Cabral, MA AFL-CIO*)

This refile bill would increase wage benefits for injured workers under sections 34 and 35 by restoring the amount to 2/3 of average weekly wage and the duration to 260 weeks for §34 (currently 156) and 600 weeks for §35 (currently 260 or 520 for serious injuries).

**Total Incapacity - Increase Benefits** (H.3006 - *Kennedy*)

This bill would increase the weekly compensation for total incapacity (§34) benefits. Compensation would increase from the current 60% to 2/3 of average weekly wage.

**Partial Incapacity - Increase Benefits & Limiting Durations** (H.3008 - *Kennedy*)

This bill would increase temporary total benefits to 2/3 of average weekly wage. It would eliminate the requirement that benefits not exceed 75% of §34 benefits and combined earnings and benefits not to exceed two times the state average weekly wage. It also amends the maximum duration from 260 weeks to 520 weeks.

**Medical Services** (S.90 - *Tarr*)

Section 1 would amend §30 by eliminating the requirement that the employee report to a physician within a preferred provider arrangement (PPA) for his/her first scheduled appointment. Section 2 would amend §30 by requiring the Commissioner to promote the "efficient coordination by the insurer of said health care services as well as other services provided by the insurer." §30 states that medical services provided must be presumed adequate and reasonable when they comport with the medical treatment guidelines. Section 3 would amend §30 would require that this presumption apply whether an appeal is made to the insurer (i.e., through the utilization review process) or whether an appeal is filed with the DIA. Section 4 would amend §30 by allowing employees within a PPA to switch doctors within a medical specialty once.

**Comprehensive Bill** (H.1649 - *Stanley*)

1. **Ch. 23E, § 6 Expedited procedures for Fraudulent Activity**

This section would amend the procedure for expedited conferences for claims alleging illegal discontinuance of compensation, fraudulent behavior, catastrophic injuries or medical emergencies. It would require that these claims be referred to conference within seven days.

2. **Ch. 152 §1 (1) Definition of Average Weekly Wages**

This section would exclude overtime pay from the calculation of average weekly wage.

3. **New Section §1 (5a) Definition of Experience Modified Insured**

This section would create a definition of experience modified insured to mean (for the purposes of lump sum agreements under §48 (1)) "any employer eligible for an experience rated plan in the Commonwealth."

4. §1 (7A) Definition of Personal Injury

This section amends the standard by which an injury that combines with a pre-existing condition is determined to be compensable. The current statute reads "the resultant condition shall be compensable only to the extent such compensable injury or disease remains a major but not necessarily predominant cause of disability or need for treatment." This bill would amend it to read "the resultant condition shall be compensable only to the extent such compensable injury or disease is and remains the predominant contributing cause of disability or need for treatment. A contributing cause shall be determined to be the predominant cause if it is the largest single cause and is also larger than all other causes taken in combination.

5. §8 (2) (c) When Insurers may modify or discontinue payments

This section alters when an employer must resume payments of benefits after they have been discontinued because of a return to work. The bill requires resumption of benefits only after the employee informs by certified letter and medical evidence demonstrating that a changed or worsening medical condition renders him incapable of performing such work. (The current provision requires that the employee inform the insurer and employer that the resulting disability renders him incapable of performing such work.)

6. §8 (2) Termination/Modification of Payments

This section brings the terms by which an employer can terminate an employee that has returned to work (and therefor trigger reinstated benefits) in line with the handicap discrimination legislation.

7. New Clause §8 (2) (n) Termination/Modification of Payments

This section would create another means by which an insurer may motion for modification of benefits "based upon evidence of fraudulent actions or behavior."

8. §8 (2) Termination/Modification of Payments

For the purposes of §8 (2) (d) this section would create the presumption that termination of an injured employee within 180 days of returning to work was for the reason that the employee was physically or mentally incapable of performing the essential functions of the job with or without accommodation. This appears to bring the employer's right to terminate in line with handicap discrimination laws. The presumption could be rebutted if termination was for cause or other bona fide personnel reasons.

9. §8 (4) Impartial Medical Exam

This bill would alter the circumstances under which an insurer could request an impartial examination after starting payment of benefits. The bill would allow an insurer to request an impartial exam anytime after accepting liability or being assigned liability by an AJ or ALJ. (Presently an insurer may request an impartial exam no sooner than 60 days after requesting a discontinuance conference but before a conference order has been issued.) Under the bill, the insurer could suspend all or part of the payment of benefits if the report contained "evidence of the ability to perform the essential functions of a job consistent with the employee's education, skills, and experience." The medical report would constitute prima facie evidence at a subsequent proceeding, as is contained in §11A.

Failure of an employee to report to an impartial exam or to submit requested medical reports to the examiner would constitute sufficient cause for suspension of benefits.

10. § 10 New Paragraph

This section would create an expedited process whereby no conciliation or conference would be held for a claim for section 34 (temporary total) benefits involving occupational disease, stress, cardio-vascular deficits, cerebral vascular deficits, asbestosis, cancer or by reason of the serious and willful misconduct of the employer (§28), permanent and total incapacity (§34A0 and or when death occurs before full payment of benefits (§36A). These types of claims would proceed immediately to hearing. All impartial medical examinations and medical depositions would be conducted prior to the hearing. The hearing would be required to occur within 180 days of the filing of the claim.

11. §11 Hearings

This section would amend §11, dealing with hearings. It would require that all discovery, including medical depositions, take place before the hearing commences. Each party would be required to submit a draft decision outlining the factual and legal basis for the decision within seven days of the close of the hearing.

12. §11A Impartial Medical Exams

This section would amend §11A by requiring the Senior Judge to appoint an impartial examiner from the roster (currently agreed to by the parties or by the AJ) within seven days of an appeal of a conference order (currently 10 days).

13. §11B Procedure for Hearing

This section would require that no post-hearing discovery could occur, and that all medical depositions occur prior to the scheduled hearing date.

14. §13 (3) Health Care Services Board

This section would add a representative of occupational health nurses to the makeup of the Health Care Services Board.

15. §13 (4) New Section

This section would prohibit physicians treating workers' compensation claimants from referring them to a clinical laboratory for diagnostic nuclear medicine, radiation oncology, physical rehabilitation, psychometric testing, home infusion therapy, or diagnostic imaging goods or services if the physician or his/her immediate family has a financial interest in the entity.

16. §20 Hospital Records as Evidence

This section would strike the requirement that original copies of hospital records be submitted when being introduced into evidence at DIA proceedings.

17. §20 Adequate and Reasonable Health Care Services

This would amend the circumstances under which an injured employee could choose his or her treating physician. The employee could still choose a treating physician and switch once. Unless the insurer had a preferred provider arrangement (pursuant to §30 or 8 (1)), in which case the employee would be required to choose one from the network.

18. §30H Vocational Rehabilitation Services

This section would amend the vocational rehabilitation requirement. An employer would satisfy the voc/rehab obligation if the rehab plan was consistent with a functional capacity evaluation from a treating physician and the employer guarantees the position for 12 months.

19. §35D Computation of Weekly Wage Earning Capacity

The section amends the computation of earning capacity by requiring it to be computed by an administrative judge.

20. §35D (2) Earning Capacity

This section would amend the computation of earning capacity by allowing as prima facie evidence the written offer of the employee's job at the time of injury consistent with a functional capacity evaluation from either the treating physician, an impartial physician under §8 (4) or a company physician.

21. §35D(3) Earning Capacity

This section would amend the computation of earnings capacity by allowing as prima facie evidence the written report of a suitable available job consistent with a functional capacity evaluation from a treating physician an impartial physician under §8 (4) or a company physician.

22. §48 Lump Sum Agreements

This section would amend the manner by which lump sum agreements are reviewed by the DIA. A conciliator would be required to review all agreements for completeness unless the employee is not represented by counsel or where the parties seek determination by an AJ or ALJ on an amount to discharge a lien. In such cases an AJ or ALJ would be required to approve the agreement as being in the claimant's best interest. The section would eliminate the requirement that an agreement contain no bars on employment with any employer. It removes the \$10,000 fine



against employers seeking to obtain illegal releases, as well as the right of an employee to reopen the claim when the settlement violates these provisions. The section also removes the provisions nullifying agreements regarding any future legal actions whether or not related to workers' compensation. It removes the presumption that the employee is physically incapable of refusing to work for one month for every \$1,500 amount in the settlement.

23. §75A Preference of Injured Employees for Rehiring

This section would provide preferential rehiring rights only for injured employees who have not settled cases pursuant to a lump sum agreement under §48.

24. §75B Qualified Handicapped Persons

This section would amend §75B to allow employers the right to secure the resignation of an injured employee as part of lump sum agreement under §48.

**Comprehensive Bill** (S.33 - Creedon)

1. Definitions (§1 (1)) - Average Weekly Wage

Section 1 would amend the definition of average weekly wage by requiring that the average weekly wage for §35 claimants who have returned to work and suffered reinjury, must be calculated using the wage the claimant was earning at the time of the original injury.

2. Benefits (§35) - Maximum Amount

Section 2 would amend §35 by eliminating the requirement that partial disability benefits not exceed 75% of §34 benefits.

3. Benefits (§35B) - Subsequent Injury

Section 3 would amend §35B to require that an injured employee who returns to work for at least 2 months and suffers another injury, will receive benefits at the rate currently in place, whether or not the new injury is a recurrence of the former injury. Section 3 would allow the employee to opt out of this section if it would subject him/her to a lower rate of compensation.

4. Procedure (§7A) - Employee Unable

Section 4 would amend §7A to state that when an employee is killed or becomes mentally unable to testify as the result of a workplace injury, a presumption is created that the claim complies with all procedural requirements and the injury was not the result of a willful. Section 4 of the bill would require that the incapacity to testify be determined to be "the result of the injury" rather than "causally related" as it currently reads.

5. Conciliation §10(6) - Last Best Offer

Section 5 would repeal subsection 6 of §10 which requires that each party submit written offers stating the amount of benefits believed to be owed in cases involving a request for additional compensation or to modify/discontinue benefits.

6. Conference (10B) - Last Best Offer

Section 6 would amend §19A (2(b)) by repealing the requirement that the administrative judge at conference implement one of the offers rendered at conciliation. It would require that the insurer submit an offer two days before the conference to the claimant. Unless the offer is accepted, the insurer would not be required to pay a referral fee under §13A.

7. Attorney's Fees (§13A) - Last Best Offer

Section 7 would amend §13A dealing with attorney's fees. This bill would remove all reference to the last best offer submissions.

8. Fraudulent Conduct (§14) - Duty to Reveal Knowledge of Fraud

Section 8 would amend §14 dealing with fraudulent actions by stating in subsection 3 that a person who knowingly makes a false or misleading statement or conceals knowledge of any event affecting the payment of benefits will be punished by five years imprisonment, *if they were required by law to reveal the matter*. Presumably, this is to ensure the protection of privileged information (e.g., information protected by the attorney-client privilege).

**Rate of Reimbursement for Health Care Services** (S.55 - *Lynch*)

Section 1 deletes the current language in section 13 and replaces it with simpler language stating that the Rate Setting Commission (now called Division of Health Care Finance & Policy) must establish the maximum reimbursement rates for hospitalization and all other health care services, and that no insurer may be held liable for any charge greater than those established rates. The bill would eliminate the ability for insurers and medical providers to negotiate rates. It would remove the "regardless of setting" provision thereby allowing hospitals to set rates higher than non-hospital facilities. It would remove the requirement that providers sign bills with their license numbers, and the removal of the adherence to federal "safe harbor" regulations. Further, all provisions regarding treatment protocols, utilization review and the establishment of the Health Care Services' Board would be deleted.

**Health Care Services - PPA's and UR Guidelines** - Section 2 creates a new section 30. The bill would eliminate authorization for preferred provider arrangements (PPA's) as well as all language pertaining to utilization review guidelines.

**Partial Incapacity (§35) - Increase Benefits** - Section 3 would amend section 35 (partial incapacity benefits) by eliminating the maximum rate of benefits (75% of §34 benefits). It would eliminate the duration of §35 benefits as well.

**Lump Sum Settlements** (H.2051 - *Donovan*)

This bill would amend §48 by requiring that a carrier's waiver of reimbursement under §15 could not be considered future weekly benefits. It would also remove the necessity that an employer that is an experience modified insured approve a lump sum settlement.

**Lump Sum Settlements - Conciliator Approval** (H.653 - *Koczera*, S.71 - *Morrissey*)

Both H. 653 and S. 71 are identical and seek to amend §48 of the act which pertains to lump sum settlements. This bill would elevate the role of the conciliator to approve lump sum settlements "as being in the claimant's best interest." Currently, the statute provides that conciliators may "approve as complete" lump sum settlements, a much lower standard. Roughly 300 lump sum settlements are reviewed by conciliators each year, compared to 10,000 that are reviewed by ALJs. This higher standard ensures stricter review of the terms of the settlement, and should encourage early settlement.

**Lump Sum Agreements - Review Board Approval** (S.93 - *Tisei*)

This bill would amend Section 48 by requiring that proposed lump sum agreements be submitted for approval to the Review Board. The Review Board would insure that the lump sum agreement document is accurate and in conformity with factual representations made by the parties in all prior proceedings. The agreement would be approved only if the proposed payment is found by the Review Board to be in "direct correlation to a known and expected term of disability, and to a known and expected degree of loss in earnings capacity resulting from the subject of injury." The bill also creates a procedure whereby lump sums made prior to enactment of this bill can be reexamined. The agreement could be "reformed to correct any inequities in payments, if so found, with an accompanying order for an additional payment." If additional payments are merited, the Review Board could order them.

**Lump Sum Settlements - Limitations on Agreements** (H.3598 - *Larkin*)

This bill would limit when a lump sum agreement can discharge an employee's right to payment of future benefits. No lump sum agreement should be entered into or approved unless: (1) the employee has returned to work for at least 6 months, earning at least 75% of his/her pre-injury wage; (2) survivor benefits are claimed under §31; (3) the employee is determined by an AJ to be permanently and totally disabled; (4) or the employee becomes a domiciliary of another state.

**Make the Conciliation Process Optional** (H.3395 - *Sullivan*)

This bill would require the DIA to notify all parties when a claim or complaint is received. It would make conciliation optional, at the discretion of the filing party. Section 36 benefit claims or medical-only claims would have to be conciliated.

**Attorney's Fees** (S.56 - *Lynch*)

Section 1 of this bill would allow attorneys to collect fees for advancing an employee's rights under section 75A (preferential hiring of injured workers) and 75B (protections against handicap discrimination), in addition to any attorney's fees owed under section 13A.

**Agreements to Pay Benefits (§19)** - Section 2 of this bill adds two new subsections to section 19. It would allow any administrative judge, administrative law judge or conciliator to approve any agreement to pay benefits authorized by §19. In addition, it would allow an agreement to include a pay without prejudice clause. (See discussion regarding H. 654 on page 7 of other packet.)

**Removal of AJ's & ALJ's - Code of Judicial Conduct** (H.3763 - *Cabral*) [Refile]

This bill would require the Senior Judge, the AJ's and the ALJ's to be subject to the Code of Judicial Conduct as promulgated by the SJC.

**Special Fund & Trust Fund Budgets - Reducing Year End Balances** (H.3588 - *Koczera*)

Section 1 of this bill would amend §65(4) to require that the Advisory Council vote and record its support or opposition to any proposed trust fund budget. Section 2 would amend how much money the DIA can carry forward each year from year-end balances. Currently, only 35% of a prior years expenditures can be brought forward in a new fiscal year. Any balance exceeding 35% of the prior year's expenditures must be used to reduce the employers special fund assessment. This bill, as it is written, would make it in nearly impossible to reduce year end balances because it would require reductions only when the balance exceeds a prior year's expenditures. To ensure that balances are reduced to a greater extent than current practice, a lower amount than 35% of expenditures ought to be the threshold. The bill should be amended to read some percent less than 35%.

**Special Fund & Trust Fund Assessments - Reporting of DIA Transfers** (H.3591 - *Koczera*)

This bill would require the DIA to file with the House and Senate Committees on Ways & Means, and the Committee on Commerce and Labor a review of all transfers between budget subsidiary accounts in the prior fiscal year. This bill would also require the DIA Commissioner to provide the Secretary of the Commonwealth with a notice explaining the duties, responsibilities, and liabilities of each corporation to purchase and provide workers' compensation insurance coverage.

**Right of Action for School Employees Not Covered by WC** (H.2626 - *Swan*)

Certain municipalities, municipal boards, and school districts are not covered by the workers' compensation act because they did not elect coverage when workers' compensation was first enacted. Section 67 allows employees of uninsured employers to file actions for damages against employers involving work related injuries. This bill would specifically allow school employees to file such actions if the school district was not covered by the workers' compensation act.

**Comprehensive Bill** (H.3770 - *Dempsey, AIM*) [Refile]

§1 - This section expedites the dispute resolution process for employees who file claims for illegal discontinuances, discontinuances based on fraud, and for medical emergencies. Such claims would by-pass conciliation and be assigned to an administrative judge for a conference to be held within seven days.

§2 - This section requires DIA judges to conform to the state Code of Judicial Conduct. The Commissioner would establish a process for handling complaints by the public against judges.

§3 - This section excludes overtime from the calculation of the average weekly wage.

§4 - The 1991 reform requires an insurer to obtain the employer's consent to lump sum settlements. The law covers employers who are "experienced modified insureds". Although that term was not defined by the statute, it has been restrictively applied to limit the number of employers whose consent must be obtained prior to settlement. Section 4 defines an "experienced modified insured" employer as any employer eligible for an experienced rated plan.

§5 - This section amends the standard used to determine compensability when a subsequent injury aggravates an underlying injury or condition. Under current law, whether a subsequent injury is compensable will depend upon whether the underlying condition is work-related or non-work related. This section applies the same standard regardless of the nature of the prior condition. The section also limits compensation in situations where the aggravating injury has a minor impact by requiring that any aggravating injury be the predominant contributing cause of the present disability.

§6 - This section permits the automatic resumption of compensation when an employee who returns to work subsequently leaves within twenty-eight days, if the employee presents current medical documentation of a worsened or changed condition which prevents performance of job duties.

§7 - This section conforms statutory language relating to suitable job offers to the terminology used in the Americans with Disabilities Act.

§8 - This section permits an insurer to terminate or suspend benefits based on evidence of fraudulent activity or behavior. An employee whose benefits have been terminated pursuant to this section would be entitled to an expedited claims process under section 1 of this legislation.

§9 - This section reduces the current time period for presuming disability when an employee is terminated from benefits from one year to six months, and provides that the presumption shall be rebutted if the discharge was for bona fide personnel actions, including reductions in force.

§10 - This section allows an insurer who accepts liability either voluntarily or involuntarily to request the assignment by the Senior Judge of an impartial physician. If the impartial exam supports a work capability the insurer may file a complaint for modification and suspend benefits. This section should result in significant savings since, under current law, there is a waiting period before the exam may be requested. This change will strengthen the value of the impartial medical report. This section also eliminates the penalty on insurers who suspend benefits in reliance on the report of an impartial physician selected from the roster. Instead of a penalty, an insurer would be required to pay interest at 5% to the employee if benefits are reinstated by the judge. Finally, the section requires direct payments to the impartial physician by the insurer in section 8(4) cases.

§11 - This section requires complex or serious claims which do not lend themselves to resolution at conciliation, and which depend on the use of evidence not allowed at conference, to proceed directly to a hearing within 180 days. Claims involving occupational disease, stress, heart, lung, or cancer cases, and intentional injury would be subject to the expedited process. This change represents savings since it will reduce the time period for final resolution of the issues.

§12 - This section requires all medical testimony to be taken in person or by deposition prior to a hearing and eliminates post-hearing discovery. The section also requires the parties to prepare draft decisions. Since it now takes as much as six months to complete medical depositions after lay testimony has concluded, this provision should result in significant time and cost savings.

§13 - This section contains a technical correction necessary to permit impartial exams in 8(4) cases.

§14 - See section 12.

§15 This section would add an Occupational Health Nurse to the makeup of the HCSB.

§16 - This section prohibits physicians from referring claimants to health care services facilities in which the physician or physician's family has a financial interest. Exemptions are permitted in cases of emergency or where there is no alternative facility within a reasonable distance.

§17 - This section conforms Massachusetts to the practice in 49 states by providing that employees are responsible for paying their own attorney's fees. Fees would be capped at twenty percent of cash award to an employee, not to exceed an upper limit of \$4,000. The section creates exceptions where the employee is covered by an arbitration agreement or elects to obtain legal services from the DIA.

§18 - This section creates a legal assistance pilot program whereby the DIA would create an Office of Legal Assistance to provide legal counseling to injured workers free of charge as an alternative to private counsel.

§19 - This section expands the existing definition of a "fraudulent workers' compensation insurance act" to include certain false billing practices by health care providers if done with an intent to defraud. Prohibited practices would include unbundling, upcoding, exploding, and duplicating.

§20 - This section allows certified copies to be substituted for original hospital records at a hearing.

§21 - This section would allow an offer of a modified job consistent with a functional capacity evaluation and guaranteed for twelve months to satisfy all obligations to provide vocational rehabilitation.

§22 - This section requires employees to use an insurer provided or agreed to physician while receiving benefits during the 180 day pay without prejudice period.

§23 - This section requires the amount of an earning capacity to be consistent with a bona fide modified job offer.

§24-§25 - This section allows a functional capacity evaluation performed by a treating physician, impartial physician or company physician to support the determination of an earning capacity when an employee receives a written offer of his or her former job.

§26 - This section coordinates the receipt of workers' compensation, Social Security, and retirement benefits by requiring reductions in weekly benefit amounts where the employee is receiving federal old age benefits or payments under an employee benefits plan.

§27 - This section permits employers and employees to agree to terminate the employment relationship when a lump sum includes future wage losses; in addition, the settlement may specify that the employee will not seek re-employment with the employer for a designated period of time.

§28 - This section creates an exception to preferential rehiring in cases where liability has been redeemed by a lump sum settlement. Finally, the section amends the presumption of disability to conform with the terminology of the ADA.

§29 - This section would amend §75B to allow an employer to secure a resignation as part of a lump sum settlement.

#### **Exemption of Corporate Officers** (H.3968 - *Lepper*)

This bill is similar to H.1079 which exempts corporate officers from the requirement of obtaining workers' compensation insurance. The bill differs from H.1079 by adding the conditions that there can be no more than two who are the only employees. Furthermore the bill requires the officers to file written notice with the DIA.

#### **Exemption of Volunteers of Charitable and Non-Profit Organizations** (H.3969 - *Murray*)

This bill would make the requirement of obtaining workers' compensation insurance elective for volunteers of charitable and non-profit organizations. This legislation was enacted in the last legislative session.

**Lump Sum Settlements - Approval** (H.3764 - *Cabral*)

This bill (similar to H. 2051) would remove the necessity that an employer that is an experience modified insured approve a lump sum settlement.

**Impartial Physicians - Appointment** (H.3971 - *Owens-Hicks*)

Section 1 of this bill would amend section 11A by not allowing an impartial physician to be appointed when the report of both the treating physician and the insurer's physician agree with respect to "diagnosis and etiology." (Etiology is the branch of medicine that deals with the causes of disease.) Section 2 would limit the number of times an impartial medical examiner can be appointed to five times in any one month. It would further require that an insurer could not recommend the same examiner for more than a "majority of cases." Section 3 would make any impartial medical examiner subject to the penalties provided in ch. 152, sec. 14 §3 (anti-fraud provisions) if they knowingly produced a false or inaccurate report to benefit the insurer.

**Insurance Rates - Competitive Rating** (H.3773 - *Koczera*)

This bill (identical to last years "substitute-bill" which incorporated the Advisory Council's concerns) would require a system of competitive rating of workers' compensation insurance rates. The bill would takes into account the concerns of the Council as expressed in our report.

**Health Care Workers Infected by HIV on the Job** - (H.2678 - *Stefanini*)

This bill is aimed at protecting health care workers who are exposed to the HIV virus while on the job by requiring the Department of Public Health to adopt the Occupational Safety and Health Administration (OSHA) Bloodborne Disease Standard<sup>1</sup> to cover all health care workers' who provide services in Massachusetts.

**Enhanced Workers' Compensation Benefits for Infected Employees** - This section adds new sections to both Chapters 32 and 152 respectively, requiring employers to pay HIV infected employees a supplement to their workers' compensation benefits of an amount equal to the difference between the workers' compensation amount and the workers' average weekly wage. The employer would also be required to provide a minimum of \$500,000 of special disability insurance and a life insurance policy equal to twice the workers' most recent annual salary to any health care worker exposed to the virus.

**Health Care Workers Infected by HIV or HBV on the Job** (H.3075 - *Kennedy*)

This bill would protect health care workers who are exposed to either the HIV virus or the hepatitis-B virus (HBV) while on the job. This bill creates a health care workers disability board to determine whether infected health care workers are able to perform their regular duties without posing a danger to public health, and to determine the degree of disability. The bill would require the Department of Public Health to adopt the Occupational Safety and Health Administration (OSHA) Bloodborne Disease Standard to cover all health care workers' who provide services in Massachusetts. Disability or death of a health care worker infected within the course of employment can apply for and receive benefits in accordance with the workers' compensation laws.

**Comprehensive Bill** - (H.3967 - *Kennedy*)

1. **§11A(1) Impartial Physician Criteria**

Section 1 of this bill would require an Impartial Selection Subcommittee (created in Section 13 later in this bill) to establish the criteria for being named and remaining on the impartial physician roster. Currently the Department's Health Care Services Board establishes this criteria.

---

<sup>1</sup> Published December 2, 1991.

2. §11A(2) Impartial Medical Exams -- Assignment of Doctor

Section 2 of this bill would require the Senior Judge to provide both parties a list of three potential impartial physicians; each party could remove one name from the list. If both parties chose the same name, the Senior Judge would assign that physician. Currently, if both parties can not agree upon an impartial physician, the administrative judge must appoint one.

3. §11A(2) Impartial Medical Exams -- Prima Facie Weight

Section 3 of this bill would require the Senior Judge to provide medical information (i.e. medical histories, reports, and records) and an accurate job description to the impartial medical examiner. It would eliminate the standard requiring that the impartial report constitute “prima facie evidence” and can only be rebutted when additional testimony is required due to the complexity of the medical issues involved or the inadequacy of the report. This bill would require the report to constitute a rebuttable presumption and would allow the impartial’s determination to be overcome by “clear and convincing countervailing evidence to the contrary.”

4. §11A(2) Impartial Medical Exams -- Medical Reports & Depositions

This bill would amend the impartial medical exam provisions allowing additional medical reports or depositions “by right to any party by the administrative judge’s own initiative or upon motion by a party.” The bill maintains the requirement that additional testimony at the hearing be allowed when the AJ finds the testimony is required due to the complexity of issues or inadequacy of the report. Finally, it gives each party “the right” to engage a “physician” to appear or be deposed for the purpose of rebutting the impartial report.

5. §13(3) HCSB -- Creation of an Impartial Selection Committee

Section 5 of this bill creates an Impartial Selection Committee of the Health Care Services Board to be responsible for reviewing and approving the criteria for selecting and updating the roster of impartial physicians. Representatives of business and labor would be required to serve on this subcommittee. Currently the Health Care Services Board serves this function.

6. §34 Total Incapacity Benefits -- Increasing Benefits

This bill would increase the weekly compensation for total incapacity (§34) benefits. Compensation would increase from the current 60% to 2/3 of average weekly wage. The current duration would remain.

7. §35 Permanent and Total Incapacity -- Increasing Benefits

Section 7 of this bill would increase the weekly compensation for permanent and total incapacity (§35) benefits. Compensation would increase from the current 60% to 2/3 of average weekly wage.

8. §48(1) Experience Modification Employers - Lump Sum Denial

Section 8 of this bill would require experience modified insured employers who deny a lump sum agreement to employees, to submit a written explanation for the denial to the administrative judge. If the administrative judge determines the reason to be frivolous, the administrative judge may approve the lump sum.

9. §48(4) Presumption Employee is Incapable of Returning to Work

Section 9 of this bill would delete the presumption that an employee is physically incapable of returning to work whenever a lump sum agreement has been perfected. This bill would also delete the time-period for this presumption (1 month for each \$1,500 included in the settlement). It also deletes the provision that no re-employment rights shall inure during the period of presumption.

**Drug Testing of Employees** (H.3778 - Menard, AIM)

This bill creates a new chapter (149A) providing specific standards under which an employer may test employees and prospective employees for substance abuse. An employer would be allowed to test under the following circumstances:

(1) *Where the employer has reason to suspect that the employee’s job performance is being or has been affected by the use of a drug;*

(2) To prevent a **health or safety risk** to the employee, to fellow employees or to the public health;

(3) To maintain productivity, quality of services, or security;

(4) **Following an accident;**

(5) Where the employee is participating in a drug related employee assistance program or rehabilitation program and for one year after completion of such program;

(6) Where the test is conducted pursuant to the requirements of federal or state law or regulations; or

(7) As part of a drug-free workplace program to deter and detect the use, possession or sale of controlled substances.

If a drug test is confirmed to be positive, the employer may sanction the employee with a variety of punishments, including, but not limited to, suspension or termination. This proposed legislation creates a course of action for employees who believe they have been wrongly accused by the employer of their alleged violation.

#### **Workplace Safety Programs** (H.3589 - Koczera)

This bill would create within the DIA an office of safety, training and injury prevention, responsible for the implementation and enforcement of safety programs for employers of the Commonwealth. Employers with ten or more employees would be required to prepare a written safety program and establish a management loss control committee to carry out workplace safety programs that encourage injured employees to return to work and educate employees on workplace safety. This bill would require the Commissioner of the Division of Industrial Accidents to develop a list of the ten lowest experience modification employers for each policy year in an effort to recognize employers for their safety efforts. Employers who fail to establish a management loss control committee as required, can be subject to a stop work order, requiring the cessation of all business operations.

#### **Scar Based Disfigurement** (S.71 - Lynch)

This bill would eliminate the requirement that scar based disfigurement appear on the face, neck, or hands to be compensable. This would require compensation for all disfigurement, whether or not scar based, regardless of its location on the body. Section 36(k) was amended by chapter 398 to limit payments for purely scar based disfigurement by requiring benefits only when the disfigurement is on the face, neck, or hands.

#### **Employer Fines - Increase** (S.1840 - Lynch)

This bill was written by the Advisory Council with the assistance of a panel of insurance experts. The bill seeks to curtail abuses of employers who fail to carry workers' compensation insurance by increasing the fines and penalties imposed on violating compensation insurance by increasing the fines and penalties imposed on violating employers. Senate 1840 would require that violators pay a fine equal to three times the amount of premium which was avoided. In addition, the bill would require employers to pay a \$5,000 criminal penalty in severe cases and reimburse the DIA Trust Fund when an employee is injured and requires trust fund benefits. The bill would also allow companies to sue violators under the Unfair and Deceptive Business Practices Act (ch. 93A) when losing a competitive bid as a result of premium avoidance. Finally, it would require the Department of Industrial Accidents to conduct an education campaign to inform the entire employer community of the insurance requirement and the new fines.



## APPENDIX K

### Joint Committee on Commerce & Labor - FY'98

**Senator Stephen F. Lynch** (Chair)  
State House - Room 312-D  
Boston, MA 02133-1053  
(617) 722-1150

**Senator Dianne Wilkerson**  
State House - Room 312-C  
Boston, MA 02133-1053  
(617) 722-1673

**Senator Robert A. Bernstein**  
State House - Room 218  
Boston, MA 02133-1053  
(617) 722-1544

**Rep. Robert M. Koczera** (Chair)  
State House - Room 43  
Boston, MA 02133-1053  
(617) 722-2030

**Representative Janet W. O'Brien**  
State House - Room 477  
Boston, MA 02133-1053  
(617) 722-2070

**Representative Vincent A. Pedone**  
State House - Room 540  
Boston, MA 02133-1053  
(617) 722-2090

**Representative Stephen P. LeDuc**  
State House - Room 38  
Boston, MA 02133-1053  
(617) 722-2470

**Representative Thomas J. O'Brien**  
State House - Room 33  
Boston, MA 02133-1053  
(617) 722-2060

**Representative Cele Hahn**  
State House - Room 540  
Boston, MA 02133-1053  
(617) 722-2090

**Senator David P. Magnani**  
State House - Room 413-A  
Boston, MA 02133-1053  
(617) 722-1640

**Senator Marc R. Pacheco**  
State House - Room 413-B  
Boston, MA 02133-1053  
(617) 722-1551

**Senator Robert L. Hedlund**  
State House - Room 413-E  
Boston, MA 02133-1053  
(617) 722-1646

**Representative Michael J. Rodrigues**  
State House - Room 43  
Boston, MA 02133-1053  
(617) 722-2030

**Representative William Greene, Jr.**  
State House - Room 236  
Boston, MA 02133-1053  
(617) 722-2430

**Representative Brian Knuuttila**  
State House - Room 443  
Boston, MA 02133-1053  
(617) 722-2460

**Representative Charles A. Murphy**  
State House - Room 236  
Boston, MA 02133-1053  
(617) 722-2430

**Representative Bradley H. Jones, Jr.**  
State House - Room 443  
Boston, MA 02133-1053  
(617) 722-2460

## APPENDIX L

### **The Governor's Council**

Room 184, State House  
Boston, MA 02133  
(617) 727-2756

The Massachusetts Governor's Council, also known as the Executive Council, is comprised of eight individuals elected from districts, and the Lt. Governor who serves ex officio. The eight councillors are elected from their respective districts every two years. Each councillor is paid \$15,000 annually plus certain expenses.

The Council generally meets at noon on Wednesdays in its State House Chamber, next to the Governor's Office, to act on such issues as payments from the state treasury, criminal pardons and commutations, and approval of gubernatorial appointments; such as judges, notaries, and justices of the peace.

The Governor's Council is responsible for approving all Administrative Judge and Administrative Law Judges at the Department of Industrial Accidents.

**David F. Constantine**  
285 Tarkiln Hill Road  
New Bedford, MA 02745  
Res: (508) 998-1321  
Bus: (508) 998-1322

**Kelly A. Timilty**  
30 Green Lodge Street  
Canton, MA 02021  
Bus: (617) 828-6363

**Cynthia S. Creem**  
15 Esty Farm Road  
Newton, MA 02159  
Bus: (617) 523-4567

**Christopher A. Iannella**  
263 Pond Street  
Boston, MA 02130  
Bus: (617) 227-1538

**Patricia A. Dowling**  
P.O. Box 322  
North Andover, MA 01845  
Bus: (508) 683-3302

**Dorothy A. Kelly Gay**  
1 Avon Street  
Somerville, MA 02143  
Res: (617) 623-0664

**Jordan Levy**  
30 Whisper Drive  
Worcester, MA 01609  
Bus: (508) 791-7131

**Edward M. O'Brien**  
10 Dragon Circle  
Easthampton, MA 01027  
Bus: (413) 527-4600

**APPENDIX M**

**HEALTH CARE SERVICE BOARD**  
**1999 MEMBERS**

L.Christine Oliver, M.D.	CHAIR, Ex-Officio Member
M. Patricia Crane, M.P.A.	Hospital Administrative Representative
Henry W. DiCarlo	Employers' Representative
Jefferson H. Dickey, M.D.	Physician Representative
Martin J. Dunn, D.M.D.	Dentist Representative
William F. Fishbaugh, Jr., M.D.	Physician Representative
Dean M. Hashimoto, M.D., J.D.	Physician Representative
Peter A. Hyatt, D.C.	Chiropractic Representative
Charles E. Lutton, M.D., Ph.D.	Physician Representative
Daniel J. McNichol	Public Representative
William P. Ryan	Employee Representative
Bernard S. Yudowitz, M.D., J.D.	Physician Representative

---

All members can be reached c/o the

Department of Industrial Accidents  
Health Care Services Board  
600 Washington Street, 7<sup>th</sup> Floor  
Boston, MA 02111  
Tel: (617) 727-4900 ext: 310 or 574  
Fax: (617) 438-2176

**APPENDIX N**

**FISCAL YEAR 1998**

**DEPARTMENT OF INDUSTRIAL ACCIDENTS  
ORGANIZATIONAL CHART**

Wednesday, June 24, 1998

COMMISSIONER

James J. Campbell -00003  
(10MAD)

Deputy Commissioner  
Thomas Griffin -00162  
(09MAD)

Prog. Coord. II (12R21)  
L. Catino -00151

Aff. Action Mgr. (04MAD)  
Betty Oliver -00159

Director of Admin.  
(08MAD)  
Vincent Luca 00163

Admin. Asst. II  
(09R01)

S. Gethers

-09029

Admin. Sec

(15V01)

A. Powers

-09032

First Dep. Director of  
Administration (07MAD)  
Bill Sivert 00015

Deputy Director of  
Admin & EDP (06MAD)  
James Hayes -00015

Steno II (10V12)  
\*-00134

Director of Legislative  
Liaison & Communication  
(04MAD)  
Angela Constantine -00340

Director of Admin.  
(08MAD)

Vincent Luca 00163

Personnel Office  
(05MAD)  
Alice Crotty

Chief Legal  
Counsel (08MPS)  
Dino Theodore

Dep. Director Trust Fund  
(06MAD)  
Priscilla Conant

Trust Fund Manager  
(03MAD)

Health Care Services  
Board (06MAD)  
Robert Davis

Senior Judge  
(10MAD)

Joseph Jennings

Deputy Director  
(07MAD)

Douglas Sears

Impartial Medical  
Unit MGR.  
(04MAD)

Office of  
Conciliation  
(06MAD)

Dep. Director  
Operations  
(05MAD)

Administrative  
Law Judges  
(10MAD)

Administrative  
Judges  
(09MAD)

Hearing  
Stenographers  
(02MAD)

Scheduling  
(10R39)

Docketing  
(10R39)

Judicial  
Support  
(02MAD)

Finance &  
Accounting  
(05MAD)

Office of  
Automation  
(TPL)

Office of Admin.  
Services  
(03MAD)

Office of Claims  
Administration  
(06MAD)

Office of  
Insurance  
(05MAD)

Office of  
Investigation  
(06MAD)

Office of Education  
& Rehabilitation  
(06MAD)

Office of Safety  
(02MAD)

Four Regional  
Offices  
(04MAD)

Positions Filled 10      Vacancies 1      Total 11

# OFFICE OF CLAIMS ADMINISTRATION

Director (06MAD)  
William Taupier -00017  
(Acting)

Appeals Review Examiner  
(14R01)  
F. Sena -00331

Admin. Assistant II (09R01)  
E. Flanagan - 00153  
Paralegal (10R39)  
P. Donoghue 00124

## PROCESSING UNIT

Processing Manager  
(03MAD)  
Janine Senatore -09018

## RECORD ROOM

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

1 Head Clerk/CLKIV (13V02)  
A. Ivers -00191

1 EDP III (12V04)  
\* -00236

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

W. Lewis -00180  
L. Payton -00182

\* -00269  
J. Carola -00181  
M. Ivery -00178

H. McGlothlin -00143  
M. Albert -00138

R. Chen -09040  
J. Pimental -00120

## PROCESSING UNIT

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

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

1 Admin. Asst. I (07R02)  
D. Keefe -00132

7 EDP III's (12V04)

I. McGuire -00079  
H. Reddick -00198

A. Luo -09048  
E. Campbell -00135

F. Wallace -09052  
S. Steed -00199

I. Rivera -00192  
D. Waldman -00113

Positions Filled 30

Vacancies 2

Total 32

# OFFICE OF ADMINISTRATION AND EDP

Director of Admin.

(08MAD)

Vincent Luca

Dep. Director Admin.

& EDP (06MAD)

James Hayes

Administrative Sec.

(15V01)

C. Corcoran -00329

Budget Director  
(05MFO)

Brian Hickey 00208

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

6. Accountant II's  
(08R01)

C. Marcial -00108

J. Poteau -00146

R. Ponnudurai -00147

C. Emerho -00002

S. Whittle -09055

J. Scott -00157

1. Admin. Asst. I  
(07R02)

J. Casal -00188

Contract Specialist  
II (09R02)

E. Granberry 00183

Contract Specialist I  
(06R02)

J. Haynes -00131

## PUBLIC INFORMATION

1. Info. Officer III  
(11R01)

E. Butts -00001

3. Program Coord. I's  
(10R38)

L. Gilgan -00115

T. Rashid -00117

D. Sammut -00118

1. Clerk IV (13V02)

K. McNeil -00285

1. EDP III (12V04)

B. Salamone -00110

Administrative  
Services Manager  
(03MAD)

Jean Phalan -09013

3. Clerk V's  
(15V05)

H. Lilley -00290

D. Pesantes -00114

R. Fuytes -00064

2. Clerk III's/Principal  
Clerk (11V01)

J. Cashman -00111

J. McCormack 00123

## PROGRAMMING/NETWORKING

1. EDP Programmer V  
(TPL)

B. Leary -00125

2. EDP Programmer IV  
(TPL)

O. Goldberg -00204

\* -00205

2. EDP Analyst III  
(TPL)

H. Kupets I -00197

M. Drury -00126

## APPLICATIONS/OPERATIONS

1. EDP Analyst III's  
(TPL)

C. Collins -00206

1. EDP Systems Supervisor  
(17V06)

D. Callejas -09007

1. Asst MGR Computer  
Operations (11R22)

D. Moran -00173

1. Electronic Computer  
Operator (17V06)

F. Nazaire -00174

1 Research Analyst II  
(10R20)

F. Clarke -00189

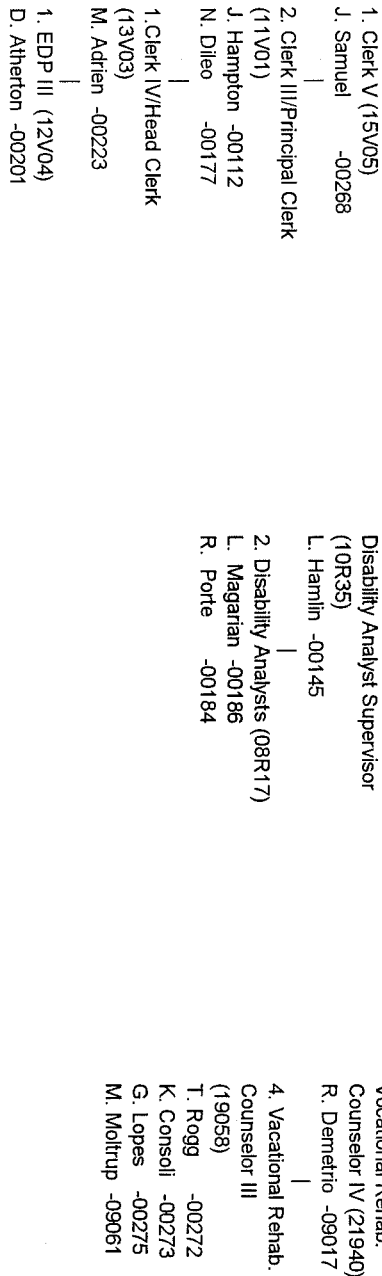
Positions Filled 37 Vacancies 2 Total 39

38

OFFICE OF EDUCATION AND REHABILITATION

Director (06MAD)  
R. Demetrio -00161  
(Acting)

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

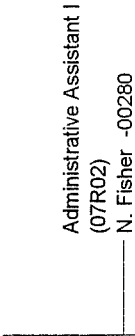


Positions Filled 14      Vacancies 1      Total 15



OFFICE OF INSURANCE

Director (05MAD)  
Richard Lundregan -00281



Self Insurance Adminsitator  
(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)  
-09044

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

1. EDP III (12V04)  
M. Catalano -00074

Positions Filled 7      Vacancies 1      Total 8

OFFICE OF INVESTIGATIONS

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

Research Analyst I  
(09R18)  
P. Allosso -00244

Administrative Assistant II  
(09R01)  
J. Parziale -00332

2 Administrative Secretary  
(15V01)  
L. Battista -00216  
R. Callahan -00305

Chief Investigator (20V01)  
J. Zirmini -00020

9 Investigators (18V07)  
J. Iandolo -00063  
S. Mohan -00059  
D. Edebiri -00055  
M. Moschella -00056  
E. Faretta -00060  
W. Taupier -00061  
S. Riley -00057  
R. Danforth -00282  
J. Beauregard -00058

Positions Filled 15      Vacancies 0      Total 15

OFFICE OF PERSONNEL

Director (05MAD)  
Alice Crotty -00016

1. Personnel Officer I  
(11R31)

M. Pesantes -00155

1. Program Coordinator I  
(10R38)

M. Guerin -09037

1. ClerkIV (15V05)

P. Beard -09038

Positions Filled 4      Vacancies 0      Total 4

OFFICE OF SAFETY

Director (02MPM)  
James Hayes -00237

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

T. Carroll -00235

1. EDP III (12V04)  
N. Reyes -00200

Positions Filled	3	Vacancies	0	Total	3
------------------	---	-----------	---	-------	---

# DIA REGIONAL OFFICES

## 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  
\* -00004

2. Review Examiner I (12R14)  
C. Cox -00247  
J. Felz -00252

2. Voc. Rehab. Counselor III (19058)  
A. Gonsales -00276  
U. Maranthas -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)  
\* -09041

1. EDP III (12V04)  
J. Jones -00202

## LAWRENCE OFFICE

Manager (04MPM)  
L. Connolly -00238

1. Administrative Assistant I (07R02)  
J. Chapman -00228

2. Administrative Judges (09MAD)  
R. Heffernan -00014  
J. LaMothe -00010

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

2. Administrative Sec. (15V01)  
K. Cunningham -00311  
B. Ciancetta -00308

2. Hearing Stenographers (17V09)  
G. Signorelli -00031  
T. O'Keefe -00315

## SPRINGFIELD OFFICE

Manager (04MPM)  
Marc Joyce -00239

1. Administrative Assistant I (07R02)  
M. Sullivan -00029

3. Administrative Judges (09MAD)  
J. St. Amand -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. Bajgier -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  
\* -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 III (12V04)  
L. Beaudry -00080

## WORCESTER OFFICE

Manager (04MPM)  
Leonard Gabrila -00241

1. Administrative Assistant I (07R02)  
C. Rafferty -00225

3. Administrative Judges (09MAD)  
T. Merlo -00012  
J. Constantino -00006  
S. Sumner -00011

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'Melia -X0009  
D. Miller -X0013  
D. Layton -09031  
P. Vincequere -09035

3. Hearing Stenographers (17V09)  
B. Pike -00042  
T. Valls -00034  
C. Nalesnik -00035

Positions Filled 63      Vacancies 3      Total 66

# TRUST FUND

Deputy Director (06MAD)  
Priscilla Conant -09017

(Acting)

Manager (03MAD)  
K. Bullock -09000

Administrative Assistant II  
(09R01)  
M. J. Henderson -09005

## SUPPORT STAFF

1. Clerk V (15V05)  
\* -09012  
2. Clerk IV/Head Clerk  
(13V02)  
J. Trulzi -09009  
J. Lentini -09001

2. Accountant II's  
(08R01)  
B. Tisei -09006  
N. Tsapatsaris -09007

6. Counsel II's (17R01)  
P. Benitez-Perales -09010  
P. Ingraham -09011  
D. Andronico -09020  
Y. Viera Cardoza -00022  
M. Kelly -00023  
D. Salvucci -09022  
1. Paralegal (10R39)  
A. Fortes -09021

4. Investigators (18V07)  
T. Vincequere -09015  
J. Silva -09013  
J. Primeau -09014  
A. Giovanucci -09016

2. Registered Nurse III  
(03A16)  
D. DiBella -09003  
T. Clemente -09004  
3. Claims Adjusters  
(08R03)  
K. Magnotta -09002  
T. Allison -09018  
J. Rudav -09019

Positions Filled 22      Vacancies 2      Total 24

LEGAL COUNSEL

Chief Legal Counsel  
(08MPS)  
Dino Theodore -00021  
(Acting)

|

4. Counsel II (17R01)  
J. Labadhi -00328  
\* -00347  
\* -00087  
\* -00348

|

1. Paralegal (10R39)  
E. Hausman -00086

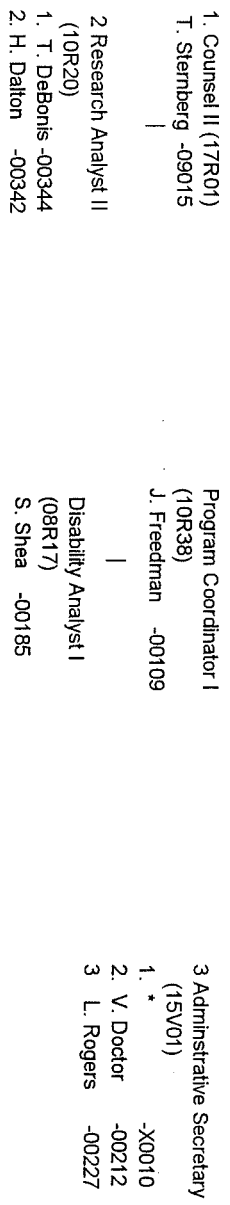
|

1. Adm. Secretary (15V01)  
A. Frederick -09051

Positions	4	Vacancies	3	Total	7
-----------	---	-----------	---	-------	---

HEALTH CARE SERVICES BOARD

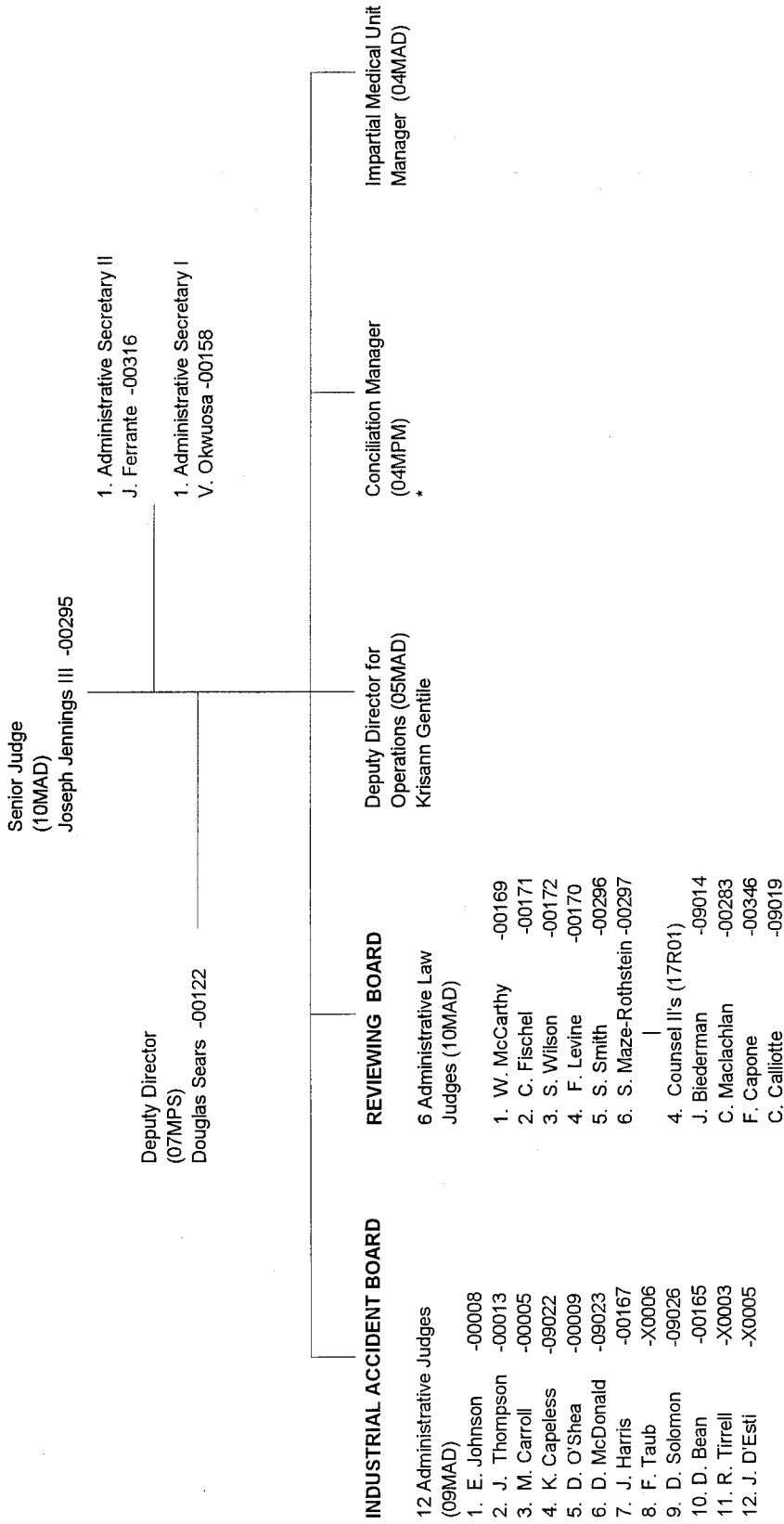
Executive Director  
(06MAD)  
Robert Davis -00341



Positions Filled 8      Vacancies 1      Total 9



# DIVISION OF DISPUTE RESOLUTION



Positions Filled 26      Vacancies 0      Total 26

# DIVISION OF DISPUTE RESOLUTION CONT

Deputy Director for  
Operations (05MAD)  
KrisAnn Gentile -09020

JUDICIAL SUPPORT	REVIEWING BOARD SECRETARIES (CONT)	DOCKETING UNIT	SCHEDULING UNIT	HEARING STENOGRAPHERS
Manager (02MAD) Deborah Pierre -09021   11 Administrative Secretaries (15V01) 1. N. Nunes -00213 2. * -00220 3. J. Marshall -00310 4. K. Wallace -00304 5. D. Urquhart -09034 6. T. Thompson -00219 7. W. Ferebee -00306 8. C. Long -00211 9. L. Jones -00234 10. P. Brown -00230 11. J. Cruickshank -00214 12. S. McQuarrie -00119	Manager (02MAD) Cont   6. Administrative Secretaries (15V01) 1. M. Crosby -09033 2. H. Houlder -00233 3. A. Tainter -00229 4. K. Ivers -00307 5. C. Shidler -09030 6. L. Kuntamukkala -00309	1. Paralegal (10R39) M. Fitzpatrick -09046   2. Clerk IV/Head Clerk (13V02) T. Courage -00222 M. Bernal -09036   1. Clerk III/Principal Clerk (11V01) P. Lando -00136	1. Paralegal (10R39) M. Flaherty -09047   2. Clerk IV/Head Clerk (13V02) A. Porfido -00210 J. Dapsys -09027   1. EDP III (12V04) L. Soto -00121	Manager (02MAD) Nancy Rannella -00038   20. Hearing Stenographers (17V09) A. Lagere -00036 M. LaRose -00043 K. DeGregorio -00049 L. Verrochi -00030 M. Flaherty -00048 B. O'Brien -00044 L. Person -00039 P. Phelan -00041 D. Washington -00045 L. Sutera -00052 L. Brown -00053 D. Golden -00054 P. Folsy -00051 P. Nelson -00037 P. Finelli -00313 C. Marquis -00314 J. Luongo -00032 S. Hayes -00312 S. Gildea -00128 * -00129

Positions Filled 47 Vacancies 2 Total 49

# DIVISION OF DISPUTE RESOLUTION CONT

## SENIOR JUDGE

### CONCILIATION UNIT

Conciliation Manager (06MPM)  
-00242

### IMPARTIAL MEDICAL UNIT

Impartial Unit Manager (04MAD)  
Kathleen White -00326

#### SUPPORT STAFF

1. Administrative Asst. II (09R01)  
S. Perez -00203
1. Clerk IV/Head Clerk (13V02)  
M. Bell -09039

#### CONCILIATORS

7. Review Examiner II (14R10)  
S. Corte -00256  
K. Walsh -00258  
N. Mann -00259  
J. Runkal -00260  
C. Rubbico -00255  
L. Delaney -00263  
C. Casella -00265

1. Review Examiner I (12R14)  
S. DeMarco -00253

1. Accountant II (08R01)  
E. Ruiz -00317

1. Accountant I (07R02)  
C. Bynoe -00330

2. Administrative Sec (15V01)  
J. Faiella -00231  
B. Lauzon -00215

1. Administrative Assistant I (07R02)  
E. Smith -00321

6. Clerk V's (15V05)  
D. French -00318  
D. Weaver -00320  
M. Sheppard -00323  
L. Fitzpatrick -00324  
V. Blanchard -00325  
J. Keogh -00190

Positions Filled 22      Vacancies 1      Total 23

ADVISORY COUNSEL

Executive Director (06MAD)  
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 294	VACANCIES 16	TOTAL 310
(T F) POSITIONS FILLED 22	VACANCIES 2	TOTAL 24

**APPENDIX O**  
**COLLECTIONS AND EXPENDITURES REPORT - FISCAL YEAR 1998**

<b><i>SPECIAL FUND</i></b>	<b><i>FY'98</i></b>	<b><i>FY'97</i></b>	<b><i>FY'96</i></b>	<b><i>FY'95</i></b>	<b><i>FY'94</i></b>
<b><u>COLLECTIONS</u></b>					
INTEREST	931,367	945,546	998,971	585,191	365,817
ASSESSMENT	14,143,523	14,518,007	16,915,362	21,084,055	17,537,534
LESS RET. CHECKS	0	0	(26,640)	(44)	0
ADJUSTMENTS			0	(3,241)	
LESS REFUNDS	(10,600)	(12,825)	(67,265)	(10,354)	(98,514)
<b>SUB-TOTAL</b>	<b>14,132,923</b>	<b>14,505,182</b>	<b>16,821,457</b>	<b>21,070,416</b>	<b>17,439,020</b>
FILING FEES	3,698,202	3,974,703	3,970,484	3,281,447	4,744,199
COLLECTION FEE	(4,429)	(33,414)	(16,205)	(10,354)	
LESS RET. CHECKS	(2,276)	(3,228)	(80,608)	(2,566)	(4,447)
LESS REFUNDS	(4,497)	(3,721)	(4,579)	(3,014)	(5,192)
<b>SUB-TOTAL</b>	<b>3,687,000</b>	<b>3,934,340</b>	<b>3,869,092</b>	<b>3,805,513</b>	<b>4,734,560</b>
1ST REPORT FINES	284,457	391,801	377,109	665,226	402,442
LESS COLLECTION FEE	(4,231)	(24,033)	(12,072)	(9,218)	
LESS RET. CHECKS	(200)	(1,900)	(700)	(1,200)	(300)
LESS REFUNDS	(400)	(600)	(500)	(1,500)	(2,200)
<b>SUB-TOTAL</b>	<b>279,626</b>	<b>365,268</b>	<b>363,837</b>	<b>653,308</b>	<b>399,942</b>
STOP WORK ORDERS	655,233	432,640	292,175		
LESS REFUNDS	0	(225)			
LESS BAD CHECKS	(59,718)	(11,322)	(3,600)		
COLLECTION FEE	(73,660)	(9,180)	(2,460)		
<b>SUB-TOTAL</b>	<b>521,855</b>	<b>411,913</b>	<b>286,115</b>		
LATE ASSESS. FINES	42,422	50,350	97,865	25,701	33,822
STOP WORK ORDERS			see above	370,271	166,600
SEC. 7 & 14 FINES	14,000	5,018	5,118	10,400	0
MISCELLANEOUS	19,876	19,681	22,899	12,876	7,867
LESS REFUND SEC.7 FINE	(3,900)				
<b>SUB-TOTAL</b>	<b>72,398</b>	<b>75,049</b>	<b>125,882</b>	<b>419,248</b>	<b>208,289</b>
<b>TOTAL COLLECTIONS</b>	<b>19,625,169</b>	<b>20,237,298</b>	<b>22,465,354</b>	<b>26,533,676</b>	<b>23,147,628</b>
BALANCE BRGT FWD	11,836,705	13,724,400	12,044,652	6,015,882	3,035,890
<b>TOTAL</b>	<b>31,461,874</b>	<b>33,961,698</b>	<b>34,510,006</b>	<b>32,549,558</b>	<b>26,183,518</b>
LESS EXPENDITURES	(20,546,414)	(22,124,993)	(20,785,606)	(20,504,906)	(20,167,636)
<b>BALANCE</b>	<b>10,915,460</b>	<b>11,836,705</b>	<b>13,724,400</b>	<b>12,044,652</b>	<b>6,015,882</b>
<b><u>EXPENDITURES</u></b>					
SALARIES	12,461,842	12,675,242	11,966,331	11,432,627	10,984,604
FRINGE BENEFITS	3,595,185	3,661,402	3,703,858	3,613,307	3,513,989
INDIRECT COSTS	366,570	526,447	498,563	501,84170	578,985
NON-PERSONNEL COSTS	4,079,325	5,235,003	4,613,724	4,954,835	5,093,478
FY'96 ADJUSTMENT		26,899			
PRIOR YEAR DEFICIENCY			3,130		
IP INDIRECT-EX	43,492				
<b>SUB-TOTAL</b>	<b>20,546,414</b>	<b>22,124,993</b>	<b>20,785,606</b>	<b>20,502,616</b>	<b>20,171,056</b>
misc.				2,290	(3,420)
<b>TOTAL EXPENDITURES</b>	<b>20,546,414</b>	<b>22,124,993</b>	<b>20,785,606</b>	<b>20,504,906</b>	<b>20,167,636</b>

**COLLECTIONS AND EXPENDITURES REPORT - FISCAL YEAR 1998**

<b><i>PUBLIC TRUST</i></b>	<b><i>FY'98</i></b>	<b><i>FY'97</i></b>	<b><i>FY'96</i></b>	<b><i>FY'95</i></b>	<b><i>FY'94</i></b>
<b><u>COLLECTIONS</u></b>					
INTEREST		0	0	0	53,222
SECTION 30H		0	0	4,192	0
ASSESSMENTS	2,810,405	2,493,610	2,064,334	1,419,799	819,613
REFUNDS		(7,834)	(46,712)	(9,024)	(93)
BD CHECKS	(12,133)				
<b>TOTAL ASSESSMENTS</b>	<b>2,798,272</b>	<b>2,485,776</b>	<b>2,017,622</b>	<b>1,410,775</b>	<b>819,520</b>
TOTAL COLLECTIONS	2,798,272	2,485,776	2,017,622	1,414,967	872,742
BALANCE BRGT FWD	415,444	202,743	167,910	285,328	2,291,964
<b>TOTAL</b>	<b>3,213,716</b>	<b>2,688,519</b>	<b>2,185,532</b>	<b>1,700,295</b>	<b>3,164,706</b>
LESS EXPENDITURES	(3,210,638)	(2,273,075)	(1,982,790)	(1,532,385)	(2,879,379)
<b>BALANCE</b>	<b>3,078</b>	<b>415,444</b>	<b>202,742</b>	<b>167,910</b>	<b>285,327</b>
<b><u>EXPENDITURES</u></b>					
RR COLAS	2,764,902	1,910,048	1,779,911	1,514,040	2,621,503
OEVR sec 30H			0	0	0
RR SEC. 37	445,736	363,027	142,513	18,345	254,676
RR LATENCY CLAIMS	0	0	0	0	3,200
RR REHAB	0	0	366		
SHELBY CLAIMS			60,000		
MM IME SEC 37	0	0	0		
<b>TOTAL EXPENDITURES</b>	<b>3,210,638</b>	<b>2,273,075</b>	<b>1,982,790</b>	<b>1,532,385</b>	<b>2,879,379</b>

<b><i>PRIVATE TRUST</i></b>	<b><i>FY'98</i></b>	<b><i>FY'97</i></b>	<b><i>FY'96</i></b>	<b><i>FY'95</i></b>	<b><i>FY'94</i></b>
<b><u>COLLECTIONS</u></b>					
INTEREST	468,719	626,082	1,390,938	620,028	354,842
ASSESSMENTS	43,554,841	38,664,243	33,891,287	30,147,213	28,974,039
LESS RET. CHECKS	0	0	(6,956)	(2,129)	0
ADJUSTMENTS			0	(92,088)	
LESS REFUNDS	(13,060)	(30,513)	(151,983)	(5,285)	(160,718)
<b>SUB-TOTAL</b>	<b>43,541,781</b>	<b>38,633,730</b>	<b>33,732,348</b>	<b>30,047,711</b>	<b>28,813,321</b>
REIMBURSEMENTS	1,255,128	1,673,509	1,346,814	1,129,709	1,029,263
PLUS ADJUSTMENTS			0	95,899	
LESS COLLECTION FEE	0	(1,739)	(74,462)	(23,739)	
LESS ADJUST. COLL. FEE				(3,810)	
RET. CHECK	(1,733)	(18,109)	(5,588)	(4,772)	(200)
REFUNDS	0	(6,414)	(1,548)		
<b>SUB-TOTAL</b>	<b>1,253,395</b>	<b>1,647,247</b>	<b>1,265,216</b>	<b>1,193,287</b>	<b>1,029,063</b>
MISC.		0	18,989		
SEC. 30 H	9,386	0	8,000	54,215	41,842
<b>TOTAL COLLECTIONS</b>	<b>45,273,281</b>	<b>40,907,059</b>	<b>36,415,491</b>	<b>31,915,241</b>	<b>30,239,068</b>
BALANCE BRGT FWD	7,895,008	6,567,009	12,588,262	12,363,485	7,588,112
<b>TOTAL</b>	<b>53,168,289</b>	<b>47,474,068</b>	<b>49,003,753</b>	<b>44,278,726</b>	<b>37,827,180</b>
LESS EXPENDITURES	(42,762,666)	(39,579,060)	(42,436,743)	(31,690,464)	(25,463,695)
<b>BALANCE</b>	<b>10,405,623</b>	<b>7,895,008</b>	<b>6,567,010</b>	<b>12,588,262</b>	<b>12,363,485</b>

**COLLECTIONS AND EXPENDITURES REPORT - FISCAL YEAR 1998**

<b>EXPENDITURES</b>	<b>FY'98</b>	<b>FY'97</b>	<b>FY'96</b>	<b>FY'95</b>	<b>FY'94</b>
RR SEC. 34	758,066	710,675	1,445,378	2,646,319	2,591,989
RR SEC. 35	652,752	699,467	828,384	750,064	795,556
RR LUMP SUM	711,594	1,180,308	2,112,194	1,575,454	1,373,464
RR SEC. 36 *	138,693	73,236	342,590	182,747	484,297
RR SEC. 31	120,908	106,268	93,383	69,115	109,928
RR SEC. 34, PERM. TOTAL	177,892	125,571	32,234		
RR COLA ADJ	113,576	113,192	100,838	123,267	12,459
RR EE MEDICAL REIMB.	59,556	48,911	49,961	64,091	29,158
RR EE TRAVEL	866	194	980	2,682	5,627
RR EE MISC. EXPENSE	0	0	669	32,638	
RR EE BOOKS & SUPPLIES	0	0	210	176	0
RR FUNERAL EXPENSES	0	0	4,000	480	8,000
RR VETERANS SERVICES	1,000	0	0	1,522	4,690
RR LEGAL FEES	288,070	364,741	725,505	499,328	716,184
RR LEGAL EXPENSES	31,934	44,299	66,294	44,002	72,862
RR LEGAL MISC. / OTHER	8,197	8,489			
RR MEDICAL EXPENSES	0	953	4,899	1,463,797	1,797,948
RR REHAB SERVICES	8,957	11,804	16,031	47,893	5,172
RR REHAB. SERV. TRAVEL	199	398	613	1,319	323
RR LABOR MARKET STUDY	19,946	20,076	26,142		
RR REHAB (OLD)	654	1,190			
RR MEDICAL	1,629,352	1,087,517	1,479,997		
RR MEDICAL RECORDS	1,584	1,992	315		
RR WELFARE LIENS	170,408	54,545	342,996	0	209,069
<b>SUB-TOTAL RR</b>	<b>4,894,204</b>	<b>4,653,826</b>	<b>7,673,613</b>	<b>7,504,894</b>	<b>8,216,726</b>
<b>KK EQUIPMENT</b>	<b>0</b>	<b>0</b>	<b>20,995</b>		
<b>MM TUITION</b>	<b>0</b>	<b>1,644</b>	<b>6,403</b>	<b>940</b>	<b>2,828</b>
<b>SUB-TOTAL CLAIMANTS</b>	<b>4,894,204</b>	<b>4,655,470</b>	<b>7,701,011</b>	<b>7,505,834</b>	<b>8,219,554</b>
<b><u>INSURERS</u></b>					
RR COLAS	18,008,554	13,701,773	11,844,247	12,741,936	10,924,588
RR SHELBY CLAIMS	595,938	1,844,665	6,723,487		
RR LATENCY SEC. 35	873,477	927,940	702,996	749,166	4,768,138
RR LEGAL FEE SEC. 35	126,800	165,445	163,488	113,783	
RR LEGAL EXP. SEC. 35	0	0	1,770		
RR SEC. 37	16,424,976	16,479,884	13,260,236	8,487,924	699,185
<b>SUB-TOTAL INSURERS</b>	<b>36,029,745</b>	<b>33,119,707</b>	<b>32,696,224</b>	<b>22,092,809</b>	<b>16,391,911</b>
<b>TOTAL LEGAL</b>	<b>40,923,949</b>	<b>37,775,177</b>	<b>40,397,235</b>	<b>29,598,643</b>	<b>24,611,465</b>
<b><u>OEVR</u></b>					
JJ IME CORP.	0	0	280	450	
MM TUITION	3,520	12,055	0	2,500	9,440
RR REHAB-30H	5,514	8,564	363	6,018	1,530
RR TRAVEL REHAB	229	308	0	114	
RR EE TRAVEL	262	0	0	0	0
RR EE BOOKS & SUPPLIES	4,727	402	0	194	0
<b>SUB-TOTAL OEVR</b>	<b>14,252</b>	<b>21,329</b>	<b>643</b>	<b>9,276</b>	<b>10,970</b>
<b>TOTAL BENEFITS</b>	<b>42,762,666</b>	<b>37,796,506</b>	<b>40,397,878</b>	<b>29,607,919</b>	<b>24,622,435</b>

**COLLECTION AND EXPENDITURE REPORT - FISCAL YEAR 1998**

<b>EXPENDITURES DEFENSE OF THE FUND</b>	<b>FY'98</b>	<b>FY'97</b>	<b>FY'96</b>	<b>FY'95</b>	<b>FY'94</b>
AA PERSONELL	830,029	744,871	579,854	495,141	306,588
AA OVERTIME	0	765	15,598		
<b>SUB-TOTAL</b>	<b>830,029</b>	<b>745,636</b>	<b>595,452</b>	<b>495,141</b>	<b>306,588</b>
DD FRINGE	240,327	211,276	180,849	151,436	100,412
DD UNIVERSAL HEALTH	391	640	650	624	155
DD MEDICARE	10,553	9,008	8,006	5,984	4,197
DD UNEMPLOYMENT	2,073	2,237	2,354		
<b>SUB-TOTAL</b>	<b>253,344</b>	<b>223,161</b>	<b>191,859</b>	<b>158,044</b>	<b>104,764</b>
BB TRAVEL	10,150	10,657	7,013	7,926	834
BB TRAINING/TUITION	170	1,325	4,690	1,035	110
BB PETTY CASH	30	50			
<b>SUB-TOTAL</b>	<b>10,350</b>	<b>12,032</b>	<b>11,703</b>	<b>8,961</b>	<b>944</b>
<b>CC CONSULTANT</b>		<b>7,972</b>	<b>7,290</b>		
EE MV RENTALS	271	57	800	69	542
EE ADVERTISING	0	430	482	0	355
EE BOOKS/SUPPLIES	11,457	20,586	59,868	364,826	2,914
EE PETTY CASH REIMB.		15	59	25	
EE IMPARTIAL APPEALS	17,300	16,900	19,580	19,125	10,575
EE CENTRAL REPRO.	0	0	500	1,240	
EE OMIS CHARGEBACK	4,600	6,681	9,713	3,999	
EE CONF. INCIDENTALS			54		
EE CELLULAR PHONES	905	829	1,083	2,454	
EE AT&T	71				
EE TELEPHONE & FAX	9,134				
EE POSTAGE	8,450				
EE INDIRECT COSTS REIMB.	33,709				
<b>SUB-TOTAL</b>	<b>85,897</b>	<b>45,498</b>	<b>92,139</b>	<b>391,738</b>	<b>14,386</b>
HH CONSULTANTS	151,209	276,030	598,532	358,301	191,494
<b>SUB-TOTAL</b>	<b>151,209</b>	<b>276,030</b>	<b>598,532</b>	<b>358,301</b>	<b>191,494</b>
JJ OPERATIONAL SERV.	295,302	386,539	457,853	244,357	48,309
<b>SUB-TOTAL</b>	<b>295,302</b>	<b>386,539</b>	<b>457,853</b>	<b>244,357</b>	<b>48,309</b>
GG BOSTON LEASE	146,846				
GG ELECTRICITY	6,460				
KK EQUIPMENT	0	26,054	16,060	221,438	19,270
LL ACTION TRANS., INC			620		
LL PRAXIS	6,300	6,396			
LL XEROX	6,627	4,730			
LL MOBIL COMM	36	39	24		
LL ORACLE	11,220				
LL SIMPLEX	102				
LL FAIRCHILD	1,517				
LL PYRAMID	2,702				
<b>SUB-TOTAL</b>	<b>181,810</b>	<b>37,219</b>	<b>16,704</b>	<b>221,438</b>	<b>19,270</b>

(CONTINUED ON NEXT PAGE)



**COLLECTIONS AND EXPENDITURES REPORT - FISCAL YEAR 1998**

<b><i>EXPENDITURES DEFENSE OF THE FUND</i></b>	<b><i>FY'98</i></b>	<b><i>FY'97</i></b>	<b><i>FY'96</i></b>	<b><i>FY'95</i></b>	<b><i>FY'94</i></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 SEC. 8	16,524	0	10,600	2,800	11,000
RR BEARAK REPORTS		48,467	54,809	15,348	
RR SECTION 50 INTEREST		0	1,924		
<b>SUB-TOTAL</b>	<b>16,524</b>	<b>48,467</b>	<b>67,333</b>	<b>204,565</b>	<b>155,505</b>
<b>TOTAL DEFENSE OF FUND</b>	<b>1,824,465</b>	<b>1,782,554</b>	<b>2,038,865</b>	<b>2,082,545</b>	<b>841,260</b>
<b>TOTAL EXPENDITURES</b>	<b>44,587,131</b>	<b>39,579,060</b>	<b>42,436,743</b>	<b>31,690,464</b>	<b>25,463,695</b>

\* Stop work order fines transferred to Special Fund from Private Trust Fund in FY'94.